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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 43

[Docket No. FAA-2004-17683; Notice No. 04-07]

RIN 2120-AI19

Implementing the Maintenance Provisions of Bilateral Agreements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend its regulations governing maintenance, preventive maintenance, and alterations on U.S.-registered aircraft located in Canada. FAA has revised the Bilateral Aviation Agreement between the United States and Canada to a Bilateral Aviation Safety Agreement (BASA), and plans to include maintenance implementation procedures (MIP) with that BASA. Certain requirements found in Part 43.17, as presently written, provide constraints that are not in accordance with standards for other MIPs. This rulemaking action would remove those constraints and provide flexibility to implement a MIP.

DATES: Send your comments on or before [*Insert date 90 days after date of publication in the Federal Register.*]

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2004-17683 at the beginning of your comments, and you should submit two copies of your comments. If

you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov . You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Leo J. Weston, Flight Standards, Aircraft Maintenance Division, AFS-306, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3811; facsimile (202) 267-5112, e-mail: leo.weston@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by sending written comments, data, or views. We also invite comments about the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. Please include cost estimates with your substantive comments. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

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 proposed rulemaking. 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 9:00 a.m. and 5:00 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.

Before acting on this proposal, we will consider all comments we receive by 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 pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting 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 docket number, notice number, or amendment number of this rulemaking.

Background

Statement of the Problem: 14 CFR § 43.17 applies to certain Canadian maintenance activities. It contains constraints that inhibit negotiating Maintenance Implementation Procedures (MIP) under the current Bilateral Aviation Safety Agreement (BASA). The BASA/MIP would expand the allowable maintenance capabilities in the U.S. and Canada. The proposed changes would allow work in Canada, with respect to U.S.-registered aircraft, to be more in line with the maintenance allowed by other FAA-certificated domestic and foreign repair stations.

Section 43.17 contains the following constraints.

(1) It requires aeronautical products for use in maintaining or altering U.S.-registered aircraft to be transported to Canada from the U.S.

(2) It requires that work be performed in accordance with §§ 43.13, 43.15, and 43.16 and recorded in accordance with §§ 43.2 (a), 43.9, and 43.11.

FAA proposes to revise § 43.17 to resolve these constraints.

(1) FAA proposes to allow shipment of parts direct to Canada from their location. The parts would not have to be transported first to the U.S. and then to Canada.

(2) FAA proposes to remove references to specific regulations and replace it with a reference to "an agreement between the United States and Canada." The effect of this change would be to facilitate agreements between the U.S. and Canada.

History: After World War II, the number of U.S. civil aircraft flying in Canadian airspace increased. At that time, the U.S. Civil Aeronautics Board (CAB) regulations only allowed U.S.-certificated mechanics and repair stations to perform maintenance, preventive maintenance, and alterations of U.S.-registered aircraft. In 1951, to alleviate the difficulties caused when U.S.-registered aircraft required maintenance while in Canada, the Canadian government proposed a reciprocal maintenance arrangement with the United States. The CAB agreed and issued Special Civil Air Regulation No. SR-377 (SR-377), titled "Mechanical Work Performed on United States Registered Aircraft by Certain Canadian Mechanics," on November 13, 1951. The preamble to SR-377 noted the CAB considered the Canadian standards to be of a "high caliber" and to "compare favorably with those in force in the United States."

SR-377 allowed Canadian maintenance persons to perform work on U.S.-registered aircraft located in Canada without holding U.S. airman certificates. The Civil Aeronautics Act of 1938 (1938 Act), however, required mechanics in the United States, to hold certificates to perform maintenance on U.S.-registered aircraft. The CAB relied on section 1(6) of the 1938 Act to exempt Canadian mechanics employed outside the United States from the definition of "airman" and thus from the requirement to hold a valid U.S. airman certificate. SR-377 did not specifically address Canadian maintenance companies.

In October 1964, SR-377 was reissued as Special Federal Aviation Regulation (SFAR) No. 10, and on April 13, 1966, the FAA reissued SFAR No. 10 as 14 CFR § 43.17. In October 1968, the FAA issued an amendment to § 43.17 "to extend to authorized employees of approved Canadian companies the privileges presently granted Canadian Aircraft Maintenance Engineers." The FAA did not extend similar privileges to Canadian maintenance companies to perform work on U.S.-registered aircraft or aeronautical parts.

In 1984, the United States and Canada signed the current Agreement Concerning the Airworthiness and Environmental Certification, Approval, or Acceptance of Imported Civil Aeronautical Products (the U.S./Canada Bilateral Aviation Agreement (BAA)). This agreement included provisions for aircraft certification and maintenance. The BAA provided for an agency-to-agency Implementation Procedure (IP), which included both maintenance and aircraft certification procedures in more detail than those included in BAAs previously concluded with other countries. The BAA and IP allow authorized persons and companies in each country to perform maintenance, alterations, or modifications on aircraft under the regulatory control of the other country if such work is performed in accordance with the laws, regulations, standards, and requirements of the country regulating the airworthiness of the affected aircraft or product. It also expanded the provisions of the previous agreement to include maintenance and alterations by Canadian Approved Maintenance Organizations (AMOs) of all aeronautical products shipped between the United States and Canada. In 1985, the United States and Canada signed the IP to carry out the objectives of the BAA. Although the IP were revised in 1988, no changes were made to provisions affecting maintenance. In 1991, the FAA

published an amendment to § 43.17 to conform to the airworthiness maintenance provisions of the BAA and IP. This amendment also changed the language of the rule to expand applicability of § 43.17 to include Canadian AMOs.

Section 43.17 of the Federal Aviation Regulations (14 CFR 43.17) currently defines the scope of mechanical work authorized to be performed by Canadian persons on U.S.-registered aircraft. An appropriately rated Canadian aircraft maintenance engineer or authorized employee of an approved Canadian maintenance company (AMO), with respect to U.S.-registered aircraft located in Canada, may:

(1) Perform maintenance and alterations if the work is performed and recorded in accordance with the requirements of Part 43 of 14 CFR.

(2) Approve the work accomplished to return the aircraft to service (except that only a Canadian airworthiness inspector or an approved inspector may approve a major repair or major alteration).

Section 43.17(c) also states that Canadian persons are allowed to perform mechanical work with respect to a U.S.-registered aircraft only when the aircraft is located in Canada.

The need to maintain products used in U.S. and Canadian aircraft operations created the need for the United States and Canada to restructure their bilateral airworthiness agreement. In addition to including the present provisions of § 43.17 to maintain and alter U.S. registered aircraft in Canada, this agreement provides for the maintenance, preventive maintenance, and alterations of aeronautical products shipped between the United States and Canada.

In 1992, the United States and Canada began negotiating a new agreement to expand the scope of the 1984 BAA and align it with the new "umbrella" format of

bilateral agreements the United States seeks with other countries. These executive agreements, termed Bilateral Aviation Safety Agreements (BASAs), provide for development of IP between the aviation authorities of each country. IP address the technical details of the agreement in areas such as certification, maintenance, simulators, and operations. Maintenance Implementation Procedures (MIP) would provide for reciprocal acceptance of inspections and surveillance of repair stations and AMOs using agreed-on standards.

The BASA/MIP is the vehicle now used to enter a new agreement or revise a present agreement with a country where an original agreement has been established under a Bilateral Aviation Agreement (BAA). The FAA has negotiated a BASA with Canada that revised the previous BAA. Negotiations are underway to establish Maintenance Implementation Procedures (MIP) that will set forth the provisions for the acceptance of maintenance, preventive maintenance, or alterations under the terms of the MIP. The present agreement with Canada includes provisions for Transport Canada Civil Aviation (TCCA) AMOs and TCCA maintenance airmen located in Canada, to perform maintenance, preventive maintenance, or alterations on U.S.-registered aircraft. The requirements for persons to perform maintenance, preventive maintenance, or alterations are set forth in § 43.17.

The BASA/MIP system provides procedures for mutual acceptance by the Foreign Civil Aviation Authority (FCAA) and the FAA to accept maintenance organizations and maintenance airmen. The MIP would set forth any specific conditions required by the FAA or TCCA for compliance with the terms of the agreement. Since the

1991 BAA agreement, TCCA has changed their regulations to harmonize those regulations with the FAA and Joint Aviation Authorities (JAA).

Reference Material: Agreement between the Government of the United States of America and the Government of Canada for Promotion of Aviation Safety, June 12, 2000; Implementation Procedures for Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities, under the Agreement between the United States of America and the Government of Canada for Promotion of Aviation Safety, October 2000; U.S./Canadian Bilateral Airworthiness Agreement, August 31, 1984; Schedule of Implementation, May 18, 1988.

All references are available on the following web site:

http://www2.faa.gov/certification/aircraft/.

General Discussion of the Proposals

The FAA and Transport Canada Civil Aviation (TCCA) plan to negotiate a MIP under the current BASA that expands the maintenance that can be performed in the U.S. and Canada. Revisions proposed in this rulemaking will allow maintenance in Canada, with respect to U.S.-registered aircraft, to be more in line with the maintenance allowed by other foreign repair stations. In this rulemaking action, FAA proposes changes to § 43.17 that will bring this regulation into line with a negotiated agreement.

By "agreement," the FAA means the terms of the BASA and the MIP that sets forth the procedures to comply with the BASA.

Section-by-Section Discussion of the Proposals

Section 43.17(a), (c)(1), (c)(2), (d)(1), and (e)(2)

The identification of the Canadian agency has been changed from "Canadian Department of Transport" to "Transport Canada Civil Aviation (TCCA)." This change reflects the current name of the agency and uses the name found in the BASA.

Section 43.17(a)

FAA proposes minor wording changes to the definitions. The purpose is to make the language flow more smoothly, not to make any substantive change.

Section 43.17(c)(2)

The current language requires that aeronautical products for use in maintaining or altering U.S.-registered aircraft be transported to Canada from the U.S. FAA proposes to remove this language to allow parts to be shipped directly to Canada from any location. The part, when located outside the U.S., no longer has to be transported first to the U.S. and then to Canada.

The current rule refers to "a person who is an authorized employee." When this was written, FAA used this language to be consistent with the Canadian rule. The Canadian rule has since changed. The FAA proposes to remove this reference to maintain consistency with the Canadian rule.

Section 43.17(d)(2)

The current language requires work to be performed in accordance with §§ 43.13, 43.15, and 43.16.

FAA proposes to remove references to the specific regulations and replace it with a reference to "an agreement between the United States and Canada." The effect of this change would be to facilitate agreements between the U.S. and Canada by not requiring a

change to § 43.17 each time a new U.S./Canadian agreement is negotiated. Any maintenance performance standards would be set forth in those agreements.

Section 43.17(d)(4)

The current language requires that work be recorded in accordance with §§ 43.2 (a), 43.9, and 43.11.

FAA proposes to remove references to the specific regulations and replace it with a reference to "an agreement between the United States and Canada." The effect of this change would be to facilitate agreements between the U.S. and Canada. Any maintenance performance standards would be set forth in an agreement.

Section 43.17 (d)(2), (d)(3), and (d)(4)

To clarify the rule, the word "work" has been changed to "maintenance, preventive maintenance, or alteration."

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

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 reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Our assessment of this proposal indicates that its economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures. We do not need to do the latter analysis where the economic impact is minimal.

The FAA proposes to amend 14 CFR § 43.17. The FAA has revised the Bilateral Aviation Agreement between the United States and Canada to a Bilateral Aviation Safety Agreement (BASA), and plans to include maintenance implementation procedures (MIP) with that BASA. Currently, some requirements written in § 43.17, provide constraints that are not in accordance with standards for other MIPs that are in place now. This rulemaking action would remove those constraints and make the implementation of BASA/MIP more beneficial to all parties by providing greater flexibility to implement a MIP.

The Canadian BASA/MIP would expand the maintenance that can be performed in the U.S. and Canada. Currently, § 43.17 contains two provisions among its requirements that present constraints with the expansion of the BAA. The FAA proposes to revise § 43.17 by removing the constraints allowing the implementation of the BASA. These constraints and proposed revisions are discussed below.

The first constraint is that § 43.17 requires for aeronautical products for use in maintaining or altering U.S.-registered aircraft be transported to Canada from the U.S, even if the products were made outside the United States. This rulemaking proposes a change allowing shipment of parts directly to Canada from their location. This change will extend the same privileges to Canadian maintenance organizations that presently apply to FAA-certificated domestic and foreign repair stations.

The second constraint requires work to be performed in accordance with §§ 43.13, 43.15, and 43.16 and recorded in accordance with §§ 43.2(a), 43.9, and 43.11. This rulemaking proposes a change that would remove references to the specific regulations and replace them with a reference to "an agreement between the United States and Canada." The effect of this change would be to facilitate agreements between the U.S. and Canada so that changes to an agreement would not automatically require changes to the rule.

The FAA contends that amending § 43.17 would result in a cost savings to those entities that would be impacted by this rule and would eliminate a barrier to trade. Therefore, the FAA has determined that the proposed rule would be cost-beneficial.

Regulatory Flexibility Act

The Regulatory Flexibility Act (the Act) of 1980, (5 U.S.C. 601 et seq.) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their

actions. The Act 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 proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

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

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration has determined that this propose rule would not have a significant economic impact on a substantial number of small entities because it is removing a trade barrier between Canada and the United States, which should lower costs for air carriers that have aircraft maintenance performed in Canada. The FAA solicits comments from interested parties. All commenters are asked to provide documented information in support of their comments.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States. In fact, the FAA believes it would remove a barrier to trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for those small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 43

Air carriers, Aircraft, Airmen, Air Transportation, Aviation Safety

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 43 of Title 14, Code of Federal Regulations, as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for part 43 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

2. Revise § 43.17(a); (c)(1), (2); (d)(1), (2), (3) and (4); and (e)(2) to read as follows:

§ 43.17 Maintenance, preventive maintenance, and alterations performed on U.S. aeronautical products by certain Canadian persons.

(a) Definitions. For purposes of this section:

Aeronautical product means any civil aircraft or airframe, aircraft engine, propeller, appliance, component, or part to be installed thereon.

Canadian aeronautical product means any aeronautical product under airworthiness regulation by Transport Canada Civil Aviation (TCAA).

U.S. aeronautical product means any aeronautical product under airworthiness regulation by the FAA.

* * * * *

(c) Authorized persons.

(1) A person holding a valid Transport Canada Civil Aviation Aircraft Maintenance Engineer license and appropriate ratings may, with respect to a U.S.-registered aircraft located in Canada, perform maintenance, preventive maintenance, and alterations in accordance with the requirements of paragraph (d) of this section and

approve the affected aircraft for return to service in accordance with the requirements of paragraph (e) of this section.

(2) A Transport Canada Civil Aviation Approved Maintenance Organization (AMO) holding appropriate ratings may, with respect to U.S.-registered aircraft or other U.S. aeronautical products, perform maintenance, preventive maintenance, and alterations in accordance with the requirements of paragraph (d) of this section and approve the affected products for return to service in accordance with the requirements of paragraph (e) of this section.

(d) * * *

(1) The person performing the work is approved by Transport Canada Civil Aviation to perform the same type of work with respect to Canadian aeronautical products;

(2) The maintenance, preventive maintenance, or alteration is performed in accordance with an agreement between the United States and Canada;

(3) The maintenance, preventive maintenance, or alteration is performed such that the affected product complies with the applicable requirements of part 36 of this chapter; and

(4) The maintenance, preventive maintenance, or alteration is recorded in accordance with an agreement between the United States and Canada.

(e) * * *

(1) * * *

(2) An AMO whose system of quality control for the maintenance, preventive maintenance, alteration, and inspection of aeronautical products has been approved by

Transport Canada Civil Aviation, or an authorized employee performing work for such an AMO, may approve (certify) a major repair or major alteration performed under this section if the work was performed in accordance with technical data approved by the Administrator.

* * * * *

Issued in Washington, DC, on MAY 0 6 2004

John M. Allen
Acting Director, Flight Standards Service

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