[4910-13]
DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

Docket No. FAA-2014-0134

RIN 2120-AF90

Proposal to Consider the Impact of One Engine Inoperative Procedures in Obstruction Evaluation Aeronautical Studies

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice of proposed policy; request for comment.

SUMMARY: This action proposes to establish a new policy that would consider the impact of one engine out procedures in the aeronautical study process conducted under existing 14 CFR part 77 criteria when the airport operations potentially affected by a determination of no hazard are able to use a dedicated one engine out flight path. Additionally, this proposed policy statement notes that the FAA has the authority to consider the cumulative effects of construction in concentrated areas when evaluating the potential for a hazard to navigation.

DATES: Send your comments on or before June 27, 2014.

ADDRESSES: You may send comments [identified by Docket Number FAA-2014-0134] using any of the following methods:

- Government-wide rulemaking web site: Go to http://www.regulations.gov and follow the instructions for sending your comments electronically.
- Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Fax: 1-202-493-2251.
- Hand Delivery: To Docket Operations, Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the notice and comment process, see the SUPPLEMENTARY INFORMATION section of this document.

Privacy: We will post all comments we receive, without change, to http://www.regulations.gov, including any personal information you provide. For more information, see the Privacy Act discussion in the SUPPLEMENTARY INFORMATION section of this document.

Docket: To read background documents or comments received, go to http://www.regulations.gov at any time or to Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Speckin, Airport Obstruction Standards Committee, Region and Center Operations, Office of Finance and Management, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone: (816) 329-3053; email: 7-ACE-Federal-Registry-Notice@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to join in this notice and comment process by filing written comments, data, or views. The most helpful comments reference a specific portion of

the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposal. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the ADDRESSES section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the ADDRESSES section.

Privacy Act: Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets. This includes the name of the individual sending the comment (or signing the comment for an association, business, labor union). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or you may visit http://regulations.gov.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person

identified in the FOR FURTHER INFORMATION CONTACT section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR Part 7.

Availability of Documents

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking portal (http://www.regulations.gov/search);

(2) Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Authority for this Proceeding

Under Section 40103(a), the Administrator has broad authority to regulate the safe and efficient use of the navigable airspace. The Administrator is also authorized to issue air traffic rules and regulations to govern the flight, navigation, protection, and identification of

aircraft for the protections of persons and property on the ground and for the efficient use of the navigable airspace (49 U.S.C. 40103(b)). The Administrator may also conduct investigations and prescribe regulations, standards, and procedures in carrying out the authority under this part (49 U.S.C. 40113). The Administrator is authorized to protect civil aircraft in air commerce (49 U.S.C. 44701(a)(5)).

Under Section 44701(a)(5), the Administrator promotes safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. Also, Section 44718 provides that under regulations issued by the Administrator, notice to the agency is required for any construction, alteration, establishment, or expansion of a structure or sanitary landfill, when notice will promote safety in air commerce and the efficient use and preservation of the navigable airspace and airport traffic capacity at public use airports. This statutory provision also provides that, under regulations issued by the Administrator, the agency determines whether such construction or alteration is an obstruction of the navigable airspace, or an interference with air navigation facilities and equipment or the navigable airspace. If a determination is made that the construction or alteration creates an obstruction or otherwise interferes, the agency then conducts an aeronautical study. The study evaluates the adverse impacts on the safe and efficient use of the airspace, facilities or equipment, as well as the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

Proposed Policy Statement

Navigable airspace is being encroached around the country with the net effect of decreasing access for aviation operations. Structures as diverse as microwave towers to

office buildings and wind turbines are being built in ever-increasing numbers near many airports. While developers may erect these structures, the FAA must consider the impact of the structures on the safe operation of flight and their impact on the safe, efficient use and preservation of the navigable airspace and airport capacity and efficiency. Additionally, aircraft operators must plan for the potential of an engine failure (one engine inoperative, or OEI) during take-off in accordance with 14 CFR parts 25, 121, and 135. An engine failure could prevent the aircraft from climbing at the normal climb rate and structures near an airport could, under such circumstances, create a safety risk. Thus, the agency interest in studying the potential impact of these structures is not limited solely to whether aircraft could avoid the proposed structures under normal circumstances. The agency should also consider the impact of OEI.

The potential impact of a structure is particularly significant at airports where existing development or other factors effectively limit operator options in an OEI situation. At these airports, increasing encroachment of the airspace may effectively reduce the amount of usable runway because of OEI procedures. [1]

The FAA is tasked with multiple mandates. Assuring aviation safety is the FAA's primary mission, including safety of navigable airspace, aircraft safety and airport safety, and responsibility for assuring that safety is shared by the agency's air traffic organization and aviation safety organization. Additionally, the Office of Airports is tasked with assuring the safety and the continued viability of public airports, and with maintaining and expanding

[1] Indeed, the increased concentration of structures could significantly impact the ability of the FAA to mitigate the risk to safety and capacity for any reason. Title 49 U.S.C. 44718 specifically requires the FAA to consider the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

aviation capacity at those airports. To that end, the FAA routinely supports significant investments at these airports to increase airport capacity and efficiency through the approval of new runways and extension of existing runways. This proposed policy statement addresses the different mandates of the FAA, while recognizing the right of developers to erect structures near airports and air navigation facilities.

The FAA is not authorized to grant or deny construction projects. Rather, Part 77 defines a number of obstruction standards that are used to identify obstacles that may have an adverse impact on the navigable airspace. Even upon the issuance of a Determination of Hazard, the developer is free to continue construction. However, zoning authorities and private insurers may be reluctant to permit construction of the structure, given the FAA's determination that it poses a hazard to navigation. Should the developer proceed with construction, the FAA, through its air traffic organization, takes action to mitigate the impact of the obstruction by altering procedures (e.g., departure routes, climb gradients) to ensure that safety is maintained. In making a hazard determination under part 77, the FAA has historically only considered aircraft operations under normal circumstances. OEI procedures have been considered emergency procedures and have not been considered by the FAA when conducting an aeronautical study under Part 77.

As long as the aircraft could operate with altered flight tracks, the FAA has not considered other potentially costly impacts to the carriers. These include, for example, greater fuel burn, reduced payload, or reduced numbers of passengers. As a result, aviation flexibility may be compromised, and the carriers have noted they are experiencing a growing erosion of capacity because of the encroachment from obstructions near airports. To keep up with this situation, the FAA is now planning to evaluate a broader definition of capacity

when evaluating new obstacles in a defined OEI departure area with the intent to preserve the usable runway length at federally obligated airports.

The responsibility to consider all obstructions beyond the runway end and make the necessary adjustments to OEI departure procedures falls upon the aircraft operator to ensure safe clearance. Every air carrier takeoff operation must plan for an engine failure. OEI procedures may force an operator to reduce the takeoff weight of the aircraft, either by reducing the number of passengers or the amount of cargo or fuel when circumstances mandate.

Historically, the FAA has held that this is an economic issue rather than a capacity issue largely based on the premise that airports are not incurring serious encroachment from multiple obstructions near the airport. However, the last forty years have shown economic activity and structures only accelerating around airports - creating an ever increasing risk. To address this, the FAA is planning to integrate the OEI requirements within its Part 77 analysis.

Air carriers believe that the FAA should include OEI requirements in its Part 77 determinations to help ensure an unobstructed departure path in the event of an emergency engine-out situation. Simply accommodating the multiple OEI procedures of all operators at an airport is not possible. The OEI procedures could be so diverse as to effectively create a zone around the entire airport where hazard determinations would be made at a height and distance that the FAA has consistently determined no hazard exists. Another solution is merited.

In May of 2008, the FAA initiated and sponsored the National OEI Pilot Project to develop OEI surface policy guidance. It engaged the airport owners/sponsors in developing an OEI surface and depicting it on the Airport Layout Plan (ALP). The OEI Pilot Project utilized the specific knowledge, expertise, and operational experience of airport management, local government/community, and air carriers to develop policy guidance for OEI surfaces that would satisfy the needs of the majority of airports and air carriers.

Based on this pilot program, the FAA has determined that it is desirable for airport owners, with input from users/operators and communities, to define an OEI departure area for each runway end supporting commercial service operations in coordination with the FAA. Developing OEI surfaces is a voluntary decision the airport owner makes in coordination with the FAA, with input from the users/operators and local community. Once the surface is defined for each critical runway end and agreed to by all stakeholders, it is the intention of the FAA to consider a consolidated OEI surface(s) and the effects of new structures encroaching them under its existing Part 77 authority.

Consideration of the dedicated OEI surfaces would extend to the full scope of existing Part 77 requirements. The FAA does not need to amend Part 77 to implement this change. Accordingly, while the FAA is willing to consider the impact of the proposed structure, it would not require notification of structures solely for the purpose to study for possible impact to an OEI surface. If a structure does not require filing under Part 77 or does not exceed an obstruction standard under §77.17, then it will not be studied for possible impact to an OEI surface. While aircraft operators can choose to develop an OEI procedure that is outside of the areas covered by Part 77 notice criteria, the FAA would not consider

those procedures when evaluating the potential impact of the proposed structure on the safety and capacity of the navigable airspace or airport.

Under this proposed policy, if notice of a proposed structure is filed with the FAA and the structure would exceed an obstruction standard, the structure would be a hazard to air navigation if it exceed the OEI surface for that runway and it was not shielded in accordance with paragraph 6-3-13 of FAA Order 7400.2,[2] Procedures for Handling Airspace Matters. The FAA invites comment on whether additional exceptions are warranted to this finding of a hazard determination for these obstructions.

The FAA believes any airport and experiencing encroachment should work with its users during the Master Planning process and propose to depict a dedicated OEI surface on the Airport Layout Plan (ALP). If this results in a large number of pending proposals, then the FAA will give top priority to those submitted by the core airports. Core airports are those with more than 1% of total enplanements, defined as large hubs, or airports with 0.75% or more of total non-military itinerant operations. These core airports are the most likely to have a near-term need to define OEI departure areas. FAA will then process requests from non-core airports on a first come, first served basis, consistent with available FAA resources. FAA approval of proposed changes to the ALP will require consideration of potential environmental impacts under the National Environmental Policy Act (NEPA). As part of the NEPA review, the FAA will identify and appropriately address any disproportionately high and adverse impacts on minority and low income populations in accordance with the Executive Order on Environmental Justice.

[2] Existing structures within the OEI surface would be grandfathered and not subject to this proposed policy; however, this proposal would apply to modifications to such structures.

The FAA intends to amend agency guidance and directives to encourage airports to collaborate with stakeholders to proactively identify OEI departure tracks and consider potential impacts of land use development upon airport capacity. The FAA is seeking input on the negative or positive impact from all parties that could result from this policy change, including developers, airport owners, aircraft operators, local governments, and any other group that feels they will be impacted.

Issued in Washington, DC, on April 21, 2014

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Office of Finance and Management
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