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FOR FURTHER INFORMATION CONTACT: Randy Fiertz (202) 267-7140, Acting Director, Office of Performance Management (APF-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: The FAA is sending letters to know major users and other interested entities about the reestablishment of "overflight" fees. These fees will be charged for ATC and related services provided to certain aircraft that fly through U.S.-controlled airspace, but neither take off from nor land in the United States. Such fees are comely referred to as "overflight" fees. The FAA is taking this action to give the public notice of the letter being sent to affected parties concerning reestablishment of "overflight" fees. This notice and a copy of the letter below will be available for public inspection in the docket at U.S. Department of Transportation Dockets, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590, between 10 a.m. and 5 p.m. weekdays, except Federal holiday. The docket may also be examined electronically through the Dockets Management System (DMS) at the following Internet address: <http://dms.dot.gov/> at any time.

Issued in Washington, DC on March 6, 2000.

Michael E. Chase,
Acting Assistant Chief Counsel for Regulations.

Letter to Users of Certain Overflight ATC Services

Dear _____:

The Federal Aviation Administration (FAA) will soon announce the reestablishment of user fees that will be charged for air traffic control (ATC) and related services provided to certain aircraft that fly through U.S.-controlled airspace, but neither take off from, nor land in, the United States. Such fees are commonly referred to as "overflight" fees.

The implementation of these fees is required by the Federal Aviation Reauthorization Act of 1996 (The Act). The Act states that the FAA should establish overflight fees through the publication of an Interim Final Rule. Under the Interim Final Rule process, the fees will take effect shortly after publication in the **Federal Register**. The FAA will invite public comment on the Interim Final Rule. After thorough consideration of the comments received, the FAA will make any appropriate changes and then issue a Final Rule.

You may recall that the FAA published an Overflight Fee Interim Final Rule in March 1997. The costs upon which those overflight fees were based were determined using FAA's 1995 Cost Allocation Study. On January 30, 1998, the U.S. Court of Appeals for the District of Columbia set aside the 1997 rule, concluding that the FAA had used an

incorrect methodology to allocate fixed and common costs. As a result of the Court's ruling, the FAA immediately suspended fee collections, subsequently refunded the \$40 million in fees that had then been collected, and withdrew the Interim Final Rule.

Although the Court of Appeals' ruling effectively terminated the 1997 overflight fees, the Act remains in effect. To comply with the Act and accurately establish the costs of ATC services using the best available information, the FAA is developing new overflight fees using actual fiscal year 1999 cost data from its new cost accounting system. This system has been reviewed carefully by accounting and financial professionals, both inside and outside the government, to ensure that the ATC enroute and oceanic cost data used are the most accurate available.

The Office of Inspector General of the Department of Transportation recently completed an in-depth review of the fiscal year 1998 cost accounting data and the flight data used to derive the new fees. A copy of the Inspector General's report can be found at www.oig.dot.gov/avauds.htm (Report no. FE-2000-024, dated December 17, 1999). The report includes recommendations, which the FAA has acted upon, including basing the overflight fees on actual cost accounting data for fiscal year 1999.

I hope the above information is useful to you in your planning. Our regulatory procedures do not allow me at this time to provide further details beyond those contained in this letter. Once the Interim Final Rule has been published, however, there will be ample opportunity for you to present your views—including a public meeting that will be announced when the Interim Final Rule is published. I look forward to working with you more closely at that time.

While the Interim Final Rule process is not the customary rulemaking approach used by the FAA, it is required by law for this particular rulemaking. Nevertheless, I can assure you that all comments received will be fully considered by the FAA before the Final Rule is issued.

Sincerely,

Donna R. McLean,
Assistant Administrator for Financial Services.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-00-7018] - /

Fees for FAA Services for Certain Flights; Public Availability of Letter

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces the availability to the public of a letter to known users of "overflight" services concerning the reestablishment of certain fees. This letter states that these fees will be charged for air traffic control (ATC) and related services provided to certain aircraft that fly through U.S.-controlled airspace, but neither take off from nor land in the United States.