

[Federal Register: August 23, 2006 (Volume 71, Number 163)]  
[Rules and Regulations]  
[Page 49344-49347]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr23au06-11]

-----  
DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 294

[OST Docket No. 2006-25691]  
RIN 2105-AD58

Canadian Charter Air Taxi Operators

AGENCY: Department of Transportation (DOT); Office of the Secretary (OST).

ACTION: Final rule.

-----  
SUMMARY: DOT is updating its rule concerning Canadian charter air taxis to make the rule consistent with the 1995 U.S.-Canada bilateral aviation agreement. When promulgated in 1981, the rule comported with the 1974 U.S.-Canada bilateral aviation agreement governing non-scheduled air services. However, the rule has not been updated to reflect the more liberal 1995 bilateral. Consequently, the rule, in its current form, contains certain restrictions on Canadian charter air taxis that are contrary to the 1995 bilateral. This final rule eliminates or amends those provisions. It also makes several other

[[Page 49345]]

technical changes to the rule and adds a provision making it clear that Canadian charter air taxis are exempt from the statutory requirement of foreign air carriers to file family assistance plans.

DATES: Effective Date: This rule is effective on September 22, 2006.

FOR FURTHER INFORMATION CONTACT: Jonathan Dols, Supervisory Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street, SW., Room 4116, Washington, DC 20590; (202) 366-9342 (Voice) or (202) 366-7152 (Fax).

SUPPLEMENTARY INFORMATION:

Background

Part 294 of the Department's aviation economic regulations (14 CFR

part 294) exempts foreign air carriers that have registered with the Department as ``Canadian charter air taxis'' from various provisions in Title 49 of the United States Code, including the requirement in sections 41301 and 41302 to obtain a foreign air carrier permit before engaging in foreign air transportation. In 1981, when the Civil Aeronautics Board \1\ (CAB) promulgated part 294, it intended to provide Canadian charter air taxis with a simplified and expedited economic licensing process. Central to the CAB's reasoning in establishing this special licensing status for Canadian charter air taxis was its opinion that ``we [the United States] have good aviation relations with our Canadian neighbors''--a description that is even more apt today.\2\  
-----  
-----

\1\ The Department assumed the CAB's jurisdiction over aviation economic matters when the CAB ``sunsetted'' on December 31, 1984. Civil Aeronautics Board Sunset Act of 1984, Public Law 98-443, October 4, 1984, and Airline Deregulation Act of 1978, Public Law 95-504, October 24, 1978.

\2\ Proposed Rule to Classify and Exempt Canadian Air Taxi Operators, 45 FR 80117, December 3, 1980.  
-----  
-----

On February 24, 1995, the United States and Canada greatly liberalized their commercial aviation relationship by signing the Air Transport Agreement Between the Government of the United States of America and the Government of Canada (hereinafter the ``Agreement'' or the ``1995 Bilateral''). Among other things, the Agreement granted American and Canadian air carriers, including Canadian charter air taxis, rights to conduct a wide array of operations not permitted under the countries' previous bilateral agreement governing non-scheduled air services, which had been in force since 1974 (hereinafter the ``1974 Bilateral'').\3\ On November 10, 2005, Delegations from the United States and Canada initialed an ad referendum protocol to the Agreement that would further expand the traffic rights of the air carriers of both nations (hereinafter the ``Protocol'').\4\  
-----  
-----

\3\ Non-Scheduled Air Service Agreement Between the Government of the United States of America and the Government of Canada, signed at Ottawa on May 8, 1974; entered into force May 8, 1974, with exchange of notes.

\4\ Protocol to the Air Transport Agreement Between the Governments of the United States of America and the Government of Canada, initialed ad referendum at Washington on November 10, 2005. The Protocol has not yet been signed by the two Governments. By its terms, it will not come into effect before September 1, 2006.  
-----  
-----

In 1981, at the time part 294 was promulgated, it comported with the 1974 Bilateral. However, part 294 has not been updated since then to reflect the more liberal aviation relationship between the U.S. and Canada that is set forth in the 1995 Bilateral. Consequently, although

intended to facilitate the trans-border operations of Canadian charter air taxis, part 294 has ironically become, in some respects, an impediment to them. For example, the plain language of the following provisions of part 294 contradicts either the spirit or the language of the Agreement or the language as proposed by the Protocol:

(1) Sections 294.81(b) and (b)(1) permit stopovers at points within the United States only on round-trip flights originating in Canada. The Agreement permits stopovers on one-way and round-trip flights originating in either country.\5\ Section 294.81(b)(2) requires that the same aircraft stay with its passengers throughout their journey. The Agreement contains no such restriction.

-----  
----

\5\ Annex III of the Agreement.

-----  
----

(2) Section 294.82 prohibits registrants from transporting persons or property whose journey includes a prior, intervening, or subsequent movement by air to or from a point not in the United States or Canada. However, the Agreement allows the transportation of persons and property by airlines designated by each party to carry international charter traffic of passengers and cargo between any point or points in the territory of the other party and any point or points in a third country or countries, provided such traffic is carried via the territory of the party that has designated the airline and makes a stopover in that territory for at least two consecutive nights.\6\ Moreover, the Protocol would further expand third-country traffic rights by removing the two-night stopover requirement, and, instead, merely require that the flight in question make a traffic stop in the airline's homeland.\7\ Accordingly, we are removing section 294.82, as described below, in order to make clear that the third-country traffic rights applicable to Canadian charter air taxis are coextensive with the rights of all Canadian airlines under the Agreement, or, when the Protocol becomes effective, the new rights under that Protocol.

-----  
----

\6\ Id.

\7\ Annex III of the Agreement, as proposed to be amended by Article 7 of the Protocol initialed at Washington, November 10, 2005.

-----  
----

(3) Section 294.88 prohibits certain trans-border operations to or from points west of Blind River, Ontario, and east of the Ontario-Manitoba provincial line (the ``Northwest Ontario restriction''). The Agreement grants traffic rights to the carriers of both nations between any points or points in the United States and any point or points in Canada.\8\ The CAB included the Northwest Ontario restriction in part 294 because the Canadian Air Transport Committee had imposed a similar restriction on the operations of U.S. air taxis.\9\ We are aware of no such restriction today on U.S. air taxis and, therefore, see no basis for the Northwest Ontario restriction to remain in part 294.

-----  
-----  
      \8\ Annex III.

      \9\ Order 78-11-87, In the Matter of Charter Authority of  
Canadian Foreign Air Carriers, (CAB Docket 34051) (November 16,  
1978).

-----  
-----

      (4) Section 294.89 imposes an uplift ratio. The Agreement  
explicitly prohibits uplift ratios.\10\  
-----  
-----

      \10\ Article 4 of the Agreement.  
-----  
-----

      These differences between part 294 and the Agreement have created  
confusion in the aviation industry and imposed unnecessary costs on  
Canadian charter air taxis.\11\ Moreover, they undermine the original  
intent of part 294, which was to expedite the licensing process for  
Canadian charter air taxis. Under present circumstances, there is a  
strong incentive for Canadian charter air taxis to eschew the  
``expedited'' registration process of part 294 in favor of undertaking  
to meet the very requirements from which the CAB sought to relieve  
them, i.e., from having to obtain a foreign air carrier permit. In  
recognition of these issues, and because, as a general matter, the  
Department seeks to remove unnecessary regulatory burdens and to  
advance the United States-Canada air transport relationship,

[[Page 49346]]

the Department amends 14 CFR 294.81 and removes 14 CFR 294.82; 294.88;  
and 294.89.  
-----  
-----

      \11\ The Department has anecdotal evidence of Canadian charter  
air taxi operators turning down business otherwise permitted under  
the Agreement for fear of violating part 294. Some carriers have  
incurred the added legal costs of applying to the Department for  
exemptions from certain of the contradictory provisions in part 294  
as a means of avoiding possible enforcement action for violating  
those provisions.  
-----  
-----

      In addition, the Foreign Air Carrier Family Support Act of 1997  
(Pub. L. 105-148) (hereinafter ``FACFSA''), added to Title 49 of the  
United States Code section 41313, ``Plans to address needs of families  
of passengers involved in foreign air carrier accidents.'' Section  
41313 requires all foreign air carriers with authority to operate to or  
from the United States to develop and submit plans to the Department  
and the National Transportation Safety Board (NTSB) that address the  
needs of families of passengers involved in certain aircraft accidents.

In 1998, the Department interpreted section 41313 as not applying to small aircraft operations and issued an order that exempted all foreign air carriers holding Departmental authority to conduct foreign air transportation using only small aircraft from the requirements of section 41313. Although this order was served on those Canadian charter air taxis that, at the time, were registered with the Department, the exemption was, through an administrative oversight, not subsequently codified in 14 CFR part 294. Therefore, the Department takes this opportunity to amend 14 CFR 294.10 (Exemption authority) to codify this order and, thereby, make it clear that Canadian charter air taxis are not required to submit family assistance plans to the Department or the NTSB.

-----  
----

\12\ Order 98-1-31, In the Matter of the Foreign Air Carrier Family Support Act of 1997 Exemption Under 49 U.S.C. Sec. 40109, (DOT Docket 98-3304) (January 29, 1998).

-----  
----

As a final matter, the Department hereby makes the following additional, non-substantive administrative changes to part 294:

- (1) Amend section 294.2(a) to reflect the current U.S.-Canada bilateral aviation agreement signed in 1995.
- (2) Amend sections 294.20, 294.20(b), 294.21(b), 294.22, and 294.40 to reflect the change in organizational structure that occurred when the Special Authorities Division, which is the Departmental program office that administers part 294, was transferred from the Office of Aviation Analysis to the Office of International Aviation.
- (3) Amend sections 294.3(e), 294.21(g), 294.50(d) to clarify that air carrier authority granted by the Government of Canada is a condition of receiving and maintaining an effective registration under part 294.
- (4) Amend sections 294.21(e)(1) to make clear that the onus rests on the carrier, not the Department, to provide the Federal Aviation Administration with a copy of the carrier's approved OST Form 4505.
- (5) Amend sections 294.22 to make clear that a refiling may be made using electronic mail, as well as by other means, so long as it is received by the Department within 30 days of a change in a carrier's name or operations.
- (6) Amend sections 294.32 to identify the correct section in 14 CFR part 212 that covers the bonding and escrow requirements applicable to foreign air carriers.

#### Regulatory Analysis and Notices

The Administrative Procedure Act (APA) (5 U.S.C. 553) generally requires public notice and an opportunity for public comment before issuance of a final rule. It, however, provides an exception when an agency finds that there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B), it is unnecessary and contrary to the public interest to utilize the notice of proposed rulemaking and public comment procedures for this rule because it is a corrective action required to make the regulation consistent with an international agreement. The Department

notes that, as a temporary measure, it has in the past granted carrier-specific exemptions obviating any problems for the recipient that would have been caused by the discrepancies between part 294 and the Agreement.\13\ In addition, the rule codifies an existing Departmental order exempting Canadian charter air taxis from the statutory requirement of foreign air carriers to file family assistance plans. Thus, in effect, the revised regulations merely codify current Departmental practice. All other changes are purely administrative in nature.

-----  
-----  
\13\ See, e.g., Notice of Action Taken, London Air Services Limited, Exemption from 49 U.S.C. Sec. 41301 (DOT Docket 2003-15123) (August 22, 2003).

-----  
-----  
Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The Department has determined that the amendments to 14 CFR part 294 in the final rule are not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. It has not been reviewed by the Office of Management and Budget. The amendments will impose no additional costs on the affected carriers. Rather, they will minimally reduce regulatory compliance costs by eliminating any need for Canadian charter air taxis to apply for an exemption to the outdated provisions of 14 CFR part 294 that are not in consonance with the Agreement. Because these amendments will have minimal economic impact on the covered carriers, no further regulatory evaluation is necessary.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to assess the impact of regulation on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. The Department certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The amendments to 14 CFR part 294 will not change U.S. law regarding the trans-border operations of Canadian charter air taxis or the rights available to Canadian charter air taxis under the 1995 U.S.-Canada bilateral aviation agreement, nor will they add any regulatory requirements.

#### Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The Department has determined that this proposal will 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, and therefore has no federalism implications.

Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ('`Consultation and Coordination with Indian Tribal Governments``'). Because this final rule will not significantly or uniquely affect the Indian tribal communities, and will not impose substantial direct compliance costs, the funding and consultation requirements of the Executive Order do not apply.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 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 proposed or final agency rule that may result in the expenditure by State, local, and tribal

[[Page 49347]]

governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule does not contain any Federal mandate that would result in such expenditures. Therefore, the requirements of Title II of the Act do not apply.

Paperwork Reduction Act

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 2507 et seq.).

List of Subjects in 14 CFR Part 294

Air taxis, Canada, Charter flights, Reporting and recordkeeping requirements.

0

For the reasons set forth in the preamble, the DOT amends 14 CFR part 294 as follows:

0

1.-2. The authority for 14 CFR part 294 continues to read as follows:

Authority: 49 U.S.C. Chapters 401 and 417.

0

3. Revise paragraph (a) of Sec. 294.2 to read as follows:

Sec. 294.2 Definitions.

\* \* \* \* \*

(a) Agreement means the Air Transport Agreement Between the Government of the United States and the Government of Canada, signed at Ottawa, February 24, 1995, with Annexes and any amendments,

supplements, reservations, or supersessions to it.

\* \* \* \* \*

0

4. Revise paragraph (e) of Sec. 294.3 to read as follows:

Sec. 294.3 General requirements for Canadian charter air taxi operators.

\* \* \* \* \*

(e) Has effective authority from the Government of Canada to conduct charter air service between the United States and Canada.

\* \* \* \* \*

0

5. Add paragraph (d) to Sec. 294.10 so that it reads as follows:

Sec. 294.10 Exemption authority.

\* \* \* \* \*

(d) Section 41313 (aviation disaster family assistance plans for foreign air carriers)

Sec. 294.20 [Amended]

0

6. Amend Sec. 294.20 introductory text and paragraph (b) by removing the words ``Office of Aviation Analysis'' and adding in their place the words ``Office of International Aviation.''

0

7. In Sec. 294.21, revise paragraph (b), paragraph (e)(1), and paragraph (g) to read as follows:

Sec. 294.21 Procedure on receipt of registration form.

\* \* \* \* \*

(b) Any person objecting to the registration of a Canadian charter air taxi operator shall file an objection with the Office of International Aviation, Special Authorities Division, and serve a copy on the applicant within 28 days after the Department receives the properly completed registration application. Objections shall include any facts and arguments upon which they are based.

\* \* \* \* \*

(e) \* \* \*

(1) Issue the registration by stamping its effective date on OST Form 4505 and sending a copy of it to the carrier.

\* \* \* \* \*

(g) A registration shall not be issued until the Department receives evidence that the applicant has effective authority issued by the Government of Canada. The applicant must provide copies of its Air Carrier Operating certificate and non-scheduled international license issued by the Government of Canada.



\* \* \* \* \*

0

8. In Sec. 294.22, revise the introductory text and paragraph (a)(1) to read as follows:

Sec. 294.22 Notification to the Department of change in operations or identifying information.

Registrants shall refile a copy of OST Form 4505 with the Department's Office of International Aviation, Special Authorities Division, upon any of the following events. The refile shall be sent by electronic mail, or other means, so as to be received by the Department not later than 30 days after the reported event has occurred.

(a) \* \* \*

(1) A registration ceases to be in effect unless the Government of Canada amends the registrant's Air Carrier Operating Certificate to reflect the registrant's new name within 60 days of the name change and the registrant submits to the Department a copy of its amended Canadian authority.

\* \* \* \* \*

0

9. Revise paragraph (a) of Sec. 294.32 to read as follows:

Sec. 294.32 Security arrangements for operating Public Charters.

\* \* \* \* \*

(a) The Canadian charter air taxi operator shall meet the bonding or escrow requirements applicable to foreign air carriers as set forth in Sec. 212.8 of this chapter.

\* \* \* \* \*

Sec. 294.40 [Amended]

0

10. Remove the words ``Office of Aviation Analysis'' in Sec. 294.40 and add in their place the words ``Office of International Aviation.''

0

11. Revise paragraph (d) of Sec. 294.50 to read as follows:

Sec. 294.50 Cancellation, revocation, or suspension of registration.

\* \* \* \* \*

(d) The Government of Canada terminates or suspends authority it granted to the registrant to conduct charter air service between the United States and Canada.

\* \* \* \* \*

0

12. Revise paragraph (a) of Sec. 294.60 to read as follows:

Sec. 294.60 Applications for authorization to conduct individual operations or programs not otherwise permitted by this part.

(a) Where the terms, conditions, or limitations of this part, particularly Sec. 294.81, require prior approval of individual flights or charter programs, the registrant shall apply for such approval by filing three copies of OST Form 4540 with the Office of International Aviation, Foreign Air Carrier Licensing Division. OST Form 4540 may be obtained from the Foreign Air Carrier Licensing Division.

\* \* \* \* \*

Sec. 294.81 [Amended]

0

13. Amend Sec. 294.81 by revising paragraph (b) to read as follows:

Sec. 294.81 Local traffic prohibited.

\* \* \* \* \*

(b) A registrant may grant stopover privileges at any point or points in the United States to passengers and their accompanied baggage as part of a single continuous operation to or from Canada.

Sec. 294.82 [Remove]

0

14. Remove section 294.82.

Sec. 294.88 [Remove]

0

15. Remove section 294.88.

Sec. 294.89 [Remove]

0

16. Remove section 294.89.

Issued this 14th day of August, 2006, at Washington, DC, under authority delegated in 49 CFR 1.56a.

Susan McDermott,  
Deputy Assistant Secretary of Transportation for Aviation and International Affairs.

[FR Doc. E6-13664 Filed 8-22-06; 8:45 am]

BILLING CODE 4910-62-P