

PART 185—TESTIMONY BY EMPLOYEES AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS, AND SERVICE OF LEGAL PROCESS AND PLEADINGS

Sec.

185.1 Purpose.

185.3 Acceptance of service on behalf of the Secretary of Transportation or the Administrator.

185.5 Testimony by employees and production of records in legal proceedings.

AUTHORITY: 49 U.S.C. 106(g), 40113-40114, 46104; 49 CFR part 9.

SOURCE: Docket No. 9900, 34 FR 16622, Oct. 17, 1969, unless otherwise noted.

§ 185.1 Purpose.

(a) The purpose of this part is to name the FAA officials who, pursuant to part 9 of the regulations of the Office of the Secretary of Transportation (49 CFR part 9) as amended (34 FR 11972, July 16, 1969), are those:

(1) Upon whom legal process or pleadings may be served in any legal proceeding concerning the FAA, and who have authority to acknowledge the service and take further action thereon; and

(2) Who otherwise perform the functions prescribed by part 9 in legal proceedings concerning the FAA with respect to testimony by FAA employees and production of FAA records in legal proceedings.

(b) For purposes of this part, "legal proceedings" includes any proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

§ 185.3 Acceptance of service on behalf of the Secretary of Transportation or the Administrator.

Legal process or pleadings in any legal proceeding concerning the FAA may be served, at the option of the server, on the Chief Counsel, Deputy Chief Counsel, Assistant Chief Counsel, Litigation Division, of the FAA, or any other FAA official designated by the Chief Counsel, with the same effect as if served upon the Secretary of Transportation or the Administrator. The official accepting the service under this

section acknowledges the service and takes further action as appropriate.

§ 185.5 Testimony by employees and production of records in legal proceedings.

The Chief Counsel, and each Assistant Chief Counsel, each Regional Counsel, the Aeronautical Center Counsel, and the Technical Center Counsel, with respect to matters arising within their respective jurisdictions, and any other FAA official designated by the Chief Counsel, perform the functions in legal proceedings (other than one described in § 185.3 of this part) as prescribed by part 9 of the regulations of the Office of the Secretary of Transportation, with respect to testimony by FAA employees and production of FAA records in legal proceedings.

[Doc. No. 9900, 34 FR 16622, Oct. 17, 1969, as amended by Amdt. 185-1, 54 FR 39296, Sept. 25, 1989; Amdt. 185-3, 62 FR 46866, Sept. 4, 1997]

PART 187—FEES

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APPENDIX C TO PART 187—FEES FOR PRODUCTION CERTIFICATION-RELATED SERVICES PERFORMED OUTSIDE THE UNITED STATES

AUTHORITY: 31 U.S.C. 9701; 49 U.S.C. 106(f), 106(g), 106(1)(6), 40104-40105, 40109, 40113-40114, 44702, 45301.

SOURCE: Docket No. 8347, 32 FR 12051, Aug. 22, 1967, unless otherwise noted.

§ 187.1 Scope.

This part prescribes fees only for FAA services for which fees are not prescribed in other parts of this chapter or in 49 CFR part 7. The fees for services furnished in connection with making information available to the

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public are prescribed exclusively in 49 CFR part 7. Appendix A to this part prescribes the methodology for computation of fees for certification services performed outside the United States. Appendix C to this part prescribes the methodology for computation of fees for production certification-related services performed outside the United States.

[Docket FAA-2015-3597, Amdt. 187-36, 81 FR 85853, Nov. 29, 2016]

§ 187.3 Definitions.

For the purpose of this part:

Great circle distance means the shortest distance between two points on the surface of the Earth.

Overflight means a flight through U.S.-controlled airspace that does not include a landing in or takeoff from the United States.

Overflight through Enroute airspace means an overflight through U.S.-controlled airspace where primarily radar-based air traffic services are provided.

Overflight through Oceanic airspace means an overflight through U.S.-controlled airspace where primarily procedural air traffic services are provided.

U.S.-controlled airspace means all airspace over the territory of the United States, extending 12 nautical miles from the coastline of U.S. territory; any airspace delegated to the United States for U.S. control by other countries or under a regional air navigation agreement; or any international airspace, or airspace of undetermined sovereignty, for which the United States has accepted responsibility for providing air traffic control services.

[Docket FAA-2015-3597, Amdt. 187-36, 81 FR 85853, Nov. 29, 2016]

§ 187.5 Duplicates of licenses.

The fee for furnishing to a person entitled thereto a replacement, duplicate, or facsimile of a certificate or other document evidencing a license, for which a fee is not specifically provided elsewhere in this chapter, is \$2.

§ 187.7 Copies; seal.

The fees for furnishing photostatic or similar copies of documents and for affixation of the seal for a certification

or validation are the same as those provided in subpart H of 49 CFR part 7.

§ 187.15 Payment of fees.

(a) The fees of this part are payable to the Federal Aviation Administration by check, money order, wire transfers, draft, payable in U.S. currency and drawn on a U.S. bank, or by credit card payable in U.S. currency, prior to the provision of any service under this part.

(b) Applicants for the FAA services provided under this part shall pay any bank processing charges on fees collected under this part, when such charges are assessed on U.S. Government.

(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.

(d) The fees described in appendix B of this part are payable to the Federal Aviation Administration in U.S. currency. Remittance of fees of \$1,000 or more are to be paid by electronic funds transfer. Remittance of amounts less than \$1,000 may be paid by electronic funds transfer, check, money order, credit card, or draft.

[Doc. No. 27809, 60 FR 19631, Apr. 19, 1995, as amended by Amdt. 187-7, 62 FR 13503, Mar. 20, 1997; Amdt. 187-7, 62 FR 23295, Apr. 29, 1997; Amdt. 187-10, 62 FR 55703, Oct. 27, 1997; Amdt. 187-7, 63 FR 40000, July 24, 1998; Amdt. 187-11, 65 FR 36008, June 6, 2000; Amdt. 187-12, 66 FR 43718, Aug. 20, 2001; Amdt. 187-4, 72 FR 18559, Apr. 12, 2007]

§ 187.17 Failure by applicant to pay prescribed fees.

If an applicant fails to pay fees agreed to under appendix C of this part, the FAA may suspend or deny any application for service and may suspend or revoke any production certification-related approval granted.

[Doc. No. 28967, 62 FR 55703, Oct. 27, 1997]

§ 187.51 Applicability of overflight fees.

(a) Except as provided in paragraphs (c) or (d) of this section, any person who conducts an overflight through either Enroute or Oceanic airspace must pay a fee as calculated in §187.53.

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(b) *Services.* Persons covered by paragraph (a) of this section must pay a fee for the FAA's rendering or providing of certain services, including but not limited to the following:

- (1) Air traffic management.
- (2) Communications.
- (3) Navigation.
- (4) Radar surveillance, including separation services.
- (5) Flight information services.
- (6) Procedural control.
- (7) Emergency services and training.

(c) The FAA does not assess a fee for any military or civilian overflight operated by the United States Government or by any foreign government.

(d) Fees for overflights through U.S.-controlled airspace covered by a written FAA agreement or other binding arrangement are charged according to the terms of that agreement or arrangement unless the terms are silent on fees.

[Docket FAA-2015-3597, Amdt. 187-36, 81 FR 85853, Nov. 29, 2016]

§ 187.53 Calculation of overflight fees.

(a) The FAA assesses a total fee that is the sum of the Enroute and Oceanic calculated fees.

(1) *Enroute fee.* The Enroute fee is calculated by multiplying the Enroute rate in paragraph (c) of this section by the total number of nautical miles flown through each segment of Enroute airspace divided by 100 (because the Enroute rate is expressed per 100 nautical miles).

(2) *Oceanic fee.* The Oceanic fee is calculated by multiplying the Oceanic rate in paragraph (c) of this section by the total number of nautical miles flown through each segment of Oceanic airspace divided by 100 (because the Oceanic rate is expressed per 100 nautical miles).

(b) Distance flown through each segment of Enroute or Oceanic airspace is based on the great circle distance (GCD) from the point of entry into U.S.-controlled airspace to the point of exit from U.S.-controlled airspace based on FAA flight data. Where actual entry and exit points are not available, the FAA will use the best available flight data to calculate the entry and exit points.

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(c) The rate for each 100 nautical miles flown through Enroute or Oceanic airspace is:

Time period	Enroute rate	Oceanic rate
January 1, 2017 to January 1, 2018	58.45	23.15
January 1, 2018 to January 1, 2019	60.07	24.77
January 1, 2019 and Beyond	61.75	26.51

(d) The formula for the total overflight fee is:

$$R_{ij} = E \cdot DE_{ij} / 100 + O \cdot DO_{ij} / 100$$

Where:

R_{ij} = the total fee charged to aircraft flying between entry point i and exit point j .

DE_{ij} = total distance flown through each segment of Enroute airspace between entry point i and exit point j .

DO_{ij} = total distance flown through each segment of Oceanic airspace between entry point i and exit point j .

E and O = the Enroute and Oceanic rates, respectively, set forth in paragraph (c) of this section.

(e) The FAA will review the rates described in this section at least once every 2 years and will adjust them to reflect the current costs and volume of the services provided.

[Docket FAA-2015-3597, Amdt. 187-36, 81 FR 85853, Nov. 29, 2016]

§ 187.55 Overflight fees billing and payment procedures.

(a) The FAA will send an invoice to each user when fees are owed to the FAA. If the FAA cannot identify the user, then an invoice will be sent to the registered owner. Users will be billed at the address of record in the country where the aircraft is registered, unless a billing address is otherwise provided.

(b) The FAA will send an invoice if the monthly (based on Universal Coordinated Time) fees equal or exceed \$400.

(c) Payment must be made by one of the methods described in § 187.15(d).

[Docket FAA-2015-3597, Amdt. 187-36, 81 FR 85853, Nov. 29, 2016]

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.

[Amdt. 187-5, 60 FR 19631, Apr. 19, 1995]

APPENDIX B TO PART 187 [RESERVED]

APPENDIX C TO PART 187—FEES FOR PRODUCTION CERTIFICATION-RELATED SERVICES PERFORMED OUTSIDE THE UNITED STATES

(a) *Purpose*. This appendix describes the methodology for the calculation of fees for production certification-related services outside the United States that are performed by the FAA.

(b) *Applicability*. This appendix applies to production approval holders who elect to use

manufacturing facilities or supplier facilities located outside the United States to manufacture or assemble aeronautical products after September 30, 1997.

(c) *Definitions*. For the purpose of this appendix, the following definitions apply:

Manufacturing facility means a place where production of a complete aircraft, aircraft engine, propeller, part, component, or appliance is performed.

Production certification-related service means a service associated with initial production approval holder qualification; ongoing production approval holder and supplier surveillance; designee management; initial production approval holder qualification and ongoing surveillance for production certificate extensions outside the United States; conformity inspections; and witnessing of tests.

Supplier facility means a place where production of a part, component, or sub-assembly is performed for a production approval holder.

Production approval holder means a person who holds an FAA approval for production under type certificate only, an FAA approval for production under an approved production inspection system, a production certificate, a technical standard order authorization, or a parts manufacturer approval.

(d) *Procedural requirements*. (1) Applicants may apply for FAA production certification-related services provided outside the United States by a letter of application to the FAA detailing when and where the particular services are required.

(2) The FAA will notify the applicant in writing of the estimated cost and schedule to provide the services.

(3) The applicant will review the estimated costs and schedule of services. If the applicant agrees with the estimated costs and schedule of services, the applicant will propose to the FAA that the services be provided. If the FAA agrees and can provide the services requested, a written agreement will be executed between the applicant and the FAA.

(4) The applicant must provide advance payment for each 12-month period of agreed FAA service unless a shorter period is agreed to between the Production Approval Holder and FAA.

(e) *Fee determination*. (1) Fees for FAA production certification-related services will consist of: personnel compensation and benefit (PC&B) for each participating FAA employee, actual travel and transportation expenses incurred in providing the service, other agency costs and an overhead percentage.

(2) Fees will be determined on a case-by-case basis according to the following general formula:

$$W_1H_1 + W_2H_2 \text{ etc.}, + T + O$$

Where:

W₁H₁ = hourly PC&B rate for employee 1, times estimated hours
 W₂H₂ = hourly PC&B rate for employee 2, etc., times estimated hours
 T = estimated travel and transportation expenses
 O = other agency costs related to each activity including overhead.

(3) In no event will the applicant be charged more than the actual FAA costs of providing production certification-related services.

(4) If the actual FAA costs vary from the estimated fees by more than 10 percent, written notice by the FAA will be given to the applicant as soon as possible.

(5) If FAA costs exceed the estimated fees, the applicant will be required to pay the difference prior to receiving further services. If the estimated fees exceed the FAA costs, the applicant may elect to apply the balance to future agreements or to receive a refund.

(f) Fees will be reviewed by the FAA periodically and adjusted either upward or downward in order to reflect the current costs of performing production certification-related services outside the United States.

(1) Notice of any change to the elements of the fee formula in this Appendix will be published in the FEDERAL REGISTER.

(2) Notice of any change to the methodology in this Appendix and other changes for the fees will be published in the FEDERAL REGISTER.

[Doc. No. 28967, 62 FR 55703, Oct. 27, 1997]

PART 189—USE OF FEDERAL AVIATION ADMINISTRATION COMMUNICATIONS SYSTEM

Sec.

189.1 Scope.

189.3 Kinds of messages accepted or relayed.

189.5 Limitation of liability.

AUTHORITY: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40104, 40113, 44502, 45303.

SOURCE: Docket No. 27778, 60 FR 39615, Aug. 2, 1995, unless otherwise noted.

§ 189.1 Scope.

This part describes the kinds of messages that may be transmitted or relayed by FAA Flight Service Stations.

§ 189.3 Kinds of messages accepted or relayed.

(a) Flight Service Stations may accept for transmission over FAA communication systems any messages concerning international or overseas aircraft operations described in paragraphs (a) (1) through (6) of this sec-

tion. In addition, Flight Service Stations may relay any message described in this section that was originally accepted for transmission at an FAA Flight Service Station outside the 48 contiguous States, or was received from a foreign station of the Aeronautical Fixed Telecommunications Network that, in normal routing, would require transit of the United States to reach an overseas address:

(1) Distress messages and distress traffic.

(2) Messages concerning the safety of human life.

(3) Flight safety messages concerning—

(i) Air traffic control, including—

(A) Messages concerning aircraft in flight or about to depart;

(B) Departure messages;

(C) Flight plan departure messages;

(D) Arrival messages;

(E) Flight plan messages;

(F) Flight notification messages;

(G) Messages concerning flight cancellation; and

(H) Messages concerning delayed departure;

(ii) Position reports from aircraft;

(iii) Messages originated by an aircraft operating agency of immediate concern to an aircraft in flight or about to depart; and

(iv) Meteorological advice of immediate concern to an aircraft in flight or about to depart.

(4) Meteorological messages concerning—

(i) Meteorological forecasts;

(ii) Meteorological observations exclusively; or

(iii) Other meteorological information exchanged between meteorological offices.

(5) Aeronautical administrative messages—

(i) Concerning the operation or maintenance of facilities essential to the safety or regulatory of aircraft operation;

(ii) Essential to efficient functioning of aeronautical telecommunications; or

(iii) Between civil aviation authorities concerning aircraft operation.

(6) Notices to airmen.

(b) The following messages may only be relayed through the FAA communications systems: