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Department of Transportation

Federal Aviation Administration

**14 CFR Parts 61, 63, 65 and 187
Fees for Certification Services and
Approvals Performed Outside the United
States; Final Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 61, 63, 65, and 187**

[Docket No.: FAA-2007-27043; Amendment Nos. 61-116, 63-35, 65-49, 187-4]

RIN 2120-A177

Fees for Certification Services and Approvals Performed Outside the United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This rule amends the regulations pertaining to payment of fees to the FAA for certification services performed outside the United States. Until now, fees could be paid by check, money order, wire transfer, or draft, payable in U.S. currency and drawn on a U.S. bank. Currently, fees for certain aircraft flights transiting U.S.-controlled airspace can be paid by credit card. The rule amends the regulations also to allow payment by credit card for certification services performed outside the U.S.

This change is necessary to make payment for certification services consistent with payment for other services. It will also expedite payments and support the U.S. Department of the Treasury electronic commerce program.

Also, this rule amends the regulations where it is unclear that fees for airmen certification services apply to all applicants located outside the United States, regardless of citizenship. This action is necessary to provide consistency within FAA regulations.

DATES: Effective June 11, 2007.

Comments for inclusion in the Rules Docket must be received on or before May 14, 2007.

ADDRESSES: You may send comments [identified by Docket Number FAA-2007-27043] using any of the following methods:

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- *Fax:* 1-202-493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building,

400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to <http://dms.dot.gov> or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Emily A. White, FAA, AFS-50, 800 Independence Ave., SW., Washington, DC 20591, Telephone: 202-385-8073, Fax: 202-493-5888.

SUPPLEMENTARY INFORMATION: This rulemaking amends § 187.15(a) to allow the use of a credit card to pay fees to the FAA for certification services performed outside the United States. Until now, fees could be paid by check, money order, wire transfer, or draft, payable in U.S. currency and drawn on a U.S. bank. Section 187.15(d) already allows the use of a credit card to remit amounts less than \$1,000 for certain aircraft flights transiting U.S.-controlled airspace. This rulemaking makes sections (a) and (d) consistent in the methods of payment.

At the time of the original rulemaking, FAA offices were not set up to receive credit card payments and such use was specifically omitted from the 1995 final rule (60 FR 19631) amending part 187. With advances in electronic commerce over the years, there is now distinct value in accepting credit card payment of fees. Further, as FAA accounting systems and offices continue to be consolidated, collecting user fees by credit card allows more timely receipt and provides FAA customers with a convenient method to pay for services. The use of credit card payment supports the U.S. Department of Treasury electronic commerce program. The payment of fees by credit card will be handled through the U.S. Department of Treasury pay.gov program.

This rulemaking also amends §§ 61.13(a)(2), 63.11 and 65.11. The 1995 final rule (60 FR 19631) to amend fees under 14 CFR part 187, appendix A, specifically addressed the fact that user fees extended to all applicants located outside the United States, regardless of

citizenship. The final rule brought these regulations in line with the nondiscrimination principles of multilateral trade agreements to which the U.S. is a signatory. These include the principles of the General Agreement on Tariffs and Trade (GATT), including the GATT Aircraft Code and the General Agreement on Trade in Services. When part 187 was amended, other regulations in 14 CFR should have been revised for consistency. These are §§ 61.13(a)(2), 63.11 and 65.11.

Section 61.13(a)(2) currently requires an “applicant who is neither a citizen of the United States nor a resident alien of the United States” to show evidence of paying the correct fee prescribed in appendix A to part 187. This must be done when the person applies for a student pilot certificate issued outside the United States or a knowledge test or practical test administered outside the United States. This rulemaking changes the current wording to make it clear that an applicant’s citizenship is not at issue. The revised wording also states the fees are for “airmen certification services.” There is no need to enumerate those services because they are addressed in appendix A to part 187.

Sections 63.11 and 65.11 contain current wording that specifies: “Each person who is neither a United States citizen nor a resident alien and applies for written or practical test to be administered outside the United States for any certificate or rating issued under this part must show evidence the fee prescribed in appendix A of part 187 of this chapter has been paid.” This rulemaking changes that wording as follows: “Each person who applies for airmen certification services to be administered outside the United States for any certificate or rating issued under this part must show evidence that the fee prescribed in appendix A of part 187 of this chapter has been paid.”

These changes provide consistency and update the outdated language.

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A—Air Commerce and Safety, Chapter 447—Safety Regulation, Section 44702, Issuance of certificates, 44703, Airman Certificates, and Chapter 453—Fees. Under those statutory provisions the FAA is charged with

prescribing regulations for promoting safety in civil air commerce, issuing certificates, and charging and receiving fees for such services. This regulation addresses matters within the scope of that authority.

The Direct Final Rule Procedure

The FAA expects that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. *The only changes to the regulations are:*

- To add the ability to use a credit card to pay for FAA certification services performed outside the United States, and
- To clarify that fees for airmen certification services apply to all applicants located outside the United States, regardless of citizenship. U.S. citizens located outside the United States already are paying fees in accordance with Title 14, Code of Federal Regulations, part 187. This change will make the language throughout 14 CFR consistent. The applicability remains the same.

Unless a written adverse or negative comment, or a written notice of intent to file an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirm the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to file such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);

- (2) Visiting the FAA's Regulations and Policy web page at http://www.faa.gov/regulations_policies/; or

- (3) Accessing the Government Printing Office's web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy 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) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

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. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have reviewed this rulemaking and determined there is no information collection associated with it.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Economic Evaluation, Regulatory Flexibility Act, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law (P.L.) 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (P.L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the

foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (P.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 likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this direct final rule.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a final rule does not warrant a full evaluation, this order allows a statement to that effect. The basis for the minimal impact must be included in the preamble, if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for that determination follows.

Since this final rule merely revises wording to ensure the regulations are consistent throughout, this change will have a minimal impact, and a regulatory evaluation was not prepared. As noted above, the FAA requests comments with supporting justification on the FAA determination of minimal impact.

FAA has, therefore, determined this rulemaking action is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures. In addition, the FAA has determined that this rulemaking action: (1) Will not have a significant economic impact on a substantial number of small entities; (2) will not affect international trade; and (3) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies consider flexible regulatory proposals, to explain

the rationale for their actions, and to invite comments. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule merely revises wording to ensure the regulations are consistent throughout; this change will have only a minimal impact on any small entity affected by this rulemaking action.

Consequently, as the FAA Administrator, I certify the rulemaking action will not have a significant economic impact on a substantial number of small entities. As noted above, the FAA requests comments with supporting justification regarding this determination.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that these international standards be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking action and has determined that it will not impose costs on any international entities and thus have a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any

one year by State, local, and tribal governments, in the aggregate, or by the private sector. The FAA currently uses an inflation-adjusted value of \$128.1 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E 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 proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 63

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Navigation (air), Reporting and recordkeeping requirements, Security measures.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 187

Administrative practice and procedure, Air transportation.

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

■ 2. Revise § 61.13(a)(2) introductory text and (a)(2)(i) to read as follows:

§ 61.13 Issuance of airman certificates, ratings, and authorizations.

(a) * * *

(1) * * *

(2) An applicant—

(i) Must show evidence that the appropriate fee prescribed in appendix A to part 187 of this chapter has been paid when that person applies for airman certification services administered outside the United States.

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PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 3. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

■ 4. Revise § 63.11(a) to read as follows:

§ 63.11 Application and issue.

(a) An application for a certificate and appropriate class rating, or for an additional rating, under this part must be made on a form and in a manner prescribed by the Administrator. Each person who applies for airman certification services to be administered outside the United States for any certificate or rating issued under this part must show evidence that the fee prescribed in appendix A of part 187 of this chapter has been paid.

* * * * *

**PART 65—CERTIFICATION: AIRMEN
OTHER THAN FLIGHT CREW
MEMBERS**

■ 5. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 6. Revise § 65.11(a) to read as follows:

§ 65.11 Application and issue.

(a) Application for a certificate and appropriate class rating, or for an additional rating, under this part must be made on a form and in a manner prescribed by the Administrator. Each person who applies for airmen

certification services to be administered outside the United States or for any certificate or rating issued under this part must show evidence that the fee prescribed in appendix A of part 187 of this chapter has been paid.

* * * * *

PART 187—FEES

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

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 49 U.S.C. 106(l)(6), 40104–40105, 40109, 40113–40114, 44702.

■ 8. Revise § 187.15(a) to read as follows:

§ 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.

* * * * *

Issued in Washington, DC on March 26, 2007.

Marion C. Blakey,

Administrator.

[FR Doc. E7–6884 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P