DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 43

[Docket No. 28273; Notice No. 95–10]

RIN 2120–AE57

Revisions to Maintenance and Preventive Maintenance Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This NPRM proposes to amend the maintenance rules to allow properly trained pilots of aircraft type certificated for 9 or fewer passenger seats and operated under 14 CFR Part 135 to perform certain maintenance tasks on their aircraft. This NPRM also proposes to add certain tasks to those items considered to be preventive maintenance. The proposed changes are needed because a large number of exemption requests has demonstrated a need for pilots conducting certain types of operations to be able to respond more rapidly to emergency medical missions and to reconfigure cabins to accommodate changing needs to transport varying combinations of passenger and/or cargo in situations when a certificated mechanic is not available to perform the required maintenance task. The proposed rules, if adopted, would improve emergency response and flight turnaround times for these operations, and would relieve the public and agency burdens of filing and processing exemptions.

DATES: Comments must be submitted on or before September 18, 1995.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28273, 800 Independence Avenue, S.W., Washington, D.C. 20591. Comments delivered must be marked Docket No. 28273.

Comments may also be submitted electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward L. Ortiz, General Aviation Commercial Branch (AFS–340), Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, (202) 267–9952.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule 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 notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contract with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28273''. The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 267–3483. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

Many small air carriers operating under 14 CFR part 135 (part 135) perform missions in locations where or during times when a certificated mechanic may not be available to perform certain maintenance tasks that need immediate attention. These air carriers provide emergency ambulance service; transport internal organs for emergency medical treatment; transport packages, parts, and electronic equipment whose delivery is of a time-critical nature; and provide normal passenger-carrying service, occasionally with freight as a secondary load. Because the demand for these services varies and, especially in the case of medical emergency calls, arises at all times of the day, it is impossible for air carriers to anticipate airplane configuration requirements.

Performing cabin conversions to aircraft operating under part 135 is considered either maintenance (if extensive) or preventive maintenance (if minor), and must currently be performed by a certificated mechanic as required by § 43.3. Similarly, the removal and replacement of medical oxygen bottles is considered maintenance and must be performed by a certificated mechanic.

For many carriers, locating a mechanic each time a request for service occurs creates lengthy delays that are costly and could be potentially life threatening to injured or ill passengers. Similarly, providing a maintenance crew on ''24-hour call'' is cost prohibitive for many carriers.

In addition to imposing these burdens, the current regulations also prohibit general aviation pilots from removing and replacing easily removable communication and navigation devices, and from updating easily replaceable data bases. Certain aviation communication and navigation systems are now designed for easy removal and data base update. Many privately-owned aircraft owners and operators prefer to remove this self-contained equipment (a job that normally requires only an allen wrench and no disassembly of the unit) to prevent theft. They also would like to be able to insert flight plans or update the Air Traffic Control (ATC) software data base. Current regulations require that a mechanic perform this task.

History

As of March 1995, the FAA had addressed over 250 petitions for exemption from the sections of part 43 governing these ''maintenance'' items. A majority of these petitions were from nonhelicopter, air taxi operators who learned from local FAA inspectors that their pilots are not authorized to reconfigure their cabins or exchange medical oxygen bottles. The petitions for exemption highlight several common issues: (1) Many small part 135 air carriers operate in areas where they

undergo a hardship due to their regions' lack of certificated mechanics; (2) many others operate during times when certificated mechanics are not normally on duty (these missions are usually time-critical); and (3) many of these operators are unable to operate their aircraft in only one configuration. Passenger-to-cargo or passenger-to-stretcher conversion ensures the most efficient utilization of cabin space on each flight. In most instances, seats, stretchers, base assemblies, and other items used in the conversion are approved for aircraft installation, and the procedures for installation and removal are designed to be accomplished safely by a trained person.

Historically, the FAA has granted exemptions to permit pilots of aircraft operated under part 135 to perform seat removal and replacement tasks only if the aircraft was operated in a remote area such as the Alaskan bush or sparsely populated areas of the Northwestern United States. Certificated mechanics servicing these areas are scarce. Many of the operations include such essential services as flying food, mail, needed goods and people into and out of areas that may not be accessible by other modes of transportation.

More recently, however, exemptions have been granted to part 135 air carriers to permit their properly trained pilots to reconfigure cabin seats when flying missions of an emergency nature during times—at night and on weekends—when certificated mechanics are not normally available, and when a time delay incurred by locating a mechanic could cause undue burden or create a life-threatening situation.

The FAA has determined that if a properly trained pilot can change seat configurations in a remote area where a certificated mechanic is not available (and which might be performed under adverse conditions), he or she would be capable of and should be allowed to perform the same conversions under better conditions such as those present at the operator's maintenance base.

Passenger-to-cargo and passenger-to-stretcher conversions have been performed safely by pilots who have been trained to do so and who are employed by air carriers holding exemptions allowing their pilots to perform the tasks. No reported incidents or accidents have been attributed to properly trained pilots changing aircraft cabin configurations. If an air taxi operator develops a program for performing seat conversions and appropriately instructs and trains its pilots according to the program, safety levels equivalent to those achieved by certificated mechanics would be maintained.

Also, on January 10, 1994, the FAA published a Request for Comments (59 FR 1326; docket No. 27581) to solicit from the public a list of those regulations that are believed to be unwarranted or inappropriate. The agency received eight comments that addressed the maintenance and preventive maintenance regulations of part 43. The commenters noted that current regulations do not allow a pilot of a part 135 operator to remove and reinstall aircraft cabin seats and stretchers. The commenters feel that the current regulations are unnecessary and are financially and physically burdensome. They point out that the FAA has issued a number of exemptions to relieve the burden, and that the exemption process itself is burdensome and time consuming.

The FAA has determined that the concern shown for this issue is significant, and that this rulemaking action is consistent with the agency's responsibility to review the continuing need for its regulations and to eliminate regulations that impose unnecessary burdens.

Related Rulemaking

The Aviation Rulemaking Advisory Committee (ARAC), which is a committee composed of aviation community and FAA personnel, has been tasked with reviewing part 43 and Appendix A to determine what revisions, if any, should be made. It is anticipated that any ARAC action taken regarding this task would not be complete before a final rule resulting from this proposed rulemaking would be issued.

The Current Rule

Part 43 requires air carriers to use certificated mechanics for their aircrafts' maintenance and preventive maintenance needs. This requirement reflects an FAA position that passengers of all aircraft be given a high degree of safety protection through the proper installation of cabin seats and appointments. As outlined in Appendix A, paragraph (c), of this part, removal and replacement of aircraft seats is considered preventive maintenance. Several years ago, the FAA recognized the need for pilots operating helicopters under part 135 to be able to perform certain preventive maintenance tasks when operating in remote areas. Accordingly, the agency amended part 43, effective January 6, 1987 (51 FR 40702, Nov. 7, 1986), by adding a new § 43.3(h), which authorized part 135 certificate holders to allow their pilots, when operating rotorcraft, to perform specific preventive maintenance tasks, under the following conditions:

(1) The items of preventive maintenance must be a result of a known or suspected mechanical difficulty or malfunction that occurred en route to or in a remote area.

(2) The pilot must have satisfactorily completed an approved training program and is authorized, in writing, by the certificate holder for each item of preventive maintenance that the pilot is authorized to perform.

(3) There must be no certificated mechanic available to perform preventive maintenance.

(4) The certificate holder must have procedures to evaluate the accomplishment of a preventive maintenance item that requires a decision concerning the airworthiness of the rotorcraft.

(5) The items of preventive maintenance authorized by this section must be those listed in paragraph (c) of Appendix A of part 43.

General Discussion of the Proposal

This proposal addresses only those aircraft type certificated with 9 or fewer passenger seats operating in part 135 operations. Operators of aircraft type certificated with 10 or more passenger seats operating under part 135 would not be provided relief under this rulemaking action because they are required to have a maintenance organization in place to support their part 135 operations, and their aircraft tend to be more complex in design and construction.

Because certificated mechanics are not available at all times in all places, the current requirements of part 43 impose an economic hardship on some operators. The operational difficulties experienced by these operators and the attendant passenger inconvenience is evidenced in the content and quantity of exemption petitions submitted to the FAA. In response to these petitions, the agency proposes to add a new § 43.3(i) to allow a pilot of a small aircraft (9 or fewer passenger seats) to remove and reinstall approved aircraft cabin seats, approved cabin-mounted stretchers, and, when no tools are required, approved cabin-mounted medical oxygen bottles (gaseous and liquid).

In view of the demonstrated public benefit from permitting pilots to perform the relatively simple maintenance and preventive maintenance tasks of removing and replacing seats, stretchers, and medical oxygen bottles, and the demonstrated safety record of the performance of these

tasks, the FAA has determined that a level of safety will be maintained that is equivalent to the level of safety provided when a certificated mechanic performs the maintenance.

Granting the authority for pilots to perform the above maintenance and preventive maintenance tasks under the conditions proposed would not only reduce the burden of petitioning for exemption for part 135 operators, but it would greatly expedite flight turnaround times when a certificated mechanic is not available, thus benefiting passengers requiring immediate medical evacuation.

Given that the FAA has determined that safety would not be compromised, this proposed rule would not require the absence of certificated maintenance personnel for a trained pilot to perform certain tasks. The FAA realizes that this action may encourage pilots to undertake the maintenance tasks on a regular basis, thereby taking time away from pilot-related tasks that are required before flight. The FAA also realizes that by allowing pilots to perform certain tasks even when certificated maintenance personnel are present may take work from the maintenance personnel. This document solicits public comment on these two issues.

In addition, the FAA recognizes the technological advances in communication and navigation systems and the ease with which these devices may be removed, replaced, and updated. The agency has determined that safety would not be compromised if pilots were allowed to perform certain tasks. Therefore, this proposal would amend Appendix A, paragraph (c), to add to the list of work items considered to be preventive maintenance the removal and replacement of instrument panel-mounted, self-contained navigation and communication devices, which the manufacture has designed for frequent removal and replacement. This authorization would not extend to automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME). Similarly, this proposal would also add to the list the updating of Air Traffic Control (ATC) navigational software data bases, provided no disassembly of the unit is required and pertinent instructions are provided by the equipment manufacturer.

This proposed rulemaking would also amend Appendix A, paragraph (c)(30)(i) to correct and editorial error. During its review of the regulations, a Flight Standards District Office found that the reference to § 147.21(f) should read § 147.21(e).

In addition, the FAA has received a petition for rulemaking from Mr. John W. Caulkins requesting that a reference in § 43.7(d) that currently reads ''§ 43.3(h)'' be corrected to read ''§ 43.3(i).'' A summary of the petition was published in the **Federal Register** on June 21, 1993 (58 FR 33783), and one comment, which was favorable, was received. The FAA has determined the petition has merit, and proposes to correct the reference in this rulemaking action, taking into account, however, the proposed redesignation of current paragraph (i) to new paragraph (j).

Also, current § 43.11(b) makes reference to § 91.30(d)(2). In August 1989, 14 CFR part 91 (part 91) was recodified to make the general operating and flight rules more understandable and easier to use. All references in the Federal Aviation Regulations were to be changed at that time to correspond with the new part 91. During this recodification, § 91.30(d)(2) was renumbered § 91.213(d)(2). The text of the section was unchanged. The old reference to § 91.30(d)(2) in § 43.11 was inadvertently overlooked. This rulemaking action will correct this error.

Paperwork Reduction Act

Information collection requirements in the proposed amendment to § 43.3 have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0021. For further information contact: the Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–4735.

Regulatory Evaluation Summary

Executive Order 12866 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The FAA has determined that this rule change is not a significant rulemaking action as defined by Executive Order 12866 (Regulatory Planning and Review). The results are summarized in this section. For more detailed economic information, see the full regulatory evaluation contained in the docket.

The proposed revisions are cost relieving because they would eliminate the need for operators to carry mechanics on trips to remote areas or make special trips to maintenance facilities for the purpose of altering seat configurations or exchanging medical oxygen bottles. Currently, even if a mechanic is not needed at a remote site, operators may have to hire the services of a local mechanic to reconfigure a cabin, which can be especially expensive for emergency medical evacuation operations conducted at night during off-duty hours. For the purposes of this regulatory evaluation, the FAA assumes that typical air taxi operators that fly into remote areas where mechanics would be scarce could make 36 trips per year that would require cabin reconfiguration. The FAA further assumes that a pilot flying into a remote area would have to fly the airplane for an additional hour (roundtrip) to a larger airport where a mechanic would be available to perform the required maintenance.

The FAA estimates that a mechanic would have to be paid for ½ hour of working time at a loaded wage rate (including benefits) of $18.16 per hour. The FAA also estimates that, in the event a cabin reconfiguration had to be performed in a remote area, the airplane would burn an additional 30 gallons of fuel during the one hour of flying time needed to reach an available mechanic, which would add $60 to operating costs. The additional cost per trip would therefore amount to $69. On an annual basis, these cost-savings would amount to $2484 ($69 × 36) based on the assumption of 36 trips per year. The FAA further estimates that at least 30 operators per year would have a recurring need to reconfigure cabins in remote areas based on the number of requests for exemption from the requirements of § 43.3 submitted to the FAA each year. This number is a very conservative estimate; many air taxi operators are unaware of this option and forego the additional revenue that could be earned through reconfiguring their cabins. The FAA estimates that industry-wide cost savings from the proposed rule amendment would amount to $74,520 per year ($2484 × 30). Over a 10-year period, the discounted value of these cost savings would amount to $523,382.

Since January 1987, part 135 rotorcraft operators have been permitted to allow their pilots to perform certain preventive maintenance tasks, under very limited specified conditions, one of which is that the item of preventive maintenance must be the result of a malfunction that occurred en route to or in a remote area. In addition, numerous of the exemptions that permitted pilots

of aircraft operating under part 135 to reconfigure cabins were granted to operators of rotorcraft. Each of the above authorizations contained a requirement that the pilot be properly trained for the preventive maintenance task that would be undertaken. Rotorcraft pilots operating under part 91 rules are authorized to perform preventive maintenance tasks under § 43.3(g).

The National Transportation Safety Board (NTSB) accident report reveals no instance of rotorcraft accidents where the removal and replacement of cabin seats by a rotorcraft pilot was suspected as a possible cause. In fact, a search of the FAA and NTSB accident and incident data recorded for part 91 and part 135 operations over the 1972-present period did not reveal a single instance in which the performance by a pilot of any of the tasks that would be authorized under this proposal was suspected as having had a casual role in an accident. The FAA has therefore determined that this proposed rule would be cost relieving and would not reduce the current level of safety.

The FAA solicits information from the public to refine this estimate of cost savings. Information of use to the agency would pertain to the frequency of the practices covered by this proposal (e.g., cabin reconfiguration) as well as the additional expenses involved (e.g., cost of transporting and compensating mechanics).

International Trade Impact Analysis

The proposed rulemaking action would affect only those operators engaged in part 135 operations of a localized or regional nature. No impact is expected on international trade because these domestic operators seldom compete with foreign firms in the markets they serve.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have ''a significant economic impact on a substantial number of small entities.'' The proposed rule amendment is of a cost relieving nature and would therefore afford cost savings to individual part 135 operators.

Under FAA Order 2100.14A, the criterion for a ''substantial number'' is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. This proposal would affect all part 135 operators who operate aircraft type certificated for 9 or fewer passenger seats. For operators of aircraft for hire, a small operator is one that owns, but not necessarily operates, nine or fewer aircraft.

The FAA's criterion for a ''significant impact'' is $4,330 or more per year for an unscheduled operator. The extent of the cost savings per operator was estimated at $2484 per operator in the section on economic impacts. The FAA concludes, therefore, that this proposed rule would not have a significant economic impact, positive or negative, on a substantial number of small entities.

Federalism Implications

The regulations proposed herein will not have substantial direct effects 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, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered nonsignificant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. A draft regulatory evaluation of the proposal, including an initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 43 of the Federal Aviation 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. App. 1354, 1421 through 1430; 49 U.S.C. 106(g).

2. In § 43.3, paragraph (i) is redesignated as paragraph (j), and a new paragraph (i) is added to read as follows:

§ 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.

* * * * *

(i) Notwithstanding the provisions of paragraph (g) of this section, in accordance with an approval issued to the holder of a certificate issued under part 135 of this chapter, a pilot of an aircraft type-certificated for 9 or fewer passenger seats, excluding any pilot seat, may perform the removal and reinstallation of approved aircraft cabin seats, approved cabin-mounted stretchers, and when no tools are required, approved cabin-mounted medical oxygen bottles, provided—

(1) The pilot has satisfactorily completed an approved training program and is authorized in writing by the certificate holder to perform each task; and

(2) The certificate holder has procedures to evaluate the accomplishment of the task.

* * * * *

Appendix A to Part 43—[Amended]

3. In Appendix A to part 43, paragraph (c)(30)(i), the reference ''§ 147.21(f)'' is corrected to read ''§ 147.21(e) of this chapter''.

4. In Appendix A to part 43, paragraphs (c)(31) and (c)(32) are added to read as follows:

Appendix A to Part 43—Major Alterations, Major Repairs, and Preventive Maintenance

* * * * *

(c) * * *

(31) Removing and replacing self-contained, instrument panel-mounted navigation and communication devices (excluding automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME)) if the approved unit is designed to be readily and repeatedly removed and replaced, and pertinent instructions are provided.

(32) Updating self-contained, instrument panel-mounted Air Traffic Control (ATC) navigational software data bases (excluding those of automatic flight control systems, transponders, and microwave frequency distance

measuring equipment (DME)) provided no disassembly of the unit is required and pertinent instructions are provided.

§ 43.7 [Amended]

5. In section 43.7(d), the reference ''§ 43.3(h)'' is corrected to read ''§ 43.3(j)''.

§ 43.11 [Amended]

6. In section 43.11(b), the reference ''§ 91.30(d)(2)'' is corrected to read ''§ 91.213(d)(2) of this chapter''.

Issued in Washington, DC, on June 30, 1995.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 95–17393 Filed 7–17–95; 8:45 am]

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