

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No.: FAA-2018-1052; Notice No. 18-09]

RIN 2120-AL10

Foreign Civil Aviation Authority Certifying Statements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise a regulation that imposes a duplicative requirement on foreign applicants for type certificates of import products. Existing FAA regulations require all applicants to submit two documents: A compliance listing to document the means of compliance with applicable standards; and a corresponding statement of compliance from the applicant certifying that all the requirements in the certification basis have been complied with. These compliance documents are duplicative and redundant to the certifying statement that the FAA already requires from the foreign civil aviation authority of the country or jurisdiction having State of Design responsibility for the design approval holder of the product. The FAA proposes to no longer require either the compliance listing or the accompanying statement of compliance from the foreign applicant.

DATES: Send comments on or before April 23, 2019.

ADDRESSES: Send comments identified by docket number FAA-2018-1052 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West

Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477), as well as at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Steve Flanagan, Policy and Innovation Division Certification Procedures Branch (AIR-6C0), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20027; telephone (202) 267-1602; email steve.flanagan@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules 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. Under that section, the FAA is charged with promoting safe flight of

civil airplanes in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of airplanes. The FAA also has the authority to prescribe regulations for other practices, methods, and procedures it finds necessary for safety in air commerce. This rulemaking is within the scope of that authority because the proposed rule would eliminate duplication and promote efficiency in the issuance of type certificate approvals for import products certified by bilateral partners of the FAA, while continuing to meet the FAA's charge to promote safe flight.

I. Overview of the Proposal

The FAA proposes to amend 14 CFR 21.20, "Compliance with applicable requirements," to exclude its applicability to import products that have been type certificated outside of the United States by a bilateral partner civil aviation authority ("CAA"). These products are validated by the FAA consistent with the requirements in 14 CFR 21.29, "Issue of type certificate: import products." This proposed rule change would eliminate the necessity for redundant compliance documents to the FAA by both the CAA and the foreign applicant. The FAA would no longer require the foreign applicant to submit either the means of compliance listing or the accompanying statement of compliance because the FAA already requires that the applicant provide technical data to show compliance and for the bilateral partner CAA to provide a certifying statement of compliance. In addition to streamlining the application process for import products, this proposal would eliminate a burden to the FAA of accepting and reviewing redundant and duplicative information. This rule does not propose any changes to substantive type certification requirements applicable to foreign applicants.

II. Background

The United States has bilateral aviation agreements with numerous foreign countries for the acceptance of aeronautical products for export and import. The FAA and the foreign civil aviation authority (CAA) are responsible for implementing these agreements. Before making an agreement, the FAA thoroughly reviews the certification and production systems of the foreign

authority, including its organization, personnel, processes and regulations. Approval of the bilateral agreement makes the foreign authority (the CAA) a bilateral partner. The FAA does not sign an agreement unless the FAA has confidence in the CAA's system for certifying aviation products and overseeing the design organizations and manufacturers under its authority. Under these bilateral agreements, the CAA's type certification of a product is accepted by the FAA for import through a "validation" process to ensure all applicable requirements are met, including the procedural requirements in § 21.29, "Issue of type certificate: import products."¹

Section 21.29(a)(1) provides in pertinent part that the FAA may issue a type certificate ("TC") for an import product if the applicable State of Design (*i.e.* the bilateral partner) "certifies that the product has been examined, tested, and found to meet," applicable requirements for aircraft noise, fuel venting, exhaust emissions, and airworthiness. Therefore, in order for a product to receive a validated TC from the FAA for import of the product, the applicable foreign CAA must submit to the FAA a certifying statement that the product complies with the requirements and standards which are identified in the product's certification basis.

In accordance with § 21.29(a)(2), the FAA requires further that the foreign applicant provide to the CAA technical data to show that the product meets the applicable airworthiness and environmental requirements. In practice, this requirement is accomplished when the applicant submits to its CAA the technical data necessary for the CAA to certificate the product. Through the typical terms of a bilateral agreement, the FAA has access to this compliance data upon request to the CAA.

Section 21.20, "Compliance with applicable requirements," was issued in 2009 rule (74 FR 53385, October 16, 2009). That provision requires an applicant for a type certificate, including an amended or supplemental type certificate, to show and certify compliance with all applicable requirements by submitting to the FAA two different compliance documents: A compliance listing (§ 21.20(a)); and a corresponding applicant statement of

compliance² (§ 21.20(b)) certifying the applicant complies with the applicable requirements in its certification basis. In most cases, the § 21.20(a) statement takes the form of a compliance listing to document the means of compliance, as described in Advisory Circular (AC) No. 21-51, *Applicant's Showing of Compliance and Certifying Statement of Compliance* (Sep. 28, 2011). At a minimum, the compliance listing contains the following information: The design data; all the requirements to be complied with; the means of compliance, whether by analysis, test (flight, ground, or other), design similarity, equivalent level of safety, or exemption, etc.; and a reference to the substantiating data and documentation used to show compliance.

Section 21.20(b) establishes the FAA requirement for the TC applicant's statement of compliance with applicable requirements, the second of the two documents required by § 21.20 from an applicant for an FAA TC. An FAA TC applicant typically submits this statement of compliance upon completion of its FAA TC program.³ Like the § 21.29(a)(1) certifying statement from the foreign CAA, the § 21.20(b) applicant statement of compliance contributes to product safety and compliance by the FAA applicant's certification document stating that the product being certified complies with minimum safety, environmental, and other requirements identified in the product's FAA certification basis.

As written, § 21.20 requires compliance documents from all applicants for type certificates, including foreign applicants seeking validation by the FAA of the foreign CAA's TC of the import product under § 21.29. Section 21.20, therefore, requires foreign applicants to generate and submit to the FAA the two applicant compliance documents described above. These redundant and duplicative data are in addition to the § 21.29(a)(1) and (2) requirements which request the same information.

² The FAA has previously referred to the statement required under § 21.20(b) as the applicant "certifying statement." However, in order to distinguish between the foreign CAA "certifying statement" under § 21.29(a), the FAA now refers to the § 21.20(b) statement as the applicant "statement of compliance."

³ For additional information on type certification programs, see FAA Order 8110.4C, *Type Certification*, available online at https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.information/documentid/15172.

III. Discussion of the Proposal

The FAA proposes to eliminate the requirement on foreign applicants of import products to submit the compliance listing and applicant statement of compliance. Both of these documents are duplicative and redundant of the foreign CAA certifying statement. The FAA is amending § 21.20 to specifically exclude its applicability to those applicants seeking FAA validation TCs for import products under § 21.29.

The foreign CAA's certifying statement required in § 21.29(a)(1) and the applicant's statement of compliance required in § 21.20(b) are substantively the same and duplicative. They both provide certification that a product complies with the applicable airworthiness, environmental, and other requirements in its certification basis. Whether it is the foreign applicant or the CAA that makes the statement is of no regulatory or legal significance. Regardless of which person submits the statement, a fraudulent, intentionally false, or misleading statement is a basis for denying issuance of a type certificate and suspending or revoking an existing type certificate. See 14 CFR 21.2, "Falsification of applications, reports, or records." Moreover, as stated above, the FAA enters into a bilateral aviation agreement only if it has confidence in the foreign CAA's certification system. This confidence extends to that CAA's capability to certify that an import product has been examined, tested, and found to meet applicable requirements. The additional statement of compliance to the FAA by the foreign applicant is superfluous in light of the bilateral partner's responsibilities.

The compliance listing required under § 21.20(a) is also unnecessary for foreign applicants of type certificates of import products. When a foreign applicant seeks type certification through the validation process set forth in § 21.29, it will have already acquired, or is concurrently applying for, type certification through its own CAA. As required by § 21.29(a)(2), the foreign applicant must have provided, or is concurrently providing, technical data to its own CAA to show that the product meets all applicable airworthiness, environmental, and other requirements documented in the certification basis of the TC issued by the CAA. This information is available to the FAA during validation if needed under the terms of the bilateral agreement. Therefore, an additional compliance listing from the foreign applicant is redundant in light of the requirements

¹ For additional information on the validation process, see FAA Order 8110.52B, *Type Validation and Post-type Validation Procedures*, available online at https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.information/documentid/1031946.

in § 21.29(a) and the CAA's work during its TC program.

This proposed rule would eliminate the burden on foreign applicants to produce and submit redundant documentation and would relieve the FAA from the administrative burden associated with processing this redundant paperwork. This proposal would apply to all type certificate applications under § 21.29, including product type, amended type, supplemental, and amended supplemental type certificates. This proposal would streamline the TC process for import products, thereby facilitating U.S. industry access to aeronautical products.

IV. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct 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), as codified in 5 U.S.C. 603 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), as amended, 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements 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), as codified in 2 U.S.C. 1532, 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 annually (adjusted for inflation with a base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

In conducting these analyses, the FAA has determined that this proposal is not a "significant regulatory action," as defined in section 3(f) of Executive Order 12866. The rule is also not "significant" as defined in the Department of Transportation's (DOT's) Regulatory Policies and Procedures. The proposed rule will not have a significant economic impact on a substantial number of small entities, will not create

unnecessary obstacles to international trade, and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Evaluation

DOT Order 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 a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

By adding rule language which excludes the applicability of 14 CFR 21.20 "Compliance with applicable requirements" to products type certificated outside of the United States by a bilateral partner, this proposed rule will result in minor cost savings to the FAA.

The FAA may issue a type certificate for a product that is type certificated outside of the United States by a foreign CAA with which the United States has a bilateral agreement. Validation of the CAA's TC allows import of the product into the U.S. if the applicant and its CAA complies with 14 CFR 21.29. These applicants have also been required to comply with § 21.20,⁴ which requires the applicant show compliance with all applicable requirements and provide its statements to the FAA showing and certifying compliance. Changing the rule to exclude applications for type certificates of import products under § 21.29 from having to comply with § 21.20 will have a small reduction in burden on the FAA and on the manufacturer of such products.

These manufacturers will not have to submit documentation to the FAA under § 21.20, which is redundant to documentation provided by the CAA to the FAA under § 21.29. This will result in small cost savings to the FAA, which will no longer have to accept and review the documentation.

B. 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

⁴ While the current § 21.20 does not specify whether the applicants who must comply with that section are domestic, foreign, or both, AC 21-51 indicates that foreign applicants need to comply with 21.20 and make a statement directly to the FAA. AC 21-51 is being revised, and will reflect this proposed rule change.

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 substantial number of small entities. If the agency determines that it will, the agency must prepare a 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.

As discussed above, this proposed rule would result in minor cost savings to foreign applicants and to the FAA. Because savings to foreign entities are not relevant to this analysis and the FAA is not a small entity there are no small entities affected and the impacts are minor cost savings.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended, prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does 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 has assessed the potential effect of this proposed rule and has determined that the rule is in accord with the Trade Agreements Act as to the rule expectations and responsibilities for domestic and foreign persons engaged in aviation activities under 14 CFR.

D. 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 an expenditure 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 \$155 million in lieu of \$100 million.

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

E. 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. The FAA has determined that there is no new requirement for information collection associated with this proposed rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to 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 this regulation.

C. *barcas* Environmental Analysis

FAA Order 1050.1F 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 5-6.6(d), which covers the issuance of regulatory documents covering administrative or procedural requirements and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, “Federalism.” The agency 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.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

C. Executive Order 13609, International Cooperation

Executive Order 13609, “Promoting International Regulatory Cooperation,” promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no adverse effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

VI. This Proposed Rule Is Not Expected To Be an E.O. 13771 Regulatory Action Because This Proposed Rule Is Not Significant Under E.O. 12866. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained from 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.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9680.

B. 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. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND ARTICLES

- 1. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701-44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

- 2. Amend § 21.20 by revising the introductory text to read as follows:

§ 21.20 Compliance with applicable requirements.

Except for applications for type certificates of import products under § 21.29, the applicant for a type certificate, including an amended or supplemental type certificate, must—
* * * * *

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC, on February 7, 2019.

Earl Lawrence,
Executive Director, Aircraft Certification Service.

[FR Doc. 2019-02634 Filed 2-21-19; 8:45 am]

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