DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. 28860; Amendment No.–187–9]

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.

SUMMARY: This document changes the date aircraft operators are liable for overflight fees for air traffic and related services received during Canada-to-Canada overflights from October 1, 1997, to March 1, 1998. This change is necessary to avoid temporary disruptions of air traffic patterns along the US/Canadian border and to preserve current operational control relationships with Canadian air traffic authorities and the resulting efficiencies.

EFFECTIVE DATE: October 2, 1997.

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.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1997, the FAA published an Interim Final Rule entitled ''Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace'' (62 FR 13496). In the interim final rule, the effective date for fees charged to aircraft operators for air traffic control and related services during Canada-to-Canada overflights was deferred from May 19, 1997, until October 1, 1997. The rationale for the deferral, as outlined in the interim final rule, was that a significant number of aircraft flying between points in Canada through U.S.-controlled airspace would have an economic incentive to divert into Canadian-controlled airspace and avoid the U.S. fees if there were no corresponding Canadian enroute fees. NAV CANADA, a Canadian non-share capital corporation that owns, manages, and operates Canada's civil air navigation system, had originally planned to introduce its enroute charging system on November 1, 1997; this date has recently been revised to March 1, 1998. This change has caused the FAA to reconsider its policy on deferral of Canada-to-Canada flights.

Canada currently has an overflight charge for aircraft that transit Canadian-controlled airspace. With the exception of flights of aircraft that weigh more than 200 tons and that land or take off in Alaska, U.S. domestic aircraft operations have been temporarily exempted from this Canadian charge. NAV CANADA has stated that this exemption will terminate once the U.S. initiates charges on Canada-to-Canada overflights through U.S.-controlled airspace.

Deferment of Canada-to-Canada Overflight Fees

Currently, it is more cost effective for many Canada-to-Canada flights to transit U.S.-controlled airspace because it is either the shortest flight route or it offers the most favorable flight conditions.

In the interim final rule, the FAA stated that if it initiated overflight charges on Canada-to-Canada flights in the absence of a Canadian enroute fee, it is likely that a significant number of these flights would divert to use only Canadian-controlled airspace because it would constitute the least expensive route in which to operate. The FAA remains concerned that diversion will occur if there is only an FAA fee without a Canadian enroute fee for the period October 1, 1997, to March 1, 1998. NAV CANADA has continued to express concern that FAA implementation of a Canada-to-Canada overflight fee prior to the implementation of the Canadian enroute charge would temporarily increase the workload at Canadian control centers and could adversely affect existing bilateral agreements regarding U.S. air traffic control of certain Canadian airspace. Deferral of fee imposition will minimize temporary disruption of traffic that is likely to occur in the absence of a Canadian enroute fee.

Maintenance of the current U.S.-Canadian agreement concerning this airspace is important for the optimized routing for a significant number of both U.S. and Canadian aircraft operations. Deferring fee imposition will allow time for further U.S.-Canadian consultation, and for similar consultation, if appropriate, with other air traffic organizations as well as the International Civil Aviation Organization.

Justification

The Administrative Procedure Act, 5 U.S.C. 553 *et seq.*, requires that prior to the issuance of a final rule, an agency give notice to the public and seek comment on a proposed rule.

The March 20, 1997, interim final rule (62 FR 13498) was issued without public notice pursuant to specific Congressional authority, 49 U.S.C. 45301(b)(2). At that time, comments were sought in that interim final rule including the issue of Canada-to-Canada overflight deferral. Comments on this issue as well as all others received will be addressed in the final rule.

This document is being issued without notice or request for comments. As this action is relieving in nature and extends previously stated FAA policy, no additional notice or comment is required by applicable statutes or executive orders. Also , in view of the imminent expiration date of the deferral for these overflights, notice and comment procedures would be impracticable for this amendment.

Conclusion

There are no costs associated with this change in the interim final rule. Accordingly, the FAA has determined that this amendment (1) is not a significant regulatory action under Executive Order 12866; (2) is not a significant regulatory action under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Because the economic impact of this amendment is minimal, a full regulatory evaluation has not been prepared.

List of Subjects in 14 CFR Part 187

Administrative practice and procedure and Air transportation.

The Amendment

The Federal Aviation Administration amends 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. Appendix B is amended by revising paragraph (c) to read as follows:

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

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(c) *Deferral of Overflight Charges.* This appendix does not apply to aircraft that take off and land in Canada without intermediate stops outside of Canada that operate through U.S.-controlled airspace until March 1, 1998.

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Issued in Washington, DC on September 26, 1997.

Jane F. Garvey,

Administrator.

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