

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 187

[Docket No. 27809; Amendment No. 187-5]

RIN 2120-AE72

**Fees for Certification Services and Approvals Performed Outside the United States**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This rulemaking: Updates existing fees for airman and repair station certification services to reflect current cost levels for such services performed outside the United States (U.S.); Establishes a schedule of fees where no fee currently exists for all tests, authorizations, certificates, permits, or ratings relating to any airman certification or repair station certification performed outside the U.S.; Establishes the methodology for computing user fees and a timetable for periodic updates of fees; and Establishes additional methods of collecting those fees.

This regulation is necessary to allow the FAA to fully recover the costs it incurs in performing airman certification and repair station certification services outside the U.S. and to bring current airman fees charges in line with the General Agreement on Tariffs and Trade (GATT) and other international treaties.

The intended effect of this action is to offset the costs of providing airman and repair station certification services outside the U.S. Recovering these costs will allow the FAA to continue to provide airman and repair station certification services outside the U.S., thereby facilitating the FAA's effort to assure ready acceptance of U.S. aeronautical exports overseas.

EFFECTIVE DATE: May 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Emily A. White, Flight Standards Service, AFS-50, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3301.

**SUPPLEMENTARY INFORMATION:****Background***Statement of the Problem*

The fee schedule that appears in 14 CFR part 187, Appendix A, was established by rulemaking and became effective on October 18, 1982. It

contains fees for certain certification services performed outside of the U.S. by the FAA. However, it does not contain fees for the full scope of activities for which fees may be charged under current statutory authority. Rather, the fee schedule lists only fees for services that were being rendered outside the United States at the time of that rulemaking. The fee schedule has not been updated since 1982, although the FAA's costs for performing these services has escalated since adoption of the present rule in 1982. The FAA incurs special costs to operate overseas that increase the costs for providing services outside the U.S. These additional costs include cost-of-living allowances as well as allowances for housing and education. Due to these costs, employing an inspector outside the U.S. is approximately \$85.4 thousand more costly than employing the same inspector within the U.S.

It is currently necessary to update part 187, including Appendix A, to reflect the services for which fees will be charged and to reflect the methodology for computing current and future fees. The fees for the services described in Appendix A are published in the "Notices" section of the **Federal Register**. The current fees are published in the "Notices" section of the **Federal Register** whenever a fee is revised. Changes to these fees will be published in the "Notices" section.

The changes set out in this rule make the FAA's fees practice more nearly consistent with the principles of nondiscrimination and most-favored-nation treatment that are at the core of the international trade regime set up by the GATT, and which includes the Aircraft Code and the General Agreement on Trade in Services (GATS). Under these core trade principles, governments should not treat foreign nationals differently in the measures that they take that affect international trade. Airman certifications are not governed by any trade agreement to which the U.S. is a party, but the FAA has determined that bringing its fee practices into line with international trade practices is desirable, if not required by any special obligation of the U.S. The FAA measures with regard to certification of foreign repair stations, however, including fees charged, will be subject to U.S. obligations under the GATS, which entered into force January 1, 1995. Applying multilateral trade principles to trade in service for the first time, the GATS covers measures affecting aircraft repair and maintenance services. This regulation is consistent with U.S. obligations under the GATS.

**History***Statutory Authority*

Under 49 U.S.C. 44701, formerly, Title VI of the Federal Aviation Act of 1958, as amended (the Act), gives the Administrator authority to issue certificates for airman, instructors, schools, and repair stations.

In addition, under Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), the FAA has been charged with establishing a fair and equitable system for recovering full costs expended for any service, such as the issuance of the certificates, that provide a special benefit to an individual beyond those that accrue to the general public. Section 403a of that Act provides, in part, as follows:

It is the sense of the Congress that any work service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared or issued by any Federal Agency \* \* \* to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the fullest extent possible \* \* \*.

Section 403a further provides, in part:

The head of each Federal agency is authorized by regulation (which, in the case of agencies in the Executive Branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefore such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of any existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts \* \* \*.

In 1980, Congress passed the International Air Transportation Competition Act of 1979 (hereinafter "IATC Act") giving the FAA authority to establish fee schedules for airman and repair station certification services provided outside the U.S. Section 28 of the IATC Act amended Section 45 of the Airline Deregulation Act to read as follows:

Nothing in this section shall prohibit the Secretary of Transportation or the Administrator from collecting a fee, charge, or price for any test, authorization, certificate, permit, or rating, administered or issued outside the United States, relating to any airman or repair station. (49 U.S.C. 334, second sentence).

Since the notice of proposed rulemaking (NPRM) was published (59 FR 33832, June 30, 1994), the Congress passed the Federal Aviation Administration Authorization Act of

1994 (hereinafter "FAA Authorization Act of 1994"), P.L. 103-305 (108 Stat. 1569), which was signed into law on August 23, 1994. Section 209 of the FAA Authorization Act of 1994, amended Section 45301 of Title 49 to, among other items, specifically require the FAA to establish and collect fees for foreign repair station certification and inspection actions outside the U.S. at such levels to fully recover the costs of providing such services. Section 209 reads in part:

(2) Foreign Repair Station Certification and Inspection Fees—The Administrator must establish and collect under this subsection fees for certification and inspection of repair stations outside of the United States.

(3) Level of Fees—Fees shall be established under this subsection as necessary \* \* \* except that the Administrator may for such services as the Administrator designates (and shall for certification and inspection of repair stations outside the United States) establish fees at a level necessary to recover the full cost of providing such services.

The amounts collected shall be paid to the Federal Government.

#### Office of Management and Budget (OMB) Guidelines

To aid in establishing fee schedules, OMB has prescribed in Circular No. A-25 the general guidelines to be used in developing an equitable and reasonable uniform system of charges for certain government services and property. The circular provides that "where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those that accrue to the public at large, a charge should be imposed to receive the full cost to the Federal Government of rendering that service." Circular No. A-25 specifies the following:

A special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (for example, receiving a patent, crop insurance, or license to carry on a specific business), or

(b) Provides business stability or assures public confidence in the business activity of the beneficiary (for example, certificates of necessity and convenience [sic: convenience and necessity] for airline routes, or safety inspections of craft); or

(c) Is performed at the request of the recipient and is above and beyond the

services regularly received by other members of the same industry or group, or of the general public (for example, receiving passport visa, airman's certificate, or an inspection after regular duty hours).

In support of the President's guidance in Circular No. A-25, this final rule enables the FAA to fully recover its costs for repair station and airman certification services performed outside the U.S. This rule is also consistent with the guidance in Circular A-25 regarding the use of excise taxes because once the new fees are implemented, appropriated funds will not be used to support these services.

#### Related Activity

If adopted, the proposed new part 142, Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers (Notice No. 92-10), and Special Federal Aviation Regulation No. 58, Advanced Qualification Program, will provide for certification of training centers outside the U.S. The certification provisions relating to these training centers will be contained in the proposed new part 142. The fees for the certification of training centers and for airman certification will be contained in a new FAA advisory circular discussed elsewhere in this document.

The FAA Authorization Act of 1994, cited above, broadened the FAA's Statutory authority to charge for services outside the U.S. Prior to the enactment of this legislation, FAA authority to charge fees for services performed outside the U.S. was limited to repair station and airman certification actions.

Under this legislation, authority to charge fees for services performed outside the U.S. is extended to: "any test, authorization, certificate, permit, rating, evaluation, approval, inspection, review," (49 U.S.C. 45301 (2)(c)). New fees authorized under this expanded authority will be proposed in future rulemaking action.

#### Discussion of Comments Received

The FAA mailed over 600 advance copies of Notice No. 94-24, Fees for Certification Services and Approvals Performed Outside the United States, to the Civil Aviation Authorities of member countries of the International Civil Aviation Organization (ICAO), FAA certificated foreign repair station operators, and interested Aviation Rulemaking Advisory Committee (ARAC) members. The ARAC is a formal standing committee, comprised of representatives from aviation associations and industry. ARAC provides industry input in the form of

information, advice, and recommendations to be considered in the full range of FAA rulemaking activities.

Two commenters responded to the NPRM: Air Line Pilots Association (ALPA) and General Aviation Manufacturers Association (GAMA). All comments received were carefully considered.

The ALPA is concerned that raising fees to reflect current costs for providing services will make FAA airman certification actions too expensive for potential applicants.

The FAA noted in Notice 94-24 that, in the past, most U.S. citizens outside the U.S. have sought airman certification services from designees, who charge market rates for such services, rather than seeking free airman certification services from the FAA. Even so, under the new schedule, FAA charges for airman certification services will be comparable to, or less than, those charged by designees. For example, a written test given by an FAA Aviation Safety Inspector will now be \$40, whereas the same test given at an FAA approved test center ranges from \$60 to \$150 depending upon the location. Accordingly, the fees adopted by this rulemaking are not excessive or too expensive for potential applicants.

Also regarding testing, GAMA questioned if FAA was, in effect, receiving more than full cost recovery where multiple applicants would be simultaneously taking tests.

The proposed time of 0.5 hours, or one-half hour, as the base time for computation of fees for all written tests is based on the time that an FAA Aviation Safety Inspector must spend on each individual applicant in checking qualifications to take specific tests, review of the completed test package, and other individual instruction that might be necessary. This 0.5 hour number does not include the actual test monitoring time, which averages two hours per written test under FAA regulations, where multiple applicants might be involved. FAA specifically sought to avoid the potential of multiple charges by not proposing charges for test monitoring time.

GAMA had several concerns regarding the charging for repair station certification actions that can be addressed by an elaboration on exactly how the U.S. Government may charge for its services.

Under the U.S. Government guidelines and proposed rules, the FAA may charge only for the actual service provided and may not make a profit from its services. Consequently, if no

government time or resources are expended on a particular service, then the FAA cannot charge for that service. There are oversight offices both within and outside of U.S. Government Agencies to assure agency compliance with applicable laws and regulations.

GAMA recommends the use of bilateral-type agreements with foreign governments to accomplish the FAA's foreign repair station workload, rather than using FAA inspectors on a cost recovery basis.

The FAA has been considering bilateral-type maintenance agreements with foreign countries for some time. The FAA expects that at the appropriate time, maintenance-type bilateral agreements will be concluded. This will not only be a cost savings to the end user but to the FAA as well.

GAMA questioned whether an hourly charge for inspector services, such as for repair station certification actions, would encourage an inspector to artificially extend the time required for certification in order to generate more income for the office or as a punitive action against the applicant or certificate holder.

It should be pointed out that hourly billing for these services has been in place for over twelve years with no complaints from repair station certificate holders. Not has any question regarding billing practices ever arisen during the course of regular FAA financial management reviews. Fee collection practices are also subject to other audits by the U.S. Department of Transportation Inspector General, the General Accounting Office, and other oversight offices. Cost allocation studies have shown that the charging of an hourly rate for services that can vary widely in time per facility due to facility size, complexity, and, potential problems uncovered is a very fair and nondiscriminatory way of charging for these services.

GAMA is also concerned that transportation and subsistence not be charged for actions that are performed in the office. Approximately 95 percent of repair station certification actions are performed on site at the facility. For repair station certification actions, that may be handled without a site visit, no transportation and subsistence expense will be incurred that could be charged to the certificate holder.

Finally, GAMA states that since fees collected do not directly affect the FAA budget, the collection of these fees still might not assure the service is available when and where needed.

This statement is incorrect. Since 1991, the fees collected by FAA safety inspectors for repair station and airman

certification actions outside the U.S. has been credited back to the budget of the safety office that performed the certification action as reimbursement for expenses. This procedure helps to ensure that sufficient funds remain available for necessary certification services.

#### **Editorial and Administrative Changes**

In Notice No. 94-24, the FAA proposed that certain administrative changes be made to facilitate review and adjustment of fees as necessary to reflect changes in fees for services performed. The FAA has removed the fees from the chart contained in appendix A of part 187 and replaced it with the methodology for determining fees and a yearly timetable for review. The actual fees derived from this methodology will be contained in Advisory Circular 187-1. Future notice of changes to fees for services will be published in the "Notices" section of the **Federal Register**.

Although the FAA proposed no change to proposed redesignated § 187.15(a), editorial changes are necessary to reflect the revised chart which now describes the fees for services.

All other proposals are adopted as proposed.

#### **Paperwork Reduction Act**

There are no reporting or recordkeeping requirements associated with this rule.

#### **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 amended rule is not a "significant rulemaking action," as defined by Executive Order 12866 (Regulatory Planning and Review). The results are summarized in this section.

This rule will not impose any additional costs on any members of society other than those requesting FAA certification services outside the United States. The rule will reimburse the FAA for the cost of services currently being provided to the users. Thus, the beneficiaries, rather than the general taxpayers, will pay for the services provided by the FAA. The new and amended fees are considered equitable

and reflect the cost of providing these services. The benefits of this rule will therefore be the elimination of the need for general federal revenues by the FAA to cover the costs of these services provided by the FAA.

#### **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 draft Regulatory Flexibility Analysis (RFA) for the final rule.

The amended rule will primarily affect general aviation pilots and foreign repair stations. The RFA applies neither to individuals nor foreign entities. Therefore, a RFA is not required.

#### **International Trade Impact**

This rule will affect primarily general aviation pilots and foreign repair stations. The rule will have a favorable competitive impact on U.S. repair stations by removing the subsidy that the FAA has provided to foreign repair stations in the form of lower charges for certification services. The rule will enhance the competitiveness of domestic firms.

#### **Federalism Implications**

The regulations hereing will not have substantial direct implications 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 regulation will 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 regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this regulation 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 regulation is considered nonsignificant under DOT Order 2100.5, Policies and Procedures for

Simplification, Analysis, and Review of Regulations. A final regulatory evaluation of the regulation, including a 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 187**

Administrative practice and procedure, Air transportation.

**The Amendment**

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

**PART 187—FEES**

1. The authority citation for part 187 continues to read as follows:

**Authority:** Sec. 501, 65 Stat. 290; 31 U.S.C. 483a; secs. 301, 302, 303, 305, 307, 313, 314; 72 Stat. 744, 747, 749, 752, 754; 49 U.S.C. 1341, 1343, 1344, 1346, 1348, 1354, 1355.

Section 187.15 is revised to read as follows:

**§ 187.15 Payment of fees.**

(a) The fees described in Appendix A of this part and published in the "Notices" section of the **Federal Register** are payable to the Federal Aviation Administration by check, money order, or draft payable in U.S. currency and drawn on a U.S. bank.

(b) The fees described in Appendix A of this part and published in the "Notices" section of the **Federal Register** may be paid by wire transfer.

(c) Applicants for the FAA services described in Appendix A of this part shall pay bank processing charges, when such charges are assessed by banks on U.S. Government deposits.

3. Appendix A to part 187 is revised to read as follows:

**Appendix A to Part 187—Methodology for Computation of Fees for Certification Services Performed Outside the United States**

(a) Fixed fees and hourly rates have been derived using the methodology described below to ensure full cost recovery for certification actions or approvals provided by the FAA for persons outside the United States.

(b) These rates are based on aviation safety inspector time rather than calculating a separate rate for managerial or clerical time because the inspector is the individual performing the actual service. Charging for inspector time, while building in all costs into the rate base, provides for efficient cost recovery and time management.

(c) The hourly billing rate has been determined by using the annual operations budget of the Flight Standards Service. The budget is comprised of the following:

(1) Personnel compensation and benefits, budget code series 1100 (excluding codes 1151 and 1152—overtime, Sunday and holiday pay), 1200, and 1300.

(2) Travel and transportation of persons, budget code series 2100 (excluding code 2100—site visit travel).

(3) Transportation of things, budget code series 2200.

(4) Rental, communications, utilities, budget code series 2300.

(5) Printing and reproduction, budget code series 2400.

(6) Contractual services, budget code series 2500.

(7) Supplies and materials, budget code series 2600.

(8) Equipment, budget code series 3100.

(9) Lands and structures, budget code series 3200.

(10) Insurance claims and indemnities, budget code series 4200.

(d) In order to recover overhead costs attributable to the budget, all costs other than direct inspector transportation and subsistence, overtime, and Sunday/holiday costs, are assigned to the number of inspector positions. An hourly cost per inspector is developed by dividing the annual Flight Standards Operations Budget, excluding the items enumerated above, by the number of aviation safety inspections (OMB position series 1825) on board at the beginning of the fiscal year, to determine the annual cost of an aviation safety inspector. This annual cost of an aviation safety inspector is divided by 2,087 hours, which is the annual paid hours of a U.S. Federal Government employee. This result in the hourly government paid cost of an aviation safety inspector.

(e) To ensure that the hourly inspector cost represents a billing rate that ensures full recovery of costs, the hourly cost per inspector must be multiplied by an indirect work factor to determine the hourly inspector billing rate. This is necessary for the following reasons:

(1) Inspectors spend a significant amount of time in indirect work to support their inspection activities, much of which cannot be allocated to any one client.

(2) Not all 2,087 annual paid hours are available as work hours because training, providing technical assistance, leave, and other indirect work activities reduce the work time that may be directly billed. Consequently, the hourly cost per inspector must be adjusted upwards by an indirect work factor. The calculation of an indirect work factor is discussed in paragraph (f) of this appendix.

(f)(1) The indirect work factor is determined using the following formula:

$$\left( 1 + \sum_{i=1}^k a_i \right) (1 + b) = \text{indirect work factor}$$

where:

a=indirect work rate, and

b=leave usage (total leave hours divided by total hours available for work.

(2) The components of the formula are derived as follows:

(i) a=indirect work rate. Indirect work rate is taken from the Flight Standards Staffing Standard Order and is used to project the amount of time an aviation safety inspector spends in indirect activities, as opposed to certification and surveillance work. The indirect work activities are:

(A) Development of master minimum equipment lists on Flight Operations Evaluation Board.

(B) Development of aircraft training documents on Flight Standardization Board.

(C) Development of Maintenance program documents on Maintenance Review Board.

(D) Providing technical assistance.

(E) Assisting legal counsel.

(F) Evaluation of technical

documents.

(G) Leave (all types).

(H) Training.

(I) Administrative time.

(J) Travel for indirect work.

(ii) b=leave usage (total leave hours divided by total hours available for work). This is computed by using OMB guidelines of 280 average annual leave hours and 1,800 average annual hours

available for work for computer manpower requirements.

(g) The hourly inspector cost, when multiplied by the indirect work factor, yields the hourly inspector billing rate and ensures full cost recovery by incorporating the total amount of FAA paid hours needed to produce one hour of direct billable inspector time.

(h) Certifications and approvals for which there are fixed times, such as airman tests, are determined by multiplying the time used in the Flight Standards Staffing Standard or airman test guidelines by the inspector hourly billing rate.

(i) Certifications and approvals for which there are no fixed work rates,

such as airman and repair station facilities (air agencies), are billed at the hourly inspector billing rate.

(j) Actual transportation and subsistence expenses incurred in certification or approval actions will be billed in addition to the hourly inspector billing rate, where such expenses are incurred.

(k) In no event will the fees exceed the actual costs of providing certification or approval services.

(l) The methodology for computing user fees is published in this Appendix.

The User fee schedule is published in an FAA Advisory Circular entitled "Flight Standards Service Schedule of Charges Outside the United States." A copy of this publication may be obtained from: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954

(m) Fees will be reviewed every year, at the beginning of the fiscal year, and adjusted either upward or downward in order to reflect the current costs of

performing tests, authorizations, certifications, permits, or ratings.

(n) Notice of each change to a fee for a service described in the user fee schedule will be published in the "Notices" section of the **Federal Register**.

Issued in Washington, D.C. on April 10, 1995.

**David R. Hinson,**

*Administrator.*

[FR Doc. 95-9150 Filed 4-18-95; 8:45 am]

BILLING CODE 4910-13-M