

[Docket No. 8347; Amdts. 185-2, 187-3]

PART 185—TESTIMONY BY EMPLOYEES AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

PART 187—FEES FOR COPYING AND CERTIFYING RECORDS

Public Availability of Information

The purpose of this rule-making action is to effect the changes in the Federal Aviation Regulations made necessary by the taking effect of the "public information act" (5 U.S.C. sec. 552, as revised by P.L. 90-23) on July 4, 1967, and of the Department of Transportation regulation implementing that act, 49 CFR Part 7, entitled Public Availability of Information.

The Department regulation applies to all "operating administrations" of the Department of Transportation, including the Federal Aviation Administration. Subpart H of the Department regulation contains a schedule of fees. Additional rules applicable to FAA only are set forth in Appendix C to 49 CFR Part 7.

The Department regulation does not cover the subject-matter of FAR Part 185, Testimony by FAA Employees and Production of Records in Legal Proceedings. However because of the affinity of this subject-matter to public availability of information, it is necessary to make certain changes in Part 185 to ensure uniformity of policy in the application of Part 185 and the Department regulation. At the same time NAFEC Counsel is being authorized to perform legal functions under Part 185.

Part 187 is amended to limit its applicability to services for which fees are not prescribed in other parts of this chapter or in the Department regulation, 49 CFR Part 7. The Department regulation only covers fees for services incidental to making information available to the public. Thus it does not prescribe fees for licenses or services incidental to licensing or other FAA programs. The \$2 fee now prescribed in § 187.3(b) for certain duplicate originals of certificates is also prescribed in other provisions of this chapter (see, e.g., §§ 47.17, 61.13, 63.16, 65.16, and 143.8).

It follows that Part 187 may now be limited to prescribing residuary fees for replacements, duplicates, or facsimiles of licenses for which fees are not otherwise specifically prescribed, and fees for copies of documents requested for purposes other than those dealt with in 49 CFR Part 7. The fees for copies of licenses are at the same level as at present, and the amounts of the other fees are the same as those in 49 CFR Part 7.

This rule-making action is taken under the authority of Title V of the Independent Offices Appropriations Act of 1952 (65 Stat. 290) and secs. 301(c), 302(f), 303(d), 305, 307(b), 313(a), and 314 of the Federal Aviation Act of 1958 (49 U.S.C. 1341(c), 1343(d), 1344, 1346, 1348(b), 1354(a), and 1355). Since this action relates to agency organization, management, and personnel, and to public property, notice of rule making and public procedure thereon are not required and the action may be made effective less than 30 days after its publication.

In consideration of the foregoing, effective August 22, 1967:

1. Part 185 of the Federal Aviation Regulations (14 CFR Part 185) is amended—

a. By amending § 185.1 to read as follows:

§ 185.1 Scope.

This part prescribes the rules of the Federal Aviation Administration with respect to testimony of its employees and the release or disclosure of FAA materials and records, in legal proceedings, and the serving of legal process and pleadings.

b. By amending the first sentence of the introductory text of § 185.3 to read as follows:

§ 185.3 Deviation from policy.

Only the General Counsel, the appropriate Regional Counsel, the Aeronautical Center Counsel, or NAFEC Counsel, may grant permission to deviate from a policy prescribed in this part. * * *

§ 185.9 [Amended]

c. By amending § 185.9 by deleting the words "or the Chief Counsel of the Aeronautical Center" wherever they occur, and inserting in place thereof the words "the Aeronautical Center Counsel, or NAFEC Counsel".

d. By amending § 185.9(b) by deleting the words "the release of which is prohibited by standard Agency practices" and inserting in place thereof the words "which are not available for public disclosure".

e. By amending the last sentence of § 185.11(a) to read as follows:

§ 185.11 Legal proceedings between private litigants: factual testimony.

(a) * * * However, he must obtain the permission of the General Counsel,

the appropriate Regional Counsel, the Aeronautical Center Counsel, or NAFEC Counsel, before disclosing any information that is made unavailable by law or under Part 7 of the Regulations of the Secretary of Transportation entitled "Public Availability of Information" (49 CFR Part 7).

f. By amending § 185.15 to read as follows:

§ 185.15 Legal proceedings between private litigants: disclosure of FAA materials and records.

(a) Copies of any FAA materials or records available for public inspection under Part 7 of the Regulations of the Secretary of Transportation (49 CFR Part 7) are made available to litigants upon request under that part. It is not necessary to subpoena them.

(b) If an employee receives a subpoena or request to produce FAA materials or records in court he shall refer it to the General Counsel, the appropriate Regional Counsel, the Aeronautical Center Counsel, or NAFEC Counsel. If the request or subpoena calls for producing documents the release of which is authorized, counsel shall advise that the request or subpoena be honored.

(c) An FAA employee may not produce an FAA document or record in court except upon a clearance from the General Counsel, the appropriate Regional Counsel, the Aeronautical Center Counsel, or NAFEC Counsel. If an FAA employee is served with a subpoena calling for producing FAA records under his actual control but that are not made available for disclosure under 5 U.S.C. section 552 or other law and Subpart F of 49 CFR Part 7, the General Counsel, Regional Counsel, the Aeronautical Center Counsel, or NAFEC Counsel, as appropriate, shall request the cooperation of the local U.S. attorney and shall attempt to have the subpoena withdrawn or vacated. If this cannot be done, the employee shall appear at the time and place specified in the subpoena, accompanied by an FAA or Department of Transportation or Department of Justice attorney, as appropriate, and explain to the court that a provision of law or a regulation prohibits him from producing the documents or records, whether in answer to a subpoena or otherwise.

(d) If an FAA employee who follows the procedure set forth in paragraph (c) of this section is ordered to show cause why he should not be cited for contempt of court, the FAA or Department of Transportation requests the Department of Justice to represent the employee.

g. By conforming the references to §§ 185.1 and 185.15 in the Table of Contents to their headings as amended herein.

2. Part 187 of the Federal Aviation Regulations (14 CFR Part 187) is amended to read as follows:

Sec.

- 187.1 Scope.
- 187.3 Duplicates of licenses.
- 187.7 Copies; seal.
- 187.15 Payment of fees.

AUTHORITY: The provisions of this Part 187 issued under Title V, Independent Offices Appropriations Act of 1952 (65 Stat. 290); secs. 301(c), 302(f), 303(d), 305, 307 (b), 313(a), 814, Federal Aviation Act of 1958; 49 U.S.C. 1341(c), 1343(d), 1344, 1346, 1348(b), 1354(a), 1355.

§ 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 public are prescribed exclusively in 49 CFR Part 7.

§ 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.

The fees prescribed in this part may be paid by check, draft, or money order payable to the Federal Aviation Administration.

Issued in Washington, D.C., on August 15, 1967.

WILLIAM F. MCKEE,
Administrator.

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8:46 a.m.]