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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 198
Aviation Insurance; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 198

[Docket No. 28893; Amdt. No. 198–4]

RIN 2120–AF23

Aviation Insurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises Title 14, Code of Federal Regulations (CFR), part 198, to reflect statutory authority to issue non-premium insurance for certain types of flight operations and ground support activities essential to such flights; explain when insurance policies are in force and when they are in standby status; revise the process for amending insurance policies; increase the amount of the binder for non-premium insurance coverage; clarify that consistent with commercial aviation insurance practice, not only aircraft, but other insurable items may be insured; and clarify that the Presidential approval required for the issuance of non-premium insurance is demonstrated by the standing Presidential approval of the interagency indemnification agreement.

The intent of this final rule is to improve the efficiency of FAA's Aviation Insurance Program (Program); explain Program procedures; conform certain Program procedures to commercial aviation insurance industry practice; and offset incurred administration costs resulting from the increased frequency of utilization of the Program. The changes allow the Program to be more responsive to the aviation industry when commercial coverage cannot be obtained on reasonable terms, and the insurance coverage may be provided by the Program.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Eleanor Eilenberg, Office of Aviation Policy and Plans, APO–3, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3090.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–FAA–ARAC).

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register** webpage at http://www.access.gpo.gov/NARA/index.html for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule 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. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 1–800–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

In 1951, Congress amended the Civil Aeronautics Act of 1938 by adding a new Title XIII which authorized the Secretary of Commerce, with the approval of the President, to provide aviation war risk insurance adequate to meet the needs of U.S. air commerce and the federal government. This insurance could only be issued when the Secretary of Commerce found that war risk insurance was commercially unavailable on reasonable terms and conditions.

The war risk insurance program was established to provide the insurance necessary to enable air commerce to continue in the event of war. This was needed because of several factors: commercial war risk insurance policies contained automatic cancellation clauses in the even of major war; the geographical coverage of commercial war risk insurance could be restricted upon reasonable notice to air carriers; and rates for commercial war risk insurance could be raised without limit upon reasonable notice to air carriers.

The Aviation Insurance Program was incorporated into Title XIII of the Federal Aviation Act of 1958. Statutory responsibility for the Program was subsequently transferred to the Department of Transportation (DOT), at the time of its creation in 1967. The Secretary of Transportation (Secretary) later delegated this authority to the Administrator of the FAA (49 CFR 1.47(b)).

The definition of war risk in Title XIII was that traditionally employed by commercial underwriters and, as a matter of policy, the FAA had always conservatively interpreted the definition. In the early 1970's, this definition led to uncertainty about the extent of the Administrator's statutory authority to provide insurance against loss or damage arising from, for example, undeclared wars, hijackings, and terrorist acts. Because of a combination of the progressive exclusion of these new risks from commercial all risk policies, and the failure of the traditional definition of war risk to cover these risks, a potential gap in insurance coverage occurred, with the possibility of abrupt termination of important air services in emergency situations.

In recognition of the fact that the Administrator needed broad insurance authority in extraordinary circumstances to insure air services determined to be in the national interest, Congress amended Title XIII on November 9, 1997. These amendments, included in Public Law (Pub. L.) 95–163, removed from Title XIII all references to risk categories. They authorized the Administrator to provide insurance against loss or damage due to any risk arising from operations of aircraft in foreign air commerce or between two points outside the United States deemed by the President to be in the foreign policy interests of the United States. However, such insurance could only be issued if commercial insurance for those operations was not available on reasonable terms and conditions. The January 15, 1986 amendment to part 198

reflected the 1997 amendments to Title XIII.

Between 1975 and 1990 there was little use of the insurance authority. In 1983 and 1984, the FAA insured, without premium, about 50 military charter flights from the United States to Central America. Otherwise, commercial insurance for flights to most areas of the world was available. Since 1990, the Aviation Insurance Program has been used much more than in the 1975–1990 period, but air carriers can usually still obtain commercial insurance.

Since 1990, the Aviation Insurance Program has been mostly used to provide insurance for civil aircraft chartered by the military. The Department of Defense (DOD) under the National Airlift Policy relies on civil air carriers to meet its airlift requirements. Under the Civil Reserve Air Fleet (CRAF) program, the DOD contractually obligates airlines to provide aircraft and flight crews to meet mobilization transport requirements in exchange for shares of peacetime DOD transport business. This saves the DOD the expense of purchasing, operating, and maintaining a large standby transport aircraft fleet. Although the CRAF program is available, the DOD usually can meet its transport requirements with aircraft and crews volunteered by the CRAF airlines, without formal activation of the program; and, in fact, the CRAF has been activated only once in its history—the partial CRAF activation of 1990–91, during Operation Desert Shield/Storm.

Gaps between the FAA and commercial insurance coverage were highlighted during Operation Desert Shield/Storm as a result of the CRAF activation and the long post-Vietnam hiatus in Aviation Insurance Program activity. Two such gaps could not be closed without new legislation. The more significant was the inability to cover domestic CRAF flight segments. Most of the airlines' commercial hull or liability war risk insurance policies excluded coverage of all CRAF flights; while, by law, FAA-issued, non-premium insurance could cover only international flight segments. Thus, the airlines had to rely on direct indemnification from the DOD for coverage of CRAF domestic flight segments (e.g., ferry flights to a military base to pick up troops and supplies destined for the theater of operations). In addition, flights transporting armed forces and military materiel on behalf of, and pursuant to an agreement between, the U.S. Government and a foreign government, but not operated under a U.S. Government contract, could not be covered by non-premium insurance. Title IV of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Pub. L. 102–581, gave the FAA the authority to provide non-premium insurance coverage for these two previously uncoverable categories of flights, as well as for goods and services (e.g., spares support, refueling) in direct support of such flights. The FAA filled other coverage gaps by adopting new procedures and policies involving the revision of its insurance policies to cover, e.g., the costs of search and rescue attempts for an aircraft; and the development of endorsements to these policies to meet the specific needs of DOD contract carriers.

In 1994, Congress recodified the Federal Aviation Act, including the Aviation Insurance Program's provisions, without substantive change, into Title 49, United States Code. The Program's provisions were incorporated into Chapter 443 of that Title.

In 1997, Congress reauthorized the Aviation Insurance Program and amended Chapter 443. The insurance amendments, included in the Aviation Insurance Reauthorization Act of 1997, Pub. L. 105–137, stated that aircraft hull may be insured for reasonable value as determined by the Secretary in accordance with reasonable commercial aviation insurance business practice. They also stated that the Presidential approval of the standing interagency indemnification agreement between the DOT and other U.S. Government agencies, constitutes the necessary determination, for non-premium insurance, that continuation of the aircraft operation is necessary to carry out U.S. foreign policy. The amendments also authorized the Secretary to use binding arbitration of claims, and pay awards under such arbitration; and extended the Program's authorization until December 31, 1998.

Aviation Insurance Program

Chapter 443 authorizes the Secretary of Transportation, subject to approval by the President, to provide aviation insurance coverage for American aircraft or foreign-flag aircraft operations, deemed necessary to carry out the foreign policy of the United States, for which commercial insurance is unavailable on reasonable terms. This is a discretionary program. Insurance may be issued in two forms—non-premium and premium.

Non-premium insurance has been issued for American aircraft under contract to any U.S. Government department or agency which has an indemnity agreement with the DOT. Applicants currently pay a one-time binder fee of $200 per aircraft for non-premium insurance. This fee has not been adjusted since 1975.

The FAA's historical interpretation of Chapter 443, confirmed by the 1997 legislative authority, has been that the Presidential approval required for the issuance of non-premium insurance is demonstrated by the standing Presidential approval of the indemnity agreement between the DOT and the other U.S. Government agencies.

In order to minimize the time needed to provide non-premium insurance coverage, upon receipt of the application from the carrier, the FAA issues the carrier a standby non-premium policy which lists that carrier's registered aircraft. Actual coverage for operations of these aircraft commences upon formal activation notice from the FAA which details the conditions and limits of the activated policy.

Premium insuance has been issued for American aircraft or foreign-flag aircraft for regular commercial scheduled or charter service. The U.S. Government assumes the financial liability for claims in exchange for a premium. The Presidential approval required for premium insurance must be separately obtained for a period of not more than 60 days. The Presidential approval may be renewed for additional 60 days periods if so approved before each additional period. Under certain circumstances, this renewal authority has been and may be delegated to the Secretary. As a general policy, premium insurance will not be issued for a U.S. Government department or agency; whereas such a department or agency may request non-premium insurance.

Non-premium insurance and premium insurance do not necessarily differ in risks covered for any given flight. The differences are in the categories of flights which may be covered and in the approval process. As noted earlier in this document, wholly domestic flights may be covered byr non-premium insurance, whereas premium insurance may cover only flights between a U.S. point and a foreign point or between two foreign points. Presidential approval is specific to flights within the scope of each request for premium insurance; it is generic to all non-premium flights for agencies which have completed an indemnification agreement with the DOT.

Two basic types of coverage are offered under the FAA's Aviation Insurance Program—hull and liability.

Hull insurance covers the loss of or damage to an aircraft hull. Under the 1997 legislative authority, coverage may not exceed the reasonable value of the aircraft as determined by the Secretary in accordance with reasonable commercial aviation insurance business practice.

Liability insurance covers bodily injury or death; personal injury; damage to or loss of property, including cargo, baggage, and personal effects. Coverage may not exceed the registered limits of liability on file with the FAA or the corresponding commercial coverage in effect on the date of loss.

The NPRM

The FAA published Notice No. 97–5, on April 17, 1997 (62 FR 19008) and a correction notice on April 22, 1997 (62 FR 19530) requesting comments. The NPRM contained an overview of the recent experience of the FAA's Aviation Insurance Program. In sum, during Operation Desert Shield/Storm, the FAA issued non-premium war risk insurance for over 5,000 flights, and premium war risk insurance for 36 flights. The FAA has also issued non-premium insurance for flights supporting recent humanitarian and peacekeeping operations, including 1992–94 flights to and from Somalia, 1994 flights into Haiti, and, starting in April 1996, troop rotation flights between Tuzla, Bosnia, and Germany.

Coverage gaps and the air carriers' dependence on FAA-issued insurance caused Congress, the air carrier industry, and the FAA to review the Program's statutory authority, in 1992. Title IV of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Pub. L. 102–581, gave the FAA the expanded authority to issue non-premium insurance for two previously uncoverable categories of flights, as well as for goods and services in direct support of such flights.

The FAA has addressed other coverage gaps by adopting new procedures and policies, including revising the FAA insurance policies and developing new endorsements for those policies.

As more fully described later in this document, this final rule improves the Program's efficiency, explains Program procedures, reflects the expanded statutory authority to insure certain flights, increases the amount of the binder fee to offset incurred administration costs resulting from increased frequency of utilization of the Program in the last five years, and conforms Program practice to the commercial practice of insuring other insurable items. This final rule does not compromise the basic premise that the FAA has broad discretion and judgment to determine the acceptable level of risk to be insured against under a given set of circumstances, and the policies and procedures to be followed in the administration of the Aviation Insurance Program.

Discussion of Comments

On April 17, 1997 the FAA published an NPRM. Two commenters responded to the NPRM—the National Air Carrier Association (NACA) and American Airlines, Inc. (American).

NACA concurred with all the changes that the FAA proposed to part 198. However, NACA suggested that the rulemaking be delayed until Congress reauthorizes chapter 443, on the theory that potential amendments to Chapter 443 would require additional changes to part 198. Because a related suggesion was among the comments made by American, the FAA addresses the NACA suggestion in the response to American's comments, below.

American's first comment is a suggestion that section 198.3 should contain clarifying language indicating that Chapter 443 coverage is effective for the entire period of activation. This suggestion is related to subsequent comments that the section's deactivation provisions are overbroad, and should be deleted or modified according to language that American proposes. The FAA addresses these comments together.

American proposes that section 198.3, paragraph (b), should be revised to reflect the language "have been [met] at the time of issuance," so that it is clear that the conditions listed in (b)(1) through (3) for issuance of a non-premium standby policy are conditions precedent to issuance, not ongoing conditions. Thus, American asserts, a change in any of such conditions would not invalidate insurance coverage-especially in mid-flight-until formal deactivation procedures have been followed or the carrier completes the flight or series of flights to which the activated coverage applies. American has also proposed detailed, modifying language for paragraphs (c) through a new (e), to limit the alleged overbroadness of the deactivation provisions; alternately, it suggests that paragraphs (b) through (d) should be deleted and included in the FAA policies.

The FAA does not agree with the majority of these comments. If the Administrator were to find, subsequent to activation, that commercial insurance had become available on reasonable terms, activated insurance coverage would not be in compliance with a statutory condition. However, the FAA would not deactivate such coverage without written notice to the operator. It should be noted that the regulation provides, in paragraph (d), for written deactivation notification by the FAA to the aircraft operator; and that the details of such notice of deactivation/termination are articulated in the FAA policies. In addition, to address the concern that coverage not be invalidated in mid-flight, the FAA is willing to add an appropriate provision in the policies. That provision will state that coverage will remain in force until the insured aircraft has completed the contracted flight by making a safe return at an airfield not excluded by the geographical limits of the operator's commercial policy. The FAA believes that such specific language belongs in the FAA policies, not in the regulations.

In light of the foregoing, this final rule does not adopt the above-described proposed addition to section 198.3(b), nor the additional modifying details relating to paragraphs (c) through proposed new (e). The FAA also does not adopt the alternate suggestion to delete paragraphs (b) through (d) from the regulation; nor does the FAA adopt, in full, in the FAA policies, American's modifying language for these paragraphs.

However, the FAA agrees with comments that paragraphs (a) and (b) of section 198.3 should refer to an insurance policy's being "issued," not its being "made available"; and that paragraph (a) should be modified to clarify, with regard to premium insurance, which of the requirements of section 198.1 must be met. This final rule reflects these changes. In addition to changes recommended by American, the FAA has added conforming language to section 198.3(c)(2).

American's second comment is that the FAA should withdraw the clarifying language in section 198.3(b)(2), regarding the Presidential approval required for issuance of non-premium insurance, because the GAO has disagreed with the FAA's interpretation in a recent reauthorization hearing, and recent history shows a Presidential determination was made for 1994 humanitarian relief air services to Haiti. American acknowledges that Congress may ratify the FAA's interpretation by amending Chapter 443 in accordance with the FAA's approach.

The FAA does not accept American's suggestion to withdraw the referenced language because Congress has confirmed the FAA's historical interpretation that the Presidential

approval required for the issuance of non-premium insurance is demonstrated by the standing approval of the interagency indemnification agreement.

American's third comment is threefold. First, American suggests that the FAA should delete the section 198.3 (b)(3) requirement for carriers to submit current and updated commercial policies, because the requirement implies an ongoing condition which could invalidate activated insurance. Next, American suggests that the requirement is unnecessary, all the FAA needs is the amount of a carriers's commercial insurance, and the fact that the requirement does not apply to premium insurance highlights the FAA's lack of need for the actual policies. Third, American questions the regulations' lack of an assurance of confidentiality to protect a carrier's proprietary or competitive interests; and suggests that the FAA only require the carrier to provide confidentially the amount of its commercial insurance.

It is not the FAA's intent that the requirement to submit commercial policies and endorsements to the FAA constitute a continuing condition that could invalidate activated coverage. It should be noted that section 198.3 (c)(2) does not reference submission of the commercial policies and endorsements.

The FAA disagrees with the comment that submission of the commercial policies and endorsements is unnecessary. The FAA needs such documents in order to verify the commercial coverages that an air carrier had in place prior to insurance becoming unavailable. It should also be noted that the CRAF or Airlift Services Contract between the DOD and each air carrier requires the carrier to supply the FAA with a complete copy of its current hull and comprehensive liability commercial insurance policies. In addition, one of the GAO's recommendations to the Secretary of Transportation, in the 1994 Report to Congress, "Aviation Insurance: Federal Insurance Program Needs Improvements to Ensure Success," was that the FAA should require airlines to submit copies of their current commercial war-risk policies and any subsequent revisions, as a condition for obtaining non-premium (and premium) insurance; and periodically verify the information submitted by the airlines. Finally, as to the requirement's applicability to premium insurance, the FAA notes that when a request for premium insurance is made, the FAA requires very specific information from the operator, which would normally include submission of the commercial policy. However, because of the unique nature of premium requests, the FAA's specific information needs cannot be catalogued, in advance in this rulemaking.

In light of the foregoing, the FAA does not adopt the suggestion to only require submission of the amount of a carrier's commercial insurance. However, the FAA notes that 5 U.S.C. 552(b)(4) allows an agency to not release to the public matters obtained from a person that are confidential commercial or financial information. To the extent that the commercial policies and endorsements qualify for such protection, the FAA will protect them to the fullest extent of the law.

American's fourth comment is a suggested revision of paragraph (c) of section 198.9, limiting the evidence carriers are required to submit to the FAA that commercial insurance is not available on reasonable terms, only to evidence requested by the FAA. The FAA does not believe that the revision would hinder the FAA's ability to obtain the need information, and therefore adopts the suggestion. This final rule incorporates language similar to American's suggested language, but does not adopt the word "reasonable" (as in "upon reasonable request by the FAA"). By statute and delegation, the FAA has both the authority and responsibility to administer the Aviation Insurance Program. The FAA has the discretion to determine the pertinent information required in the particular circumstances presented. The FAA is also concerned that a debate over the "reasonableness" of the request would delay the issuance or activation of insurance.

American's fifth comment is a suggested revision that the FAA also accepts, to replace the ten-day notice requirement in section 198.11 with language which better reflects business needs and practices. This final rule incorporates this change.

American's sixth and final comment is twofold. First, American suggests that it is advisable for the FAA to postpone adopting a final regulation until Congress has reauthorized Chapter 443, as the reauthorization legislation may warrant further changes to the regulation. Second, the FAA should also revise the proposed rule based on the comments on Notice No. 97–5, and issue a new notice of proposed rulemaking for further comment. NACA has made a similar suggestion to American's point on delaying until the reauthorization of Chapter 443 is finalized. These comments are addressed together, below.

The FAA does not agree that the proposed regulation needs further changes based on the reauthorization legislation. As previously noted in this document, that legislation contains four amendments to Chapter 443: (1) Authority that aircraft hull may be insured for reasonable value as determined by the Secretary in accordance with reasonable commercial aviation insurance business practice; (2) authority that Presidential approval of the standing interagency indemnification agreement constitutes the necessary Presidential determination for non-premium insurance; (3) authorization for the Secretary to use binding arbitration of claims, and pay awards under such arbitration; and (4) an extension of the Program until December 31, 1998.

These provisions do not conflict, nor are they inconsistent, with this final rule. First, the FAA notes that binding arbitration is not a subject of this rulemaking. Second, the Presidential determination authority, as discussed above, confirms the FAA's historical interpretation. Third, the FAA does not believe that section 198.7 conflicts, or is inconsistent, with the legislative authority on insuring aircraft hull. This is so because section 198.7 permits the FAA to determine that an aircraft is insured at its reasonable value in accordance with reasonable commercial aviation insurance business practice, which is the legislative authority.

The FAA also does not agree that it needs to issue a new notice of proposed rulemaking for further comment. The FAA has revised the regulation in response to the comments on Notice No. 97–5.

Analysis of the Rule as Adopted

Section 198.1

Section 198.1 sets forth editorial changes reflecting language used in the 1994 recodification of the Federal Aviation Act.

Section 198.1(b) is amended to reflect the expanded operations covered under the Aviation Insurance Program. This amendment includes, as eligible operations, those in domestic air commerce, if non-premium insurance is sought.

Section 198.3

Section 198.3(b) is amended to reflect the expanded authority to cover flights operated pursuant to an agreement between the United States and a foreign government. The section also reflects the FAA's historical interpretation of Chapter 443 that the Presidential approval required for the issuance of non-premium insurance is demonstrated by the standing

Presidential approval of the indemnity agreement between DOT and another U.S. Government department or agency. In addition, the section contains a requirement for that aircraft operator to place on file with the FAA a current copy of its commercial insurance policy or policies as well as policy endorsements. This section also explains when FAA policies are in standby status and when they are in force.

Section 198.5

Section 198.5 sets forth editorial changes reflecting language used in the 1994 recodification of the Federal Aviation Act, and also clarifies that any other insurable item may be insured if eligible for insurance under Section 198.1.

Section 198.7

Section 198.7 sets forth editorial changes reflecting language used in the 1994 recodification of the Federal Aviation Act; and deletes previous language requiring the agency on whose behalf contract air services are to be performed to approve revisions of the non-premium policy.

Section 198.9

Section 198.9 is revised in order to provide flexibility to applicants for insurance. It provides for the FAA office administering the Aviation Insurance Program to give guidance and necessary forms to applicants for insurance, and removes Appendix A from the regulations. It also adds a requirement that an applicant for premium or non-premium insurance must, upon request by the FAA, provide evidence to the FAA of the unavailability of commercial insurance, as well as contains a provision specifying that the standby non-premium policy only provides actual coverage when formally activated by the FAA.

Section 198.11

Section 198.11 reflects editorial changes, the inclusion of language relating to other insurable items, and the replacement of the 10-day notice requirement with language reflecting commercial business needs and practices.

Section 198.13

Section 198.13 is revised to reflect the FAA's current administrative payment procedures, and reflects generic instructions that add greater flexibility to this section.

Section 198.15

Section 198.15 revises the current $200 binder for non-premium insurance, established in 1975, and updates it for the effects of inflation by using the annual cumulative Consumer Price Index (CPI) rounded to the nearest $25. For example, using the latest annual cumulative CPI available (2.851 for 1996), the binder would be $575 (calculation: $200 × 2.851, rounded to the nearest $25) per aircraft or other insurable item. In the future, the binder amount will be adjusted annually for newly registered aircraft and other insurable items, to reflect future increases in the CPI, rounded to the nearest $25. The binder will continue to be a one-time charge, so that once an aircraft operator registers an aircraft or other insurable item no additional binder charge will be due while the operator continues to operate that aircraft or other insurable item. After publication of the final rule, the binder set forth in the final rule will be adjusted not more frequently than annually, based on changes in the Consumer Price Index of All Urban Consumers (CPI) published by the Secretary of Labor. The adjusted binders will also be published in the "Notice" section of the **Federal Register**. This procedure will permit binder adjustments in a timely manner. However, in no event will an adjusted binder exceed the FAA's cost for providing a service. The adjusted binders will become effective in accordance with the notice which sets forth the adjusted binders. The increased binder will apply only to each insured carrier's aircraft and other insurable items registered after the effective date of this final rule.

Section 198.15(d) has been added to state the FAA's longstanding policy that when an operator acquires an aircraft previously covered under another operator's policy, the new operator must register it in the same manner as an aircraft not previously covered. The insurance registrations are not transferable.

Section 198.17

Section 198.17 is added to reflect the expanded authority to cover goods and services provided in direct support of aircraft operations.

Appendix A to Part 198—Form of Application Named in Section 198.9

Appendix A is removed in order to simplify the administration of the Aviation Insurance Program. The FAA office administering the Program will provide forms upon request.

Paperwork Reduction Act

Information collection requirements in this final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0514.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations (JAR)

The FAA has determined that a review of the ICAO Standards and Recommended Practices and JAR's is not warranted because there are no existing comparable rules.

Regulatory Evaluation Summary

Executive Order 12866 (issued October 4, 1993) established the requirement that each agency shall assess both the costs and benefits of every regulation and propose or adjust a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. 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. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act, an international trade impact assessment, and an unfunded mandates determination. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this rule.)

The final rule will not impose significant additional costs on affected air carriers. Through the changes, the FAA will attempt to recover from the beneficiaries some of the costs of providing the current services. The total cost of administering the program amounted to about $375,000 for the 1997 fiscal year (FY97) ending September 1997. Updating the $200 1975 binder by the latest annual CPI increases for 1996 and adjusted to the nearest $25 results in a binder of $575. This $575 multiplied by the number of aircraft newly registered per annum (estimated at 80), will yield $46,000 after the rule is amended. This amounts to 12.3% of FY97 administrative costs.

Principal benefits of the rule are clarifications of the existing program authorities to issue aviation insurance as restated in the recodification of the Federal Aviation Act, P.L. 103–272, the expansion of the program to include

provisions of nonpremium insurance to certain domestic segments, and to cover operations involving international agreements between the U.S. Government and foreign countries or organizations. The expansions in program scope reflect new authority created by Congress based on requirements identified during the Gulf War. The purpose of this legislative change embodied in the current rule is to increase the efficiency and flexibility of the program to respond to Defense Department requirements for air transportation between points within the United States and foreign countries.

The increase in the binder fee being instituted by the rule reflects the real cost of administration as adjusted for inflation. In the absence of this change, these administrative costs would be derived from the existing Aviation Insurance Revolving Fund to the ultimate detriment of current program participants as a whole. The FAA believes that the non-premium binder is equitable and justified in that it charges individual program participants for administrative costs associated with enrolling their aircraft in the program.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to consider the impact of rules on small entities, that is, small businesses, nonprofit organizations, and local governments. If there is a significant impact on a substantial number of small entities, the Agency must prepare a Regulatory Flexibility Analysis.

This proposal will affect Part 121 scheduled operators as well as unscheduled operators. Applying the 1996 CPI to the $200 1975 binder, the extent of the costs imposed by this rule is a one time cost of $575 per aircraft for registration. There are 23 small air carriers affected by this program with fewer than 1,500 employees. The FAA has determined that this binder, to utilize Chapter 443 insurance, will not have a substantial adverse economic impact on these entities. Rather, the binder costs facilitate program efficiency in general to the benefit of participating airlines, including airlines considered small entities. All of these air carriers need some form of insurance, because of the terms of their contracts with commercial lenders and lessors, to participate in the Chapter 443 Aviation Insurance Program and conduct certain DOD and DOS contract flights. Without the insurance availability, they could not benefit from the DOD and DOS business they otherwise obtain.

International Trade Impact

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. The rule will not have any impact on international trade as the registration fee will be the same for all carriers, foreign as well as domestic.

Unfunded Mandates Determination

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates or private sector mandates.

Significance

The FAA has determined that this regulation will not be significant under Executive Order 12866, Regulatory Planning and Review, issued October 4, 1993. This rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 16, 1979) and DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, May 22, 1980. A regulatory evaluation of this rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket.

List of Subjects in 14 CFR Part 198

Aircraft, Freight, Reporting and recordkeeping requirements, War risk insurance.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration revises 14 CFR part 198 as set forth below:

PART 198—AVIATION INSURANCE

Sec.

198.1 Eligibility of aircraft operation for insurance.
198.3 Basis of insurance.
198.5 Types of insurance coverage available.
198.7 Amount of insurance coverage available.
198.9 Application for insurance.
198.11 Change in status of aircraft.
198.13 Premium insurance—payment of premiums.
198.15 Non–premium insurance—payment of registration binders.
198.17 Ground support and other coverage.

Authority: 49 U.S.C. 106(g), 40113, 44301–44310; 49 CFR 1.47(b).

§ 198.1 Eligibility of aircraft operation for insurance.

An aircraft operation is eligible for insurance if—

(a) The President of the United States has determined that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States;

(b) The aircraft operation is—

(1) In foreign air commerce or between two or more places all of which are outside the United States if insurance with premium is south; or

(2) In domestic or foreign air commerce, or between two or more places all of which are outside the United States if insurance without premium is sought; and

(c) The Administrator finds that commercial insurance against loss or damage arising out of any risk from the aircraft operation cannot be obtained on reasonable terms from an insurance carrier.

§ 198.3 Basis of insurance.

(a) Premium insurance may be issued by the FAA is the requirements of § 198.1(a), (b)(1) and (c) are met.

(b) Subject to § 198.9(c), standby insurance without premium may be issued by the FAA if all of the following conditions have been met:

(1) A department, agency, or instrumentality of the U.S. Government seeks performance of air services

operations, pursuant to a contract of the department, agency, or instrumentality; or transportation of military forces or materiel on behalf of the United States, pursuant to an agreement between the United States and a foreign government.

(2) Such department, agency, or instrumentality of the U.S. Government has agreed in writing to indemnify the Secretary of Transportation against all losses covered by such insurance. Such an agreement, when countersigned by the President, constitutes a determination that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States.

(3) A current copy of the aircraft operator's applicable commercial insurance policy or policies is on file with the FAA, including every endorsement making a material change to the policy. Updated copies of these policies must be provided upon each renewal of the commercial policy. Every subsequent material change by endorsement must be promptly provided to the FAA.

(c) Insurance is activated, placing the insurance in full force, as specified by the FAA's written notification to the operator and remains in force until such time as either of the following occurs:

(1) The requirements in § 198.1 are no longer met; or

(2) In the case of non-premium insurance, an aircraft operation is no longer performed under contract to a department, agency, or instrumentality of the U.S. Government; or pursuant to an agreement between the United States and a foreign government; or the Administrator finds that commercial insurance can now be obtained on reasonable terms.

(d) Insurance policies revert to standby status upon written notification by the FAA to the aircraft operator. A policy will remain in standby status until either—

(1) The insurance is activated by written notice; or

(2) The policy is canceled.

§ 198.5 Types of insurance coverage available.

Application may be made for insurance against loss or damage to the following persons, property, or interests:

(a) Aircraft, or insurable items of an aircraft, engaged in eligible operations under § 198.1.

(b) Any individual employed or transported on the aircraft referred to in paragraph (a) of this section.

(c) The baggage of persons referred to in paragraph (b) of this section.

(d) Property transported, or to be transported, on the aircraft referred to in paragraph (a) of this section.

(e) Statutory or contractual obligations, or any other liability, of the aircraft referred to in paragraph (a) of this section or of its owner or operator, of the nature customarily covered by insurance.

§ 198.7 Amount of insurance coverage available.

(a) For each aircraft or insurable item, the amount insured may not exceed the amount for which the applicant has otherwise insured or self-insured the aircraft or insurable item against damage or liability arising from any risk. In the case of hull insurance, the amount insured may not exceed the reasonable value of the aircraft as determined by the FAA or its designated agent.

(b) Policies issued without premium may be revised from time to time by the FAA with notice to the insured, to add aircraft or insurable items or to amend amounts of coverage if the insured has changed the amount by which it has otherwise insured or self-insured the aircraft or itself.

§ 198.9 Applicant for insurance.

(a) Application for premium or non-premium insurance must be made in accordance with the applicable form supplied by the FAA.

(b) Each applicant for insurance with the premium under this part must submit to the FAA with its application a letter describing in detail the operations in which the aircraft is or will be engaged and stating the type of insurance coverage being sought and the reason it is being sought. The applicant must also submit any other information deemed pertinent by the FAA.

(c) Each applicant for premium or non-premium insurance must, upon request by the FAA, submit to the FAA evidence that commercial insurance is not available on reasonable terms for each flight or ground operation for which insurance is sought. Each aircraft operator who has a standby non-premium insurance policy must, upon request by the FAA, submit evidence to the FAA that commercial insurance is not available on reasonable terms before the FAA activates that policy. The adequacy of the evidence submitted is determined solely by the FAA.

(d) The standby non-premium policy issued to the aircraft operator does not provide actual coverage until formally activated by the FAA.

§ 198.11 Change in status of aircraft.

In the event of sale, lease, confiscation, requisition, total loss, or other change in the status of an aircraft or insurable items covered by insurance under this part, the insured party must notify the office administering the Aviation Insurance Program before, or as soon as practicable after, the change in status.

§ 198.13 Premium insurance—payment of premiums.

The insured must pay the premium for insurance issued under this part within the stated period after receipt of notice that premium payment is due and in accordance with the provisions of the applicable FAA insurance policy. Premiums must be sent to the FAA, and made payable to the FAA.

§ 198.15 Non-premium insurance—payment of registration binders.

(a) The binder for initial registration is $575 for each aircraft or insurable item. This binder is adjusted not more frequently than annually based on changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

(b) An application for non-premium insurance must be accompanied by the proper binder, payable to the FAA. A binder is not returnable unless the application is rejected.

(c) Requests made after issuance of a non-premium policy for the addition of an aircraft or insurable item must be accompanied by the binder for each aircraft and insurable item.

(d) When an operator acquires an aircraft or insurable item that was previously covered under an active or standby policy, the new operator must register that aircraft or item on its policy and pay the binder for each aircraft and insurable item.

§ 198.17 Ground support and other coverage.

An aircraft operator may apply for insurance to cover any risks arising from the provision of goods or services directly supporting the operation of an aircraft that meets the requirements of § 198.3(b).

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