(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a replacement P/N 97867–1 or P/N 97867–3 hydraulic hose assembly on an airplane, unless the hydraulic hose assembly is a serviceable part as defined in paragraph (h) of this AD.

(j) Reporting Requirements

At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, submit a report of the results (including no findings) of the inspection required by paragraph (g) of this AD. Send the report to Fokker Services B.V., Technical Services, Service Engineering, P.O. Box 1357, 2130 EL Hoofddorp, The Netherlands, email *technicalservices@fokker.com.* The report must include the type of damage found and airplane flight cycles and also any no findings.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2015–0077, dated May 6, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6895.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker Service Bulletin SBF28–32–164, dated January 14, 2015.

(ii) Fokker Service Bulletin SBF100–32–166, dated January 14, 2015.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 15, 2016.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28341 Filed 11–28–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No.: FAA–2015–3597; Amdt. No. 187–36]

RIN 2120–AK53

Update of Overflight Fee Rates

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule updates existing overflight fee rates using Fiscal Year (FY) 2013 FAA cost accounting and air traffic activity data. Overflight fees are charges for aircraft flights that transit U.S.-controlled airspace, but neither land in nor depart from the United States. Overflight fee rates were last updated in 2011. As a result, the FAA is not recovering the full cost of the services it provides. The FAA is increasing the rates for enroute and oceanic overflights based on Fiscal Year (FY) 2013 cost and air traffic activity data. The FAA is phasing in this rate increase over 3 years in equal percentage terms. This is a less burdensome approach than the alternative of phasing in the new rates in equal absolute terms, and is the same methodology used in the previous rulemaking. Finally, the FAA is making several organizational and clarifying revisions to the overflight fee requirements.

DATES: This rule is effective January 1, 2017.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How to Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Aleksandra Damsz, Financial Analyst, Office of Financial Analysis, AFA–400, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8055; email *aleksandra.damsz@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On August 28, 2015, the FAA published the notice of proposed rulemaking (NPRM), Update of Overflight Fee Rates (80 FR 52217). This rulemaking updates the existing overflight fees (last updated in a 2011

Final Rule) using more current FAA cost accounting and air traffic activity data.

The FAA is increasing the rates for enroute and oceanic overflights over three 12-month intervals to bring cost recovery from FY 2008 to FY 2013 recovery. The following table shows the increases:

TABLE 1—RATE INCREASES FOR ENROUTE AND OCEANIC OVERFLIGHTS

Revision date	Enroute rate (per 100 nautical miles)	Oceanic rate (per 100 nautical miles)
Current Rate	$56.86	$21.63
January 1, 2017 to January 1, 2018	58.45	23.15
January 1, 2018 to January 1, 2019	60.07	24.77
January 1, 2019 and Beyond	61.75	26.51

Each fee rate will be effective for a 12-month period. However, the FAA will not make fee adjustments based on fiscal year or calendar year, but rather in 12-month intervals based on the effective date of this final rule.

The FAA received 74 comments to the NPRM. The Aircraft Owners and Pilots Association (AOPA) and 37 individuals (25 of whom were part of a form letter campaign) raised the issue that the $250 overflight fee billing threshold has not been raised while the fee rate has been raised. As a result, flights that were not getting billed in previous years because they were below the $250 threshold amount are now receiving a bill. Based on the comments received and subsequent analysis, the FAA is increasing the overflight fee billing threshold from $250 to $400.

The FAA also finalizes several organizational and content revisions to part 187 to clarify the overflight fees requirements.

Summary of Costs and Benefits of the Final Rule

The higher overflight rates based on FY 2013 unit costs will allow the FAA to move closer to full cost recovery of air traffic control services already being provided to operators. The present value of the fee increases through the third 12-month interval—when the full increase in rates will have taken place—is $9,560,692 for foreign operators and $141,888 for domestic operators. The increased fees provide greater incentives for foreign and domestic operators to economize on U.S. air traffic control facilities and U.S.-controlled airspace, thus increasing the efficient allocation of resources.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Chapter 453, Section 45301, *et seq.* Under that Chapter, the FAA is charged with prescribing regulations for the collection of fees for air traffic control and related services provided to aircraft, other than military and civilian aircraft of the United States Government or a foreign government, that transit U.S.-controlled airspace, but neither take off from nor land in the United States (''overflights''). This final rule is within the scope of that authority.

III. Background

A. History of Overflight Fees

The FAA's overflight fees were initially authorized in section 273 of the Federal Aviation Reauthorization Act of 1996. After a series of legal challenges and refinements, overflight fee rates were implemented in their current form in 2001. Since that time the fee rates have been based on cost data from the FAA's Cost Accounting System and air traffic data from the FAA's Traffic Flow Management System (TFMS). They were last updated in 2011. The 2011 final rule updated the existing rates by using cost and activity data for FY 2008. Because the rates had not been updated for 9 years, and the total enroute and oceanic rate increases were significant, the FAA decided to phase in the increases. The 2011 final rule phased in the increases over a 4-year period, with rate increases occurring on October 1 of 2011, 2012, 2013, and 2014. Thus, on October 1, 2014, the FAA was recovering the amounts that would have produced full cost recovery in FY 2008.

B. Aviation Rulemaking Committee

The FAA established and chartered an Overflight Fees Aviation Rulemaking Committee (ARC) consisting of foreign air carriers (and trade associations of those carriers) that are subject to the FAA's overflight fees. The ARC was chartered on May 1, 2013, with the task to provide the FAA a report detailing recommendations for tasks moving forward with the process of updating the overflight fee rates.

The ARC met with the FAA on June 12, 2013, and on January 23, 2014. On February 14, 2014, the ARC submitted several recommendations on future overflight rate updates. For a full discussion of the ARC's recommendations and FAA's responses, see the NPRM published at 80 FR 52218–52219.

IV. Discussion of the Final Rule

The FAA received 74 comments to the FAA's notice of proposed rulemaking to update the fee rates. Sixty-eight comments were received from individuals. Of the 68 individual comments received, there were 25 commenters who commented as part of a form letter campaign that focused on the interests of general aviation pilots flying from the U.S. to the Caribbean who make one or more intermediate stops enroute due to the aircraft's limited range or human physiological needs.[1] The FAA also received comments from three carriers and three associations: Carriers included British Airways, Lufthansa Airlines and Air Canada, and associations included National Airlines Council of Canada (NACC), International Air Transport Association (IATA) and Aircraft Owners and Pilots Association (AOPA).

Commenters raised a total of 17 issues. These issues, as well as FAA's responses, are discussed below.

A. Overflight Fee Billing Threshold

AOPA and 37 individuals (25 of whom were part of the form letter campaign) raised the issue that the $250 overflight fee billing threshold should be raised. Their concern was that while the overflight fee rate has increased, the billing threshold has not increased. As a result, flights that were not being billed in previous years because they

[1] The flight leg between the intermediate fuel or rest stop outside of the United States and the destination outside of the United States qualifies as an overflight generating a fee where the flight leg transits U.S.-controlled airspace.

were below the threshold are now receiving a bill. Commenters also asked that the threshold be increased to $450 and that the amendment should provide for automatic adjustments to correspond with future increases in overflight fees rates.

FAA concurs that the overflight fee billing threshold should be increased. In consideration of the comments, the FAA has analyzed the minimum threshold for overflight billings and has decided to increase this minimum threshold from $250 to $400 as part of this rulemaking.

Overflight fee rates (per 100 nautical miles) in the August 2001 final rule were $33.72 for enroute and $18.94 for oceanic and the rule included a minimum billing threshold of $250. The NPRM proposed the following rates over a 3 year period:

TABLE 2—PROPOSED ENROUTE AND OCEANIC FEE RATES

Revision date	Enroute rate (per 100 nm)	Oceanic rate (per 100 nm)
Current Rate	$56.86	$21.63
October 1, 2015	58.45	23.15
October 1, 2016	60.07	24.77
October 1, 2017	61.75	26.51

This final rule adopts the rates as proposed. The rates under this final rule are 83% higher for enroute and 40% higher for oceanic as compared with the rates in the 2001 final rule ($33.72 for enroute and $18.94 for oceanic). The minimum billing threshold of $250 has been updated to account for the percentage growth in the fee rates, resulting in a threshold of $457.81 for enroute and $349.92 for oceanic. A weighted average of the two rates is then calculated using actual FY 2014 enroute and oceanic miles to calculate the updated billing threshold of $400.

B. Excluding General Aviation

AOPA and 67 individuals (25 of whom were part of a form letter campaign) commented that U.S. general aviation should be exempt from paying overflight fees. These commenters stated that Congress did not intend to impose overflight fees on general aviation when it granted FAA authority to establish overflight fees.

Commenters also stated that charging general aviation traffic does little to recover air traffic control costs and general aviation traffic should not be burdened with overflight fees since they are an existing active consumer of fuel and other taxes which fund FAA and aviation services.

Further, commenters stated their view that because the FAA excluded enroute Guam and San Juan costs from total costs in the NPRM, that FAA therefore acknowledged that these fees should not apply to U.S. general aviation traffic.

The FAA notes that Congress did not differentiate between general aviation and commercial aviation in the overflight fees statute. Title 49 U.S.C. 45301 (a) states that ''[t]he Administrator shall establish a schedule of new fees, and a collection process for such fees, for . . . [a]ir 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.'' Similarly, under the FAA's Fee Regulation, 14 CFR part 187, App. B, any person who conducts a flight through U.S.-controlled airspace that does not include a landing or takeoff in the United States must pay a fee for the FAA's rendering or providing certain services, including but not limited to the following: Air traffic management; communications; navigation; radar surveillance, including separation services; flight information services; procedural control; and emergency services and training.

Consistent with the statutory and regulatory requirements, the FAA is required to collect overflight fees from any person who transits US airspace and neither takes off or lands in the United States. Neither the statute nor the regulation permit the FAA to exclude general aviation operators or to consider whether one aviation user group utilizes air traffic control services more than another. Additionally, there is no statutory or regulatory exception to the overflight fee requirement when persons covered by the requirement pay fuel or other related aviation taxes.

With regard to enroute Guam and San Juan costs and miles being excluded, the FAA has determined that the NPRM incorrectly stated that the combined enroute Guam and San Juan control facilities ''may handle a mix of general and commercial aviation traffic.'' The FAA had intended to state that these control facilities ''may handle a mix of terminal and enroute aviation traffic.'' This correction does not impact the underlying analysis.

Overflight fees are assessed on all traffic types with the exceptions noted in the August 28, 2015 NPRM, which stated that ''The FAA's costs used for this fee calculation are total costs because the services provided benefit all system users, including overflight users''. 80 FR at 52218. While combined control facilities may handle a mix of Terminal and Enroute aviation traffic, this is not an issue because 49 U.S.C. 45301, as noted above, does not distinguish or exempt general aviation users from the fees.

C. General Aviation Charged for Same Day Fuel Stops

AOPA and 32 individuals (25 of whom were part of a form letter campaign) stated that the FAA's proposal would impose overflight fees on U.S. registered general aviation operations that land in or depart from the United States but also make intermediate stops enroute due to the aircraft's limited range or human physiological needs. AOPA provided an example as follows:

> [A]n aircraft departs from an airport in Florida destined for the Dominican Republic in the Caribbean, but stops enroute at Nassau to refuel before continuing on to the Dominican Republic that same day. While overflight fees will not be assessed for the first leg of the flight between Florida and the fuel stop in Nassau, overflight fees under the NPRM will be assessed for the second leg of the flight between the fuel stop and the Dominican Republic. In comparison, a non-stop flight between Florida and the Dominican Republic would not result in any overflight fees.

The commenters also noted that when general aviation is charged for same-day fuel stops, a significant amount of time is wasted in working with the FAA to get these charges reversed.

The FAA emphasizes that overflight fees are assessed based on an evaluation of each flight. During the evaluation process, each flight is reviewed to consider whether an intermediate stop for fuel has occurred. A flight is not considered to be an overflight (*i.e.,* triggering an overflight fee) if it departs or lands in the United States and the FAA can determine that an intermediate

stop for fuel occurred. In that case, no fee is assessed. The amount of time on the ground at an intermediary location is considered when making the determination.

D. Compromising Safety

AOPA and 6 individuals stated that by failing to recognize the limitations of most general aviation aircraft, the proposed rule may encourage non-stop flights to or from U.S. airports in order to avoid overflight fees, even though an intermediate fuel stop would increase the safety of the operation or is otherwise physiologically necessary. Commenters argued that this is not in the best interest of safety. One commenter stated that to avoid the fees ''[t]he pilots will not use air traffic services. They will not travel, or travel unsafely, perhaps to the point of turning off transponders. And with this will cause preventable accidents.''

As previously stated, overflight fees are assessed based on an evaluation of each flight. A flight is not considered to be an overflight if it departs or lands in the United States. This can include intermediate stops for fuel.

Additionally, as discussed previously, the FAA is raising the minimum billing threshold from $250 to $400 as part of this rulemaking action. This will provide for air traffic control services in many instances without the pilot necessarily incurring any cost.

Discussion of turning off transponders is an unlikely scenario and an unnecessary action. Use of a transponder in and of itself will not generate user fees. User fees are based on the filing of a flight plan and receiving air traffic control services such as flight following or instrument flight rules separation services. A discrete transponder code would also need to be assigned to the aircraft. One could continue to use the transponder without incurring any cost, such as squawking 1200, indicating a Visual Flight Rules (VFR) operation without necessarily receiving air traffic control services.

A desire to reduce or minimize the dollar cost associated with any flight does not alleviate a pilot from the duties and responsibilities associated with acting as pilot in command. The pilot in command is the final authority and ultimately responsible for the operational safety of that flight. Pilots avoiding necessary fuel stops and/or turning off transponders to avoid air traffic control services and fees will likely jeopardize the safety of that flight and create unnecessary risk. The overflight fee must be considered part of the planning and associated cost of any flight, where a pilot does not take off or land from an airport located in the United States. Again, intermediate fuel stops that are of a short duration can be considered part of an overall flight that originates or departs from a United States location.

E. Cost Recovery Rate Increase

In the NPRM, the FAA asked for comments on whether it should expedite the increase of overflight fee rates to achieve full cost recovery. IATA, NACC, Lufthansa, Air Canada and British Airways opposed an expedited increase to enable cost recovery and suggested that the overflight fee rates be frozen at their present level until the ARC is re-convened and a new proposal for the rate increases is discussed and agreed upon. Air Canada noted that the Air Transport Agreement between Canada and the United States states that user charges must be ''just, reasonable, and not unjustly discriminatory.''

The FAA has reviewed the feedback on expediting the increase in overflight fee rates for cost recovery and has decided to proceed with the rate increases proposed in the NPRM without expediting them. Congress has directed the FAA to establish and maintain overflight fees ''reasonably related to the Administration's costs.'' To retain the cost-based relationship, that means the FAA must periodically review and revise its overflight fee rates, and that is why the FAA is now proceeding to the final rule to impose the fee rates proposed in the NPRM. The FAA believes that fees ''reasonably related to the Administration's costs'' would necessarily be ''just, reasonable, and not unjustly discriminatory,'' under the Transport Agreement. In addition, the overflight fees are not unjustly discriminatory because they are assessed only on aircraft flights that transit U.S.-controlled airspace, but neither land in nor depart from the United States. Both foreign and domestic operators are charged in the same manner. Those aircraft that do not transit U.S.-controlled airspace pay no fee.

F. Marginal Allocation

Lufthansa, Air Canada, and IATA commented on the issue of the cost base used for the fee calculation and stated two concerns:

The first comment on marginal cost allocation stated generally is that costs for services neither used nor required by overflights should be removed from the cost base. The commenters also expressed concern that the level of overflight fees goes beyond that which is reasonably related to costs for providing air traffic control and related services to these operations. Commenters pointed out that the ARC noted that the amount recovered for non-overflight [2] services has remained unchanged, while overflight fees have continued to rise at a steady pace over the same period. IATA stated that insufficient data has been provided to justify FAA's claim that under the ARC proposal, ''the FAA would have recovered slightly less than 60% for enroute and 50% for oceanic of the total increase between FY 2015 rates (based on FY 2008 costs) and rates using FY 2013 data.''

Second, these commenters asserted that it is difficult to allocate overhead costs in a fair and justifiable manner to the air navigation cost base, specifically to the cost base of overflight charges. They asserted that this is because, contrary to most other air navigation service providers around the world, the FAA does not exclusively provide air traffic control services and hence, according to Air Canada, there is a fundamental problem with the FAA's ''organizational structure and complexity and the size of the overhead cost.''

The FAA notes the cost base concerns raised by Lufthansa, Air Canada, and IATA are not accurate. The methodology for estimating the fee is the same one used in the FY 2011 Final Rule to which the ARC had agreed.

Since the original issuance of the Final Rule relating to overflight fees in August 2001, the statutory standard for the fees was relaxed by Congress to provide that the fees need to be ''reasonably related'' to costs. This is in contrast to the previous standard in effect at the time of the issuance of the original Interim Final Rule in August 2000. That standard provided that the fees needed to be ''directly'' related to the FAA's costs of providing the air traffic control and related services.

The FAA continues to use the same methodology for calculating the fee rates as was used in the 2011 update. The overflight fee rate is calculated by dividing total ATO costs by the total flight miles. The rate calculation methodology is used separately for both enroute and oceanic cost and mile data to derive the overflight fee rate for enroute and oceanic. ATO costs and flight miles used in this calculation are system totals and not related only to overflights. Therefore, there is no need to exclude any costs from the cost base.

[2] ''Non-overflight services'' refers to services provided by the FAA to aircraft that do land in or takeoff from the United States, and operate in U.S. airspace under the direction of the FAA.

The FAA and ARC proposals are both based on FY 13 actual rates. The difference in methodology is that the FAA proposed a 3 year compounded annual growth rate (CAGR) phased-in over 3 years. The ARC proposal is based on a 5 year CAGR that only includes 3 years of phase-in. After year 3 the ARC recommended that a new ARC be re-convened to determine the need for updates after that period. Under the ARC's proposal therefore, the FAA would recover less than the FY13 levels.

In response to IATA's statement that the FAA has not provided the data to support its claim that ''the FAA would have recovered slightly less than 60% for enroute and 50% for oceanic of the total increase between FY 2015 rates (based on FY 2008 costs) and rates using FY 2013 data,'' the FAA provides the following details (per 100 nautical miles):

TABLE 3—COST RECOVERY COMPARISON

	Enroute	Oceanic
FAA Rate—FY 2008 Cost Recovery	$56.86	$21.63
FAA Rate—FY 2013 Cost Recovery	61.75	26.51
FAA Increase	4.89	4.88
ARC Final Proposed Rate	59.75	24.09
ARC Increase	2.89	2.46
ARC Proposed Increase as % of FAA Increase	60%	50%

Inclusion of overhead is a commonly accepted practice in fee setting, is consistent with generally accepted accounting principles, and is a specifically allowable element of cost under Office of Management and Budget (OMB) Circular No. A–25 on User Charges as well as International Civil Aviation Organization's (ICAO'S) Policies on Charges for Airports and Air Navigation Services. In addition, the same Act of Congress that changed the above fee setting standard from ''directly'' to ''reasonably related'' also gave the Administrator sole and final discretion in the determination of FAA costs. 49 U.S.C. 45301(b)(1). Again, the methodology used for determining overhead also remains unchanged from the FY2011 Final Rule and is based on FAA's Cost Accounting System.

G. FAA Costs

Lufthansa, Air Canada, NACC and IATA commented on the issue of increasing FAA costs. They expressed concern over the steady pace at which FAA operational costs continue to rise and their impact on overflight fees. Industry partners are expected to embark on cost control and cost reduction efforts and the FAA is urged to commit to a cost efficiency target that remains below inflation. Also, IATA expressed disagreement with the NPRM stating that the FAA ''believes forecasting based on projected traffic is more appropriate than using arbitrary cost targets'' and stated that it has found that unanticipated and untimely economic occurrences can significantly impact forecast-based traffic projections, resulting in inaccurate accounting of traffic demand, business plans, required resources, and funding streams. As an example, over the past several years, the FAA forecast has consistently overestimated the growth projections for operations in the National Airspace System. Lufthansa suggested freezing the overflight fee rates at their current level and ''reconsider the whole question of overflight fees.''

The issue of FAA's operational costs, and the rate at which they may increase, is outside the scope of this rulemaking. Under the statutory requirement, overflight fees must be ''reasonably related to the Administration's costs, as determined by the Administrator, of providing the services rendered.'' 49 U.S.C. 45301(b)(1). Neither the FAA traffic forecast nor cost targets are used in the fee calculation, but rather fees are calculated based on actual cost and miles.

H. Overflight Fee Calculation Cost Base

Lufthansa, IATA and Air Canada commented on the cost base used for the overflight fee rate calculation. Lufthansa and Air Canada both asserted that Air Route Traffic Control Center's (ARTCC's) have staff dedicated to manage, organize and optimize traffic approaching major airports in metropolitan areas. These working positions and all associated costs are included in the cost base for enroute, as the traffic concerned is still hundreds of miles away from the respective TRACON. As part of the enroute cost base, the costs are partly paid for by overflight fees. However, according to the commenters, overflying traffic does not require those services and hence, these costs should be excluded from the cost base used for the rate calculation. IATA also reiterated that the ARC recommended that the costs for services not used by overflights (*e.g.,* flow control into major airports and approach services at airports and airfields not served by a TRACON) be removed from the cost base.

Lufthansa also commented that it is unacceptable for the FAA to simply qualify services as ''de minimis'' without providing any details and justification. According to Lufthansa, ''[t]he NPRM on overflight fees is about facts and data and transparency of these. The term[] ''de minimis'' is a qualification, but not a quantification, and is not appropriate or acceptable in this context.''

The FAA does not agree that costs relating to flow control should be removed from the enroute cost base. The Traffic Management Unit personnel at the enroute centers are responsible for the safe and efficient flow of all traffic, including overflights, in their airspace, and it would be neither reasonable nor practicable for the FAA to attempt to sort out and exclude the portion of such costs solely attributed to overflights.

Moreover, air traffic flow management is a specifically allowable item for cost recovery under ICAO's Policies on Charges for Airports and Air Navigation Services (ICAO Document 9082).

While it is true that there are low activity airports and airfields that are not served by a TRACON or an air traffic control tower, and that in these instances the air traffic control services are provided by enroute controllers, the level of such activity is sufficiently low that it does not require increased staffing. See 76 FR 43114–43115 (July 20, 2011).

I. Failed ARC Process

British Airways, Air Canada, Lufthansa, IATA and NACC expressed disappointment that the FAA has chosen to dismiss the ARC's recommendations and stated that they viewed the ARC process as failed. They stated concern that the FAA's proposed rule included several new methodologies for which there had not

been any consultation with industry and for which prior indication and relevant information required to accurately determine the cost-based charges had not been provided. Had any prior indication or concerns been raised, these ARC members stated that they could have provided guidance to the Agency. Additionally, these ARC members stated that the FAA released its NPRM one month prior to the current rate expiration date, leaving no time for the ARC members to react to it and develop an alternative that could be supported by all parties.

Under the ARC's May 1, 2013 Charter, the objective of the ARC was to provide ''advice and recommendations on the appropriate amounts for future overflight fees.'' However, the FAA has no obligation to accept the advice and recommendations; it takes the ARC's report under advisement. The agency also is not required to coordinate with the ARC after the ARC has issued its report. In most cases, the ARC would be terminated after its business has concluded.

While the FAA considered the ARC's recommendations, it declined to implement the recommendations. Also, FY 2015 enroute and oceanic overflight fee rates do not have a set expiration date and remain in effect until notice of new rates is published and the new rates are effective. Consequently, the NPRM was not released one month prior to the expiration date of these fee rates.

J. ARC Data Transparency

Lufthansa, British Airways and IATA commented that the ARC was not provided with relevant information such as staffing levels, labor costs, actual and projected traffic growth, and efficiency measures, to be able to accurately determine the cost-based user fee. They stated that without this information it is impossible to accurately determine cost based charges.

The FAA does not concur that information relevant to overflight fees was kept from the ARC. The FAA provided detailed responses to ARC questions in 2013. Moreover, during the ARC meetings, the FAA provided the following relevant information to ARC members:

- Number of airports providing service for approach and departure services
- Difference between lower and higher level sectors
- IFR flights operating from these airports
- Inclusion and exclusion in cost allocation for enroute
- Stable and decreasing expenses from 2010 to 2013
- Specific FAA initiatives to improve efficiency
- Classification of flight miles for IFR and VFR traffic
- Detailed description and breakout of overhead costs, staffing levels, and capital expenditure
- Methodology for overflight fee calculation
- Results of sequestration on ATO costs
- Current rates and collection data for overflight fees
- Use of overflight fee collections
- Cost Accounting System cost of service documents
- Enroute and oceanic flight miles
- 2013 President's Budget (budget in effect when the ARC met)
- 2013 Senate Appropriations Bill
- Detailed summary of FAA budget breakdown
- Detailed summary specific to FAA operating budget
- Detailed summary specific to FAA capital programs
- Detailed summary specific to FAA NextGen programs
- Detailed summary specific to FAA NextGen Research, Engineering & Development
- Air Traffic Controller Workforce headcount, hires, and attrition
- System wide Traffic and Controller Trends

The data stated above as well as responses to the ARC's questions include the details to accurately determine cost based fee charges.

K. Guam and San Juan Costs and Miles Exclusion

Lufthansa noted FAA's proposal in the NPRM to exclude enroute Guam and San Juan costs from total FAA costs. Lufthansa noted that while it did not disagree with the exclusion in principle, it did not see in the NPRM how the exclusion would impact cost base, traffic, and fees. Lufthansa then questioned why this change and others in the NPRM had not been brought to the attention of the ARC.

The FAA response is as follows:

As an initial matter, the ARC concluded business on February 14, 2014, when it issued its recommendations. It was not until August 28, 2015, however, that FAA announced in the NPRM that it was proposing to exclude Guam and San Juan costs from total FAA costs. As a result, this change could not have been brought before the ARC, which was terminated 18 months prior to the time that the NPRM was issued.

Costs:

Guam and San Juan facilities are being excluded from the enroute costs to be consistent with Honolulu. This determination was made after reviewing the ARC recommendations. As a result, the FAA enroute costs have decreased.

Traffic Mileage:

The enroute miles associated with Honolulu and oceanic miles for Guam were double-counted when presented to the ARC as they are also counted as part of the Oakland oceanic airspace. It was determined that the mileage was to be removed for these facilities. As a result, the total flight miles (GCD-nm) for enroute and oceanic were lower.

Net Impact:

With the decrease in costs and flight miles for enroute, the per 100nm fee decreased. On the oceanic side, the costs remained un-changed while the flight miles decreased, resulting in an increased per 100 nm fee.

This change was not brought to the attention of the ARC before the publication of the NPRM because, at the time of the change, the FAA had already received the ARC's recommendations.

TABLE 4—IMPACT OF THE GUAM AND SAN JUAN CHANGE

	Prior to Guam and San Juan change	Post Guam and San Juan change
Enroute		
FAA Cost	$4,645,629,212	$4,597,808,058
Total Flight Miles (GCD-nm)	7,504,243,185	7,445,668,883
Rate Prior to Change (/100nm)	$61.91	$61.75
Oceanic		
FAA Cost	$184,391,603	$184,391,603

TABLE 4—IMPACT OF THE GUAM AND SAN JUAN CHANGE—Continued

	Prior to Guam and San Juan change	Post Guam and San Juan change
Total Flight Miles (GCD-nm)	708,610,831	695,620,413
Rate After Change (/100nm)	$26.02	$26.51

Enroute fees are $61.75 per 100 nautical miles (based on FY13 cost recovery) and oceanic fees are $26.51/100 nautical miles (based on FY13 cost recovery).

L. Weight-Based Fee Rates

Thirteen individuals stated that it is not fair that small planes are charged the same fee rate as large commercial planes. They suggested that a tiered rate be charged on only U.S.-registered aircraft with a not-to-exceed amount depending upon the aircraft total gross weight similar to landing fees at larger airports or that the rate be based on the number of seats on the plane.

The FAA does not concur that the fee rates should be charged based on weight or the number of seats on the aircraft. As noted above, the FAA is required to collect overflight fees from any person who transits US airspace and neither takes off or lands. 49 U.S.C. 45301(a); 14 CFR part 187, App. B. The statutory requirement is that the overflight fees be ''reasonably related to the Administration's costs, as determined by the Administrator, of providing the services rendered.'' 49 U.S.C. 45301(b). No distinction is made in the law between types of aircraft, aircraft weight, or number of seats. In addition, VFR aircraft utilizing flight following services are provided similar service as IFR traffic. They are both charged overflight fees.

M. General Aviation Excluded From the Aviation Rulemaking Committee

One individual stated that general aviation was not represented in the ARC, which was established to examine overflight fees and provide the FAA recommendations on future overflight fee rates.

The 2013 ARC inadvertently did not include representatives from general aviation because historically, members of this ARC and its predecessors were primarily composed of the parties from the extensive 1997–2003 overflight fees litigation—the Air Transport Association of Canada and seven international air carriers. Representatives from general aviation were not parties to the litigation. Membership of the 2013 ARC appears to have been an outgrowth of the 2008 overflight fees ARC, which appears to have been an outgrowth of the 2004 ARC on overflight fees. According to the August 26, 2009 ARC Report, ''[a]s 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.''

Despite the fact that general aviation was not represented on the ARC, general aviation was provided an opportunity to review and comment on the final rule. Twenty-five of the 74 comments that the FAA received in response to the NPRM were filed by advocates of general aviation. As noted above, the general aviation commenters raised the issue that the $250 overflight fee billing threshold had not been raised while the fee rate had been raised. As a result, flights that were not getting billed in previous years because they were below the $250 threshold amount were now receiving a bill. As noted, the FAA concurred with the general aviation commenters that billing threshold should be increased. In consideration of the comments, the FAA will be increasing the minimum threshold from $250 to $400 as part of this rulemaking.

N. General Aviation Visual Flight Rules

Lufthansa, Air Canada, NACC and IATA asked for further clarification on the timeline of VFR flights being included in the calculation of overflight fees. Additionally, three individuals stated that because VFR traffic neither requires nor receives the same level of service as IFR traffic, VFR traffic should be charged less or excluded from the overflight fees requirement.

VFR traffic utilizing flight following services are already included in the total mileage. Hence, there is no need for a timeline. In order to provide VFR flight following services, air traffic control generates a ''flight plan'' within FAA systems that is captured in the TFMS. This allows the aircraft call-sign (typically tail number for VFR flights) to be displayed and tracked against the discrete beacon code assigned by air traffic control. Non-discrete beacon codes (*e.g.,* 1200) are not provided by TFMS and therefore not captured in the overflights data. These VFR flights would not be assessed an overflight fee. This is consistent with the recommendation.

Air traffic control actively monitors and controls VFR flight following aircraft providing them with updates and guidance when necessary. VFR aircraft utilizing flight following are provided similar service as IFR traffic.

O. Great Circle Distance

Lufthansa, Air Canada, IATA and NACC commented on the use of great circle distance for calculating the nautical mile distance used in the overflight fee rate calculation. They stated that great circle distance was not part of the ARC agenda, nor was it discussed in terms of calculating overflight fees and stress the importance of ensuring the adoption of great circle distance be revenue neutral to the FAA. Further, they ask that a clearly defined GCD catalogue be published and consulted with airline users before it takes effect and that the FAA provide examples of same-route cost comparisons between great circle distance, as proposed, versus cost data (via the Cost Accounting System) and air traffic data (from TFMS).

The FAA has not changed the application of great circle distance within overflights. The great circle distance methodology is the same as used in the previous rulemaking (2011 Final Rule) with no change to the way the fees are generated. The formula in the rule was rewritten to enhance clarity and transparency concerning how the fees are assessed. Since the great circle distance use and methodology remains the same, FAA has determined there is not a need to consult with the airline users before taking effect (since it has already been in effect), nor is there a need for a great circle distance catalogue to be published.

P. Regulatory Costs on Small Entities

According to IATA, the NPRM indicates that there were 469 domestic operators (mostly small entities) that overflew U.S. controlled airspace in FY 2013. The NPRM provided assurances that the rulemaking would not have a significant economic impact on small entities (estimated at an average increase of $36.50 per operation). In its comments, IATA asked for further detail

as to the air traffic control services rendered to these domestic operators: ''how much they cost and (most importantly) who is covering those costs.'' IATA stated that its members should not be required to cover the costs incurred by these domestic operators.

The FAA concurs that IATA members are not and will not be assessed costs incurred by domestic operators. Any aircraft that overflies U.S. controlled airspace will be charged the same overflight fee, calculated based on systemwide cost and traffic, regardless if it is a domestic US or foreign operator. Regardless of the level of exception, which is applied to both domestic and foreign carriers, operator origin does not affect overflight fee billings.

Q. Meaning of $250 Billing Threshold Language

One individual commented that the NPRM's ''wording of Section 187.55(b) changes the wording in the current rules from a prohibition on the FAA sending an invoice when monthly fees are below the threshold to a statement that the FAA will send an invoice when monthly fees are above the threshold.'' The commenter further stated that, if strictly interpreted, this would allow the FAA ''to send invoices when fees are below the threshold at its discretion'' and would require invoices ''when fees are above the threshold.'' The commenter advised that this would be ''opposite to the original meaning,'' and recommended that ''the prohibition on below-threshold invoices should be restored as this appears unintentional. If intentional, the FAA has offered no justification for the change as would be required by the rulemaking process.''

The current regulatory provision addressing invoicing of overflight fees includes billing and states that the FAA will send an invoice to each user that is covered by this appendix when fees are owed to the FAA. If the FAA cannot identify the user, then an invoice will be sent to the registered owner. No invoice will be sent unless the monthly (based on Greenwich Mean Time) fees for service equal or exceed $250. Users will be billed at the address of record in the country where the aircraft is registered, unless a billing address is otherwise provided. (14 CFR part 187, appendix B, paragraph (f)(1).)

Under this provision, if the overflight fee amount owed is less than $250, no invoice will be sent and no billing results. Overflight fees are only assessed when the invoice amount is $250 or more.

In the NPRM, FAA suggested regulatory text that would replace the language in appendix B relating to invoicing. (The NPRM proposed to remove and reserve appendix B). (80 FR 52217, 52224 (Aug. 28, 2015).)

The FAA does not agree that the change in wording would permit the agency to issue invoices for fees when the fee amount is below the $250 threshold. The FAA also does not agree with the comment that the change would be ''opposite to the original meaning.'' As adopted in this final rule, the proposed language in section 187.55 makes no substantive change. It does nothing different than the existing appendix B provision. In both cases, the FAA will send an invoice if fees are owed. In both cases, if the fees equal or exceed $400, as adjusted from $250 based on the comments received, the FAA will send an invoice. If the fees are less than $400, as adjusted from $250 based on the comments received, then the FAA will not send an invoice and no fees will be owed for the services rendered. As indicated in the NPRM, the FAA proposed this change and others as ''organizational changes to part 187 to clarify the overflight fee requirements.'' 80 FR 52220. The NPRM proposed no substantive changes to the current regulatory provision addressing invoicing of overflight fees found in appendix B, paragraph (f)(1). ''The proposed billing and payment procedures in new § 187.55 are unchanged from those in existing Appendix B.'' 80 FR 52220.

V. Summary of Regulatory Text Changes

The changes to the existing regulatory text made pursuant to this final rule generally reflect ''organizational changes to part 187 to clarify the overflight fee requirements.'' 80 FR 52220.

The FAA has revised the authority citation for part 187 to reflect current law.

In § 187.1, ''Scope,'' the FAA has removed the duplicate reference to Appendix A, removed the reference to Appendix B because Appendix B is being removed, and added a reference to Appendix C that inadvertently had not been added when Appendix C (computation of fees for production certification-related services performed outside the United States) was added.

The FAA has added a new § 187.3, ''Definitions,'' section to the rule, which revises four existing definitions from former Appendix B and adds a new definition for ''great circle distance'' consistent with the FAA's method used for calculating overflight fees.

The FAA has added a new § 187.51, ''Applicability of overflight fees,'' in which subparagraph (a) specifies who must pay an overflight fee. The FAA has added a new subparagraph (d) to address fees for flights through U.S.-controlled airspace covered by an FAA agreement or other binding arrangement. The FAA periodically enters into agreements with foreign states, regional groups of states, or foreign air navigation services providers to set the terms for the FAA's management or control of foreign airspace among other air navigation services provided by the FAA.

The FAA has added a new § 187.53, ''Calculation of overflight fees,'' which in subparagraph (a) retains the formula for calculating overflight fees from the former Appendix B but also clarifies the explanation of calculating that fee. Subparagraph (b) addresses how miles flown through each segment of airspace will be calculated, using great circle distance (GCD), from the point of entry into U.S.-controlled airspace to the point of exit from U.S.-controlled airspace. Subparagraph (c) includes a table providing the rate for each 100 nautical miles flown through enroute or oceanic airspace. Subparagraph (d) provides the mathematical formula for the total overflight fee. Subparagraph (e) states that the FAA will review the rates described in this section at least once every 2 years and will adjust them to reflect current costs and volume of services provided.

In § 187.55, ''Overflight fees billing and payment procedures,'' are unchanged from those in former Appendix B.

VI. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects

of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

This rule will institute a 3-year phase-in of rate increases for oceanic and enroute overflights, with rates per 100 nautical miles increasing in three 12-month intervals to $23.15, $24.77, and $26.51 for oceanic flights, and to $58.45, $60.07, and $61.75 for enroute flights. The final rate of $26.51 for oceanic services, reached at the end of the third 12-month interval, is derived from the FAA's FY 2013 total cost of providing these services ($184,391,603) divided by the total nautical miles (695,620,413 nm) flown by operators (overflights and non-overflights) in oceanic airspace. An analogous calculation is made to obtain the third 12-month interval rate of $61.75 for enroute services ($4,597,808,058/7,445,668,883 nm). These higher rates based on FY 2013 unit costs will allow the FAA to move closer to full cost recovery of air traffic control services already being provided to operators.

Tables 5 and 6 show estimates of the increase in overflight fees for domestic operators and foreign operators for the three 12-month intervals, using FY 2013 overflight mileage totals, thus assuming no annual growth. As the tables show, the present value (at a 7 percent discount rate) in 2013 dollars of the projected fee increases through the third 12-month interval—when the full increase in rates will have taken place—is $141,888 for domestic operators and $9,560,692 for foreign operators. The updated fee rates will provide greater incentives for foreign and domestic operators to economize on U.S. air traffic control facilities and U.S.-controlled airspace, thus increasing the efficient allocation of resources.

TABLE 5—DOMESTIC OPERATORS—OVERFLIGHT FEES

Domestic Operators	Current	Year 1	Year 2	Year 3
Oceanic Fees (per 100 nm)	$21.63	$23.15	$24.77	$26.51
Oceanic Billings w/o Final Rule	528,616	528,616	528,616	528,616
Oceanic Billings w/Final Rule	528,616	565,707	605,400	647,878
Increase in Oceanic Billings	0	37,091	76,784	119,262
Enroute Fees (per 100 nm)	56.86	58.45	60.07	61.75
Enroute Billings w/o Final Rule	634,376	634,376	634,376	634,376
Enroute Billings w/Final Rule	634,376	652,064	670,245	688,933
Increase in Enroute Billings	0	17,688	35,869	54,557
Increase in Overflight Billings	0	54,779	112,653	173,819
PV Increase in Overflight Billings	0	51,195	98,395	141,888

TABLE 6—FOREIGN OPERATORS—OVERFLIGHT FEES

Foreign Operators	Current	Year 1	Year 2	Year 3
Oceanic Fees (per 100 nm)	$21.63	$23.15	$24.77	$26.51
Oceanic Billings w/o Final Rule	28,072,427	28,072,427	28,072,427	28,072,427
Oceanic Billings w/Final Rule	28,072,427	30,042,152	32,150,083	34,405,920
Increase in Oceanic Billings	0	1,969,724	4,077,656	6,333,493
Enroute Fees (per 100 nm)	56.86	58.45	60.07	61.75
Enroute Billings w/o Proposed Rule	62,543,288	62,543,288	62,543,288	62,543,288
Enroute Billings w/Proposed Rule	62,543,288	64,287,136	66,079,607	67,922,055
Increase in Enroute Billings	0	1,743,848	3,536,318	5,378,767
Increase in Overflight Billings	0	3,713,572	7,613,974	11,712,259
PV Increase in Overflight Billings	0	3,470,628	6,650,340	9,560,692

Notes: 1. Rates for overflights are per 100 nautical miles. 2. Fees are in U.S. dollars. 3. Values are discounted back to the effective date of the rule at a 7% discount rate.[3] 4. Fees are slightly overstated in that we do not account for the fact that under the old rule operators incurring a bill of less than $250 were not charged, and under the new rule operators incurring a bill of less than $400 will not be charged. Over the 3-year period, FY2013–FY2015, monthly fees of less than $250 were small, constituting between 0.3% and 0.4% of annual total fees, and monthly fees of between $250 and $400 were smaller, constituting between 0.2% and 0.3% of annual total fees.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, subsection (b)) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to

[3] Office of Management and Budget, Circular A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,'' October 29, 1992, p. 8.

regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

While the FAA did not receive comments on the regulatory flexibility analysis, the FAA did receive comments from 25 individuals and from AOPA, an industry group representing small entities. They commented that the overflight fees should not be applied to general aviation aircraft and that the fees went up but the $250 threshold was not changed. The FAA notes that Congress did not differentiate between general aviation and commercial aviation in the overflight fee statute. AOPA commented that with the fee increase users were now paying fees when they exceeded the $250 threshold. In response, the FAA has raised the threshold to $400 in this final rule.

We ranked in descending order all 469 domestic operators based on their overflight fees for fiscal year 2013 and found that the 14 top ranked operators accounted for more than 40% of that year's total domestic overflight fees. Of these 14 operators we identified 4 as small entities (using a size standard of 1,500 or fewer employees) and found all of them to have an increase in overflight fees as a percentage of annual revenues to be less than 1 percent.[4] [5] We believe this rule does not impose a significant economic impact on those small entities.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. ICAO standards allow providers of navigation services to require users of these services to pay their share of the related costs. The FAA has determined that this rule primarily affects foreign commercial operators. The recovery of costs of providing air navigation services is consistent with ICAO standards and international practice. Foreign operators will be charged a fee only if they use U.S.-controlled airspace without taking off or landing in the U.S., and U.S. operators will be charged in the same manner. Accordingly, the FAA does not believe this rule will create an unnecessary obstacle to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155.0 million in lieu of $100 million.

This rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this rule. The information used to track overflights (including the information collection necessary to implement this rule) can be accessed from flight plans filed with the FAA. The collection of information from the Domestic and International Flight Plans is approved under OMB information collection 2120–0026.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

The ICAO guidance document on aviation fees and charges, ICAO Document 9082 (Ninth Edition—2012), ICAO's Policies on Charges for Airports and Air Navigation Services, recommends consultations before imposing fees. In addition, Article 12 of the Air Transport Agreement between the United States of America and the European Union and its Member States (April 30, 2007, as amended June 24, 2010) encourages consultation.

By convening an ARC, presenting updated cost and traffic data to the ARC, and considering the ARC's recommendations, the FAA consulted with system users prior to proposing the overflight fee update. 80 FR 52217 (August 28, 2015). Additionally, the FAA invited comments on the proposal as part of its rulemaking process, which permitted participation by all interested parties.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the

[4] Employment and revenue data is from *www.Manta.com.*

[5] Since our overflight fees by operator include both enroute and oceanic overflights, we first calculate the weighted average percentage increase in fees from the final rule, which we find to be 14.95%. To assess the economic impact on any one U.S. operator, we then multiply the operator's 2013 operating fees by 14.95% to estimate the increase in that operator's fees as a result of the final rule. We then divide this estimate by the operator's annual revenue to assess the impact of the final rule on the operator.

categorical exclusion identified in paragraph 5–6.6f and involves no extraordinary circumstances.

VII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it will not be a ''significant energy action'' under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action will have no effect on international regulatory cooperation.

VIII. Additional Information

A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
- Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
- Accessing the Government Publishing Office's Web page at *http://www.fdsys.gov*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket, notice, or amendment number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 187

Administrative practice and procedure, Air transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 187—FEES

■ 1. Revise the authority citation for part 187 to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(f), 106(g), 106(l)(6), 40104–40105, 40109, 40113–40114, 44702, 45301.

■ 2. Revise § 187.1 to read as follows:

§ 187.1 Scope.

This part prescribes fees only for FAA services for which fees are not prescribed in other parts of this chapter or in 49 CFR part 7. The fees for services furnished in connection with making information available to the public are prescribed exclusively in 49 CFR part 7. Appendix A to this part prescribes the methodology for computation of fees for certification services performed outside the United States. Appendix C to this part prescribes the methodology for computation of fees for production certification-related services performed outside the United States.

■ 3. Add § 187.3 to read as follows:

§ 187.3 Definitions.

For the purpose of this part:

Great circle distance means the shortest distance between two points on the surface of the Earth.

Overflight means a flight through U.S.-controlled airspace that does not include a landing in or takeoff from the United States.

Overflight through Enroute airspace means an overflight through U.S.-controlled airspace where primarily radar-based air traffic services are provided.

Overflight through Oceanic airspace means an overflight through U.S.-controlled airspace where primarily procedural air traffic services are provided.

U.S.-controlled airspace means all airspace over the territory of the United States, extending 12 nautical miles from the coastline of U.S. territory; any airspace delegated to the United States for U.S. control by other countries or under a regional air navigation agreement; or any international airspace, or airspace of undetermined sovereignty, for which the United States has accepted responsibility for providing air traffic control services.

■ 4. Add new §§ 187.51, 187.53, and 187.55 to read as follows:

§ 187.51 Applicability of overflight fees.

(a) Except as provided in paragraphs (c) or (d) of this section, any person who conducts an overflight through either Enroute or Oceanic airspace must pay a fee as calculated in § 187.53.

(b) *Services.* Persons covered by paragraph (a) of this section must pay a fee for the FAA's rendering or providing of certain services, including but not limited to the following:

(1) Air traffic management.
(2) Communications.
(3) Navigation.
(4) Radar surveillance, including separation services.
(5) Flight information services.
(6) Procedural control.
(7) Emergency services and training.

(c) The FAA does not assess a fee for any military or civilian overflight operated by the United States Government or by any foreign government.

(d) Fees for overflights through U.S.-controlled airspace covered by a written FAA agreement or other binding arrangement are charged according to the terms of that agreement or arrangement unless the terms are silent on fees.

§ 187.53 Calculation of overflight fees.

(a) The FAA assesses a total fee that is the sum of the Enroute and Oceanic calculated fees.

(1) *Enroute fee.* The Enroute fee is calculated by multiplying the Enroute rate in paragraph (c) of this section by the total number of nautical miles flown through each segment of Enroute airspace divided by 100 (because the Enroute rate is expressed per 100 nautical miles).

(2) *Oceanic fee.* The Oceanic fee is calculated by multiplying the Oceanic rate in paragraph (c) of this section by the total number of nautical miles flown through each segment of Oceanic airspace divided by 100 (because the Oceanic rate is expressed per 100 nautical miles).

(b) Distance flown through each segment of Enroute or Oceanic airspace is based on the great circle distance (GCD) from the point of entry into U.S.-controlled airspace to the point of exit from U.S.-controlled airspace based on FAA flight data. Where actual entry and exit points are not available, the FAA will use the best available flight data to calculate the entry and exit points.

(c) The rate for each 100 nautical miles flown through Enroute or Oceanic airspace is:

Time period	Enroute rate	Oceanic rate
January 1, 2017 to January 1, 2018	58.45	23.15
January 1,2018 to January 1, 2019	60.07	24.77
January 1, 2019 and Beyond	61.75	26.51

(d) The formula for the total overflight fee is:

$$Rij = E*DEij/100 + O*DOij/100$$

Where:

Rij = the total fee charged to aircraft flying between entry point i and exit point j.

DEij = total distance flown through each segment of Enroute airspace between entry point i and exit point j.

DOij = total distance flown through each segment of Oceanic airspace between entry point i and exit point j.

E and O = the Enroute and Oceanic rates, respectively, set forth in paragraph (c) of this section.

(e) The FAA will review the rates described in this section at least once every 2 years and will adjust them to reflect the current costs and volume of the services provided.

§ 187.55 Overflight fees billing and payment procedures.

(a) The FAA will send an invoice to each user when fees are owed to the FAA. If the FAA cannot identify the user, then an invoice will be sent to the registered owner. Users will be billed at the address of record in the country where the aircraft is registered, unless a billing address is otherwise provided.

(b) The FAA will send an invoice if the monthly (based on Universal Coordinated Time) fees equal or exceed $400.

(c) Payment must be made by one of the methods described in § 187.15(d).

Appendix B to Part 187—[Removed and Reserved]

■ 5. Remove and reserve Appendix B to Part 187.

Issued under authority provided by 49 U.S.C. 106(f) and 45302, in Washington, DC, on November 7, 2016.

Michael P. Huerta,

Administrator.

[FR Doc. 2016–28589 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 1005, and 1271

[Docket No. FDA–2016–N–1487]

RIN 0910–AH41

Submission of Food and Drug Administration Import Data in the Automated Commercial Environment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule/regulation to establish requirements for the electronic filing of entries of FDA-regulated products in the Automated Commercial Environment (ACE) or any other electronic data interchange (EDI) system authorized by the U.S. Customs and Border Protection Agency (CBP), in order for the filing to be processed by CBP and to help FDA in determining admissibility of that product. ACE is a commercial trade processing system operated by CBP that is designed to implement the International Trade Data System (ITDS), automate import and export processing, enhance border security, and foster U.S. economic security through lawful international trade and policy. FDA is a Partner Government Agency (PGA) for purposes of submission of import data in ACE. As of July 23, 2016, ACE became the sole EDI system authorized by CBP for entry of FDA-regulated articles into the United States. We also updated certain sections of FDA regulations related to imports. This rule will facilitate effective and efficient admissibility review by the Agency and protect public health by allowing FDA to focus its limited resources on those FDA-regulated products being imported or offered for import that may be associated with a greater public health risk.

DATES: This rule is effective December 29, 2016.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *With regard to the final rule:* Ann M. Metayer, Office of Regulatory Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4338, Silver Spring, MD 20993–0002, 301–796–3324, *Ann.Metayer@fda.hhs.gov.*

With regard to the information collection: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St.,