

FAA PROPOSES CHANGES TO ITS RULES GOVERNING AERONAUTICAL REVIEW OF PROPOSED TOWER FACILITIES



The Federal Aviation Administration (FAA) has released a *Notice of Proposed Rule Making* (NPRM) seeking comment on a number of proposed amendments to its Rules governing objects that might affect the nation's navigable air space. Part 77 of the FAA's Rules (14 CFR Part 77) contains the procedures for submitting to the FAA notice of proposed construction or alterations of

structures (such as broadcast towers) and provides for aeronautical studies of potential obstructions to determine their impact on airspace use.

Currently broadcasters and others notify the FAA when a new tower facility (or when certain modifications to an existing facility) is proposed. The FAA reviews the notification to determine (1) if the tower would be a physical obstruction to aviation or, (2) in the case of FM radio and VHF TV facilities, whether there is the potential for electromagnetic interference (EMI).

The FAA is concerned about EMI because the FM band (88-108 MHz) is immediately adjacent to the FAA's navigation/communications band (108-136.5 MHz) and utilizes a much greater transmitting power than the FAA's VHF Omni-directional Range Station (VOR), ILS, or communications systems. In addition, the VHF-TV bands (54-72 MHz, 76-88 MHz, and 174-216 MHz) are adjacent to the FAA communications navigation bands for marker beacons (75 MHz), government land mobile facilities (162-174 MHz), and bands used for communication with the military air traffic (225-328.6 MHz).

The NPRM proposes a number of amendments that may impact the FAA's aeronautical evaluation of proposed broadcaster facilities. Some are listed below.

Among other things, the FAA proposes:

- To amend the requirement to file notice by extending the period from 30 days to 60 days before either construction begins.
- A technical amendment to lower the height of a structure identified as an obstruction from above 500 ft. to above 499 ft. Under this proposed amendment, all structures that are exactly 500 ft. tall would be obstructions and would be studied to determine their effect on the navigable airspace.
- To require that notice of construction or alteration on or near a private-use airport or heliport must be filed with the FAA if that private-use airport or heliport has at least one FAA approved Instrument Approach Procedure (IAP). Currently, there is no requirement to file a notification for a tower near private airports, however the FAA believes that since many private airports now have IAPs they need to assess the EMI impact. Interestingly, no list of these airports exists. The FAA seeks comment on the best way to make this information available.
- To require notice of construction or alteration that may result in EMI to air navigation and communication facilities. In particular, the FAA proposes to require that notice be filed for: (1) construction of a new facility or modification of an existing facility which supports a radiating element for the purpose of radio frequency transmission; (2) any changes or modifications to a system, when specified in the original FAA determination including a change in the authorized

frequency, the addition of new frequencies, an increase in effective radiated power (ERP) equal to or greater than 3 dB, or the modification of any radiating elements. This proposal could potentially increase the number of tower facilities that would be required to file a notification with the FAA.

- To amend the so-called civil airport "Imaginary Surfaces" which are used to assist in determining whether or not a proposed structure would be an obstruction to air navigation at civil airports (i.e. if a structure falls within one of these imaginary surfaces then it could be considered an obstruction). The FAA proposes to amend the size of certain surfaces in order to broaden their applicability and to harmonize Part 77 with other FAA airport design documents. However, the amending of the imaginary surfaces may result in more proposed structures being classified as obstructions and consequently would require further study by the FAA to determine whether or not the structure is a hazard to air navigation.

The NPRM also proposes to re-title Part 77 and reformat it into sections that closely reflect the aeronautical study process.

Comments on these proposals are due to the FAA by September 11, 2006. A copy of the NPRM is available on the FAA Web page at <http://dmses.dot.gov/docimages/p85/401410.pdf>. The Regulatory Flexibility Analysis provides some interesting insights into the NPRM and it's available at http://dmses.dot.gov/docimages/pdf96/400987_web.pdf. The FAA Website for submitting comments is <http://dms.dot.gov/submit/>.



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