

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: Final rule.

SUMMARY: The FAA is amending Title 14 of the Code of Federal Regulations (14 CFR) to remove the interim rule that established fees and collection procedures for FAA air traffic and related services provided to certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States. On January 30, 1998, the United States Court of Appeals for the District of Columbia (court) vacated the FAA's interim final rule and remanded the rule to the FAA for disposition. The FAA is taking this action in anticipation of issuing another interim final rule for FAA air traffic and related services as provided for in the 1996 FAA Reauthorization Act.

DATES: This rule is effective July 21, 1998.

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

SUPPLEMENTARY INFORMATION: On March 20, 1997, the FAA published Amendment No. 187-727 (62 FR 13496), to announce the establishment of fees for FAA air traffic and related services provided to certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States. The FAA invited public comment on this interim final rule. The comment period closed on July 18, 1997. In addition, the FAA held a public meeting on May 1, 1997. The FAA also published two additional interim final rules that amended the original interim final rule on May 2, 1997 (62 FR 24285) and October 2, 1997 (62 FR 51735).

Authority to Establish Fees

The Federal Aviation Reauthorization Act of 1996 (the Act) directed the FAA 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 of the United States government or of a foreign government that neither take off from, nor land in, the United States (42 U.S.C. 45301, as amended by Pub. L. 104-264). Also, the Act directed the FAA to ensure that the fees collected are directly related to the FAA's costs of providing the services rendered.

United States Court of Appeals for the District of Columbia Decision

On January 30, 1998, the court issued its opinion on seven petitions consolidated in the case of *Asiana Airlines et. al.* (petitioners), versus the Federal Aviation Administration and Acting Administrator (respondents), 1998 U.S. App. Lexis 1286, App. No. 97-1356 (1998).

The petitioners challenged the interim final rule asserting that the FAA acted improperly in employing an expedited procedure before the effective date of the interim final rule, and that the regulation violated the anti-discrimination provisions of various international aviation agreements. The court rejected the petitioners' claims that FAA acted improperly in employing an expedited procedure before the effective date of the interim final rule, and that the regulation violated the antidiscrimination provisions of various international aviation agreements. However, the court concluded that the FAA's methodology of determining cost violated statutory requirements.

The court, therefore, vacated the interim final rule in its entirety and remanded the interim final rule to the FAA for further proceedings consistent with the opinion. The FAA anticipates that another interim final rule consistent with the 1996 FAA Reauthorization Act will be issued. The FAA will advise users of the details of any future interim final rule prior to the effective date of any new fee schedule imposed by interim final rule.

Discussion of Comments

As noted above, when the FAA issued the interim final rule on March 20, 1997, comments were requested concerning the rule. One hundred and twenty comments were received. As the FAA is amending 14 CFR to remove the interim final rule for fees and collection procedures for FAA air traffic and related services, and will not be implementing the interim final rule as a final rule, the comments received need no disposition. Also, most of the issues raised by the commenters were addressed by the court. In any future rulemakings pursuant to 49 U.S.C. 45301, the FAA will seek comments on any interim final rule that will be implemented as a final rule.

Accordingly, the FAA amends 14 CFR part 187, and Appendix B of part 187, by removing all references to fees and collection procedures for FAA air traffic and related services provided to certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States.

List of Subjects in 14 CFR Part 187

Administrative practice and procedure, Air transportation.

The Amendment

The Federal Aviation Administration amends Title 14 of the Code of Federal Regulations 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 removing the following sentence: "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 removing paragraph (d).

4. Part 187 is amended by removing and reserving appendix B.

Issued in Washington, DC, on July 21, 1998.

Jane F. Garvey,

Administrator.

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