DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 47

[Docket No. FAA–2002–12377; Notice No. 02–10]

RIN 2120–AH75

Aircraft Registration Requirements; Clarification of ''Court of Competent Jurisdiction''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FAA proposes to amend language in the aircraft registration regulations governing aircraft last previously registered in a foreign country. This proposal is needed to clarify the term ''court of competent jurisdiction.'' This action is intended to clearly describe what constitutes satisfactory evidence to the Administrator that foreign registration of an aircraft has ended or is invalid.

DATES: Send your comments on or before July 17, 2002.

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–2002–12377 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 a.m. and 5 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: Julie A. Stanford, Aircraft Registration Branch, AFS–750, Civil Aviation Registry, Flight Standards Service, Federal Aviation Administration, Post Office Box 25504, Oklahoma City, OK 73125; Telephone (405) 954–3131.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered to the extent possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2000–12377.'' The postcard will be date stamped and mailed to the commenter.

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 Government Printing Office'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

On August 9, 1946, the United States became a party to the Convention on International Civil Aviation, 61 Stat. 1180 (Chicago Convention). Under the Chicago Convention, the contracting parties agreed on certain principles and arrangements so that international civil aviation could be developed in a safe and orderly manner.

In considering the orderly registration of aircraft, Chapter III—NATIONALITY OF AIRCRAFT, Article 17 of the Chicago Convention, provides that ''aircraft have the nationality of the State in which they are registered.'' Therefore, ''an aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another'' (Article 18). The rules for accomplishing a change in registration mandate that ''the registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations'' (Article 19).

Before registering an aircraft, an importing State must first ensure that the exporting State has removed the aircraft form its registry. Upon request, the contracting State of last registration, in accordance with Article 21 of the Chicago Convention, furnishes information to the importing State that the registration of a specific aircraft has ended and the aircraft is no longer on that State's registry.

In promulgating § 47.37, the Administrator determined that for purposes of United States registration, satisfactory evidence of termination of foreign registration included ''a final judgment or decree of a court of competent jurisdiction that determines, under the law of the country concerned, that the registration has in fact become invalid'' (14 CFR 47.37(b)(2)).

The Administrator has interpreted the phrase ''court of competent jurisdiction'' to be a court of the country where the aircraft was last registered. In each of two recent cases (*IAL Aircraft Holding, Inc.* v. *Federal Aviation Administration,* 206 F.3d 1042, vacated, 216 F.3d 1304 (11th Cir. 2000) [hereinafter referred to as IAL Aircraft] and *Air One Helicopters, Inc.* v. *Federal Aviation Admin.,* 86 F.3d 880 (9th Cir. 1996) [hereinafter referred to as Air One]), a divided panel of the court interpreted the phrase ''court of competent jurisdiction'' differently from the FAA. In Air One, the Ninth Circuit implicitly decided that a United States

court of appeals was itself a ''court of competent jurisdiction'' capable of rejecting the position of Spanish registry officials that the aircraft's Spanish registry was valid. In IAL Aircraft, the Eleventh Circuit held expressly that a state trial court having jurisdiction over the aircraft in rem was a ''court of competent jurisdiction'' that could determine that a Brazilian registration was invalid, despite Brazil's continued insistence that its registration remained valid. On July 6, 2000, the Eleventh Circuit vacated its earlier decision on the grounds that the court lacked Article III jurisdiction at the time the decision was issued, in light of IAL Aircraft's undisclosed sale of the aircraft while the case was pending before the court.

The FAA does not agree with these decisions rejecting its interpretation of its own regulation, an interpretation that, under governing principles of administrative law, should have been given deference by the courts. However, the FAA does not believe that adhering to its position and continuing to litigate is worth the potential harm done to international relations by possible additional judicial decisions forcing the FAA to register aircraft that remain under foreign registration. These judicial decisions may simply ''encourage foreign courts to rule, in subsequent cases, that aircraft registered by the FAA in the United States are in fact 'validly' registered here'' (Air One, O'Scannlain, J., dissenting).

General Discussion of the Proposal

The panel majority in IAL Aircraft suggested the FAA consider amending or clarifying the regulation. Accordingly, the FAA is proposing in this NPRM to amend § 47.37(b)(2) to clarify the phrase ''court of competent jurisdiction.'' The proposed amendment would add language to § 47.37(b)(2) to more clearly describe that the ''court of competent jurisdiction'' must be a court of the country where the aircraft was last registered. As discussed under the background section, this amendment is necessary for FAA compliance with the obligations contained in the Chicago Convention.

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 this proposed regulation. As stated previously, this amendment is necessary for FAA compliance with the agreements contained in the Convention.

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.

The issues addressed by the proposed change occur infrequently. FAA is aware of only two cases where judgments were pursued and obtained in countries other than where the aircraft was last registered (*IAL Aircraft Holding, Inc.* v. *Federal Aviation Administration,* 206 F.3d 1042, 1045, vacated, 216 F.3d 1304 (11th Cir. 2000) and *Air One Helicopters, Inc.* v. *Federal Aviation Admin.,* 86 F.3d 880 (9th Cir. 1996). This would indicate that any other similar situations would have been in accordance with FAA's interpretation of the regulation, *i.e.,* the judgment was obtained in the country where the aircraft was last registered.

If adopted, the proposed change would affect only those few cases which otherwise might have been filed within the United States rather than in the country where the aircraft was last registered. While there may be some additional costs associated with those cases, such costs would vary according to the country of last registration and in some cases may be less than those normally associated with obtaining a proper judgment from a court of the United States.

The proposed change offers the benefits of compliance with international treaty (Convention on International Civil Aviation, 61 Stat. 1180) and Section 44102 of Title 49, United States Code. The benefits of complying with international law appear to justify additional costs, if any, associated with obtaining a judgment from a court in the country where the aircraft was last registered. Accordingly, 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 of a proposal is minimal.

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

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 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 in any one year (adjusted for inflation.)

However, for regulations with an expected minimal impact above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. It is determined that the expected impact is so minimal that the proposal does not warrant a full Evaluation as statement to that effect and the basis for it is included in proposed regulation. Since this final rule revises and clarifies FAA rulemaking procedures, the expected outcome is to have a minimal impact with positive net benefits. The FAA requests comments with supporting

justification regarding the FAA determination of minimal impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 established ''as 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 RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. 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 proposed or final rule will have a significant economic impact on a number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis described in the RFA. 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 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 reasons should be clear.

The proposed rule clarifies the term ''court of competent jurisdiction'' to clearly describe what constitutes satisfactory evidence to the Administrator that foreign registration of an aircraft has ended or is invalid. Its economic impact is minimal. Therefore, we certify that this proposed action would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or 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. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including, both barriers affecting the export of American goods and services to foreign counties and barriers affecting the import of foreign goods and services into the United States. In accordance with the above statute and policy, the FAA has assessed the potential affect of this proposed rule and has determined that it would have negligible impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, 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 on a proposed or final rule that may result in a $100 million or more expenditure (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 proposed rule does not contain such a mandate. 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 have 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 have 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) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the proposal is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 47 of Title 14, Code of Federal Regulations, as follows:

PART 47—AIRCRAFT REGISTRATION

1. The authority citation for part 47 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113–40114, 44101–44108, 44110–44111, 44703–44704, 44713, 45302, 46104, 46301; 4 U.S.T. 1830.

2. Amend § 4737 by revising paragraph (b)(2) to read as follows:

§ 47.37 Aircraft last previously registered in a foreign country.

* * * * *

(b) * * *

(2) A final judgment or decree of a court of competent jurisdiction of the foreign country, determining that, under the laws of that country, the registration ahs become invalid.

Dated: Issued in Washington, DC, on May 17, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 02–15195 Filed 6–14–02; 8:45 am]

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