Rules and Regulations

Federal Register

Vol. 74, No. 28

Thursday, February 12, 2009

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76, and 150

RIN 3150–AH57

[NRC–2005–0001]

Protection of Safeguards Information; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a rule that appeared in the **Federal Register** on October 24, 2008 (73 FR 63545), that amends the regulations for the protection of Safeguards Information (SGI) to protect SGI from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials. This action is necessary to correct an erroneous authority citation.

DATES: Effective February 23, 2009.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 492–3663, e-mail: *Michael.Lesar@nrc.gov*.

SUPPLEMENTARY INFORMATION: In FR doc. E8–24904, published on October 24, 2008, on page 63571, in the second column, under instruction 20, the authority citation for 10 CFR part 52 is corrected to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

Dated in Rockville, Maryland, this 6th day of February 2009.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration.

[FR Doc. E9–3074 Filed 2–11–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

Update of August 2001 Overflight Fees

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of an Aviation Rulemaking Committee on Overflight Fees.

SUMMARY: On December 17, 2008, the Acting Administrator of the Federal Aviation Administration (FAA) approved the Charter of an Aviation Rulemaking Committee (ARC) created for the purpose of consulting with the FAA regarding the cost of providing air traffic control and related services to overflights, and providing advice and recommendations to the Administrator regarding the future level of FAA's Overflight Fees. This Notice includes a copy of the Overflight Fees ARC Charter and information about how to request to participate as a member of the ARC.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Dave Lawhead, Office of Financial Controls (AFC–300), FAA, Washington, DC 20591. E-mail: *Dave.lawhead@faa.gov,* or by phone at (202) 267–9759.

SUPPLEMENTARY INFORMATION: The Overflight Fees ARC Charter is printed in its entirety immediately following this Notice. Please note that, in addition to the Chair, and a Vice-Chair, if one is designated, the ARC will be limited to no more than 15 other members, each of whom will serve totally at their own expense, with no compensation, per diem, or reimbursement of expenses of any kind. If more than 15 air carriers, trade associations, or other system users express an interest in serving on the Committee, membership will be determined by the FAA. In making membership selections, the FAA will consider geographic diversity, operational differences, and the amount of Overflight Fees paid to the FAA by the requester in fiscal year 2008. If you want to be considered for selection as a member of the ARC, you need to notify the contact person listed in this Notice within 30 days of the date of publication of the Notice.

Issued in Washington, DC, on February 5, 2009.

Ramesh K. Punwani,

Assistant Administrator for Financial Services/CFO, Federal Aviation Administration.

Order

Federal Aviation Administration Overflight Fee Aviation Rulemaking Committee Charter

1. Purpose. This order constitutes the charter for the Overflight Fee Aviation Rulemaking Committee (the ''Committee'') that is designated and established pursuant to the Administrator's authority under 49 U.S.C. 106(p)(5).

2. Distribution. This order is distributed at the director level in Washington headquarters and throughout the Office of the Associate Administrator for Financial Services and the Air Traffic Organization.

3. Background. Section 273 of the Federal Aviation Reauthorization Act of 1996, 49 U.S.C. 45301 (the ''1996 Act''), authorized the FAA to impose fees on aircraft that traverse U.S.-controlled airspace but neither take off nor land in the United States. Under the 1996 Act, ''[s]ervices for which costs may be recovered include the costs of air traffic control, navigation, weather services, training and emergency services which 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.'' 49 U.S.C. 45301(b)(1)(B). At the time of its enactment, section 273 provided that the FAA Administrator ''shall ensure that each of the [overflight] fees * * * is directly related to the Administration's costs * * * of providing the service rendered.'' 49 U.S.C. 45301(b)(1)(B)(1996). In November 2001, Section 273 was amended to state that the Administrator

''shall ensure that each of the fees * * * is reasonably related to the Administration's costs, as determined by the Administrator, of providing the service rendered * * *.'' Section 119(d) of the Aviation and Transportation Security Act of 2001, Public Law 107–71.

4. Objective. The Administrator deems it appropriate to create the Overflight Fees Aviation Rulemaking Committee to obtain advice and recommendations on the appropriate amounts for future Overflight Fees.

5. Duties. The Committee is to evaluate information regarding the services rendered to overflights by the FAA and the costs of providing those services to overflights, and, based on that evaluation, to make recommendations regarding future overflight fee increases. The Committee shall provide its recommendations to the Administrator by a deadline to be determined by the Chair, which may be modified by the Administrator.

6. Organization and Administration.

a. The Committee shall be led by the Chair, who shall be a full-time employee of the FAA appointed by the Assistant Administrator for Financial Services. The Chair may designate a Vice Chair, who shall not be employed by the FAA and who shall be a representative of foreign air carriers or trade associations of those carriers, or other system users who are subject to Overflight Fees.

b. In addition to the Chair and Vice Chair, the Committee shall be comprised of not more than 15 members, who shall be employees or other representatives of the foreign air carriers (or trade associations of those carriers) or other system users that are subject to the FAA's Overflight Fees. The members shall be selected by the Associate Administrator for Financial Services and, to the extent possible, the membership also shall be geographically diverse and include representatives that conduct primarily enroute overflights and primarily oceanic overflights. Each member may designate one representative and one alternate to serve on the Committee. Each member of the Committee shall have one vote.

c. Members may permit their employees and consultants (including financial, technical and legal professionals) to attend any Committee meeting and review Committee documents.

d. Additional FAA personnel may participate, as directed by the Chair, as adjunct non-members of the Committee.

e. The Assistant Administrator for Financial Services is the sponsor of the Committee. The Associate Administrator for Financial Services shall receive all Committee recommendations and reports. The Associate Administrator shall also be responsible for providing administrative support for the Committee and shall provide a secretariat. The Chair shall be responsible for establishment of the procedures, consistent with this charter, under which the Committee shall operate.

f. Meetings shall be held as frequently as needed, as determined solely by the Chair.

g. The Chair shall arrange notification to all members of the time, place and agenda for any meeting through the secretariat and shall ensure that, to the extent practicable, any materials to be considered at the meeting are distributed to Committee members in advance. The Committee is not required to keep minutes, but the Chair may elect to do so. Committee recommendations to the Administrator must be approved by at least a two-thirds vote of the members. The Chair shall have the right to submit a separate report or recommendation to the Administrator.

7. Compensation. All non-government Committee members shall serve without compensation from the U.S. government, and shall bear all costs related to their participation on the Committee.

8. Public Participation. Unless otherwise decided by the Chair, all meetings of the Committee shall be closed. Interested persons wishing to attend a meeting who are not members of the Committee (or employees or consultants invited by a member) must request and receive approval in advance of the meeting from the Chair.

9. Availability of Records. Subject to the provisions of the Freedom of Information Act, Title 5 U.S.C. 522, records, reports, agendas, working papers, and other documents that are made available to, prepared by, or prepared for the Committee shall be available for public inspection and copying at the FAA Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591. Fees shall be charged for the information furnished to the public in accordance with the fee schedule published in part 7 of title 49, Code of Federal Regulations.

10. Public Interest. The formation of the Committee is determined to be in the public interest in connection with the performance of duties imposed on the FAA by law.

11. Effective Date and Duration. This order is effective immediately. The Committee shall remain in existence for two years after the effective date of this Order unless sooner terminated or extended by the Administrator.

Dated: December 17, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. E9–2985 Filed 2–11–09; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Children's Products Containing Lead; Exemptions for Certain Electronic Devices; Interim Final Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Interim final rule.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing an interim final rule concerning certain electronic devices for which it is not technologically feasible to meet the lead limits as required under section 101 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, 122 Stat. 3016. By notice published elsewhere in today's **Federal Register**, the Commission is withdrawing the proposed rule on exemptions for certain electronic devices published in the **Federal Register** on January 15, 2009, 74 FR 2435.

DATES: This interim final rule is effective February 10, 2009. Comments must be in writing and should be submitted by March 16, 2009.

ADDRESSES: Comments should be e-mailed to *Sec101ElectronicDevices@cpsc.gov*. Comments should be captioned ''Section 101 Electronic Devices Interim Rule.'' Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504–7923). Comments also may be filed by facsimile to (301) 504–0127.

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, PhD., M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7254, e-mail *khatlelid@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The CPSIA Lead Content Limits

The CPSIA provides for specific lead limits in children's products. Section 101(a) of the CPSIA provides that, by

August 26, 2009

BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

IN RE OVERFLIGHT FEES	)
AVIATION RULEMAKING COMMITTEE	)
	)

CONDITIONAL "RECOMMENDATION" OF THE INDUSTRY MEMBERS OF THE FAA AVIATION RULEMAKING COMMITTEE ON OVERFLIGHT FEES

The industry members of the U.S. Federal Aviation Administration ("FAA") Aviation Rulemaking Committee for overflight fees (the "ARC")[1] present this conditional recommendation on user fees charged by the FAA for the provision of air traffic control services to airlines that neither take off nor land in the United States (see appendix I for a historical background).

The industry members of the ARC have engaged in constructive discussions with the FAA in an attempt to reach a suitable adjustment for the increase in fees that was originally proposed by FAA during the first meeting of the ARC. As a result of those discussions – and conditional upon acceptance, representations and expectations that they have received in connection with the increased fees, – the industry members will not object to a change in fees as outlined below.

2. CURRENT ECONOMIC REALITY.

The industry ARC members urge FAA to recognize the worldwide airline industry is under unprecedented negative financial pressure as the result of a confluence of factors. In 2008 and 2009 year to date alone, over 14 airlines have been forced to cease operations altogether. Other carriers have been forced to reorganize under bankruptcy law protections. As IATA Director General and CEO Giovanni Bisignani recently stated: "These are extremely challenging times for airlines; there are no signs of an early economic recovery. Other external risks are potentially great, including rising oil prices and the impact of Influenza (H1N1) on demand. Cash flow is threatened by weak demand, exaggerated by reduced fares; after years of cost reduction, the scope for further cuts is limited."

[1]The industry members of the ARC are Air Canada, Air France, Air Transat, Air Transport Association of Canada, Association of Asia Pacific Airlines, British Airways, Plc, Cathay Pacific Airways Limited, International Air Transport Association, KLM Royal Dutch Airlines, Lufthansa German Airlines, Mexicana Airlines, National Airlines Council of Canada, SkyService Airlines, Inc., Sunwing Airlines, WestJet and Virgin Atlantic Airways Ltd.

According to IATA's most recent forecast, airlines could suffer losses of US $9 billion this year. IATA has also adjusted its estimates for losses in 2008, from US $8.5 billion to US $10.4 billion. In addition to the global downturn, a number of airlines overflying the US have been hit extremely hard by the H1N1 pandemic; this is again forecasted to be a factor this coming fall by the World Health Organization. As the FAA can well appreciate, in this challenging environment any increase in overflight fees will be materially detrimental to the finances of the affected carriers; exposing the industry stakeholder to further economic risk.

We recognize the desire to update the overflight fees but, at the same time, we must remain diligent in our opposition to changes that would discourage already depressed traffic levels and the future growth of the industry and which would not be reasonably related to the cost of providing the underlying ATC service. Even in the current environment we the carriers represented by the ARC are at peril of a decline of traffic and reduced revenue. We therefore request FAA to review the overflight fees based on our recommendations in order to reflect the current economic reality.

3. COST ACCOUNTING SYSTEM.

The industry members of the ARC are conditionally not challenging the use of the CAS at this time, with the hope and understanding that the FAA will continue ongoing efforts to continually improve the accuracy and integrity of the CAS. The ARC acknowledges that, for the purpose of this exercise, the FAA's Cost Accounting System ("CAS") will be the basis for the FAA's determination of costs for delivery of air navigation services to overflights. Although the industry members continue to believe that it is more accurate to remove the FAA's overhead and other non-related costs for the overflight fee cost base, and therefore does not endorse this methodology as a whole.

The ARC records demonstrate that FAA is seeking to recover more than the reasonably related costs for providing ATC and related services to overflights. By contrast, costs for providing ATC and related services to flights that take off or land in the United States in lieu of overflight fees are partially recovered through a contribution from the General Fund. Accordingly, it is clear that the proposed overflight fees will be assessed on terms that are "less favorable" to foreign airlines which do not take off or land in the United States, than to their U.S. counterparts.

4. CONDITIONAL ACCEPTANCE OF INCREASE IN OVERFLIGHT FEES.

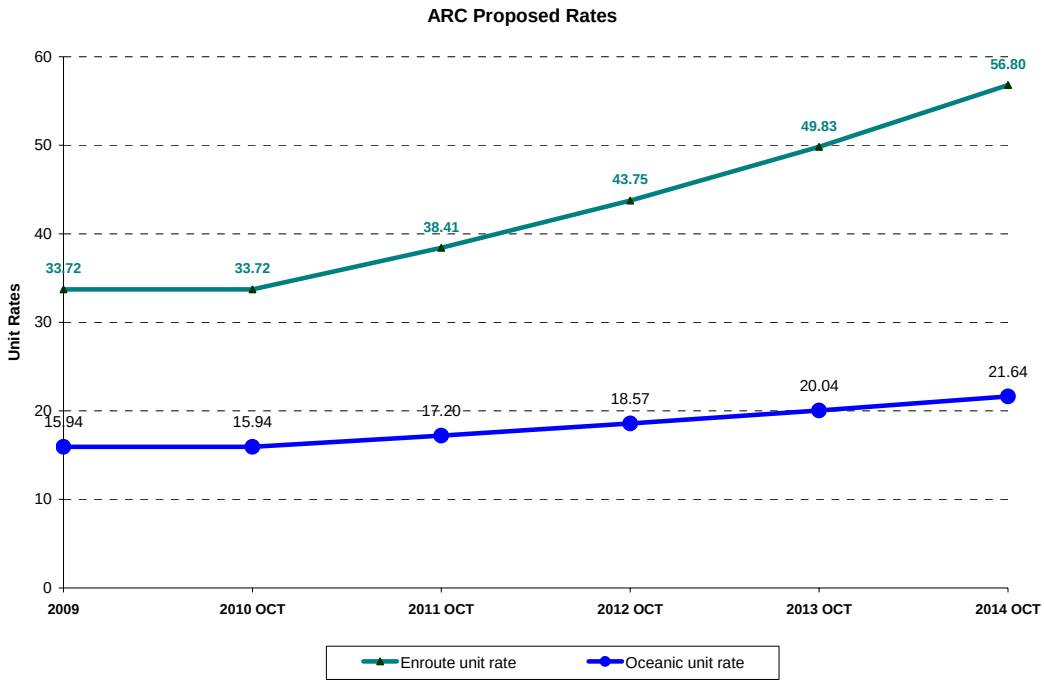
The industry member's acceptance of an increase in overflight fees is conditioned upon certain factors, including the lack of any increase until completion of the NPRM process, and a cap on the increase as set forth herein. The industry members have provided this consent pursuant to their desire to work in a collaborative effort with FAA to reach a mutually agreeable resolution with regard to FAA's desire to increase the fees. However, if, for any reason, the

reasonable conditions which the industry members have placed on their consent are not fulfilled, the members would be free to return to their multi-pronged objections to the fee increase sought by FAA, without limitation. (See appendix II).

Assuming that FAA would implement an equal annual increase through use of a standard notice-of-proposed rulemaking and comment period ("NPRM"), the ARC members would not object to an annual increase of 13.9% for Enroute fees and 8% for Oceanic fees over four consecutive years beginning in October 2011.Given the magnitude of the increase dictated by an update from 1999 to 2008 data, it is critical that any such change abide by the ICAO principles of gradualism in implementing this fee increase over a multiple year period. This agreement is conditioned upon the understanding that the increase would not go into effect until after the issuance of a final rule following the NPRM, and not before October 1, 2011, and that there would be no further increase until FY2016.

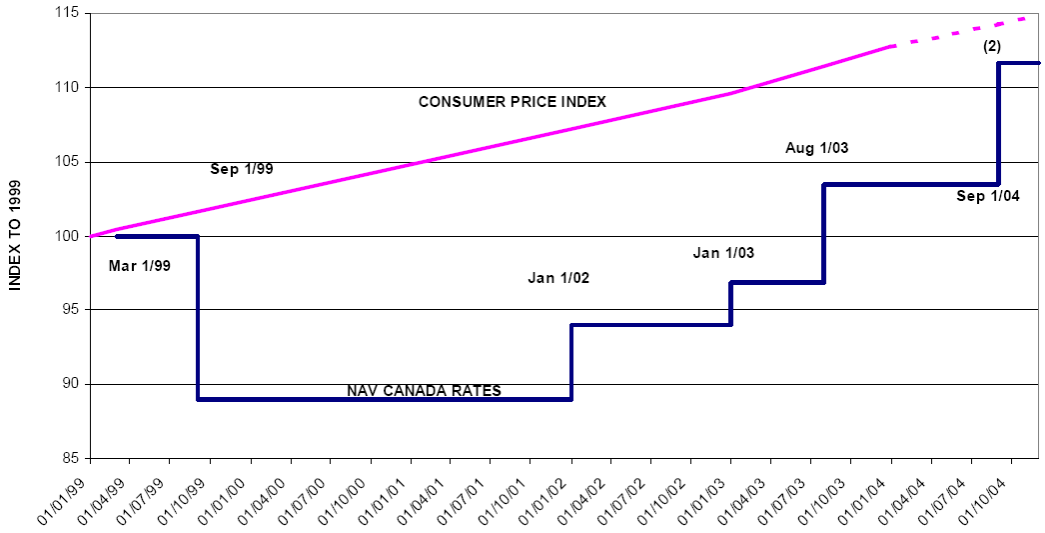
The following charts show increases in overflight fees for which the ARC provides its conditional acceptance.

Year	2009	2010 OCT	2011 OCT	2012 OCT	2013 OCT	2014 OCT
Enroute unit rates incl billing and collection sales factor	33.72	33.72	38.41	43.75	49.83	56.80
%increase		0.00	13.9%	13.9%	13.9%	14.0%
Oceanic unit rates incl billing and collection sales factor	15.94	15.94	17.20	18.57	20.04	21.64
%increase		0.00	7.9%	8.0%	8.0%	8.0%



5. DEVELOPMENT OF UNIT COSTS

The FAA's operational costs have been increasing at a steady pace between 1999 and 2009, which partially resulted in the need to adjust the overflight fees. As a comparison, fees for ATC providers such as Nav Canada have only increased 5% over the period between 1999 and 2009, 19% below inflation. The average unit rate for EUROCONTROL between 2002 and 2009 has decreased by 1.9%.



With a single user group paying user fees and a direct relationship between FAA's cost base and a fee for the services provided, it is imperative that future focus of the FAA be directed towards sustained growth and measurable cost-efficiencies.

The ARC members urge the FAA to establish a formal financial user consultation process prior to future adjustments of the cost base, in line with internationally accepted policy on Air Navigation Service Charges, developed by the International Civil Aviation Organization ICAO in Doc 9082 and to aim for a time over time reduction of the unit costs through cost containment and traffic growth, in line with the trend with other leading ATC Providers around the world.

6. CONCLUSION

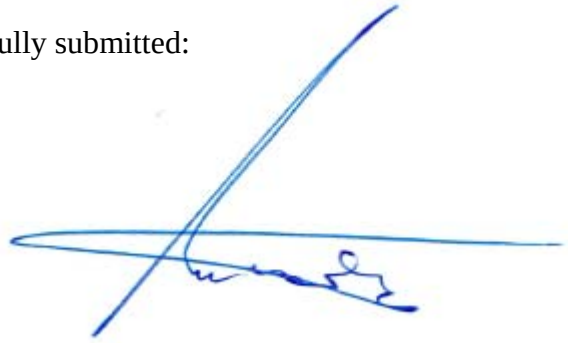
We acknowledge the cooperative attitude FAA has demonstrated during this ARC process and the opportunity to provide our recommendations to FAA. Despite the issues that the ARC members still have with regard to FAA's intention to increase the overflight fees, the members of the ARC, in the spirit of good faith cooperation and collaboration with the FAA, will

conditionally not object to the fee increase set forth above, assuming that the above stated conditions are fulfilled.

We assume that FAA will reconsider their overflight fee structure as a whole if a political decision would be made to start collecting user fees for all users while removing the existing tax system, in which case an equitable and truly cost related charging system would become easier to achieve.

In the meantime, please feel free to contact the undersigned or any of the other ARC members if there are any further questions.

Respectfully submitted:



Cyriel Kronenburg

Vice Chairman, Aviation Rulemaking Committee,
International Air Transport Association, IATA

APPENDIX 1: HISTORICAL BACKGROUND

In October 1996, Congress enacted section 273 of the Federal Aviation Reauthorization Act of 1996, Pub. L. 104-264, codified at 49 U.S.C. § 45301, which, for the first time, authorized the FAA to impose a user fee for the provision of air traffic control and related services to aircraft that neither takeoff nor land in the United States. In March 1997, the FAA issued an "Interim Final Rule" which sought to impose nearly $100 million in overflight fees, fifty million of which was set aside by Congress to fund the Essential Air Services program in the United States. In January 1998, the U.S. Court of Appeals for the D.C. Circuit vacated the IFR, ruling that the fees did not comply with the statutory directive that they be "directly related" to FAA's costs of providing services to overflights because of FAA's use of "Ramsey pricing" to determine the fees (footnote 2).

In June 2000 the FAA issued a new IFR which sought to recover approximately $40 million per year in overflight fees. In July 2001, the D.C. Circuit vacated the 2000 IFR because the FAA did not show that the fees were directly related to costs, in that FAA provided no basis for its assumption that FAA incurs the same level of costs to provide services to overflights as to non-overflights.2 The following month (August 2001), FAA issued a final rule for overflight fees (the "Final Rule") which continued to assume that the agency incurred the same level of costs to provide ATC and related services to overflights as to non-overflights.

In April 2003, the D.C. Circuit vacated the Final Rule (footnote 3). The Court stated that: "For the third time, we must review the lawfulness of a Federal Aviation Administration regulation establishing fees for air traffic control services for 'overflights' . . . . For the third time, we find that the FAA disregarded its statutory mandate." The Court found that the airlines' experts had made "a substantial case refuting the agency's unexplained insistence that miles of overflights and non-overflights in the Enroute and Oceanic airspaces are approximately equivalent in their per-mile generation of costs." The Court acknowledged the FAA's assertion that some overflights spend some time at low altitudes, but pointed out that this did "not undermine petitioners' claim that they fly predominately in the high altitude sector, to a degree far greater than do non-overflights." The Court also rejected FAA's contention that fixed and common costs dominate, and therefore any difference in the marginal cost of servicing an additional overflight versus an additional non-overflight is immaterial.

During the interim between the July 2001 and April 2003 D.C. Circuit decisions, Congress enacted Section 119(d) of the Aviation Transportation and Security Act of 2001 ("ATSA"). Section 119(d) amended the 1996 overflight fee statute to provide that (1) overflight fees must be "reasonably related" (rather than "directly related") to the FAA's costs of providing services to overflights, and (2) the FAA's determination of its costs for providing services to overflights is not subject to judicial review. Although the D.C. Circuit, in its April 2003 decision, ruled that

[2] *Air Transport Association of Canada v. FAA*, 254 F.3d 271 (D.C. Cir. 2001).

[3] *Air Transport Association of Canada v. FAA*, 323 F.3d 1093 (D.C. Cir. 2003).

Section 119(d) did not apply retroactively to the FAA's final rule on overflight fees, in December 2003 Congress enacted certain legislative language in Section 229 of Vision 100, which was intended to retroactively nullify the April 2003 Court ruling. Section 229 states: "The interim final rule and final rule referred to in subsection (a), including the fees issued pursuant to those rules, are adopted, legalized, and confirmed as fully to all intents and purposes as if the same had, by prior Act of Congress, been specifically adopted, authorized, and directed as of the date those rules were originally issued." The new law also purported to make ATSA Section 119 applicable to the overflight fees.

Pursuant to a settlement reached between FAA and the parties that had successfully challenged the 2000 IFR and the 2001 Final Rule, FAA agreed to "make payments to the litigating [carriers] from previously collected fees" based on a formula agreed to by the parties "in addition to whatever refunds and credits" were otherwise available to the litigating carriers. Following the settlement, FAA resumed assessment and collection of overflight fees based on the methodology of the Final Rule. As a result, the carriers have been paying $33.72 per 100 nautical miles for Enroute services, and $15.94 per 100 nautical miles for Oceanic services.

As part of the settlement with the litigating carriers, the FAA agreed to the creation of the ARC, which was to consist of FAA and industry representatives working to examine in depth the FAA's methodology for overflight fees and to recommend whether it should be modified. Section 4 of the ARC Charter states that the "Committee's primary task is to identify the services rendered to overflights by the FAA, to determine the FAA's costs of providing services to overflights, and, based upon that determination, to make recommendations to the Administrator regarding the level of future overflight fees that would be consistent with the provisions of the 1996 Act, as amended." Section 5(a) of the Charter states that the "Committee is to evaluate information regarding the services rendered to overflights by the FAA and the costs of providing those services to overflights, and, based on that evaluation, to make recommendations regarding future overflight fees, including possible modification to, or replacement of, the fees currently being charged by the FAA." Section 6(h) states that "Committee recommendations to the Administrator must be approved by at least a two-thirds vote of the members. The Chair shall have the right to submit a separate report or recommendation to the Administrator."

The first meeting of the ARC occurred in April 2005. It was followed by a visit of the ARC to the Enroute center near Cleveland, Ohio, in June 2005. In December 2008, the FAA issued a Federal Register notice to reconstitute the ARC. The reconstituted ARC held formal meetings in April and July of 2009. During these meetings FAA has discussed with the industry members possible ranges of increases in the overflight fees to be paid by affected carriers. FAA also provided certain items of information to the ARC industry members in connection with the increase in overflight fees which FAA announced it intended to seek. Also in 2009, both Houses of Congress proposed or otherwise considered statutory language for an update in the overflight fees.

APPENDIX II

1. The FAA is utilizing a methodology which the U.S. Court of Appeals for the D.C. Circuit ruled in 2003 failed to comply with the statutory standard that the fees be "directly related" to FAA's costs of providing ATC and related services to overflights. The fact that the language has been changed to "reasonably related" from "directly related" does not change the core fact that the FAA incurs a lower level of costs (in terms of manpower and otherwise) to provide ATC and related services to overflights than to aircraft that operate at lower, transitional altitudes throughout the air traffic control system. This evidence was clearly placed before the FAA in connection with the litigation over the second IFR and the Final Rule, and there has been no development that has changed this fact or the import of the Court's 2003 decision. In sum, in order for the fees to be truly cost based, the fee methodology would need to reflect the fact that the agency incurs more costs to provide service to non-overflights than to overflights. The members also believe that there is no basis for including the cost of overhead in the overflight fee methodology.

2. The industry members object to the multiple efforts to deprive airlines of the right to obtain judicial review of FAA's derivation of the overflight fees. Following the first two successful legal challenges to overflight fees, and commencing with Section 119 of ATSA in November 2001, and continuing with Section 229 of Vision 100 in December 2003 and language in proposed legislation being considered by Congress at this time, the FAA appears to have sought and obtained language to deprive airlines subject to overflight fees of the right to seek and obtain judicial review with regard to certain aspects of the fees. The timing of Section 119 of ATSA and Section 229 of Vision 100 appears to indicate that the legislation was intended to change the result of independent decisions of the judiciary branch, which would not have been appropriate. Beyond that, it is contrary to international norms and good policy to prohibit airlines from being able to obtain judicial review of user fees. The fact that Article 84 of the Convention on International Civil Aviation ("Chicago Convention") and various bilateral and multilateral air services agreement to which the United States is a party provide for independent review of user charges demonstrates the international consensus that no State should be permitted to dictate the user charges imposed on foreign airlines without having a suitable review process before a disinterested dispute resolution body. However, the dispute resolution remedies in the international air services agreements are complex and time consuming. It is incumbent on each State that imposes user charges on aviation to provide for independent judicial review in the courts of that nation, so that the dispute resolution provisions which are binding on each State do not need to be needlessly invoked. Stated simply, the international airline community merely wants the ability to have an independent national judiciary review compliance by the fee-charging entity with applicable legal requirements. That should not be objectionable to FAA or the U.S. Congress.

3. Finally, the proposed overflight fees are not consistent with bilateral and multilateral air services agreement (with which the United States is a signatory), which require, among other things, that foreign airlines (which are the carriers subject to overflight fees) be assessed user charges on terms "not less favorable than the most favorable terms available" to other carriers.

See, e.g., Article 12(1) of the "Air Transport Agreement" between the European Union and the United States (April 25, 2007) ("User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed"); Article 9(1) of the "Air Transport Agreement Between The Government of the United States of America and The Government of Canada" (February 24, 1995) ("User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party for the use of air navigation and air traffic control services shall be just, reasonable and not unjustly discriminatory. In any event, such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline"); see also Article 15 of the Chicago Convention ("like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities . . . which may be provided for public use for the safety and expedition of air navigation") ("charges . . . imposed . . . for the use of air navigation facilities by the aircraft of any other contracting State hall not be higher . . . than those that would be paid by its national aircraft engaged in similar international air services").