

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 187**

[Docket No. 28860; Amendment No. 187-7]

RIN 2120-AG17

**Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Interim final rule; notice of public meeting.

**SUMMARY:** This document establishes fees for FAA air traffic and related services for certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States. This document allows the FAA to reasonably recover the costs it incurs in performing these services. The document also requests comments concerning the fee schedule and the fee collection process. In addition, the FAA is announcing a public meeting on the interim final rule to provide an additional opportunity for public to comment.

**DATES:** Effective date May 19, 1997. Comments must be received by July 18, 1997.

The public meeting will be held on May 1, 1997; Registration: 8:30 a.m.; Meeting: 9:00 a.m.-5:00 p.m.

**ADDRESSES:** The public meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC, in the main auditorium on the 3rd Floor. Comments on this interim final rule should be mailed or delivered in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 28860, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be submitted to the Rules Docket by using the following Internet address: 9-NPRM-CMTS@faa.dot.gov. Comments must be marked Docket No. 28860. Comments may be examined in the Rules Docket, Room 915-G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays. Written comments to the docket will receive the same consideration as statements made at the public meeting.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Wharff, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7035.

Requests to present a statement at the public meeting on the Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace interim final rule and questions regarding the logistics of the meeting should be directed to Regina L. Jones, Federal Aviation Administration, Office of Rulemaking (ARM-104), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9822; fax (202) 267-5075.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments, and by commenting on the possible environmental, economic, and federalism-or energy-related impact of the adoption of this interim final rule. Comments concerning the implementation and effective date of the rule are also specifically requested.

Comments should identify the regulatory docket and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

The closing date for comments on the proposal [Insert date 120 after the date of publication]. This 120 day comment period is intended to allow the international commenters sufficient time to submit comments. In order to give the public an additional opportunity to comment on the interim final rule, the FAA is planning a public meeting. Because of this additional opportunity to comment on the interim final rule, the FAA will not intend to extend the closing date for comments.

Requests from persons who wish to present oral statements at the public meeting on the Fees for Air Traffic Services for Certain Flight Through U.S.-Controlled Airspace interim final rule should be received by the FAA no later than April 25, 1997. Such requests should be submitted to Regina L. Jones as listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Requests received after April 25 will be scheduled if time is available during the meeting; however, the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to

each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Before taking any final action on this interim final rule, the Administrator will consider the comments made on or before the closing date for comments, and the interim final rule may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. 28860." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

**Public Meeting Procedures**

The public meeting will be held on May 1, 1997, at the Federal Aviation Administration, 800 Independence, Ave. S.W., Washington, D.C., in the main auditorium on the 3rd Floor; Registration: 8:30 a.m.; Meeting: 9:00 a.m.—5:00 p.m.

The following procedures are established to facilitate the public meeting on the interim final rule:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 a.m. and 9:00 a.m.) subject to availability of space in the meeting room.

2. The public meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group.

4. Participants should address their comments to the panel. No individual will be subject to cross-examination by any other participant.

5. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

6. Representatives of the FAA will conduct the public meeting. A panel of FAA personnel involved in this issue will be present.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket (Docket

No. 28860). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the interim final rule may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meeting panel are intended to facilitate discussion of the issues or to clarify issues. Because the meeting concerning the Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace is being held during the comment period, final decisions concerning issues that the public may raise cannot be made at the meeting. The FAA may, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at this public meeting will be considered by the FAA.

10. The meeting is designed to solicit public views on the interim final rule. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

#### Availability of the Interim Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339) or the Federal Register's electronic bulletin board service (telephone: 202-512-1661).

Internet users may reach the FAA's webpage at <http://www.faa.gov> or the Federal Register's webpage at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs) for access to recently published rulemaking documents.

Any person may obtain a copy of this document by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9677. Communications must identify the docket number of the document.

#### Background

##### *Authority to Establish Fees*

The Federal Aviation Authorization Act of 1996 (the Act) directs the Federal Aviation Administration to establish by interim final rule a fee schedule and collection process for air traffic control and related services provided to aircraft other than military and civilian aircraft to the United States government or of a foreign government that neither take off from, nor land in, the United States (49 U.S.C. 45301, as amended by Pub. L. 104-264). The Act states that the FAA may recover up to \$100,000,000 in FY 1997. Also, the Act directs the FAA to ensure that the fees allowed by the Act are directly related to the FAA's costs of providing the service rendered. Services for which costs may be recovered include the costs of air traffic control, navigation, weather services, training and emergency services that are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off nor land in the United States.

In addition, under Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), the FAA has the authority to establish a fair and equitable system for recovering full costs expended for any service that provides a special benefit to an individual beyond those that accrue to the general public. The Independent Offices Appropriation Act (IOAA) provides, in pertinent part:

(a) It is the sense of Congress that each service or thing of value provided by an agency \* \* \* to a person \* \* \* is to be self sustaining to the extent possible.

(b) The head of each agency \* \* \* may prescribe regulations establishing the charge for a service or thing of value provided by the agency. \* \* \* 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.

This statute has been reviewed several times by the Supreme Court and what is permissible under it is well defined. This statute must be followed in establishing fees unless another statute specifically authorizes fees in lieu of what is generally authorized under 31 U.S.C. 9701. The fees in this interim final rule are established under 49 U.S.C. 45301 in conjunction with 31 U.S.C. 9701.

#### *Office of Management and Budget (OMB) Guidance*

Office of Management and Budget (OMB) Circular No. A-25, User Charges, revised July 8, 1993, establishes guidelines for Federal agencies to establish fees for Government services. The Circular covers all Federal activities that convey special benefits to recipients beyond those accruing to the general public. The objectives of OMB Circular A-25 are to ensure that the Government provision of special goods or services to specific recipients be self-sustaining. The FAA has followed the OMB guidelines in developing this interim final rule as it applies to these fees.

#### The Interim Final Rule

Beginning sixty days after the publication of the interim final rule, the FAA will assess a fee for air traffic and related services provided to users of aircraft (both commercial and general aviation) that transit U.S.-controlled airspace but do not take off or land in the United States. The rule does not apply to military and civil aircraft operated by the United States government or by a foreign government.

For the purpose of this rulemaking the U.S.-controlled airspace includes both U.S. sovereign airspace (hereafter "domestic airspace") and airspace allocated to the United States by the International Civil Aviation Organization (hereafter "oceanic airspace"). Canada-to-Canada overflight operations are defined (hereafter "Canada-to-Canada") as flights, conducted by aircraft, that take off and land in Canada without intermediate stops outside Canada that operate in U.S.-controlled airspace. Commercial users are defined as those operators whose primary purpose is to provide passenger and/or cargo air transportation for compensation or hire. General aviation users are defined as those operators who do not provide passenger and/or cargo transportation for compensation or hire. Furthermore, in this rule general aviation users are divided into two groups: General aviation users operating piston-powered aircraft and general aviation users operating turbine-powered aircraft. General aviation turbine-powered aircraft include both turboprop and turbojet aircraft.

Operators of aircraft that transit U.S.-controlled airspace but do not land in or depart from the United States currently contribute nothing financially to the provision of air traffic services (ATS). This is despite the fact that they use ATS and other services that impose

costs on the U.S. air traffic control (ATC) system. Congress has determined that these users should bear a portion of the cost of those services.

The air transportation environment has changed over the past decades with the advent of increasing numbers of long range aircraft that fly at high altitudes far above areas of high density air traffic. The use of these aircraft and the routes they are able to fly have greatly increased the efficiency of air transportation. Although these overflight operations do not generally enter areas of high density air traffic, they do use FAA air traffic and related services.

Operators of overflight aircraft benefit from the FAA's provision of ATS in several ways. First, and most importantly, FAA's ATS enhance safety through air traffic control, navigation, and communications services. Second, flight through U.S.-controlled airspace provides optimized routing for long distance aircraft that is of great value to the users of these aircraft.

The level of ATS and other services that is actually provided to operators of overflights depends, in part, on the portions of U.S.-controlled airspace such flights transit. These services can include communications, navigation, radar surveillance, emergency services, and flight information services (flight plan filing, weather briefing, and others). For aircraft transiting U.S.-domestic airspace, Air Route Traffic Control Centers (ARTCCs) provide separation by means of radar surveillance (if they are operating under instrument flight rules or in airspace above 18,000 feet). Also, these flights generally use navigational aids and radio communication with ARTCCs.

For aircraft transiting oceanic airspace, where radar surveillance and navigational aids are not available, navigation is generally conducted by on-board systems. Aircraft separation, however, is provided under procedural control, under which flights report their position to an air traffic controller each time they fly over a specified reporting point.

The FAA estimates that approximately 213,000 non-public flights transit U.S.-controlled airspace without landing or taking off annually (See the *Analysis of Overflights Costs and Pricing* that has been placed in the public docket). Air carriers comprise over 210,000 of these flights and general aviation about 3,000.

The total cost to the FAA associated with all overflights is projected to be approximately \$97 million for FY 1997, including the cost of collecting the fees. This amount represents the sum of the

separate costs for providing air traffic control services to aircraft flying through domestic and oceanic airspace.

Charging overflights for ATS is accepted in the international arena. The International Civil Aviation Organization (ICAO) states that "where air navigation services are provided for international use, the providers may require the users to pay their share of the costs. \* \* \* (*Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services*, Paragraph 32 (Doc. 9082/4)). Further, paragraph 42 of Doc. 9082/4 notes that "providers \* \* \* may require all users to pay their share of the costs regardless of whether or not utilization takes place over the territory of the provider state." (Document 9082/4 has been placed in the docket.)

An important factor to consider when constructing an overflight fee is the extent that it will alter user behavior. The FAA believes an inappropriately constructed fee could encourage some users to reroute or otherwise avoid ATS. Excessive avoidance of air traffic control services could potentially reduce air traffic safety. ATS reduces hazards associated with adverse weather conditions and mid-air collisions and enhances the ability to rapidly provide search and rescue services. The FAA believes that some users are more likely to change their behavior in a manner that diminishes safety. Commercial users arguably are less likely to cease use of ATS and other services than general aviation users. Most commercial aircraft are designed to operate more efficiently at altitudes in excess of 18,000 feet. All operations at altitudes at or above 18,000 feet within the United States and its territories must be under air traffic control. Also, to some extent, commercial users are able to pass the overflight fee on to their passengers or cargo customers. Many general aviation users, on the other hands usually operate at altitudes less than 18,000 feet and bear the entire burden of the fee. Consequently, general aviation users are more likely to avoid ATS and other related services if the cost of these services are high relative to the aircraft's operating costs. This may be particularly true for general aviation aircraft users that transit domestic airspace or are involved in inter-island flights in the Caribbean or Pacific airspace. These user may elect to avoid using ATS.

In fact, using U.S. estimates of hourly variable operating costs for general aviation piston-powered and turbine-powered aircraft and assuming average cruising speeds of 130 kts and 300 kts, a fee consistent with full-cost recovery

(as derived below) could represent a significant cost to these users. (Estimates of U.S. variable operating costs were derived from the "all other category" reported in Tables 23 and 25-B of the "Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Program", which can be found in the docket. Cost figures were adjusted to reflect 1997 dollars.) On a per-mile base, the full-cost overflight fee is approximately 144% of the variable operating cost for piston-powered aircraft and approximately 48% of the variable operating cost for turbine-powered aircraft.

In addition, an examination of the cost elasticity estimates for air traffic services suggests that general aviation users are much more responsive than commercial users to a change in the cost of receiving ATS. The ATS cost elasticities are discussed as part of the *Analysis of Overflights Costs and Pricing*, which can be found in the docket. These elasticity estimates measure the demand responsiveness (i.e., the propensity to change the amount consumed of ATS) of the user to a change in the cost of receiving ATS. In particular, the general aviation piston-powered aircraft cost elasticity is approximately 18 times larger than the cost elasticity estimate for commercial aircraft. Similarly, the general aviation turbine-powered aircraft cost elasticity is approximately 5 times larger than the cost elasticity estimate for commercial aircraft.

Because of the concern that users may change their behavior in a manner inconsistent with safety, the FAA has established fees for certain users of ATS services based on the statutory requirements of cost recovery balanced against its primary responsibility of promoting air traffic safety.

#### Defer Charging Canada-to-Canada Overflight Operations

Currently, it is cost effective for many Canada-to-Canada operations to transit U.S.-controlled airspace. Routing through U.S.-controlled airspace occurs because it is either the shortest route or it offers the most favorable flight conditions; both reduce operator costs. Canada currently has an overflight charge for aircraft that transit Canadian-controlled airspace. With the exception by flights of aircraft that weigh more than 200 tons and that land or take off in Alaska, domestic U.S. aircraft operations have been temporarily exempted from this charge in order to allow time for U.S. and Canadian consultation. NAV CANADA, a non-share capital corporation which owns,

manages, and operates Canada's civil air navigation system, is expected to implement a Canadian enroute charge by November 1, 1997.

If the FAA were to impose the overflight charge on these Canada-to-Canada operations, it is likely that a significant number of Canada overflights would divert to movement through Canadian-controlled airspace. NAV CANADA through informal, high-level, correspondence and meetings with the FAA regarding general principles of overflight charges and cross-border ATC operational issues, has expressed concern that charging Canada-to-Canada overflights prior to the implementation of the Canadian enroute charge would temporarily increase the workload at Canadian air control centers and could adversely impact existing bilateral agreements regarding U.S. air traffic control of certain Canadian airspace. Meeting records and correspondence have been placed in the docket.

Continued maintenance of U.S. control of this airspace is important for the optimized routing for a significant number of U.S. domestic aircraft operations. To allow time for U.S. Canadian consultation, the FAA has chosen to offer charging Canada-to-Canada overflights until October 1, 1997.

#### The Overflight Fee

As noted above, the Federal Aviation Authorization Act of 1996 directs the Federal Aviation Administration to establish a fee schedule and collection process for air traffic control and related services provided to aircraft other than military and civil aircraft operated by the United States government or by a foreign government that neither take off from, nor land in, the United States. The Act further directs the FAA to issue the initial fee schedule and associated collection process as an interim final rule, to ask for public comment, and to issue a subsequent final rule.

The Act requires that fees be directly related to the FAA's cost of providing the services rendered. Furthermore, the Conference Report for the Act states "\* \* \* assuming similar costs of serving different carrier and aircraft types, the fee may not vary based on factors such as aircraft seating capacity or revenue derived from passenger fares" (*Congressional Record*, September 26, 1996, H11316). Consistent with statutory direction, the sense of Congress as documented in the Conference Report, and FAA's aviation safety mission, the FAA has adopted a tiered charging system.

Commercial users will be charged fees consistent with the principle of full cost

recovery; general aviation users will be charged fees less than the recovery of full cost in order to minimize any potential safety risks. This method of charging will not result in the cross-subsidization of one user group by another. This charging system is also consistent with ICAO principles. ICAO notes that in determining the costs to be recovered from users "Governments may choose to recover less than full costs in recognition of local, regional, or national benefits" (Doc. 9082/4, paragraph 35). The FAA believes that the fees for general aviation should be set so that general aviation users will continue to use air traffic control services when such services enhance safe and efficient travel. Consequently, the fee for general aviation piston-powered aircraft users is 1/18th that of the full cost of service; and the fee for general aviation turbine-powered aircraft is 1/5th that of the full cost of service.

The overflight fee is computed based on distance flown through U.S.-controlled airspace. Separate computations are made for services provided in domestic airspace and in oceanic airspace in order to reflect the different costs of providing services in each of these environments. For any city-pair route, the distance within domestic airspace and within oceanic airspace is used, based on calculation of the great circle route (GCR) between the actual point of entry and the actual point of exit from each category of airspace. The use of this procedure for computing distance protects users within U.S.-controlled airspace from routing patterns created by unusual events, such as traffic congestion, weather situations, and other circumstances. Total fees assessed for using each type of airspace (domestic and oceanic) do not exceed the costs of providing services within that type of airspace.

To calculate the fee in a manner consistent with full-cost recovery two factors are taken into account: (1) the cost of providing air traffic control services for overflights in oceanic and domestic airspace, and (2) the distances flown in U.S.-controlled airspace. Cost pools were estimated for oceanic and domestic airspace as described and documented in the *Analysis of Overflights Costs and Pricing*, which has been placed in the docket. Each cost pool consists of incremental ATS and allocated fixed and common costs associated with providing air traffic control services in each airspace.

Incremental ATS costs, which include, but are not limited to, controller staffing requirements and

training, were determined by multiplying the number of aircraft flying through a particular airspace by the incremental rate. The allocated fixed and common costs were assigned to each cost pool based on the pool's proportion of incremental cost. The allocated fixed and common costs associated with ATS and applied to overflights represent the "Ramsey allocation" of FAA's total fixed and common costs to the ATS line of business. Radio navigation is an example of a fixed cost. Program support, administration, and capital costs are examples of common costs. A detailed discussion of the cost allocation procedure is outlined in the *Analysis of Overflights Costs and Pricing*. For FY 1995 the estimated cost pools for overflights of U.S.-controlled oceanic and domestic airspace were \$42.2 million and \$47.5 million, respectively.

A charge is assessed for each 100 nautical miles flown in oceanic and domestic airspace. The oceanic and domestic charges per one hundred nautical miles are \$69.50 and \$78.90, respectively (expressed in 1997 dollars). These figures were derived in two steps. First, each FY 1995 cost pool was divided by the total number of overflight miles associated with the pool as calculated according to the origination/destination great circle route (OD-GCR). Currently, the OD-GCR mileage represents the best available flight data associated with these cost pools. Reliable GCR entry and exit data will become available; at which time, the unit charges will be adjusted to reflect historical GCR entry and exit data. OD-GCR and GCR entry and exit mileage are not expected to differ significantly in total for the year. Second, each fee was adjusted to capture the cost of collection and to reflect projected cost increases between 1995 and 1997. Unit charges derived in this manner are free from cross-subsidization. The collection assumes a one-time development cost of \$2.1 million amortized over a two year period and an annual operating cost of \$1.0 million. Projected cost increases are based on the "all other" deflation estimates published in the *1997 Budget of the United States Government* (page 160, Table 10.1).

The fee for users of a commercial aircraft overflight is calculated as follows:

$$R_{ij} = \$69.50 * DO_{ij} + \$78.90 * DD_{ij},$$

where

$R_{ij}$  = the fee charged to commercial aircraft flying between city i and city j,

DO<sub>ij</sub>=distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

DD<sub>ij</sub>=distance traveled in domestic U.S. airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

The fee for users of a general aviation turbine-powered aircraft overflight is calculated as

$$GATR_{ij} = (\$69.50/5) * DO_{ij} + (\$78.90/5) * DD_{ij}$$

or

$$GATR_{ij} = \$13.90 * DO_{ij} + \$15.78 * DD_{ij},$$

where

GATR<sub>ij</sub>=the fee charged to general aviation turbine-powered aircraft flying between city i and city j,

DO<sub>ij</sub>=distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

DD<sub>ij</sub>=distance traveled in domestic U.S. airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

The fee for users of a general aviation piston-powered aircraft overflight is calculated as

$$GAPR_{ij} = (\$69.50/18) * DO_{ij} + (\$78.90/18) * DD_{ij}$$

or

$$GAPR_{ij} = \$3.86 * DO_{ij} + \$4.38 * DD_{ij},$$

where

GAPR<sub>ij</sub>=the fee charged to general aviation piston-powered aircraft flying between city i and city j,

DO<sub>ij</sub>=distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

DD<sub>ij</sub>=distance traveled in domestic U.S. airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

These formulas assume that actual entry and exit data are available for individual flights in U.S.-controlled airspace. If not, best available flight data will be used.

All fees are designed to charge both direct and indirect costs to users in a logical and fair manner as required by IOAA. Because users of general aviation

piston-powered aircraft are likely to be extremely price sensitive with potential impacts on the consumption of safety related services, and because their use of ATS appears minimal, general aviation users are charged a discounted fee (less than full-cost recovery). Also, general aviation piston-powered aircraft users transiting less than 250 nautical miles of U.S.-controlled airspace will not be charged a fee. The distance based exemption reflects a concern for administrative efficiency. The cost of collecting from this user group for distances less than 250 miles is likely to exceed any fee incurred.

The fees in this interim final rule will be reviewed at least once every 2 years, in accordance with OMB Circular A-25, and adjusted to reflect changes in costs. The first review is scheduled one year after the date of publication of the interim final rule. Fees will be adjusted to reflect historical GCR entry and exit mileage within U.S.-controlled airspace.

Based on the OD-GCR, the following table illustrates the tiered fee schedule.

REPRESENTATIVE FEE SCHEDULE FOR INTERNATIONAL OVERFLIGHTS

Origination	Destination	Aircraft type	Domestic airspace			Oceanic airspace			Total miles <sup>2</sup>	Total fee <sup>3</sup>
			Rate <sup>1</sup>	Miles <sup>2</sup>	Charge <sup>3</sup>	Rate <sup>1</sup>	Miles <sup>2</sup>	Charge <sup>3</sup>		
Canada: YUL Dorval Int'l. Airport, Montreal .....	Canada: YHZ Halifax, Nova Scotia .....	Commercial .....	\$78.90	149	\$118	\$69.50	.....	.....	149	\$118
YYZ Pearson Airport, Toronto, Ontario ..	YYC Calgary, Alberta .....	Commercial .....	78.90	644	508	69.50	.....	.....	644	508
Canada: YUL Dorval Int'l. Airport, Montreal .....	Canada: YHZ Halifax, Nova Scotia .....	GA Piston .....	4.38	149	7	3.86	.....	.....	149	None
YYZ Pearson Airport Toronto, Ontario ...	YYC Calgary, Alberta .....	GA Piston .....	4.38	644	28	3.86	.....	.....	644	28
Canada: YUL Dorval Int'l. Airport, Montreal .....	Canada: YHZ Halifax, Nova Scotia .....	GA Turbine .....	15.78	149	24	13.90	.....	.....	149	24
YYZ Pearson Airport Toronto, Ontario ...	YYC Calgary, Alberta .....	GA Turbine .....	15.78	644	102	13.90	.....	.....	644	102
Canada: YVR International Airport, Vancouver ....	Mexico: SJD San Jose Del Cabo .....	Commercial .....	78.90	1,084	855	69.50	.....	.....	1,084	855
Asia: NRT Narita Airport, Tokyo, Japan .....	Canada: YYC Calgary, Alberta .....	Commercial .....	78.90	1,938	1,590	69.50	470	\$327	2,408	1,917
Europe: AMS Amsterdam, Netherlands .....	Caribbean: MBJ Montego Bay, Jamaica .....	Commercial .....	78.90	.....	.....	69.50	2,118	1,472	2,118	1,472
Europe: LHR Heathrow Airport London, Eng .....	Mexico: Mexico City .....	Commercial .....	78.90	1,515	1,195	69.50	256	178	1,771	1,373
Asia: SEL Seoul, South Korea .....	Pacific: Sydney, Australia .....	Commercial .....	78.90	.....	.....	69.50	1,111	772	1,111	772

<sup>1</sup> Rates are expressed per 100 nautical miles.

<sup>2</sup> Miles are nautical miles.

<sup>3</sup> Charges and total fee are rounded to the nearest dollar.

Fee Collection Process

The FAA has established and maintains data from several sources, including but not limited to, flight plans and radar/radio data, that identifies the point of entry and exit, aircraft registration number and the type of aircraft for all aircraft entering U.S.-controlled airspace. Information will be extracted from the database and used, along with the fee formula, to compute each fee.

The FAA will bill users by sending a monthly invoice. Affected air carrier users are requested to designate and submit to the FAA the name and

address of a U.S. agent for billing. All other users are requested to submit a billing address to the FAA. Users not providing a billing address will be billed at the address of record of the aircraft owner as maintained in the country where the aircraft is registered.

As provided in § 187.15(d), monthly remittance of fees of \$1,000 or more are to be paid by electronic funds transfer. Monthly remittances below \$1,000 may be paid by electronic funds transfer, check, money order, credit card, or draft. All payments must be in U.S. currency.

Invoices that become delinquent will be processed according to 49 CFR part 89.

Comments Requested

As noted above, the FAA seeks comments on the interim final rule, specifically, the fee schedule, formulas used to determine the cost per unit, the associated collection process, and the scope of services for which costs will be recovered. Commenters should be aware, however, that the FAA does not have discretion to make changes to some aspects of the fee that were specifically mandated by Congress.

The FAA is aware of several different approaches used throughout the world by civil aviation authorities in constructing overflight fees. ICAO identifies several parameters that, in principle, can be used to construct an ATS fee. These parameters include distance flown, aircraft weight, and time-in-system. (Doc. 9161/2, paragraphs 73, 74, and 78). A fee system can be designed to recover some or all of the costs of providing air traffic control services. For practical reasons, such as billing efficiency, managing traffic patterns, equity, or issues related to safety, a civil aviation authority may prefer one changing method over another. A civil aviation authority may also decide to recover only a portion of the total cost of providing ATS from particular user groups. Below are two different approaches to the fee system that the FAA has adopted in this interim final rule.

#### *Alternative Approaches*

One approach that was not adopted by the FAA is to base the fee on distance flown and aircraft weight, though the use of weight when viewed as a measure of value of the service to the user is not consistent with the FAA's current authority. In general, the following formula could be used to establish an ATS charge under this approach:

$$R=T*D*P,$$

where

R=fee,

T=unit rate,

D=great circle distance flown expressed in hundreds of nautical miles,

P=a proportional measure of aircraft weight (e.g., the square root of weight).

As with the fee structure adopted by the FAA, two separate unit rates could be developed to reflect the cost of providing ATS and other services in both domestic and oceanic airspace. Given the appropriate choice of unit rates, this approach is also consistent with full-cost recovery. This approach not only reflects the cost of providing ATS but also incorporates users' ability/willingness to pay. That is, civil aviation authorities are able to charge for ATS based on the value of service received. Heavier (lighter) aircraft users pay more (less) for the use of ATS. Proponents of this approach suggest that a distance- and weight-based fee will encourage the additional use of ATS and other safety related services while permitting full cost recovery by the provider. Consequently, the air transportation community will benefit, as a whole, from a safer and more efficient use of airspace without the

provider subsidizing any user (in contrast, the fee described in the interim final rule results in subsidization of general aviation users by the provider).

Internationally, this option has had some acceptance. Eurocontrol (The European Organization for the Safety of Air Navigation) uses this formula to charge civil aircraft flying either for a part of or for the whole flight under Instrument Flight Rules and to military aircraft flying as General Air Traffic. The weight component is taken to be the square root of the maximum take-off weight of an aircraft expressed in metric tons divided by 50. This approach could not be adopted by the FAA unless Congress specifically authorized its use.

Another approach which was not adopted by the FAA is to base the fee on an aircraft's time-in-system. In principle, a time-in-system approach would provide a highly accurate measure of the amount of ATC services used. Higher speeds mean less time spent in a given airspace and therefore a reduction in the service provided. A charging mechanism based on this approach could take the following form:

$$R=T*Z,$$

where

R=fee,

T=unit rate,

Z=time in system.

A time-in-system approach, however, favors faster aircraft and may impose a heavier fee burden on slower users. Although this approach could be used to recover the full cost of ATS, it appears to have several shortcomings that must first be resolved. First, it requires actual flight data for an aircraft transiting controlled airspace or some estimated time based on an aircraft's speed and distance flown in controlled airspace. Second, it can be argued that ATC systems were primarily developed to serve the faster commercial users and not slower general aviation users. Slower aircraft should therefore not be required to pay proportionally more for ATS. Third, rerouting due to weather conditions or excessive air traffic can significantly impact a time-in-system fee. To date, there is no universally accepted standard for measuring time-in-system.

Commenters are welcome to address any different approaches that they believe would be consistent with the purposes and limitations of the Act and the IOAA.

#### *Comments Concerning Emergency Services*

Under the current fee formula, the only emergency service costs recovered are those costs associated with enroute

center coordination of these services. Costs associated with the provision of alternative landing sites, search and rescue services, and crash fire rescue are not recovered. Such costs are borne by the FAA through the AIP program, by the U.S. Coast Guard, by other military services, and by the airports themselves. At the finalization of the rule, commenters should be advised that the FAA is considering an adjustment to the fee formula to include such costs. Commenters are encouraged to submit comment on this adjustment and to provide suggestions regarding the means by which the fee should be adjusted.

#### *Comments From U.S. Entities*

Additionally, the FAA is requesting comment from any small U.S. entity who believes that this rule will create a significant economic impact on their operations. As detailed below, the FAA does not believe there will be any such impact.

#### *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 its costs. Second, the Regulatory Flexibility Act 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.

This section summarizes the FAA's economic and trade analyses, findings, and determinations in response to these requirements. The complete economic and trade analyses are contained in the docket.

#### *Analysis of Benefits*

The fees would reimburse the FAA for the actual cost of services provided to commercial users and a portion of the cost of services provided to general aviation users in the manner authorized by Congress, so that the beneficiaries of this service, rather than the taxpayer, would pay for the service provided by the FAA. Moreover, the fees being imposed by the FAA cover no more than the costs of providing these services. The FAA believes that the fees are equitable.

A fee will establish a mechanism through which those who use a service provide the majority of resources necessary to fund the service that is provided. This will result in a more efficient allocation of scarce societal and FAA resources. The efficient allocation

of resources will benefit society at large, because more resources will become available for other service demanded by the public.

On an annualized basis for 1997, the overflight fee is expected to generate approximately \$60 million in fee revenue.

#### Cost of Collection of User Fees to the FAA

The FAA estimates a one-time development cost of \$2.1 million amortized over a two-year period and an annual operating cost of \$1.0 million.

The costs of collection of the fee is relatively small compared to the revenue that can be generated. The cost of collection along with the fee charges will be reviewed at least once every 2 years and adjusted either upward or downward in order to reflect the current costs of performing the services covered. The first review is scheduled one year after the date of publication of the interim final rule. Fees will be adjusted to reflect historical GCR entry and exit mileage within U.S.-controlled airspace.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to specifically review rules that may have a "significant economic impact on a substantial number of small entities."

The FAA's criteria for "a substantial number" are a number which is not less than 11 and which is more than one third of the small entities subject to this rule. For all carriers, a small entity has been defined as one which owns, but does not necessarily operate, nine or fewer aircraft. The FAA's criteria for "a significant impact" are as follows: At least \$4,900 per year for an unscheduled air carrier, \$70,100 per year for a scheduled carrier having airplanes with only 60 or fewer seats, and \$125,500 per year for a scheduled carrier having an airplane with 61 or more seats.

Using these criteria and the data available at this time, the FAA has determined that the interim final rule will not have a significant economic impact on a substantial number of small U.S. entities. However, since this is a rule issued without notice, the FAA is seeking comment on this issue in the comment section of the preamble. If comments are received that indicate a significant economic impact on a substantial number of small U.S. entities, the final rule will be revised.

#### International Trade Impact

The overflight provisions would primarily affect foreign airlines. The rule may have a favorable competitive impact on U.S. air carriers. Currently U.S. airlines are at a comparative disadvantage with foreign airlines because all airlines (U.S. and foreign) must pay user fees to transverse other countries' airspace while foreign airlines do not have to pay a fee to transverse U.S. controlled airspace. The interim final rule would enhance the competitiveness of domestic firms.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Reform Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Reform Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Reform Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Reform Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed \$100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

#### Federalism Implications

The regulations do not have substantial direct effects on the states, on the relationship between national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

#### International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. For this document, the FAA has reviewed the SARP of Annex 6, Parts I and II, applicable to foreign commercial air transportation operations and foreign general aviation operations respectively. The FAA has determined that this interim final rule will not present any differences with ICAO guidance.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this rule.

#### Justification For No Public Notice and Comment

The Administrative Procedure's Act, 5 U.S.C. 553 et. seq., requires that prior to the issuance of a final rule, an agency will give notice to the public and seek comment on a proposed rule. This interim final rule is issued without public notice and comment pursuant to subsequent and specific authority. This authority is found at 49 U.S.C. 45301(b)(2), which requires that this interim final rule be issued before public comment is sought. A final rule will be issued subsequent to this public comment.

#### Conclusion

The FAA has determined that this regulation: (1) is a significant rule under Executive Order 12866; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and "Regulatory Flexibility Determination," the FAA certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities. A

copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

#### List of Subjects in 14 CFR Part 187

Administrative practice and procedure and Air transportation.

#### The Amendment

The Federal Aviation Administration amends part 187 of the Federal Aviation Regulations [14 CFR part 187] as follows:

#### PART 187—FEES

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

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40104–40105, 40109, 40113–40114, 44702, 45301–45303.

2. Section 187.1 is amended by adding the following sentences to the end of the section to read as follows:

##### § 187.1 Scope.

\* \* \* Appendix A to this part prescribes the methodology for computation of fees for certification services performed outside the United States. Appendix B to this part prescribes the fees for certain aircraft flights that transit U.S.-controlled airspace.

3. Section 187.15 is amended by adding new paragraph (d) to read as follows:

##### § 187.15 Payment of fees.

\* \* \* \* \*

(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. Remittances below \$1,000 may be paid by electronic funds transfer, check, money order, credit card, or draft.

4. Part 187 is amended by adding new appendix B to read as follows:

#### Appendix B to Part 187—Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace

(a) *Applicability.* Except as provided in paragraph (b) and (c) of this appendix, this appendix applies to any person who conducts a flight through U.S.-controlled airspace that does not include a landing or takeoff in the United States. U.S.-controlled airspace includes both U.S. sovereign airspace (hereafter "domestic airspace") and

airspace allocated to the United States by the International Civil Aviation Organization (hereafter "oceanic airspace").

(b) *Government flights.* This appendix does not apply to any military or civil aircraft operated by the United States government or by any foreign government.

(c) *Deferral of Overflight Charges.* This appendix will not apply to aircraft that take off and land in Canada without intermediate stops outside Canada that operate in U.S.-controlled airspace prior to October 1, 1997.

(d) *Services.* Persons covered by paragraph (a) of this appendix shall pay a fee for the use of air traffic control services and associated 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, such as flight plan filing, and weather briefings.
  - (6) Procedural control.
  - (7) Emergency services and training.
- (e) *Methodology for the Computation of fees.*

(1) For the use of any of the services listed in paragraph (d) of this appendix, the fee is computed based on user type and distance flown. Distance flown is based on the great circle route (GCR) for the actual point of entry and the actual point of exit of U.S.-controlled airspace. Fees are assessed using the methodology presented in paragraph (d) (2), (3), and (4) of this appendix. Where actual entry and exit points are not available, the best available flight data will be used.

(2) For commercial users a fee is assessed for each 100 nautical miles flown in U.S.-controlled airspace. Commercial users are defined as those operators whose primary purpose is to provide passenger and/or cargo air transportation for compensation or hire. Separate calculations are made for transiting domestic and oceanic airspace. The total fee charged for an overflight between any two cities is equal to the sum of these two charges. Expressed in 1997 dollars, this relationship is summarized as

$$R_{ij} = \$69.50 * DO_{ij} + \$78.90 * DD_{ij},$$

where

$R_{ij}$  = the fee charged to commercial aircraft flying between city i and city j,

$DO_{ij}$  = distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

$DD_{ij}$  = distance traveled in domestic U.S. airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

(3) For a general aviation user of turbine-powered aircraft, the total fee charged between any two cities (expressed in 1997 dollars) is calculated as

$$GATR_{ij} = \$13.90 * DO_{ij} + \$15.78 * DD_{ij},$$

where

$GATR_{ij}$  = the fee charged to general aviation turbine-powered aircraft flying between city i and city j,

$DO_{ij}$  = distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

$DD_{ij}$  = distance traveled in U.S.-controlled domestic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

A general aviation user of turbine-powered aircraft is defined as those operators who do not provide passenger and/or cargo transportation for compensation or hire.

(4) For a general aviation user of piston-powered aircraft, the total fee charged between any two cities (expressed in 1997 dollars) is calculated as

$$GAPR_{ij} = \$3.86 * DO_{ij} + \$4.38 * DD_{ij}$$

where

$GATR_{ij}$  = the fee charged to general aviation piston-powered aircraft flying between city i and city j,

$DO_{ij}$  = distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

$DD_{ij}$  = distance traveled in U.S.-controlled domestic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

A general aviation user of piston-powered aircraft is defined as those operators who do not provide passenger and/or cargo transportation for compensation or hire.

(5) General aviation users of piston-powered aircraft traversing less than 250 nautical miles of U.S.-controlled airspace will not be charged a fee under this appendix.

(f) *Billing and payment procedures.*

(1) *Billing.* The FAA will send an invoice to each user that is covered by this appendix. Users will be billed at the address of record in the country where the aircraft its registered, unless a billing address is otherwise provided.

(2) *Payment.* Payment shall be made by one of the methods described in § 187.15.

(g) *Review of fees.* The fees prescribed in this appendix will be reviewed at least once every 2 years, at the beginning of the fiscal year, and adjusted either upward or downward in order to reflect the current costs of performing the services covered by this appendix.

Issued in Washington, DC, on March 14, 1997.

Barry L. Valentine,

Acting Administrator.

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