

**AVIATION ASSEMBLY**

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The Embassies of Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the Commission of the European Union present their compliments to the Department of State and have the honor to refer the Department on behalf of their governments, to the Interim Final Rule published on June 2, 2000, establishing new "Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace".

Already three years ago, the Governments expressed their concerns to the Department of State in a **demarche** dated May 23, 1997 about the FAA's decision to proceed by way of an Interim **Final Rule**, instead of a proposed rule. The latter would have **allowed** for appropriate **consultations** and information, and ensured **the** compliance with international commitments of the United States, under the Chicago Convention, **as** well as bilateral air services agreements concluded between the United States and a number of nations whose governments are **party** to this note.

**Although** not contesting the principle of **recovering** the costs of Air Navigation Services by means of relevant fees, the Governments recall that, according to internationally agreed principles, **this should** be done in a fair, equitable and transparent manner, with prior and meaningful consultations with governments, airlines and **other** interested parties.

The **governments** note that the previous rule, introduced on March 20, 1997, has been overturned by **the** U.S. Court of Appeals of the District of Columbia, stating that the FAA's allocation of fixed and common costs violated the statutory directive and that the fees should be directly related to the agency cost of providing services. This confirms that the previous **rule** was prepared and enacted without appropriate consultations and consideration of parties involved.

It was understood that the FAA at that time had a **statutory** mandate to proceed quickly, because U.S. Congress sought rapid action **from** the agency to begin recovering **costs** of services provided during fiscal year 1997. Now, almost 3 years have passed. It is the governments' opinion that the FAA should have revert to the normal procedure, under the **APA (5 U.S.C. § 553)**, and publish a proposed rule.

The governments would like to remind the Department of State that their representatives had urged the FAA to pursue an **early**, open and substantive dialogue on its future proposal. This led to a special briefing session held on February 25, 1999, and an informal **meeting** with FAA Assistant **Administrator**, Mr. David **Traynham**, held almost a year **later** on February, 16, 2000. At these occasions FAA representatives indicated that they were open to consultations with all interested parties, and they will be ready to take into account views expressed during the comment period.

The governments would like to reiterate that under procedures recommended by the International **Civil** Aviation Organization, and under many of the bilateral agreements between the United States and most of the nations whose governments are party to this Note, advanced consultations are required prior to the effectiveness of the Interim final Rule. These consultations can only have **significance** if there is a **sufficient** exchange of **accurate** information between experts to make a determination as to whether the fees proposed are just, reasonable and nondiscriminatory- Such exchange and consultations can not take place within a period of **60** days, as announced in the Interim Final Rule.

Consequently, the Governments request that, in order to honor its international. obligations, the United States extend the comment period and delay the implementation of the Interim Final Rule until significant and comprehensive consultations with all parties concerned have been achieved.

The Governments further request the State Department to draw to the attention of the Department of Transportation and the Federal Aviation Administration the contents of this Note.

The Embassies avail themselves of the opportunity to renew to the Department of State the assurance of their highest consideration.