

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 3

[Docket No.: FAA–2023–1194; Notice No. 23–07]

RIN 2120–AL85

#### U.S. Agents for Service on Individuals With Foreign Addresses Who Hold or Apply for Certain Certificates, Ratings, or Authorizations

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes that individuals with foreign addresses, and no U.S. physical address of record on file with the FAA, who hold or apply for certain certificates, ratings, or authorizations designate a U.S. agent for service of FAA documents. The U.S. agent would receive service of FAA documents on the certificate holder or applicant's behalf. This proposed rule would facilitate the FAA's ability to accomplish prompt and cost-effective service of process and service of other safety-critical or time-sensitive documents to individuals abroad through service on their U.S. agents.

**DATES:** Send comments on or before August 11, 2023.

**ADDRESSES:** Send comments identified by docket number FAA–2023–1194 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building

Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

*Docket:* Background documents or comments received may be read at [www.regulations.gov](http://www.regulations.gov) at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jessica Kabaz-Gomez, Office of the Chief Counsel, Enforcement Division, AGC–300, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; (202) 267–7395; email [Jessica.Kabaz-Gomez@faa.gov](mailto:Jessica.Kabaz-Gomez@faa.gov).

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## I. Executive Summary

### A. Overview of Proposed Rule

This rulemaking proposes adding a new subpart C to part 3 of title 14 of the Code of Federal Regulations (14 CFR). Proposed subpart C will require individuals who have a foreign address and no U.S. physical address of record on file with the FAA to designate a U.S. agent for service if they apply for a certificate, rating, or authorization issued under 14 CFR part 47, 61, 63, 65, 67, or 107, or hold a certificate, rating, or authorization issued under any of these parts.

The U.S. agent would receive service of FAA documents on behalf of the certificate, rating, or authorization holder or applicant. This proposed rule would facilitate the FAA's ability to accomplish prompt and cost-effective service of process and service of other safety-critical or time-sensitive documents to individuals abroad through service on their U.S. agents. This would conserve agency resources, ensure that lengthy delays in service of process do not compromise aviation safety, and provide individuals abroad with timely notice of FAA actions and the opportunity for more expedient due process.

### B. Background and Statement of the Problem

Currently, only air carriers and foreign air carriers are required to designate a U.S. agent for service of FAA documents.<sup>1</sup> However, individuals across the world are able to hold and apply for FAA certificates, ratings, and authorizations. As of July 2022, there were approximately 115,000 individuals holding certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107 who had a foreign address and did not have a U.S. physical address of record on file with the FAA. Serving certain documents on these individuals outside of the U.S. presents a challenge for the FAA. Accomplishing valid service of process abroad requires compliance with international service requirements under multi-lateral treaties (*i.e.*, the Hague Service Convention, 20 U.S.T. 361 (signed Nov. 15, 1965), and the

<sup>1</sup> See 49 U.S.C. 46103(a)(1) (requiring air carriers and foreign air carriers to designate an agent) and 14 CFR 119.49 and 129.9 (implementing 46103(a)(1)).

Inter-American Convention on Letters Rogatory, adopted January 30, 1975, together with the Additional Protocol to the Convention (IACAP), adopted May 8, 1979, S. Treaty Doc. No. 98–27 (1986)) or by other means that comport with the receiving country and U.S.'s applicable laws regulating extraterritorial service.

These international service requirements are triggered by the FAA's service of process abroad, specifically when the FAA sends documents abroad that compel compliance and are subject to administrative or judicial review. Such documents may include notices of proposed civil penalties, orders of suspension or revocation, and emergency orders of suspension or revocation. International service requirements can significantly delay service of these documents for months (and in some cases over a year), and also impose additional costs on the agency. These international service requirements cannot be waived by document recipients, or circumvented by sending documents electronically.

### C. Summary of the Costs and Benefits

Approximately 115,000 individuals outside the U.S. as of July 2022 hold certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107 and do not have a U.S. physical address of record on file with the FAA. Service of process abroad imposes burdensome costs on the FAA. This proposed rule would eliminate a majority of the costs of affecting international service and transfer some of these transaction costs back to the individual that necessitated them by requiring designation of a U.S. agent. The costs experienced by these individuals will depend on the arrangements made (*e.g.*, hiring a professional U.S. agent for service of process could cost \$150 to \$300 annually). Although there may be some initial costs to the FAA to revise its systems to accommodate the change, these costs will be offset by avoiding the foreign process costs that include international mailings and foreign translations.

## II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety, such as the rules governing service that are addressed in this notice, is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority, including the authority to issue regulations.

This rulemaking is issued under the authority described in 49 U.S.C. 44701(a)(5), which establishes the authority of the Administrator to prescribe regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. These regulations are within the scope of that authority and are consistent with 49 U.S.C. 46103, which governs the FAA's service and provides that the FAA may effectuate service on an agent.

## III. Discussion of the Proposal

This proposed rule would amend 14 CFR part 3. If adopted, the proposal would require individuals who hold or apply for certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107 and who have a foreign address and no U.S. physical address of record on file with the FAA to designate a U.S. agent for service. The U.S. agent would receive service of FAA documents on the individual's behalf.

### A. Proposed Rule

Individuals who hold or apply for FAA certificates, ratings, or authorizations are not currently required to designate a U.S. agent for service of FAA documents. However, the FAA may serve documents on an agent as permitted under 49 U.S.C. 46103. The FAA therefore proposes to amend 14 CFR part 3 to add subpart C with §§ 3.301 through 3.303 to require individuals with foreign addresses, and no U.S. physical address of record on file with the FAA, who hold or apply for certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107, as specified below, to designate a U.S. agent for service of certain FAA documents.

#### 1. Rationale for Proposed Rule

The FAA is proposing this rulemaking to enable prompt and cost-effective service of documents to individuals abroad through service on their U.S. agents. This would avoid international service associated with service of process, which can impose significant costs and cause tremendous delays to service. As previously discussed, the FAA's service of process abroad can trigger international service requirements. International service requirements can delay service of these documents for months (and in some cases over a year) and impose burdensome costs on the agency. These service requirements cannot be circumvented by stipulation or agreement between the FAA and the individual receiving the document as

that could violate a country's national sovereignty and potentially U.S. treaty obligations.<sup>2</sup> Similarly, the FAA cannot avoid these international service requirements by sending these documents electronically by email.<sup>3</sup>

The two international service conventions applicable to the FAA's service of these documents are the Hague Service Convention, 20 U.S.T. 361 (signed Nov. 15, 1965), and the Inter-American Convention on Letters Rogatory, adopted January 30, 1975, together with the Additional Protocol to the Convention (IACAP), adopted May 8, 1979, S. Treaty Doc. No. 98–27 (1986). The main method for service under these conventions, when a country has objected to postal service under either convention, is through the country's designated central authority, which is cumbersome, slow, and costly compared to service of process accomplished directly through registered mail on the intended recipient. It can take three to six months for a country's central authority to effect service of process and provide proof of such service to the requester under the Hague Service Convention, and six months to a year under the IACAP. However, service times under the IACAP and Hague Service Convention are country dependent, with some countries taking a year or more.

These delays can create a serious risk to aviation safety. For example, when the FAA is serving emergency orders on an individual the FAA finds unqualified to hold FAA certificates, ratings, or authorizations, the individual may attempt to continue exercising the associated privileges until the FAA serves the individual in accordance with international service requirements. Service delays may also impact when individuals receive notice of the FAA's action and their opportunity to timely respond.

Additionally, international service requirements impose costs on the FAA in the form of fees from receiving countries' central authorities that process the FAA's service requests and document translation costs. The cost of

<sup>2</sup> Failure to honor such international treaty obligations or respect a country's national sovereignty when serving legal enforcement documents is in contravention of international and foreign law. In such instances, the offended country's government issues a demarche to the U.S. Department of State, which notifies the U.S. Department of Justice when the incident involves a U.S. Government attorney. Such incidents could harm diplomatic relations between the offended country and the United States.

<sup>3</sup> International service conventions do not expressly authorize email service of process abroad, and email service abroad could violate the internal law of the receiving state and potentially result in judgments that are unenforceable in foreign courts.

service through a country's central authority varies for each country, with the United States' Central Authority imposing a \$95 fee and many countries imposing a reciprocal fee. However, service of process to some remote locations within countries can cost several hundred dollars. In addition, countries that are parties to the IACAP, and many that are parties to the Hague Service Convention, impose translation requirements for the central authority to serve documents. The FAA currently must procure translation services when these treaties require translation, adding additional expense. If the FAA could serve its documents domestically on U.S. agents, then these international service treaties and their requirements would not apply. The FAA could save the costs of countries' central authority service fees and translation costs, as the FAA could serve the documents in English directly on individuals' U.S. agents.

Further, most countries are not parties to the Hague Service Convention or the IACAP. Service of process to individuals in these countries must comport with the receiving country's laws and U.S. law regulating extraterritorial service of process. There is no central repository specifying what the service requirements are in each of these countries. Accordingly, at minimum, service to these countries requires the FAA to consult with the Department of State, Department of Justice, or local counsel in the receiving country to determine what constitutes effective and legally permissible service in that country. If a country objects to postal service, letters rogatory are likely the only available and recognized means of service. Letters rogatory through diplomatic channels take eighteen months or more.

In sum, these international service requirements cause tremendous delays to service, with safety implications, and they impose significant costs on the agency. By requiring individual certificate holders abroad to designate a U.S. agent for service, this rulemaking would enable prompt and cost-effective service of documents to individuals abroad through service on their U.S. agents. This would conserve agency resources, ensure that lengthy delays in service of process do not compromise aviation safety, and provide individuals abroad with timely notice of FAA action. As previously discussed, for consistency, and to streamline service on U.S. agents, the agency is also proposing to serve other time-sensitive or safety-critical documents in its discretion on U.S. agents even when

international service requirements are not triggered.

## 2. Applicability (§ 3.301)

The FAA proposes to add § 3.301 to specify subpart C's applicability. This new requirement to designate a U.S. agent for service would only apply to individuals, not entities. Additionally, only those individuals with a foreign address who do not have a U.S. physical address<sup>4</sup> of record on file with the FAA, and who hold or apply for certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107, would be required to designate a U.S. agent for service. Foreign addresses are those that are not in the U.S. or its possessions or territories.

The proposed rule would apply to individuals and not to entities because the FAA already has various means of easily reaching certificated entities abroad, but not a fast and cost-effective way of reaching individuals. For example, air carriers and foreign air carriers already designate an agent for service in their operation specifications, as required by 14 CFR 119.49 and 129.9. Foreign repair stations are required to provide a physical address to the FAA of their facilities, make these stations available for inspection, and notify the agency of any change to their address, in addition to complying with foreign business registration requirements, which may include designating agents for service in the country in which they are located. Other foreign entities, like design approval holders under 14 CFR part 21, are under the jurisdiction of their foreign civil aviation authority.

Additionally, individuals are traditionally more difficult to locate and serve than entities, given that entities have business registration, address, inspection, and agent requirements. Though certificated individuals are required to maintain a current mailing address on record with the FAA, if they fail to do so, the FAA has greater difficulty locating an individual certificate holder abroad than an entity or an individual in the United States. For these reasons, the proposed rule would only apply to individuals with a foreign address who do not have a U.S. physical address of record on file with the FAA.

For the proposed rule to apply to these individuals, they must hold or apply for FAA certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107. These

<sup>4</sup> A U.S. physical address is an address in the States of the United States, the District of Columbia, or any U.S. territory or possession, but excludes PO boxes, mail drop boxes, and commercial addresses that are not also residential addresses.

individuals comprise the majority of individuals holding FAA certificates, ratings, and authorizations abroad and represent those who the agency most commonly serves with process and other safety-critical or time-sensitive documents. Individuals who only hold or apply for FAA certificates, ratings, or authorizations other than those issued under 14 CFR part 47, 61, 63, 65, 67, or 107 are not covered by the proposed rule due to the limited benefit that would be derived by having the proposed rule apply to them. For instance, there are very few part 21 certificate holders who are individuals, with even fewer abroad, and the FAA could not identify any prior instances that required service of documents abroad to these certificate holders.

Similarly, this rulemaking does not include FAA designees abroad who do not hold or apply for certificates issued under 14 CFR part 47, 61, 63, 65, 67, or 107. FAA designees communicate through the designee management system (DMS) and their designations are privileges that the FAA can suspend or terminate within DMS, such that there are no issues or concerns with service abroad.

For these reasons, proposed § 3.301 provides that this proposed rule only applies to individuals who hold or apply for FAA certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107 with a foreign address who do not have a U.S. physical address of record on file with the FAA.

## 3. U.S. Agent for Service Defined (§ 3.302)

The proposed rule defines a U.S. agent for service as an entity or an adult (18 or older) with a U.S. address who a certificate, rating, or authorization holder or applicant designates to receive FAA service on their behalf. Accordingly, individuals can hire any entity, including registered agent service companies, with a U.S. address to be their designated U.S. agent for service. Alternatively, they can designate any adult who is 18 or older with a U.S. address, including a relative or associate, to be their U.S. agent for service.

Regardless of who an individual designates as a U.S. agent, the U.S. agent must have a U.S. address for the FAA to serve. If an entity is serving as the U.S. agent, the FAA proposes that the U.S. agent's address must be the entity's office address. If an adult individual is serving as the U.S. agent, the FAA proposes that the U.S. agent address must be the U.S. agent's usual place of residence, or, if applicable, the U.S. agent's military office address in the

United States.<sup>5</sup> A post office (PO) box, military post office (APO), or mail drop box would not suffice as a U.S. agent address as these types of addresses create service difficulties.

Under the proposed rule, the FAA would serve the designated U.S. agent in lieu of serving the individual or applicant at their foreign address. The U.S. agent would directly receive the FAA's service of process, and other time-sensitive or safety critical documents. Service of process includes the FAA's service of documents that compel compliance and are subject to administrative or judicial review. Examples include initiating legal enforcement action documents, such as notices of proposed civil penalty or assessment, orders of suspension or revocation, and emergency orders of suspension or revocation. For consistency, and to streamline service on U.S. agents, the agency in its discretion is also proposing to serve other time-sensitive or safety-critical documents on U.S. agents. Examples of such documents include reexamination letters, letters of investigation, Office of Aerospace Medicine letters requesting additional information or denying a medical certificate, and notices to aircraft owners of ineffective or invalid aircraft registration.

In some instances, the appeal and reply deadlines of these documents can be very short. For example, FAA emergency orders have a two-day deadline, from receipt by the U.S. agent, for the certificate holder to seek review of the FAA's emergency determination, and ten days from the order's date of service for appeal of the order. As discussed in greater detail below, the U.S. agent would be responsible for timely transmitting all documents the FAA served on the U.S. agent to the certificated individual or applicant who designated them.

Ultimately, the individual who holds the certificate, rating, or authorization is responsible for ensuring that service can be effectuated on their designated U.S. agent at the U.S. agent address provided. If the U.S. agent is unavailable for service, the individual who holds the certificate, rating, or authorization is responsible for ensuring that he or she timely receives the mail in question. For example, if a U.S. agent for service is on travel at the time of mailing, the individual who holds the certificate, rating, or authorization may want to have a friend or associate collect

the mail and notify the individual of the service. The specific requirements and responsibilities for designated U.S. agents are further detailed below.

#### 4. U.S. Agent Designation Requirements (§ 3.303)

The FAA proposes that individuals designate a U.S. agent for service in writing to the FAA in a form and manner prescribed by the Administrator. The FAA will publish an Advisory Circular with the final rule specifying the proposed acceptable form and manner for individuals to submit their designation of a U.S. agent for service. The FAA will encourage individuals to designate their U.S. agent for service electronically, for expediency. An individual designating a U.S. agent for service would be required to provide the U.S. agent's full name; their U.S. agent address, as previously discussed; their email address, should electronic service be feasible; their fax number (optional); and their phone number (optional), in the event of service issues.

Individuals who hold or apply for more than one FAA certificate, rating, or authorization issued under 14 CFR part 47, 61, 63, 65, 67, or 107, would only be required to designate a single U.S. agent for service. Once an individual designates a U.S. agent there would be no need to re-designate a U.S. agent with each certificate, rating, or authorization renewal or application for a new certificate, rating, or authorization. However, all individuals would be required to keep their U.S. agent designation current. The FAA proposes that individuals notify the FAA of any change to their U.S. agent's contact information or a change to whom they have designated as their U.S. agent within thirty calendar days of the change.

Absent extraordinary circumstances, the FAA would consider service on an individual's U.S. agent the equivalent of service directly on the individual, triggering all applicable appeal and reply deadlines. As previously explained, the reply and appeal deadlines in documents served can be very short. For these reasons, prior to designating a U.S. agent for service, the FAA proposes that individuals ensure the U.S. agent they have selected understands the requirements for serving as a U.S. agent, including timely transmitting FAA documents to the individual who designated them, and agrees to serve in that capacity. In addition, the FAA proposes under § 3.303 that a U.S. agent must be mentally competent to assume this duty. The FAA further proposes that the

responsibility for ensuring these requirements are met falls on the individual designating the U.S. agent. Individuals designating U.S. agents would be required to certify to the FAA, under penalty of perjury, that a U.S. agent has accepted the responsibility of receiving FAA service on behalf of the individual.

#### 5. Effective Date and Consequences for Failing To Comply (§ 3.303)

Enforceability of this proposed rule is important to provide its intended benefit to the FAA and the public. Accordingly, the FAA proposes consequences for noncompliance with the requirement to designate a U.S. agent for service. If six months after publication of the final rule, an individual has not designated a U.S. agent as required, the FAA proposes to not permit an individual to exercise the privileges of any certificate, rating, or authorization issued under part 47, 61, 63, 65, 67, or 107, and an individual aircraft owner's aircraft registration certificate would not be considered effective.

The FAA may take enforcement action against individuals who fail to timely comply with the proposed rule consistent with FAA Enforcement and Compliance Order 2150.3. This six-month time span is proposed to provide sufficient time for affected individuals to comply with this rulemaking. Additionally, after publication of the final rule, the FAA proposes to preclude issuance of certificates, ratings, or authorizations under part 47, 61, 63, 65, 67, or 107 to applicants with a foreign address who do not have a U.S. physical address unless they designate a U.S. agent at the time of application, as required by this proposed rule. For applications currently before the agency for review when the final rule is published, the FAA proposes to notify applicants of the requirement to designate a U.S. agent for service and provide them sufficient opportunity to comply with the requirements before the FAA would permit issuance of their certificates, ratings, or authorizations.

#### IV. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of Executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 ("Modernizing Regulatory Review"), direct that each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory

<sup>5</sup> A designated U.S. agent may only use a military office address if they are serving as a U.S. agent in their official capacity, rather than their personal capacity.

Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$165,000,000, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: will result in benefits that justify costs; is not an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector.

#### A. Regulatory Impact Analysis

##### 1. Baseline for the Analysis

As mentioned previously, approximately 115,000 individuals in July 2022 applied for or held certificates, ratings, and authorizations issued under 14 CFR parts 47, 61, 63, 65, 67, and 107 using a foreign address. The FAA estimates that approximately 97 percent of these individuals that used a foreign address are citizens of foreign countries. As also described above, service of process abroad imposes burdensome costs on the agency. The FAA estimates that it sends over 8,000 documents abroad annually, including both service of process and other documents, at a cost close to \$600,000 including mailing costs, staff time, and translation services when required.<sup>6</sup> Examples of documents that have been sent abroad are shown in Table 1.

<sup>6</sup> The average cost to FAA per document served is \$75.

TABLE 1—EXAMPLES OF DOCUMENTS SERVED ABROAD

| Documents   |
|---|
| <p>Aerospace Medicine’s letters, for example:</p> <ul style="list-style-type: none"> <li>• All Denial Letters.</li> <li>• Withdrawal of Special Issuance (SI) Authorization Letters.</li> <li>• Special Issuance Authorization Letters.</li> <li>• Re-examination/Request for Information Letters.</li> <li>• Lack of Qualification Letters with Referral to Legal.</li> <li>• Letters of investigation.</li> </ul>   |
| <p><b>Aerospace Medicine’s Federal Drug and Alcohol Testing Letters of Investigation</b></p>  |
| <p>Enforcement action documents, for example:</p> <ul style="list-style-type: none"> <li>• Notice of Proposed Civil Penalty (NOPCP).</li> <li>• Final Notice of Civil Penalty (FNPCP).</li> <li>• Order Assessing Civil Penalty (OACP).</li> <li>• Notice of Proposed Assessment (NOPA).</li> <li>• Civil Penalty Letter.</li> <li>• Notice of Proposed Certificate Action (NOPCA).</li> <li>• Order of Suspension (OS).</li> <li>• Order of Revocation (OR).</li> </ul> <p>Emergency enforcement action documents, for example:</p> <ul style="list-style-type: none"> <li>• Emergency Order of Revocation (EOR).</li> <li>• Emergency Order of Suspension (EOS).</li> </ul> |
| <p><b>Flight Standards Reexamination Letters</b></p>  |
| <p>All FAA Program Office’s Letters of Investigation.</p> <p>Aircraft Registry’s letters, for example:</p> <ul style="list-style-type: none"> <li>• Notices to Aircraft Owners of Ineffective Aircraft Registration</li> <li>• Notices to Aircraft Owners of Invalid Aircraft Registration</li> </ul>   |

##### 2. Benefits

The benefits of the proposed rule include prompt and cost-effective service of these documents to individuals abroad through service on their U.S. agents. Prompt service will conserve agency resources, ensure that lengthy delays in service do not compromise aviation safety, and provide individuals abroad timely notice of the FAA’s actions. However, these benefits are not quantified because the ultimate impacts on aviation are not known.

##### 3. Costs

Under the proposed rulemaking, the affected individuals will bear the transaction costs associated with having a foreign address on file with the FAA. There is a minimal cost associated with designating new U.S. agent and any updates thereafter. Individuals may designate an entity or an adult (18 or older) with a U.S. address to serve as their U.S. agent. The FAA determined that the cost of hiring a registered U.S.

agent service company may range from \$150 to \$300 annually.<sup>7</sup> However, it is possible that many individuals with foreign addresses have a friend or family member residing in the U.S. whom they may choose to designate as their U.S. agent. Given the uncertainty regarding how individuals with foreign addresses may choose to comply with this proposed rule, the FAA solicits comments and data on the estimated costs of compliance.

The FAA would incur implementation costs to collect the U.S. agent information. However, the FAA anticipates developing an automated system that would not require agency staff processing time. The initial implementation costs will then be offset by saving the baseline foreign service process costs and avoiding the costs of translation services (required by contracting parties to the Hague Service Convention or IACAP).

##### 4. Comparison of Costs and Benefits

In summary, the FAA expects that the benefits of prompt document service, which could affect aviation safety, will exceed any costs associated with implementing this administrative change. Costs associated with designating a U.S. agent for affected individuals abroad would be largely incurred by the individual who holds the certificate, rating, or authorization, rather than the FAA. This proposed rule would eliminate a majority of the costs of affecting international service and transfer some of these transaction costs back to the individual that necessitated them by requiring designation of a U.S. agent. The FAA solicits comments regarding this assessment of impacts.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

<sup>7</sup> See <https://www.legalzoom.com/articles/how-much-does-it-cost-to-have-a-registered-agent> (last accessed Dec. 19, 2022).

governmental jurisdictions with populations of less than 50,000.

The FAA did not identify any small entities that would be affected by the proposed rule because this rule concerns only individuals and not their employers or entities or businesses the individuals are associated with. Therefore, the FAA proposes to certify that the rule will not have a significant economic impact on a substantial number of small entities. The FAA welcomes comments on the basis for this certification.

#### *C. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has determined that this proposed rule is not considered an unnecessary obstacle to trade.

#### *D. Unfunded Mandates Assessment*

Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate 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. The current threshold after adjustment for inflation is \$177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product.

#### *E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of

information, nor may it impose an information collection requirement, unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the proposed information collection to OMB for its review.

*Summary:* The FAA is proposing to require individuals who hold or apply for certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107 and who have a foreign address and no U.S. physical address of record on file with the FAA to designate a U.S. agent.

*Use:* The information collected and maintained in FAA databases would be used to serve various documents to the designated U.S. agents of individuals with a foreign address.

*Respondents:* There are currently 115,132 individuals who hold certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107 with a foreign address and who do not have a U.S. physical address of record on file with the FAA. After the implementation of the proposed rule in Year 1, the FAA expects that the number of new applicants who would be required to designate a U.S. agent would be 4,362. In addition, the FAA estimates that annually approximately 4,606 respondents might process a change of U.S. agent designation or an update to their U.S. agents' contact information.

*Frequency:* All 115,132 individuals with a foreign address, with no U.S. physical address, who currently hold certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107 will be required to designate a U.S. agent once during the implementation of the rule in Year 1. Similarly, 4,362 respondents identified as new applicants would be required to designate a U.S. agent at the time of their application in Year 2. Additionally, 4,606 respondents might need to change their U.S. agent or update the information for their current U.S. agent. This would require submission of a new U.S. agent designation.

*Annual Burden Estimate:* The FAA estimates that it would take an individual 10 minutes to submit a U.S. agent designation. In Year 1, the number of annual burden hours would be 19,189 [(115,132 individuals × (10 minutes ÷ 60 minutes)], and 1,495 hours each year afterwards (=[(4,362 + 4,606) × (10 minutes ÷ 60 minutes)]). The annual

cost of this U.S. agent designation requirement to individuals would be \$1,195,761 in Year 1 and \$93,131 each year afterwards.

The collection of the U.S. agent designation will be fully automated. Therefore, there will be no new cost to the government.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by August 11, 2023. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

#### *F. International Compatibility*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

#### *G. Environmental Analysis*

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.f and involves no extraordinary circumstances.

## V. Executive Order Determinations

### A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order (E.O.) 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

### B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,<sup>70</sup> and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,<sup>71</sup> the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this proposed rule.

### C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it would not be a “significant energy action” under the Executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

### D. Executive Order 13609, Promoting International Regulatory Cooperation

E.O. 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of E.O. 13609, and has determined that this action would have no effect on international regulatory cooperation.

## VI. Privacy

With regard to the information persons may submit in accordance with this proposed rule’s requirements, the FAA conducted a privacy impact assessment (PIA) under section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) and section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889 (Dec. 17, 2002). The PIA found the NPRM requirements that affect privacy include the collection of personally identifiable information (PII) of U.S. agents designated by individuals with a foreign address and no U.S. physical address on file with the FAA that hold or apply for certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107. The information the NPRM proposes to collect includes the U.S. agent’s full name, U.S. address, fax number, phone number, and email address.

As part of the PIA, the FAA analyzed the effect the proposed rule might have on collecting, storing, and disseminating personally identifiable information (PII) of U.S. agents designated by individuals with a foreign address and no U.S. physical address on file with the FAA that hold or apply for certificates, ratings, or authorizations issued under 14 CFR part 47, 61, 63, 65, 67, or 107. The FAA also examined and evaluated protections and alternative information-handling processes in developing the proposed rule to mitigate potential privacy risks. A copy of the draft PIA is posted in the docket for this rulemaking.<sup>8</sup>

## VII. Additional Information

### A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically or commenters should send only one copy of written comments if comments are filed in writing.

<sup>8</sup> Upon finalization, PIAs are posted on the Department of Transportation’s Privacy Program page.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

The FAA also specifically invites comments and requests data and information in response to the following questions:

(1) How many individuals impacted by this rule are likely to have contacts within the United States that they could designate as their U.S. agent for service at no cost?

(2) Apart from publishing the rulemaking in the **Federal Register** for notice and comment, what other methods of outreach could the agency undertake to inform individuals impacted by this rule?

**Confidential Business Information:** Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Privacy:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

### B. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at [www.regulations.gov](http://www.regulations.gov) using the docket number listed above. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at [www.federalregister.gov](http://www.federalregister.gov) and the Government Publishing Office's website at [www.govinfo.gov](http://www.govinfo.gov). A copy may also be found at the FAA's Regulations and Policies website at [www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies).

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

### C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit [www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

#### List of Subjects in 14 CFR Part 3

Aircraft, Aviation safety, U.S. agent for service.

#### The Proposed Amendment

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

### PART 3—GENERAL REQUIREMENTS

■ 1. The authority citation for part 3 is revised to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701, 44704, 46111, and 46103.

■ 2. Add subpart C to read as follows:

### Subpart C—Designated U.S. Agents for Service

Sec.

3.301 Applicability.

3.302 Definitions.

3.303 Designation of a U.S. agent for service.

#### § 3.301 Applicability.

This subpart applies to individuals who:

(a) Do not have a U.S. physical address of record on file with the FAA;

(b) Have a foreign address of record on file with the FAA; and

(c) Hold or apply for certificates, ratings, or authorizations under part 47, 61, 63, 65, 67, or 107 of this chapter.

#### § 3.302 Definitions.

*U.S. agent address* is an address in the States of the United States, the District of Columbia, or any U.S. territory or possession. If the U.S. agent is an entity, the address must be the U.S. agent's office address. If the U.S. agent is an individual, the address must be the U.S. agent's usual place of residence or, if applicable, the individual's U.S. military office address. A U.S. agent may only use a military office address if they are serving as a U.S. agent in their official capacity with the military. A U.S. agent address may not be a post office box, military post office box, or a mail drop box.

*U.S. agent for service (U.S. agent)* is an entity or an adult (individual who is 18 or older) with a U.S. address who a certificate, rating, or authorization holder or applicant designates to receive FAA service on their behalf.

*U.S. physical address* is an address in the States of the United States, the District of Columbia, or any U.S. territory or possession, but excludes post office boxes, military post office boxes, mail drop boxes, and commercial addresses that are not also residential addresses.

#### § 3.303 Designation of a U.S. agent for service.

(a) Individuals must designate a U.S. agent for service within the U.S. in writing to the FAA in a form and manner prescribed by the Administrator. Individuals designating a U.S. agent must ensure that the U.S. agent understands the requirements for receiving FAA service on behalf of the individual and is competent to perform that responsibility.

(b) The designation must include the U.S. agent's full name, address, email address, and certification by the individual that the U.S. agent has accepted responsibility for receiving FAA service on behalf of the individual.

It may also include the U.S. agent's fax number and phone number.

(c) Individuals must notify the FAA in a form and manner prescribed by the Administrator of any change to their U.S. agent designation or the U.S. agent's contact information within 30 days of the change.

(d) Individuals must comply with the requirements listed in this subpart no later than:

(1) [DATE 6 MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], for certificate holders. Certificate holders that fail to timely designate a U.S. agent for service and comply with the requirements under this subpart may not exercise the privileges of any certificate, rating, or authorization issued under part 47, 61, 63, 65, 67, or 107, and an individual aircraft owner's aircraft registration certificate will be considered ineffective; and

(2) [EFFECTIVE DATE OF FINAL RULE], for applicants. An applicant that fails to designate a U.S. agent for service and comply with the requirements under this subpart shall not be issued a certificate, rating, or authorization under parts 47, 61, 63, 65, 67, or 107.

3. Effective [DATE 6 MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], amend § 3.303 by revising paragraph (d) and adding paragraph (e) to read as follows:

#### § 3.303 Designation of a U.S. agent for service.

\* \* \* \* \*

(d) No individual shall exercise the privileges of any certificate, rating, or authorization issued under part 47, 61, 63, 65, 67, or 107 of this chapter unless the individual has designated a U.S. agent as required under this subpart. Aircraft registration certificates issued to individuals who fail to designate a U.S. agent as required under this subpart will be ineffective.

(e) No individual shall be issued a certificate, rating, or authorization under part 47, 61, 63, 65, 67, or 107 of this chapter unless the individual has designated a U.S. agent as required under this subpart.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

**Marc Nichols,**

*Chief Counsel, Office of the Chief Counsel.*

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