

Rules and Regulations

Federal Register

Vol. 74, No. 145

Thursday, July 30, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA-2007-28503; Amendment No. 33-29]

RIN 2120-AJ04

Airworthiness Standards; Fire Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA amends the airworthiness standards for issuance of original and amended aircraft engine type certificates for fire protection. The new standard will change aircraft engine fire protection certification standards to update and harmonize them with European Aviation Safety Agency (EASA) fire protection requirements, thereby simplifying airworthiness approvals for import and export purposes.

DATES: This amendment becomes effective September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Directorate Standards Staff, ANE-111, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (781) 238-7120; fax (781) 238-7199; e-mail marc.bouthillier@faa.gov. For legal questions concerning this final rule contact Vincent Bennett, Office of the Chief Counsel—Operations, New England Regional Counsel, ANE-7, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (781) 238-7044; e-mail vincent.bennett@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

This rulemaking is promulgated under the authority as described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, the Administrator is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce, including minimum safety standards for aircraft engines. This regulation is within the scope of that authority because it updates the existing regulations for aircraft engine fire protection.

Background

In 1989, the FAA met with the European Joint Aviation Authorities, United States (U.S.) and European aviation industry representatives to harmonize U.S. and European certification standards. Transport Canada subsequently joined this effort. The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) through its Engine Harmonization Working Group to review existing regulations and recommend changes to remove differences in U.S. and European engine certification fire protection standards.

Part 33 of Title 14 of the Code of Federal Regulations (14 CFR Part 33) prescribes airworthiness standards for original and amended type certificates for aircraft engines certificated in the United States. The Certification Specifications for Engines (CS-E) prescribe corresponding airworthiness standards for aircraft engine certification in Europe by the European Aviation Safety Agency (EASA).

While part 33 and the European regulations are similar, they differ in several respects. These differences can result in additional costs and delays. This final rule is based on Aviation Rulemaking Advisory Committee (ARAC) recommendations to the FAA to harmonize the differences.

Summary of the Rulemaking

The FAA published a notice of proposed rulemaking (NPRM) on February 21, 2008 (73 FR 9494) that proposed changes to § 33.17. We proposed to change aircraft engine fire protection certification standards to update and harmonize them with European Aviation Safety Agency (EASA) requirements. The comment period for the NPRM closed on May 21, 2008. The new rule will harmonize fire protection certification standards for engines certificated in the United States under 14 CFR part 33 and in European countries under EASA Certification Specifications for Engines (CS-E) and will simplify international type certification procedures. The rule will also reflect current industry design and FAA certification practices. This final rule adopts the proposed rule with minor changes.

Summary of Comments and Discussion of Final Rule

Two domestic engine manufacturers, General Electric and Pratt & Whitney, and two private individuals responded to the NPRM request for comments. The commenters supported the proposed rule, suggested minor changes to improve clarity, and requested that certain information be included in the companion Advisory Circular (AC).

An individual commenter stated that proposed § 33.17(f) should specify drain line flow capacity equal to the maximum flow rate possible. We believe specifying flow rate would be overly design restrictive and is unnecessary. The rule is clear that no hazardous quantity of flammable fluid may accumulate unintentionally, and any tube or line intended to drain flammable fluids must be sized properly to meet this requirement. Therefore, the rule as proposed already addresses the commenter's concern about flow rate capacity. However, the companion AC will include guidance for § 33.17(f), and will highlight the need for proper drain and vent line flow capacity.

Pratt & Whitney, General Electric and an individual commenter suggested a specific definition for the term "hazardous quantity" in § 33.17(c), (d)(2), and (f) be included in the companion AC. The commenters believe this definition would make FAA's guidance "consistent with EASA AMC E-130(1)." This comment relates to the

companion AC and not the rule. The public will have the opportunity to comment on the companion AC, and the FAA will consider these comments in finalizing the revised AC.

Pratt & Whitney and General Electric commented on the use of the phrase “fire resistant and fireproof” in the revised rule. Pratt & Whitney stated that proposed § 33.17(b) would be more clear if it did not specify that “each external line, fitting, and other component, which contains or conveys flammable fluid during normal engine operation must be fire resistant or fireproof, as applicable.” The commenter prefers the current language that requires a fire resistant standard. The commenter stated that while an advisory circular could provide clarification on when a fire resistant or fireproof standard is applicable, maintaining the current wording would prevent potential confusion.

We believe the text of § 33.17(b) is consistent with FAA, EASA and industry accepted standard certification practice of testing varying component types to fire resistant or fireproof standards. However, we have replaced the term “as applicable” with “as determined by the Administrator” to reflect the existing practice of requiring the applicant to comply with the standard which provides an acceptable level of fire protection based on the product design. Additionally, the existing AC provides guidance on when a fire resistant or fireproof determination is appropriate. The companion AC for this new rule will also provide guidance on making fire resistant or fireproof determinations, and it will be consistent with current industry standard certification practices.

General Electric and an individual commented on the requirement for “fire resistant or fireproof” protection in proposed § 33.17(e); specifically, General Electric stated that the phrase, “engine control system components that are located in a designated fire zone must be fire resistant or fireproof, as applicable” does not state which, if any, of the control system components must be fireproof. Although this is a new requirement within § 33.17, fire protection requirements have been applied to control system components for some time. Historically, engine control components have included flammable potting materials, and in some applications, fluid cooling circuits have been considered. This amendment provides a regulatory standard for a fire resistant or a fireproof demonstration, as appropriate for a given engine control component design and accommodates varying designs as technology evolves

over time. The companion AC for this rule will provide guidance on making fire resistant or fireproof determinations for control systems components and will be consistent with current industry standard certification practice.

One individual suggested that costs would be incurred. We believe the individual is referring to the cost of certification, as this is a certification requirement, and not a manufacturing requirement. In this final rule, as in the NPRM, we have determined there will be a decrease in the overall cost of certification for manufacturers. By codifying standard certification practices in the United States and in Europe, manufacturers will receive cost-savings from eliminating duplicate documentation and the need to comply with two separate testing and certification standards.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. We have determined there is no current or new requirement for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of

U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more yearly (adjusted for inflation with base year of 1995).

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

Under current regulations, aircraft engine manufacturers must satisfy both the FAA and EASA engine certification standards to market aircraft in the United States and Europe. Meeting two different sets of certification requirements can raise the cost of developing a new aircraft engine without increasing safety. This final rule harmonizes FAA type certification standards for fire protection with the requirements already in existence in Europe, thus simplifying airworthiness approvals for import and export. A more streamlined and common set of certification standards lowers the cost of airplane engine development and fosters international trade.

The FAA has not attempted to quantify the cost savings that may occur, only noting that harmonized standards will contribute to cost savings for all part 33 engine manufacturers who seek certification in both the United States and in Europe. There is also potential for increased safety by having more clear and explicit regulations.

In the NPRM, we used this same justification to determine that costs were minimal and the benefits justified the costs. Although we received a comment from an individual questioning the cost savings to manufacturers, we received no comments from manufacturers about our determination. As manufacturers worked with aviation authorities to remove differences in fire protection certification standards, we stand by our original determination that the costs are minimal.

This final rule incorporates EASA certification standards, while

maintaining the existing level of safety. The benefits of this rule justify the costs and existing level of safety will be preserved. The Office of Management and Budget has determined that this final rule is a "significant regulatory action" because it harmonizes U.S. aviation standards with those of other civil aviation authorities.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a large number of small entities. If the agency determines that it will, the agency must prepare an initial regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Our initial determination showed the requirements would not have a significant impact on a substantial number of small entities, and we received no comments about this determination. We conclude that this final rule will not have a significant impact on a substantial number of small entities for two reasons. First, as noted earlier, the net effect of the rule will provide regulatory cost relief in the certification process. Second, all United States turbine aircraft engine manufacturers but one, exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft engine manufacturers. United States turbine aircraft engine manufacturers include: General Electric, CFM International, Pratt & Whitney, International Aero Engines, Rolls-Royce

Corporation, Honeywell, and Williams International. Williams International is the only one of these manufacturers that is a U.S. small business.

Therefore, as the FAA Administrator, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure it does not exclude imports that meet this objective. As a result this final rule does not create unnecessary obstacles to international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in the spending of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$136.1 million instead of \$100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various

levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because while it is a "significant regulatory action" it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
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.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of

1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulationspolicies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 33 of the Federal Aviation Regulations (14 CFR part 33) as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

■ 1. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 2. Section 33.17 is revised to read as follows:

§ 33.17 Fire Protection.

(a) The design and construction of the engine and the materials used must minimize the probability of the occurrence and spread of fire during normal operation and failure conditions, and must minimize the effect of such a fire. In addition, the design and construction of turbine engines must minimize the probability of the occurrence of an internal fire that could result in structural failure or other hazardous effects.

(b) Except as provided in paragraph (c) of this section, each external line, fitting, and other component, which contains or conveys flammable fluid during normal engine operation, must be fire resistant or fireproof, as determined by the Administrator. Components must be shielded or located to safeguard against the ignition of leaking flammable fluid.

(c) A tank, which contains flammable fluids and any associated shut-off means and supports, which are part of and attached to the engine, must be fireproof either by construction or by protection unless damage by fire will not cause leakage or spillage of a hazardous quantity of flammable fluid. For a reciprocating engine having an integral oil sump of less than 23.7 liters capacity, the oil sump need not be

fireproof or enclosed by a fireproof shield.

(d) An engine component designed, constructed, and installed to act as a firewall must be:

(1) Fireproof;

(2) Constructed so that no hazardous quantity of air, fluid or flame can pass around or through the firewall; and,

(3) Protected against corrosion;

(e) In addition to the requirements of paragraphs (a) and (b) of this section, engine control system components that are located in a designated fire zone must be fire resistant or fireproof, as determined by the Administrator.

(f) Unintentional accumulation of hazardous quantities of flammable fluid within the engine must be prevented by draining and venting.

(g) Any components, modules, or equipment, which are susceptible to or are potential sources of static discharges or electrical fault currents must be designed and constructed to be properly grounded to the engine reference, to minimize the risk of ignition in external areas where flammable fluids or vapors could be present.

Issued in Washington, DC, on July 17, 2009.

Lynne A. Osmus,

Acting Administrator.

[FR Doc. E9–18192 Filed 7–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0052; Airspace Docket No. 09–AGL–1]

Amendment of Class E Airspace; Ironwood, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Ironwood, MI. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Gogebic Iron County Airport, Ironwood, MI. This action also makes a minor change to the airspace description, removing the reference to the Ironwood ILS. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Gogebic Iron County Airport.

DATES: *Effective Date:* 0901 UTC, October 22, 2009. The Director of the

Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT:

Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On February 12, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Ironwood, MI, adding additional controlled airspace at Gogebic Iron County Airport, Ironwood, MI. (74 FR 7011, Docket No. FAA–2009–0052). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication the National Aeronautical Charting Office notified the FAA that the extension defined by the Ironwood ILS was not needed. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at Ironwood, MI, adding additional controlled airspace extending upward from 700 feet above the surface at Gogebic Iron County Airport, Ironwood, MI, and removes reference to the Ironwood ILS in the airspace description. This action is necessary for the safety and management of IFR aircraft operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a