DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. 28967; Amendment No. 187–10]

RIN 2120–AG14

Fees for Providing Production Certification-Related Services Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document establishes fees by voluntary agreement for production certification-related services pertaining to aeronautical products manufactured or assembled outside the United States. In addition, the document outlines the methodology for determining the fees, describes how and when the FAA will provide these services, and describes the method for payment of fees. This rule will allow the FAA to recover certain costs incurred in providing requested production certification-related services abroad and will help to ensure that such services are provided in a responsive and timely manner.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Ramona L. Johnson, Production and Airworthiness Certification Division, AIR–200, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–7145.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

This document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board (telephone: 202–512–1661).

Internet users may access the FAA's web page at http://www.faa.gov or the **Federal Register**'s web page at http://www.access.gpo.gov/su__docs to download recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting 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. Communications must reference the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

The FAA's definitions of small entities may be accessed through the FAA's web page http://www/faa.gov/avr/arm/sbrefa.htm, by contacting a local FAA official, or by contacting the FAA's Small Entity Contact listed below.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

Statement of Problem

Under Title 49 U.S.C. 44701, the FAA is responsible for the regulation and promotion of safety of flight. Title 49 U.S.C. 44704(b) authorizes the FAA Administrator to issue production certificates. Section 44704(b) provides, in part, that:

> The Administrator shall issue a production certificate authorizing the production of a duplicate of any aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued when the Administrator finds the duplicate will conform to the certificate. On receiving an application, the Administrator shall inspect, and may require testing * * *.

The production certification-related services that the FAA provides to fulfill its statutory responsibilities may be generally described as follows:

1. Processing applications for the following: production under a type certificate only, production under an approved production inspection system, production under a production certificate or extension of a production certificate, production under a technical standard order authorization, and production under a parts manufacturer approval. The processing of applications includes a review of data, response to the applicant, and evaluation of the applicant's further responses as necessary.
2. Certificate management of the manufacturing facility quality assurance system.
3. Witnessing tests and performing conformity inspections of articles.
4. Managing designees.
5. Investigating incidents, accidents, allegations and other unusual circumstances.

These FAA services are provided to Production Approval Holders (PAH). A person who holds a parts manufacturer approval (PMA), a Technical Standard Order (TSO) authorization, or a production certificate (PC), or who holds a type certificate (TC) and produces under that TC, is referred to as a PAH. The regulatory services provided to a PAH include: initial PAH qualification, ongoing PAH and supplier surveillance, designee management, conformity inspections; as well as initial PAH qualification and ongoing surveillance for production certificate extensions outside the United States. The specialists who perform these functions on behalf of the FAA are Aviation Safety Inspectors, Aviation Safety Engineers, and Flight Test Pilots.

Currently, the FAA performs production certification-related services both domestically and internationally. It does not issue production approvals outside of the United States. However, in some situations, the FAA allows a PAH to use suppliers outside the United States if parts or sub-assemblies can be 100 percent inspected by the PAH upon their receipt in the United States or if parts or sub-assemblies are produced under a PAH's supplier control system that has been approved by the PAH and accepted by the FAA. Under certain circumstances, production outside the United States of complex parts, sub-assemblies, or products is approved by the FAA on a case-by-case basis.

PAHs who choose to perform manufacturing outside the United States receive significant and special benefits. These benefits often depend on whether the PAH can obtain FAA oversight at the manufacturing site when the PAH needs the service. Since it is FAA's responsibility to prescribe and enforce standards in the interest of safety for the design, materials, workmanship, construction, and performance of civil

aeronautical products, the FAA's oversight of manufacturing facilities located outside the United States helps ensure safety and marketability.

The Need for Rulemaking

Globalization of the aircraft manufacturing industry increases the challenges to the FAA in carrying out its statutory mandate to ensure that safety and airworthiness standards for civil aircraft are being met during manufacture.

Limited resources make it difficult for the FAA to oversee these diverse and complex international ventures by PAHs when and where the services are needed. Congress recognized the impact of FAA's resource limitations in the Federal Aviation Administration Authorization Act of 1994, PL 103–305 (108 State. 1569). As stated in Conference, H.R. Rep. No. 103–677 on H.R. 2739:

> Safety regulatory efforts to keep pace with the trend of globalization can be hampered by resource constraints * * * the Aircraft Certification Service should be able to offset expenditures made in support of aircraft or airline safety regulatory programs of both U.S. and foreign owned companies outside the United States.

In addition, under Title V of the Independent Offices of Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, Congress authorized agencies such as the FAA to establish a fair and equitable system for recovering the cost for any service, such as the issuance of a certificate, that provides a special benefit to an individual beyond those that accrue to the general public. Title 31 U.S.C. 9701(a) provides, in part, as follows:

> It is the sense of the Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

Title 31 U.S.C. 9701(b) further provides:

> The head of each Federal agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies shall be as uniform as practicable. Each charge shall be—
>
> (1) fair; and
>
> (2) based on—
>
> (A) the costs to the Government;
>
> (B) the value of the service or thing to the recipient;
>
> (C) public policy or interest served; and
>
> (D) other relevant facts.

The Rule

This rule allows PAHs to enter into a voluntary agreement with the FAA for the provision of production certification-related services outside the United States on mutually agreed terms and conditions. This will be available to PAHs who elect to use organizations or facilities outside the United States to manufacture, assemble, or test aeronautical products after September 30, 1997.

An agreement for services between the PAHs and the FAA for production certification-related services for products manufactured, assembled, or tested outside the United States will allow the FAA to provide services upon request in a more responsive and timely manner than otherwise is available. By charging for its services outside the United States when needed by the PAHs, the FAA will be able to support the PAH's more complex manufacturing activities and provide acceptance of parts, sub-assemblies, and products that would otherwise need to be disassembled when received in the United States. Under this rule, when production certification-related services are requested and provided outside the United States, no duplication of FAA work or reinspection of parts in the United States is anticipated, except as otherwise required of domestic manufactured parts during the PAH receiving inspection process.

The rule simply makes oversight resources available in a more timely and effective fashion, permitting PAHs to pay for FAA oversight services.

Guidelines for Cost Recovery

The FAA developed this rule consistent with the IOAA and with the Office of Management and Budget's (OMB) Circular A–25, entitled "User Charges."

Fees under this rule may be assessed to PAHs who agree to pay for certain special benefits conferred by FAA's production certification-related services outside the United States. These special benefits will include, but are not limited to: (1) services rendered at the time and location requested by an applicant; (2) services for the issuance of a required production approval at the time and location requested by the applicant; and (3) services to assist an applicant or certificate holder in complying with its regulatory obligations at the time and location requested by the applicant.

The FAA has determined that all services associated with the issuance, amendment, or inspection of a production certificate or approval as detailed in this rule will be subject to cost recovery. All direct and indirect costs incurred by the FAA in providing the special benefits outside of the United States as detailed by this rule will be recovered. Each fee will not exceed the FAA's cost of providing the service to the recipient. Calculation of agency costs will be performed as accurately as is reasonable and practical, and will be based on the specific expenses identified to the smallest practical unit.

To determine the smallest practical unit for the various FAA services covered, a letter of application will be made by the PAH to the FAA requesting FAA production certification-related services outside the United States. The application procedure will apply to any PAH; i.e., holders or applicants for production under a type certificate only, under an approved production inspection system, under a production certificate or extension of a production certificate, under a technical standard order authorization, or under a parts manufacturer approval. Based on the details provided in the application, the FAA will estimate the cost and terms of providing the requested services to the PAH outside the United States and detail those costs to the applicant. If the applicant desires the services, the applicant will then request the provision of those services from the FAA. A written agreement between the applicant and the FAA will then be entered into if the PAH and the FAA can mutually agree to all terms.

Methodology for Fee Determination and Collection

Fee Determination

The FAA will recover the full cost associated with providing production certification-related services by agreement outside of the United States. Costs to be recovered include personnel compensation and benefits (PC&B), travel and transportation costs, and other agency costs.

PC&B: For the purpose of these computations, average PC&B rates for participating Aircraft Certification Service employees will be charged per each agreed activity. PC&B charges will reflect the actual hours spent participating in the activity as well as preparatory time, travel time, and the time spent on follow-up activities.

Travel and transportation costs: These charges will include all costs pertaining to domestic, local, and international transport of persons and equipment. These costs may include fares, vehicle rental fees, mileage payment, and any expenses related to transportation such as baggage transfer, insurance for equipment during transport, and communications. FAA personnel will adhere to all U.S. Government travel regulations.

Fees will be charged for lodging, meals, and incidental expenses in accordance with U.S. Government per diem rates, rules, and regulations. Incidental expenses include fees, tips, and other authorized expenses.

Other agency costs: Also included in these computations will be other direct costs; for example, all printing and reproduction services, supplies and materials purchased for the activity, conference room rental, and other activity-related expenses. An additional percentage charge, as established by the FAA in accordance with OMB Circular A–25, will be added to the total cost of this activity to compensate for agency overhead.

The Aircraft Certification Service of the FAA maintains a data system to which employees submit periodic records identifying the number of work hours used to provide service to customers. Travel vouchers are also submitted and audited. This data will be maintained for each applicant and project. The Aircraft Certification Service tracks work hour records quarterly to determine the costs associated with providing its services. This information will be used in assessing and adjusting fees. In this manner, the FAA will be able to assure applicants that they are paying only for expenses incurred in connection with services provided to that specific applicant.

Fee Collection

All charges will be estimated and agreed upon between the FAA and the applicant before the FAA provides services under the agreement.

Payment of estimated fees will be made to the FAA in advance for all production certification-related activities scheduled during the upcoming 12-month calendar period unless a shorter period is mutually agreeable between the PAH and the FAA. The amounts set forth in the cost estimate will be adjusted to recover the FAA's full costs. If costs are expected to exceed the estimate by more than 10 percent, notification will be made to the applicant as soon as possible. No services will be provided until the FAA receives the full estimated payment for the agreed to period. As activities are completed, the full costs of the activities will be charged against the advance account. Any remaining funds will either be returned or applied to future activities as requested by the applicant.

Payment for services rendered by the FAA will be in the form of a check, money order, draft, or wire transfer, and will be payable in U.S. currency to the FAA and drawn on a U.S. bank. Bank processing fees, when charged to the United States Government, will also be added to the fees charged to the applicants.

In any case where an applicant has failed to pay the agreed estimated fee for FAA services, the FAA may suspend or deny any application for service and may suspend or revoke any production-related approval granted.

In accordance with the agreement that will be signed by the FAA and the applicant (Appendix C(d)(3)), this arrangement may be terminated at any time by either party by providing 60 days written notice to the other party. Any such termination will allow the FAA an additional 120 days to close out its activities.

The FAA plans to issue an Advisory Circular further detailing the requirements of the application as well as providing other pertinent guidance and information.

Correction to Notice

In Notice No. 97–11, (62 FR 38008), the authority citation is revised to delete 49 U.S.C. 106(m) to properly reflect FAA's authority to enter into agreements. That authority is 49 U.S.C. 106(l)(6). This has been corrected in this rule.

In another correction, in Appendix C to part 187(c), Definitions, ''Production approval holder'' was listed as ''U.S. production approval holder''. This was an error and is revised. Also this has been corrected in the rule.

Finally, although used throughout the NPRM in discussing items to be inspected, the word ''part'' was inadvertently omitted from the definition of ''Manufacturing facility'' found in Appendix C (c). This has been corrected in the rule.

Discussion of Comments

The FAA considered a total of 242 comments on the proposed rule, of which 232 were identical or nearly identical. Of the total number of comments, 38 were received before the comment period closed on August 14, 1997, and 204 were received after the comment period closed. Comments were received from: the International Association of Machinists and Aerospace Workers (IAM) (one from the IAM President as well as 227 additional comments from its lodges and members), the Aerospace Industries Association of America (AIA) (two comments), the General Aviation Manufacturers Association (GAMA) and AIA (a joint comment), the NORDAM Group (submitted twice), the Timken Company, the Parker Hannifin Corporation, the Bureau Veritas of France, individuals (seven), and from a law firm. For the purposes of responding to the comments, the FAA has grouped together, for discussion, comments with essentially identical analyses. All comments received were carefully considered prior to the issuance of the final rule.

Several of the comments addressed multiple issues and some of the issues were addressed by many commenters. As a result, the FAA responses to the comments are organized, not by individual comment, but by the following general issues: employment issues, safety and quality issues, cost issues, and miscellaneous issues.

Employment Issues

IAM's President's comments, the local lodges' comments, and the members' comments opposed the proposal for similar reasons. They state that the proposal would facilitate the ability of PAHs to substitute products manufactured by facilities and suppliers located outside the United States for products manufactured in the United States. The result would be a loss of high pay, high skill production jobs in the United States.

The FAA disagrees with the analyses of these comments. The rule is designed to allow the FAA to provide special production certification-related services to PAHs and suppliers outside the United States when and where these services are needed and paid for by the PAH. The rule is not designed to, as claimed by the commenters, ''expedite the manufacture of aerospace parts off shore.'' Nor do the commenters provide any data that this rule will specifically have the effects claimed.

For over 15 years, the FAA has performed production certification-related services both domestically and internationally for PAHs that have used facilities and suppliers located outside of the United States. The use of these facilities and suppliers has increased over time for several reasons; one reason is that customers outside the United States have purchased U.S. aerospace products on the condition that a share of the product be manufactured in their countries. These conditions are known as ''offset'' agreements. This rule takes no position on the use of offsets. However, the FAA is required by law to provide production certification-related services outside the United States to ensure that the product conforms to FAA's safety requirements. As seen in more detail in the International Trade Impact section of this Preamble and in the Final Regulatory Evaluation of the rule, the FAA recognizes that the indirect effect of this rule may increase

the use of facilities and suppliers outside the United States. This increase may not be at the expense of production that would otherwise occur in the United States. As explained in the International statement and regulatory evaluation, it is anticipated that this rule may indirectly result in an overall increase in the production of U.S. aircraft due to expanded access to export markets.

The language of the final rule has been clarified in Appendix C, paragraph (d)(1) to reflect the voluntary nature of the agreement.

Safety Issues

IAM also states that the rule will increase the use of repair stations outside the United States. In conjunction with their contention that the FAA will not be able to monitor overseas facilities as effectively as it monitors facilities in the United States, IAM suggests the possibility of an increase in the use of ''bogus'' or unapproved parts into the aviation system. As a result, IAM contends that this rule will adversely effect air transportation safety.

The FAA disagrees with this comment. In order to maintain the level of safety required, the regulations specific to the manufacture of commercial products (aircraft, aircraft engines, or propellers) and parts thereof are contained in Title 14, Code of Federal Regulations (14 CFR) part 21 (part 21), Certification Procedures for Products and Parts. Products and parts manufactured anywhere in the world for use by U.S. manufacturers under part 21 must conform to an FAA-approved type design and be manufactured in accordance with an approved production certificate or parts manufacturing approval (PMA). The type design consists of drawings and specifications that define the configuration and design features of the product. An approved production certificate or PMA contains a manufacturer's quality/inspection control system that describes the methods, tests, and inspections necessary to ensure that each product or part produced conforms with the type design and is in a condition for safe operation.

This rule does not change the basic FAA approach to meeting its statutory responsibility. The FAA will continue to inspect parts manufactured in the United States and the FAA will continue, as resources allow, to inspect parts manufactured outside the United States by PAHs. If resources are insufficient, the FAA will continue to require that the parts be fully inspectable in the United States, or be inspected by appropriate civil aviation authorities (CAA). The rule adds the option of having the FAA perform safety assessments at non-U.S. facilities to confirm compliance with FAA regulations if the PAH desires to provide the financial resources and the FAA can accommodate the PAH's request. This rule will continue the FAA's past and current efforts to ensure both the safety of and the manufacture of aerospace products wherever those products are manufactured.

Also, the comments regarding the use of foreign repair stations, as well as repairs on products, are outside the scope of this rulemaking. The regulations for maintenance and repair are covered under 14 CFR part 43, Maintenance, Preventive Maintenance, Rebuilding, and Alteration, and part 187, Fees, Appendix A.

However, one possible byproduct of this rule is that it could result in a greater FAA presence outside the United States which could deter, rather than encourage, the manufacturer(s) of ''bogus parts.'' Arguably, this could increase safety for not only U.S. aviation users, but all aviation users.

Parker Hannifin Corporation suggests that the FAA adopt the ISO 9000 quality system as the ''worlds'' quality system, thereby, eliminating the burden for the additional oversight needed to monitor these suppliers. The commenter asserts that safety would not be jeopardized, and the FAA could work with the ''foreign aviation authorities'' to monitor the suppliers.

The FAA disagrees with this comment. United States law requires the FAA to prescribe minimum performance standards for manufacturers. The ISO 9000 series of quality standards do not provide the same level of safety as the regulations promulgated by the FAA. Additionally, ISO 9000 is an industry developed quality standard subject to change in an unpredictable fashion outside the authority of the FAA. The FAA could not meet its statutory obligation through this standard and the commenter provided no data in support of its view that FAA's adoption of ISO 9000 in lieu of this and other existing rules could provide an equivalent level of safety.

The AIA and an individual commenter suggest that the FAA recognize that other CAAs could provide oversight and audits on behalf of the FAA. Then, ''the requirement for the FAA to perform PAH certification services could be waived and this would be more cost effective. This solution should be allowed as mutually agreed to by the FAA and the PAH.'' Also, Bureau Veritas of France (a private consulting firm) states that it wants to contract for inspection services with the FAA.

The FAA agrees in part with this comment. Where possible, the FAA has entered into bilateral airworthiness agreements with other CAAs to perform, as appropriate, inspection services. However, it is not currently possible to cover through bilateral agreements every needed service at every desired location. Also, as to the suggestion that a private company could provide these services, the FAA believes at this time the agency is best suited to perform these services for PAHs under U.S. law.

This rule allows for a voluntary agreement between the FAA and the PAH to cover production that cannot be inspected in the United States or through bilaterals by CAAs. This is an alternate method for the PAH to obtain the production certification-related services they need to comply with the regulations. Also, it should be noted most CAAs currently charge a fee for their services when inspecting on behalf of the FAA.

One individual commenter states that once the PAH has demonstrated a satisfactory quality assurance system and the systemic and periodic oversight in accordance with that system, the FAA could rely upon the PAH's evaluation (audit).

The FAA agrees in part with this comment. Once PAHs and suppliers have established and maintained an effective quality assurance system, surveillance could be reduced. However, the FAA is mandated by law to perform certain functions, including evaluations (auditing) and random inspections, to assure that PAHs remain in compliance with regulations. The rule allows for the FAA and the PAH to consider this type of situation in agreeing what inspection services outside the United States are needed to meet the goals of the PAH and the requirements of the FAA.

The AIA and GAMA state that this rule should only apply to ''priority parts.''

The FAA agrees with this comment. The FAA expects to continue to focus its resources on conducting surveillances at PAH and ''priority part'' supplier facilities, unless safety concerns (e.g., supplier control problems) mandate otherwise. However, the FAA will consider each situation on a case-by-case basis as each PAH requests services.

Various commenters express concerns over ''a potential degradation in part quality and air safety brought about

through low cost labor acquired in foreign countries.''

The FAA disagrees with this comment. In order to maintain the level of safety required, the FAA promulgates regulations specific to the manufacture of commercial products. Products and parts manufactured for use by U.S. manufacturers anywhere in the world must conform to the regulations by having an FAA-approved type design and be manufactured in accordance with an approved production certificate or PMA. This rule is not for the purpose of allowing PAHs to use low cost labor nor does the FAA believe that this rule could increase FAA inspection of parts outside the United States. In fact, it could increase the amount of parts manufactured overseas under direct and appropriate FAA inspection/surveillance resulting in enhanced safety.

Cost Issues

Parker Hannifin Corp., AIA, and GAMA are concerned that this rule ''initiates double taxation.'' ''We as taxpayers already pay for government employee compensation and administrative overhead expenses for services rendered'', and ''that services should be funded through general revenues.''

The FAA disagrees with the comment. The FAA does not have the resources to provide full production certification-related services by agreement throughout the world. This rule affords the PAH an opportunity to expedite the receipt of the services where and when the PAH needs those services. This rule is a voluntary way for the FAA to provide services to the industry in a more responsive and timely manner using industry rather than taxpayer funds. But the FAA will continue to provide inspection services overseas as resources permit. In addition, the rule allows recipients of specific FAA services, rather than the general taxpayer, to pay for those specific services.

Also, AIA and GAMA believe that only marginal (direct) costs should be recovered.

The FAA disagrees with the comment. Pursuant to OMB Circular A–25, the FAA is directed to recover the full cost associated with providing production certification-related services outside the United States. Costs to be recovered include personnel compensation and benefits, travel and transportation costs, and other agency costs. Also, this practice is consistent with the fees charged by other Federal agencies for similar services.

The AIA and GAMA further state that for many industries, budgets are established based on a different calendar year than that of the government. They contend that this difference may create a difficulty for the PAHs budgeting for future FAA services.

The FAA agrees with this comment. The FAA has designed its procedures to accommodate differing accounting years between Government and industry. Applicants for these services can request and arrange for services on any mutually agreeable periodic basis.

The language of the final rule has been clarified in Appendix C, paragraph (f), to reflect this change.

The AIA and GAMA are concerned that ''real time'' business decisions would be constrained by the Federal budget process.

The FAA agrees in part with this comment. The FAA's goal is to provide a flexible alternative which can quickly respond to ''real time'' needs. However, there are limits to FAA's ability to respond to every situation immediately. Nevertheless, the rule allows the FAA greater flexibility to respond and, thereby, improve its coordination with business.

Several commenters express concern regarding how the FAA will manage the program under this rule.

The FAA is developing the necessary procedures to implement the rule that will provide requirements for PAHs application, FAA/industry memorandum of agreement, and accounting and reporting systems. Concurrent with publication of NPRM No. 97–11, the FAA has published a notice of availability of Proposed Advisory Circular 187–XX. The final advisory circular will be issued in the near future.

The AIA contends that a statement in the preamble is incorrect because some U.S. suppliers could lose business. The statement follows: ''This proposed rule would not impose any additional costs on any members of society other than those requesting FAA production certification-related services for manufacturing outside the United States.

The FAA agrees with this comment to the extent that some U.S. suppliers could be adversely affected, but does not agree with the commenter that this effect will be substantial. The rule recognizes the long standing U.S. industry practice of conducting manufacturing outside the United States and, where possible, allows for FAA inspection services by agreement.

The Timken Company estimates that the proposed rule, if enacted, would cost his company $80,000 in the first year for no discernible benefit to his company.

The FAA cannot agree or disagree with this comment, as the commenter did not provide supporting data.

The AIA and GAMA state ''that cost recovery charges should not be assessed at suppliers based on allegations, otherwise a PAH may suffer considerable expense because of unfounded allegations (perhaps by a competitor).''

The FAA disagrees with this comment. The FAA will not recover costs associated with special investigations (e.g., investigations resulting from accidents and incidents, suspected unapproved part). However, if safety concerns should arise (e.g., supplier control problems) which require changes to agreements, those agreements will be renegotiated or terminated.

Miscellaneous Issues

The IAM questions whether FAA resources would be stretched too thin to be effective and responsive under this rule.

The FAA disagrees with this comment. The FAA will increase its staffing levels to accommodate additional work load if voluntary agreements require such an increase. The final rule language has been clarified (Appendix C, paragraph (d)(3)) to state the FAA will provide services on request only when it can reasonably do so.

The AIA and GAMA suggest that ''any foreign cost recovery scheme must apply only to new programs or supplier arrangements. Existing arrangements must be undisturbed by its implementation.''

The FAA agrees in part with this comment. This rule does not require existing arrangements to be changed. However, if companies with existing international suppliers did not apply, they would have an economic advantage over new entrants in the international market place, thereby impeding international competitiveness. All PAHs have the option to voluntarily apply.

The AIA and GAMA recommend that a policy be established to preclude wasteful practices by FAA, such as: multiple visits to a single country/area by FAA personnel, multiple visits to a supplier by various FAA regions; increased audits of foreign suppliers over and above normal FAA surveillance, etc.

The FAA agrees with the comment. Future voluntary agreements will be incorporated into FAA planning to minimize inefficient practices.

The AIA and GAMA suggest that an appeal process be addressed as part of the rule when the FAA revokes an approval.

The FAA agrees with this comment. Title 14, CFR part 13 provides such an appeal process.

NORDAM Group expresses concern regarding FAA support to those PAHs who made a voluntary agreement to pay for ''better services'' versus those PAHs who did not.

The FAA disagrees with this comment. As stated previously, this rule provides the option to PAHs to obtain inspection services by agreement when the FAA does not have resources to perform these services. The FAA will continue to provide services when and where resources permit. The FAA will treat all requests in a fair manner, consistent with its responsibilities.

The language of the final rule has been clarified in Appendix C, paragraph (d)(1), to reflect that the agreement is an option available to a PAH who chooses to use suppliers located outside the U.S.

NORDAM Group asks: ''if foreign-located sub-tier vendors (suppliers) are covered;'' ''if the rule will constitute a way around the Bilateral Aviation Safety Agreement (BASA) process;'' and ''does it make a difference where their PAH is located? (U.S. or foreign).''

The FAA responds to the comments with the following: any FAA-approved PAH who uses suppliers at any level outside the United States will have the option to request services under this rule. Also, this rule does not circumvent the BASA process. PAHs have the option to utilize suppliers in any other country. However, it is not assumed that the FAA can call upon another authority through the Bilateral Airworthiness Agreement (BAA) or BASA process to assist with its oversight responsibilities. While a BASA recognizes that a CAA has the capability and authority to perform reciprocal services, a CAA may not have sufficient staff and resources to support specific U.S. PAH activities. The FAA can only ask for the CAA's assistance, not guarantee it. If the PAH needs the FAA to perform services that a CAA cannot perform due to the lack of resources, time, experience, or authority (i.e., Aircraft Certification Service Evaluation Program (ACSEP)), routine evaluations and surveillance), a voluntary agreement may be needed. Also, as discussed in Advisory Circular, AC 21–20B, Supplier Surveillance Procedures, the CAA may charge the PAH or it's suppliers to perform services on behalf of the FAA. It does not matter where the PAH is located. Again, this option is available to any PAH who chooses to use suppliers located outside the U.S.

The AIA and GAMA state that if the PAH chooses to use a supplier in a non-bilateral country then the FAA should not charge the PAHs for the training provided to the other country's authority.

The FAA agrees with the comment. The training FAA may provide to another authority is not applicable to the cost of production certification-related services the FAA will provide.

An IAM Local, Air Transport District 143, has a concern that employees of a foreign aircraft manufacturer are not randomly tested for drugs and do not follow Occupation Safety Health Administration (OSHA) standards similar to those in the United States.

This comment does not address matters within the scope of this rule. Also, it should be noted that the FAA does not require aircraft manufacturing employees to be randomly tested for drugs in the United States.

NORDAM Group asks ''will the foreign PAH's agreement to pay before the project begins, constitute a blank check and thus create an incentive for the FAA to maximize its revenues?'

The voluntary agreements between the PAH and FAA include a detailed schedule of services. This schedule will identify the types of specialists needed and the number of hours projected for work on each project. Payment to the FAA would only include funding for work agreed to in the schedule of services. The FAA will not collect any funds for which specific activities or work projects have not been identified.

The language of the final rule has been clarified in Appendix C, paragraph (e), to reflect that only actual FAA costs of providing the services will be charged. Also, the term ''prepaid'' has been replaced with ''estimated'' to better reflect the terms of the agreement.

The AIA and the law firm of Winthrop, Stimson, Putman, and Roberts both request an extension to the comment period in this rulemaking. Both state they need additional time for distribution of the NPRM to members for review, analysis, and return of comments.

The FAA did not approve this request. As noted above, the FAA has considered, to the extent practical, comments received prior to the issuance of the final rule. As over 200 comments were received and considered, it is clear most commenters had adequate time to submit comments and further delay was not in the public interest.

Meeting

At the request of the IAM, a meeting was held with OMB on October 20, 1997. The IAM representative stated that, while the aerospace industry was in a boom right now, the IAM was concerned about the future. The IAM foresaw a time when other countries would seek to expand their share of aerospace production. The IAM's concerns extend primarily to China, Japan, and third world countries. The IAM said that the NPRM states that the rulemaking facilitates manufacturing outside the United States, and urged that the government resist pressures to permit or encourage this practice.

The IAM representative also stated that it was currently possible to trace the materials and components of every aircraft part to ''when it was born.'' The IAM representative expresses concern that this ability would be diminished with respect to parts manufactured outside the United States.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements and has identified no comparable requirements applicable to this rule.

Paperwork Reduction Act

Information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0615.

Regulatory Evaluation Summary

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 the costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify its costs; (2) will not have a significant impact on a substantial number of small entities; and (3) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

As previously stated, the fee will be that amount necessary for the FAA to recover its full costs. The FAA has determined that an average hourly fee will be about $120. On that basis, the FAA calculates that the first year fees will total about $4.038 million (in 1997 dollars). Due to an anticipated increase in the number of requests for FAA production certification-related services outside the United States as the aerospace industry grows, these annual fees will increase to about $5.912 million (in 1997 dollars) in the fifth year, after which they would remain stable.

In addition, the FAA has determined that it will take an applicant 60 hours of legal, management, and engineering time for a PAH to complete the paperwork required for the first agreement. After that first year, it will take 20 hours of legal, management, and engineering time for a PAH to complete the paperwork for each succeeding agreement.

The primary benefit from this rule will be that it will allow the FAA to perform its safety inspection functions in a more efficient, cost-effective manner. The final rule allows the FAA to be more responsive to PAHs; thereby reducing the time between when the PAH requests the service and the time when the FAA provides it. This enhanced responsiveness will increase the integration of new and innovative safety technology developed outside the United States into aircraft and enhance the safety of the aircraft fleet. Further, although the rule's purpose is to facilitate safety inspections, not to promote production outside the United States, it will allow the FAA to fulfill its safety inspection functions for PAH offset agreements (where a certain percentage of the aircraft must be manufactured or assembled in the country). As a result, it will make the PAH more competitive in the global aviation market. Finally, it will require recipients of specific services from the FAA, rather than the general taxpayer, to pay for these services.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant (positive or negative) economic impact on a substantial number of small entities.

The rule will primarily affect PAHs that have facilities and suppliers located outside the United States. Although the rule may have an indirect adverse effect on some small U.S. suppliers, it may also have an indirect positive effect on other small U.S. suppliers. As a result, the FAA has determined that the rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Analysis

The growing globalization of aircraft manufacturing has increased competition among manufacturers. In order for PAHs to remain competitive, they need to have the flexibility to compete on an equal footing with their competitors located throughout the world. Further, many overseas purchasers of a PAH product often contractually require that some percentage of the product be produced in their own country.

The rule could affect international trade through: (1) the amount of the FAA fee; and (2) facilitating the use of facilities and suppliers outside the United States.

Charging a fee for the FAA's production certification-related services for facilities and suppliers outside the United States could slightly raise the costs of using them. One commenter stated that the rule would cost his company $80,000 per year for no gain in benefit. However, the rule will provide PAHs with more timely FAA provision of those services, thereby reducing the time to manufacture the product. Two commenters stated that the fees were needed to provide these necessary FAA services when they are needed. After careful review and evaluation, the FAA has determined that the amount of the fee will have only a minimal affect on a PAH's decision to use a facility or supplier located outside of the United States, and, therefore, have only a minimal affect on international trade.

With respect to the use of facilities and suppliers outside the United States, the rule will provide PAHs with more timely FAA provision of production certification-related services. This enhanced FAA responsiveness should reduce some of the production time lost as a result of these facilities and suppliers waiting for the FAA service. Consequently, the rule could increase the productivity of those facilities and suppliers and, thereby, could lower costs to the U.S. PAHs that use them.

An additional consideration is that many buyers outside the United States require offset agreements through which an aerospace product seller guarantees that a percentage of the product is built in that country. If the U.S. manufacturer cannot guarantee that percentage, then a non-U.S. manufacturer who can guarantee that percentage will have a competitive advantage in selling its product. The rule will also increase the productivity of these facilities and suppliers and, therefore, lower costs to the U.S. PAHs that use them.

The effects of the rule on international trade are difficult to predict and will also be influenced by FAA's implementation of the rule. For the most part, FAA intends to direct its certification activities, consistent with the practice of U.S. manufacturers, towards the use of existing, experienced aviation manufacturers as opposed to setting up new production facilities overseas. However, to perform its safety responsibilities, FAA must be able to effectively provide manufacturing oversight of these overseas manufacturers. To the extent that services are not provided because of FAA budgetary and administrative constraints, U.S. manufacturers and our country's competitive position will be harmed.

By providing these existing services in a more timely, effective fashion, FAA believes that the final rule will have the net effect of improving our international competitiveness while minimizing any adverse effects on domestic suppliers.

Federalism Implications

The regulations herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule does not contain any Federal intergovernmental or private sector mandate because all fees are entered into by voluntary agreement. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Conclusion

For the reasons discussed above, in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review, issued October 4, 1993. However, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, of May 22, 1980. Also, this rule is considered significant and has been reviewed by OMB. Further, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 will not apply to this rule. A regulatory evaluation of the rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 187

Administrative practice and procedures, Air transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 187 of Title 14, Code of Federal Regulations (14 CFR part 187) as follows:

PART 187—FEES

1. The authority citation for part 187 is revised 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.

2. Sections 187.15(a) and (b) are revised 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 transfer, or draft, payable in U.S. currency and drawn on a U.S. bank 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.

* * * * *

3. Section 187.17 is added to read as follows:

§ 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.

4. Appendix C is added to read as follows:

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 subassembly 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:

$W_1H_1 + W_2H_2$ etc., + T + O

Where:

W_1H_1=hourly PC&B rate for employee 1, times estimated hours

W_2H_2=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**.

Issued in Washington, DC, on October 22, 1997.

Jane F. Garvey,

Administrator.

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