Federal Register

Thursday,
July 14, 2005

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 43

Implementing the Maintenance Provisions of Bilateral Agreements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 43

[Docket No.: FAA–2004–17683; Amendment No. 43–40]

RIN 2120–AI19

Implementing the Maintenance Provisions of Bilateral Agreements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing maintenance, preventive maintenance, and alterations performed on U.S. aeronautical products by certain Canadian persons. The amendment removes specific regulatory references and other requirements unique to that work when performed in Canada. The United States and Canada have entered into an international agreement called a Bilateral Aviation Safety Agreement (BASA) that is in line with BASAs negotiated with other countries. The FAA and Canada are negotiating Maintenance Implementation Procedures (MIP) to accompany the BASA. The current rule contains specific regulatory language that constrains developing a standardized MIP. The MIP will require compliance with the applicable Canadian regulations plus special conditions that will ensure a level of safety equivalent to that provided by the FAA's regulations. This action is necessary for the MIP to proceed.

DATES: These amendments become effective concurrent with the date the MIP accompanying the BASA between the United States and Canada enters into force. The FAA will publish a notice in the **Federal Register** announcing the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: William D. Scott, Flight Standards, Aircraft Maintenance Division, AFS–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (502) 671–4015; facsimile (502) 671–4003, e-mail: *william.d.scott@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; 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 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 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://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the 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 its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm*, or by e-mailing us at *-AWA-SBREFA@faa.gov*.

Authority for this Rulemaking

The FAA's authority to issue rules on 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 described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing—

- Minimum standards required for safety in the design and performance of aircraft;
- Regulations and minimum standards for safety in inspecting, servicing, and overhauling aircraft; and
- Regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of that authority because it prescribes'

- New requirements for Canadian maintenance organizations and aviation maintenance engineers to meet when performing maintenance on U.S. aeronautical products.
- The new requirements are in line with requirements imposed on other foreign entities by BASA/MIPs.
- That compliance with the BASA/MIP is considered an equivalent level of safety to the requirements of this chapter.

Background

Section 43.17 of Title 14 of the Code of Federal Regulations (CFR) applies to maintenance activities performed on U.S.-registered aircraft and U.S. aeronautical products by authorized Canadian persons. Among other requirements, it specifies the particular FAA maintenance regulations to be followed when that work is performed in Canada. At present, this is the only regulation in part 43 that imposes specific requirements for maintenance work performed in a named country. It is also the only regulation that permits a person in a named country and not holding a United States airman or air agency certificate to perform maintenance, preventive maintenance, or alterations on U.S. aeronautical products. The regulation is the result of a long-standing reciprocal maintenance arrangement between the United States and Canada. The United States does not allow such work on U.S.-registered aircraft or U.S. aeronautical products in other countries except when the person there holds an FAA-issued airman or air agency (foreign repair station) certificate.

The Proposal: The United States recently concluded an executive agreement called a Bilateral Aviation Safety Agreement (BASA) with Canada. This BASA, with the working details to be spelled out in associated Maintenance Implementation Procedures (MIP), will provide a revised reciprocal maintenance arrangement. With this agreement, authorized persons in each country will continue to be allowed to work on aircraft and aeronautical products under the regulatory control of the other country. The MIP will spell out the requirements that maintenance providers in each country will have to follow. To accommodate developing the United States/Canada MIP, the FAA published a Notice of Proposed Rulemaking, ''Implementing the Maintenance Provisions of Bilateral Agreements'' on

May 11, 2004 (69 FR 26254). The essence of the proposal was to amend 14 CFR 43.17(d)(2) and (d)(4) to remove references to specific regulations to be followed by authorized Canadian persons when performing and recording their work because the applicable maintenance requirements will be spelled out in the MIP. The NPRM proposed to amend that section to require that the work would be performed ''in accordance with an agreement between the United States and Canada.'' The FAA believed that leaving the specific regulatory reference and other requirements in the rule would provide constraints that would inhibit developing the MIP. BASAs and MIP are already in effect with several other countries, and these are not affected by similar constraints in the regulations. The FAA received one comment opposed to this change. This comment and the FAA's response are discussed in the Summary of Comments. Because of the comment, we have changed the language in the rule to reference specifically the BASA/MIP that will provide a level of safety equivalent to that provided by the FAA's rules.

The FAA also proposed to remove the requirement in § 43.17(c)(2) that, for a Canadian Approved Maintenance Organization (AMO) to be able to work on U.S. aeronautical products located in Canada, those products must have been transported to Canada from the United States. Under the proposal, when a product is located outside the United States, it no longer would have to be transported first to the United States and then to Canada. This change will extend the same privileges to Canadian maintenance organizations that now apply to FAA-certificated domestic and foreign repair stations. We are adopting this change as proposed.

The preamble to the NPRM noted that the new BASA would ''expand * * * the maintenance that can be performed in the U.S. and Canada.'' Specifically, the NPRM continued: ''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 * * *. [the] FAA proposes changes to § 43.17 that will bring this regulation into line with a negotiated agreement.'' One of the changes proposed, but not discussed in the preamble, was the removal of the requirement in § 43.17(c)(2) that, for a Canadian AMO (including an authorized employee performing work for such a company) to be authorized to perform maintenance, preventive maintenance, and alterations on U.S.-registered aircraft or other U.S. aeronautical products, the aircraft or aeronautical product had to be located in Canada. The removal of this requirement would have permitted authorized Canadian personnel to work on U.S.-registered aircraft or aeronautical products in the U.S. No comments addressed that part of the proposal.

Upon further consideration of that part of the proposal, however, the FAA has decided to keep the current restriction that the aircraft or aeronautical product must be located in Canada. As discussed below under *History*, 49 U.S.C. 44711(a)(2)(A) prohibits a person from serving in any capacity as an airman with respect to a civil aircraft, aircraft engine, propeller, or appliance without holding an airman certificate (for example, a mechanic or repair station certificate). One category of ''airman'' is an individual ''directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances.'' In other words, in general, an individual not holding an FAA-issued airman certificate may not perform maintenance on U.S.-registered aircraft or aeronautical products and return them to service. The statute, however, provides for an exception to this requirement when the maintenance performed is *outside* the United States. Under 49 U.S.C. 40102(a)(8)(B) (definition of ''airman''), the Administrator of the FAA may make an exception ''for individuals employed outside the United States.'' By virtue of this provision, certain Canadian persons and maintenance organizations not holding U.S. airman certificates have been authorized to perform maintenance, preventive maintenance, and alterations on U.S.-registered aircraft and U.S. aeronautical products located in Canada.

Because 49 U.S.C. 40102(a)(8)(B) does not grant the FAA authority to except a mechanic performing maintenance on a U. S.-registered civil aircraft or U.S. aeronautical product located within the United States from the definition of ''airman,'' and a Canadian AMO representative performing maintenance on a U.S.-registered aircraft or aeronautical product would be serving in the capacity of an airman, we are keeping the restriction presently found in § 43.17(c)(2) that the aircraft or aeronautical product be ''located in Canada.''

Another change proposed for § 43.17(c)(2) was to remove the phrase ''a person who is an authorized employee'' of an AMO for the stated reason that, when the rule was written, the FAA used that language to be consistent with the Canadian rule. Noting that the Canadian rule had since been changed, the FAA proposed to remove the reference. In addition, the proposed text also removed the phrase immediately following it, that is, ''performing work for such a company.'' Through an oversight, those words were omitted from the discussion in the preamble to the NPRM. Because the two phrases must be read together, and the reason for removing them is the same as noted above, the entire phrase is being removed in this amendment as proposed.

While the removal of the phrase in § 43.17(c)(2) discussed immediately above was addressed in the preamble to the NPRM, other changes to the proposed amendatory text for that section were not discussed or explained. In the existing rule, certain criteria had to be met by an AMO before it could perform work on a U.S.-registered aircraft or U.S. aeronautical product in Canada. In particular, the AMO had to have a ''system of quality control for the maintenance, alteration, and inspection of aeronautical products that had been approved by the Canadian Department of Transport'' as a prerequisite to performing the maintenance, preventive maintenance, or alterations. Instead, the proposed rule stated, in pertinent part, that an AMO ''holding appropriate ratings may, with respect to U.S.-registered aircraft or other U.S. aeronautical products, perform maintenance, * * *.''

The FAA unintentionally omitted from the NPRM a discussion of why the agency was proposing to delete the reference to an AMO having to have an approved ''system of quality control for the maintenance, alteration, and inspections * * *'' before it was authorized to perform that work. The FAA determined that if the referenced prerequisite remained in the regulation, it would present another constraint to developing the BASA/MIP. To make the United States/Canada BASA/MIP align with the format of other existing BASA/MIPs, the agency sought to place such specific requirements in the MIP. Under the terms of the MIP, Canada would watch the AMOs for compliance with the requirements set forth in the MIP. Therefore, that part of the rule is adopted as proposed.

In addition to the above changes, the FAA proposed to delete the reference throughout the regulation to ''Canadian Department of Transport,'' the former name of the Canadian agency, and to replace it with ''Transport Canada Civil Aviation (TCCA),'' the current name of the Canadian civil aviation authority.

We also proposed to clarify the rule by replacing the word ''work'' in § 43.17(d)(2), (d)(3), and (d)(4) with ''maintenance, preventive maintenance, or alteration.'' Those changes are being adopted as proposed.

History: As described more fully in the NPRM, the U.S./Canadian reciprocal maintenance arrangement came about after World War II. At that time, the number of U.S.-registered aircraft flying in Canadian airspace increased and a need developed for maintenance on those aircraft while they were in Canada. Recognizing the similarities of their respective maintenance regulations, the two countries developed reciprocal arrangements. Those arrangements allowed authorized persons in each country to perform maintenance on aircraft under the regulatory control of the other country under specified conditions.

On November 13, 1951, the Civil Aeronautics Board (CAB) issued Special Civil Air Regulation No. SR–377 (SR–377), titled ''Mechanical Work Performed on United States Registered Aircraft by Certain Canadian Mechanics.'' The regulation allowed Canadian maintenance persons who did not hold U.S. airman certificates to perform work on U.S.-registered aircraft located in Canada. 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.'' The CAB relied on section 1(6) of the Civil Aeronautics Act of 1938 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. A similar exception now exists in 49 U.S.C. 40102(a)(8).

Under current U.S. law, an individual may not serve in any capacity as an airman performing maintenance on a U.S.-registered aircraft or aeronautical product without holding a U.S. airman certificate. This prohibition is found at 49 U.S.C. 44711(a)(2)(A). Current 49 U.S.C. 40102(a)(8)(B) defines an airman as an individual ''who is directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances.'' This means that each person who performs maintenance on and returns an aircraft or aeronautical product to service must hold a U.S. airman certificate; this would not apply to a non-certificated person who was being supervised by a certificated airman. As in the 1938 Act referenced above, current 49 U.S.C. 40102(a)(8)(B) contains a similar exception in its definition of airman. Specifically, that section provides that the Administrator of the FAA ''may provide otherwise for individuals employed outside the United States.''

In October 1964, SR–377 was reissued as Special Federal Aviation Regulation (SFAR) No. 10, and on April 13, 1966, it was codified as 14 CFR 43.17.

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 Airworthiness Agreement (BAA)). The BAA provided for an agency-to-agency Schedule of Implementation Procedures (IP), that, among other requirements, would specify in detail both maintenance and aircraft certification procedures. The IP was completed and signed on May 18, 1985; it was revised on May 18, 1988. Together, the BAA/IP allows authorized persons and companies in each country to perform maintenance, alterations, and modifications on aircraft under the regulatory control of the other country. Such work must be performed following the laws, regulations, standards, and requirements of the country regulating the airworthiness of the affected aircraft or product.

Bilateral Aviation Safety Agreements: In recent years, the United States has entered into BASAs with several countries to improve cooperation and increase efficiency in matters relating to civil aviation safety. The agreements provide for developing an IP between the aviation authorities of each respective country. The IP address the technical details of the agreement in areas such as certification, maintenance, simulators, and airline operations. Maintenance Implementation Procedures (MIP) outline the terms and conditions under which the FAA and the foreign civil aviation authority can accept each other's inspections and evaluations of maintenance facilities for findings of compliance. Their purpose is to reduce redundant regulatory oversight without adversely affecting aviation safety. MIP set forth parameters and requirements for maintenance and alterations performed in the country that does not have regulatory control of the product. MIP typically are structured to assure a level of safety equivalent to that provided by the FAA's regulation. They do this by requiring the foreign person to follow the applicable regulations of that country plus enumerated special conditions. From the United States' standpoint, the foreign country's regulations plus the listed special conditions provide a regulatory scheme that the FAA has determined is sufficiently equivalent to the FAA's.

A key difference between the United States/Canada BASA/MIP and those with other countries is that the latter provide for the certification by the FAA of repair stations in those countries that will be maintaining U.S.-registered aircraft and U.S. aeronautical products. No such FAA certification of either Canadian airmen or Canadian maintenance organizations exists or is planned. As explained above, the current reciprocal maintenance arrangement with Canada was established, in part, because the Canadian regulations were determined to compare favorably from a safety standpoint with those of the United States.

Generally, FAA-certificated repair stations in foreign countries (foreign repair stations) must follow the U.S. repair station regulations set forth in 14 CFR part 145 when working on U.S.-registered aircraft or U.S. aeronautical products. In those countries where a BASA with the United States is in effect, the requirements repair stations must follow are spelled out in the BASA and associated MIP. These typically require compliance with the applicable regulations of the country where the repair station is located plus special conditions that address any differences between that country's regulations and the FAA's. Because those repair stations hold FAA-issued air agency certificates, the FAA may take enforcement action against the stations for violations of the regulations.

United States/Canada BASA: In June 2000, the United States concluded a BASA with Canada. The goal was to replace the older BAA and to have an agreement with Canada that is more akin to the new ''umbrella'' format of bilateral agreements the United States has with other countries. On October 18, 2000, the FAA and its Canadian counterpart, TCCA, signed an IP for Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance Between Authorities. That IP replaces the earlier Schedule of Implementation Procedures, dated May 18, 1988, except for Chapter 4, Maintenance, Alteration, or Modification of Aeronautical Products, which remains in effect until MIP are concluded.

The U.S./Canada BASA recognizes ''that the standards and systems for airworthiness and environmental approvals and airworthiness acceptance of maintenance approvals and modifications or alterations, as established in the Agreement for

reciprocal acceptance of airworthiness and environmental approval, effected by exchange of notes at Ottawa on August 31, 1984, are already sufficiently equivalent to permit acceptance by each Party of findings of the other Party.'' In recent years, TCCA had changed its regulations to harmonize more closely with those of the FAA, thus facilitating the BASA/MIP process.

The FAA and TCCA are in the process of negotiating the associated MIP. The MIP will set forth the provisions for accepting maintenance, preventive maintenance, or alterations. As with other MIP, the U.S./Canada MIP will include specific conditions required by the civil aviation authorities of both countries. For work done on U.S.-registered aircraft and U.S. aeronautical products, the MIP will be structured to assure a level of safety equivalent to that provided by the FAA's regulations. It will require the authorized Canadian maintenance persons and organizations to follow the applicable Canadian regulations plus enumerated special conditions. The MIP thereby will provide a regulatory scheme essentially equivalent to the FAA's.

As explained in the NPRM, leaving the specific regulatory references in § 43.17 would inhibit the development and any later modification of the MIP. Part of the MIP process would be for the United States and Canada to evaluate each other's regulatory system. The FAA would certify that the Canadian regulations provide an equivalent level of safety for maintenance, preventive maintenance, or alterations. Any differences thought to be significant will be addressed through special conditions. This amendment to § 43.17 will promote negotiating and any future revising of the MIP. It will also result in the MIP being more in line with MIP concluded with other countries that were not constrained by the existence of specific regulatory references directed to maintenance providers in those countries.

Discussion of Comments

The FAA received five timely comments on the NPRM. We also received comments from two law students that were prepared for an aviation law class project. These comments were submitted over three and three and a half months late, respectively. Because of their untimeliness, we will not address them further. Four of the five commenters supported all or parts of the proposal.

One commenter, Standard Aero, supported the proposed amendment, but addressed only the removal of the requirement that aeronautical products have to be transported from the United States to Canada. The commenter saw no safety benefit in the requirement, noting that the FAA already accepts TCCA's system of oversight.

Two associations, the Air Transport Association of Canada and the Air Line Pilots Association, expressed general support for the proposed amendment, but neither commented on specific sections.

Another commenter, an individual, opposed the proposal, arguing that it was ''in opposition to public safety and more an effort to gut more [A]merican jobs.'' The commenter provided no supporting information for his assertions. In response, the FAA notes that adoption of the amendment will not reduce the current level of safety. As discussed previously, the reciprocal maintenance arrangement between the United States and Canada has existed for many years. Initially, the CAB determined that the Canadian regulations compared favorably with those of the United States; moreover the Canadian regulations have been harmonized to closely match the current FAA regulations. Also the MIP will be drafted to provide special conditions that must be met to assure an equivalent level of safety. As noted above, an underlying premise for the current BASA is that the relevant standards of each country are ''sufficiently equivalent to permit acceptance by each Party of the findings of the other Party.'' As to the loss of American jobs, under the existing arrangement, Canadian aircraft and products may be maintained in the United States and vice versa. The amendment facilitates the development of the MIP, but does not make any substantive changes to the existing reciprocal maintenance arrangement between the two countries. The removal of the requirement to ship parts from the United States to Canada may, in some cases, ease the economic burden on United States entities that are having aviation maintenance work performed in Canada. The elimination of that trade barrier and the possible associated cost savings could have a positive impact on American jobs.

Finally, one commenter, the Aviation Suppliers Association, supported most of the proposal but opposed the proposed changes to § 43.17(d)(2) and (d)(4). Specifically, the organization is concerned about the reference to the ''agreement between the United States and Canada.'' As discussed previously, this ''agreement'' means the U.S./Canada BASA and its MIP, which is currently under negotiation. First, the commenter objects that the proposed change ''would disenfranchise the public from future comment * * * [because] an international agreement * * * is not subject to notice-and-comment, and [it] may therefore be changed without either public comment or even public notice.'' Second, the commenter alleges that ''future changes to the bilateral agreements'' would potentially ''have the effect of interfering with trade and the business of domestic companies.'' The commenter also phrases this second concern as an allegation that the agreement ''could establish standards that adversely affect commercial relationships without a commensurate safety benefit.'' Both of these concerns are misplaced.

Procedural safeguards. Bilateral agreements are not rulemakings subject to the Administrative Procedure Act. They are nevertheless subject to abundant procedural safeguards. The FAA cannot enter into a BASA without Circular 175 authority. This is the process whereby an executive agency gains permission to enter into an international executive agreement. The Circular 175 authority for BASAs contains an extensive analysis of the need for and risks and benefits of such agreements along with a memorandum of legal sufficiency signed by the Legal Adviser to the Department of State. Moreover, each individual BASA is authorized by consensus clearance by all interested government agencies and the aviation industry through the Interagency Group on International Aviation (IGIA), chaired by the Secretary of Transportation and charged with coordinating U.S. negotiating positions on all international civil aviation matters. Any given BASA will likely require more than one IGIA clearance. The industry has been actively involved in all phases of developing BASAs and their IP.

Unlike rules, agreements do not apply directly to regulated entities, but are exchanges of rights and obligations between governments. Moreover, an executive agreement cannot be used to modify, overrule, or nullify inconsistent regulations.

Finally, all aviation agreements are reported to Congress in accordance with the Case Act and registered with the International Civil Aviation Organization (ICAO) in accord with U.S. obligations under the Convention on International Civil Aviation (the Chicago Convention).

Interference with trade, without ''commensurate'' safety benefit. The BASA and its IP do not ''interfere with trade.'' On the contrary, they facilitate trade in aeronautical goods and services. The primary purpose of this latest

evolution of the regulatory harmonization process is to avoid inefficient, redundant regulation through a process in which the parties verify that each other's systems provide equivalent levels of safety.

It is consequently also incorrect to assert that BASAs have no ''commensurate safety benefit.'' As the preamble to the NPRM states, the FAA does not enter into a BASA/MIP unless it is well satisfied that the foreign government's safety regulatory scheme provides a level of safety fully equivalent to that provided by the FAA.

Indeed, the only reason that Canada has its own mention in § 43.17 is that the U.S./Canada BAA alone among all the FAA's BAAs dealt with maintenance activities. It did so because of the special trust that the FAA had developed in Canadian safety oversight over the decades. The purpose of this change in language is to enable the U.S./Canada BASA to be treated as much as possible like the other BASAs. It corrects an anomaly that resulted from the greater confidence that the FAA had in Canadian oversight of maintenance facilities.

Conclusion. The proposed changes to § 43.17(d)(2) and (d)(4) advance the very principles on which the commenter bases its objection—promotion of trade without derogating safety and preserving public participation in the aviation safety oversight process. For clarification, the FAA is replacing the text in each of the two proposed sections that read ''an agreement between the United States and Canada'' with language that states ''a Bilateral Aviation Safety Agreement between the United States and Canada and associated Maintenance Implementation Procedures that provide a level of safety equivalent to the provisions of this chapter.''

Paperwork Reduction Act

There are no current or new requirements 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 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 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 the 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 its costs. Our assessment of this rulemaking indicates that its economic impact is minimal. Because the costs and benefits of this action do not make it a ''significant regulatory action'' as defined in the Order, we have not prepared a ''regulatory impact analysis.'' Similarly, we have not prepared a full ''regulatory evaluation,'' which is the written cost/benefit analysis otherwise required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to do a full evaluation where the economic impact of a rule is minimal.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

The FAA is amending 14 CFR 43.17. The FAA has replaced the Bilateral Airworthiness Agreement between the United States and Canada with a BASA, and plans to include a MIP with that BASA. Through the device of the U.S./Canada BASA/MIP, future changes in maintenance requirements in either country can be implemented through changes to the MIP. This will be a less burdensome and less costly process than having to amend § 43.17 each time. Currently, § 43.17 contains two provisions among its requirements that inhibit the implementation of a BASA/MIP agreement with Canada. The FAA is revising § 43.17 by removing these to facilitate development of the MIP. These revisions are discussed below. Currently, some provisions in § 43.17 provide requirements that are not in accordance with standards for other MIPs that are in place now. This final rule will remove those and make the implementation of the BASA/MIP more beneficial to all parties by providing greater flexibility to implement a MIP.

The FAA believes that amending § 43.17 results in cost savings to those entities that would be impacted by this rule and eliminates a barrier to trade. Therefore, the FAA has determined that the final rule will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 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 principle, 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 1980 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.

The Federal Aviation Administration has determined that this final rule will not have a significant economic impact on a substantial number of small entities because it is removing a barrier, which should lower costs for air carriers that have aircraft maintenance performed in Canada.

Trade Impact Assessment

The Trade Agreements 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 final rule and determined that it will 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 will remove a barrier to trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates

on State, local, and tribal governments. Title II of the Act 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 an expenditure of $100 million or more (adjusted annually for inflation) 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 $120.7 million in lieu of $100 million.

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

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national 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 paragraph 307k 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. We have determined that it is not a ''significant regulatory action'' under Executive Order 12866, as it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 43

Air carriers, Aircraft, Airmen, Air transportation, Aviation safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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, 44703, 44717, 44725.

■ 2. Revise § 43.17(a), (c), (d), 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.

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 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 a U.S.-registered aircraft or other U.S. aeronautical products located in Canada, 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) *Performance requirements.* A person authorized in paragraph (c) of this section may perform maintenance (including any inspection required by Sec. 91.409 of this chapter, except an annual inspection), preventive maintenance, and alterations, provided—

(1) The person performing the work is authorized 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 a Bilateral Aviation Safety Agreement between the United States and Canada and associated Maintenance Implementation Procedures that provide a level of safety equivalent to that provided by the provisions of this chapter;

(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 a Bilateral Aviation Safety Agreement between the United States and Canada and associated Maintenance Implementation Procedures that provide a level of safety equivalent to that provided by the provisions of this chapter.

(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 FAA.

* * * * *

Issued in Washington, DC on July 7, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–13762 Filed 7–13–05; 8:45 am]

BILLING CODE 4910–13–P