[Docket No. 8008; Amdt. 77-4]

PART 77—OBSTRUCTIONS AFFECTING NAVIGABLE AIRSPACE

Standards for Determining Obstructions

The purpose of this amendment is to eliminate the requirement that the FAA must find any structure exceeding the applicable obstruction standard and located within an airport runway clear zone or the portion of a primary surface extending beyond the end of a runway to be a hazard to air navigation, regardless of any mitigating factor.

The FAA published a notice of proposed rule making in the FEDERAL REGISTER on March 9, 1967 (32 F.R. 3887), circulated as Notice No. 67-7 proposing the elimination of the mandatory finding of hazard, thereby permitting the FAA to study all factors involved and make a finding based on the particular situation. The response to the notice indicated a general endorsement of the proposal. Due consideration was given to all comments received.

The Air Line Pilots Association withheld endorsement because the FAA had not indicated what factors it presently considers before granting an exemption to a proposal for an obstruction in a clear zone. It stated it had difficulty in visualizing any mitigating factor relative to an obstruction within a clear zone, and making it easier to allow an obstruction would undoubtedly increase the number of obstructions and decrease the safety margin.

Under the present regulation, we have granted exemptions in cases, where among other matters, the proposed construction, though in a clear zone, was shielded from aircraft flight paths; or where the structure was of a temporary nature such as construction machinery or rigs used in constructing a public water system and erected for use only during daylight hours under VFR conditions.

With the deletion of § 77.19(c)(4), the FAA would subject any construction proposal within a clear zone that exceeded the applicable obstruction standards to an aeronautical study in accordance with § 77.19(c)(3). The study, which may be reviewed by all interested persons, would determine whether the proposed construction would be a hazard. Pending such a determination the construction would be presumed to be a hazard as provided in that section.

This amendment will not reduce the protection to runway approach areas presently afforded by § 77.19(c)(4), but would retain that protection through the application of § 77.19(c)(3). It is not the intent of this amendment to make it easier for obstructions to be based in approach areas or to relax the position of the FAA with regard to such obstructions. This amendment will permit the FAA to exercise its discretionary authority in determining whether the obstruction will in fact be a hazard after reviewing all of the relevant factors. In so doing, the public will be made more aware of the proposed obstruction through circularization and notice, and will be given an opportunity to present relevant comments. Additionally, it will make unnecessary the present practice of granting exemptions from the notice requirements of Part 77 through a procedure recognized as time consuming and inefficient.

In consideration of the foregoing, Part 77 of the Federal Aviation Regulations is amended, effective November 12, 1967, as hereinafter set forth:

1. In § 77.19, paragraph (c) is amended as follows:

(a) By adding the word "or" at the end of subparagraph (2).

(b) By deleting "; or" at the end of subparagraph (3), and inserting a period in place thereof.

(c) By deleting subparagraph (4) and the flush paragraph following that subparagraph.

2. In § 77.33, paragraph (a) is amended by deleting the words "or is an obstruction in a runway clear zone".

(Secs. 307, 313, and 1101 of the Federal Aviation Act of 1958; 49 U.S.C. 1348, 1354, 1501)

Issued in Washington, D.C., on September 6, 1967.

WILLIAM F. MCKEE,
Administrator.

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