

**Comments in response to 69 Federal Register 26253 (May 11, 2004)  
Submitted Electronically to: <http://dms.dot.gov>**

**Implementing the Maintenance Provisions  
of Bilateral Agreements**  
Comments on the Notice of Proposed Rulemaking

**Submitted by the  
Aviation Suppliers Association**  
734 15th Street, NW, Suite 620  
Washington, DC 20005

**For more information, please contact:  
Jason Dickstein  
(202) 628-6776  
[Jason@washingtonaviation.com](mailto:Jason@washingtonaviation.com)**



Aviation Suppliers Association  
734 15th Street, NW, Suite 620  
Washington, DC 20005  
Voice: (202) 347-6899  
Fax: (202) 347-6894

Info@aviationsuppliers.org

Respond to: Jason Dickstein  
Direct Dial: (202) 628-6776  
Jason@washingtonaviation.com

Comments in response to 69 Federal Register 26253 (May 11, 2004)  
Submitted Electronically to: <http://dms.dot.gov>

August 14, 2004

Docket Management System  
U.S. Department of Transportation  
400 Seventh Street, SW  
Room Plaza Level 401  
Washington, DC 20590-0001

Docket No. FAA-2004-17683

Dear Sir or Madam:

Please accept these comments in response to the Federal Register Notice of Proposed Rulemaking published at 69 Federal Register 26253 (May 11, 2004) (Implementing the Maintenance Provisions of Bilateral Agreements).

## What is ASA?

Founded in 1993, The Aviation Suppliers Association ["ASA"] represents the aviation parts distribution industry, and has become known as an organization that fights for safety in the aviation marketplace. Even though parts distributors are not FAA certificated entities, they play an important role in aviation safety, and many of them have taken it upon themselves to police the quality of their own industry by developing in-house quality systems.

ASA is a proponent of industry quality systems that help assure that aircraft parts sold to operators, repair stations and mechanics are properly documented. For example, ASA is one of the FAA's partners in the Voluntary Industry Distributor Accreditation Program.

As a proponent of quality, ASA supports efforts to improve the safety and quality of aircraft parts and maintenance; in particular, ASA supports efforts to streamline and standardize the way that aircraft parts transactions occur so that human factors concerns are less likely to interfere with safety, and so that parts can be clearly identified as either appropriate for aviation use (“approved parts”) or inappropriate for aviation use (“unapproved parts”).

## Summary of ASA’s Position

ASA supports most of the FAA’s proposal; however, ASA is opposed to the elements of the proposal that would disenfranchise the public from future comment on the performance standards referenced by 14 C.F.R. 43.17, by removing the regulatory references and replacing them with references to an international agreement that is not subject to notice-and-comment, and that may therefore be changed without either public comment or even public notice.

This would potentially permit future changes of the bilateral agreements that have the effect of interfering with trade and the business of domestic companies.

## Discussion

The FAA proposed rule would take concrete standards that may be easily found in the regulations and convert them into standards that are not published in the federal register and that may be changed by the FAA without notice and comment to the public.

In particular, the performance standards found in subsections 43.17(d)(2) and 43.17(d)(4) currently establish standards that are based on references to existing regulatory standards. The proposed rule would replace these regulatorily-fixed standards with performance “in accordance with an agreement between the United States and Canada.” This is a reference to the bilateral agreement between the United States and Canada, and changes to this Agreement are not subject to notice and comment under the Administrative Procedures Act.

In the past, the FAA has not made changes to bilateral aviation safety agreements subject to notice and comment rulemaking. There is no reason to believe that it will do so in the future. See, e.g., 5 U.S.C. § 553(a)(1) (foreign affairs exception to notice-and-comment requirements). Thus, the next changes to the bilateral agreement could affect substantive rights without being subject to the notice and comment requirements of the Administrative Procedures Act. An agency action that affects substantive rights without being subject to the notice and comment requirements of the Administrative Procedures Act is invalid. 5 U.S.C. § 553; e.g. Jones v. Espy, 1993 U.S. Dist. LEXIS 3285 (D.C.D.C.).

It appears that disenfranchising the American public was exactly what the FAA intended:

The effect of this change would be to facilitate agreements between the U.S. and Canada by not requiring a change to Sec. 43.17 each time a new U.S./Canadian agreement is negotiated. Implementing the Maintenance Provisions of Bilateral Agreements, 69 Fed. Reg. 26253, 26256 (May 11, 2004).

This removes the performance standards associated with Canadian maintenance from the public participation associated with notice and comment rulemaking. Many U.S. companies rely on maintenance performed by Canadian 571 organizations (comparable to U.S. Part 145 organizations). In the event that the Canadian bilateral agreement changes with no formal notice to the public, this could mean that domestic companies would have no formal notice that the maintenance performed on their parts no longer meets the requirements of section 43.17 of the Federal Aviation Regulations. More importantly, a change that restricts the use of Canadian maintenance vendors by U.S. companies would affect the substantive rights of the companies, as well as the value of parts already maintained by Canadian maintenance vendors.

Another danger associated with this reference to the “agreement between the United States and Canada” is that future changes to the bilateral agreement could establish standards that adversely affect commercial relationships without a commensurate safety benefit, particularly for small entities, and there would be no recourse in light of the fact that the agreements themselves are excepted from notice and comment by the foreign affairs exception found at 5 U.S.C. § 553(a)(1).

ASA does not oppose the latest bilateral agreement – rather ASA’s concern is that future negotiations of bilateral agreements could alter the standards in a way that would unreasonably harm safety or commercial interests. This is not an idle concern. In recent years, the FAA has signed bilateral agreements with foreign nations that ‘promise’ an airworthiness approval document for parts exported from the United States<sup>1</sup> – however the United States has failed to provide a

---

<sup>1</sup> The language of the BASA between the United States and France is illustrative:

3.2.1.3 New JTSA/QAC Parts and Appliances. Each new part or appliance exported to France with an FAA airworthiness approval will have an FAA Form 8130-3, *Airworthiness Approval Tag*.

3.2.1.5 New Parts, Including Modification and/or Replacement Parts. Each new part exported to France with an FAA airworthiness approval will have an FAA Form 8130-3, *Airworthiness Approval Tag*.

U.S.-France BASA IPA (Aug. 24, 2001). Corresponding paragraphs of the other BASA IPAs include the following: Canada, art. 3.2.2.2; Germany, 3.2.1.5; Israel, 3.2.2.2; Italy, 3.2.1.5;

procedure by which a non-manufacturer exporter may obtain an export airworthiness approval for a class III part. Compare 14 C.F.R. § 21.323(a) (permitting any exporter to apply for an export airworthiness approval on a class I or class II part) with 14 C.F.R. § 21.323(b) (permitting only manufacturers to apply for an export airworthiness approval on a class III part). This means that distributors who could previously export parts without an airworthiness approval are now unable to export parts to bilateral countries. This has caused severe adverse commercial effects by preventing certain exports of aircraft parts from the United States. This demonstrates that lack of care in examining the effects of a bilateral agreement can have adverse domestic effects – the notice-and-comment requirements of the APA are designed to permit the public to participate and help provide the measure of care that protects domestic interests.

ASA therefore requests that the proposed changes to sections 43.17(d)(2) and 43.17(d)(4) be abandoned.

## **CONCLUSION**

For the reasons described in these comments, ASA asks the FAA to withdraw the proposed changes to sections 43.17(d)(2) and 43.17(d)(4).

Respectfully Submitted,

Jason Dickstein  
Washington Counsel  
Aviation Suppliers Association

---

Malaysia, 3.2.2.2; the Netherlands, 3.2.1.5; New Zealand, 3.2.2.2; Romania, 3.2.2.3; Russia, 3.2.2.2; Sweden, 3.2.1.5; UK, 3.2.1.5.