



421 Aviation Way
Frederick, Maryland 21701

T. 301-695-2000
F. 301-695-2375

www.aopa.org

November 17, 2015

Ms. Michelle Ferritto
Federal Aviation Administration
Orville Wright Bldg (FOB10A)
FAA National Headquarters
800 Independence Ave S.W., Room810
Washington, DC 20591

Re: FAA Docket No. FAA–2015–3597; Notice No. 15–06; Notice of Proposed Rulemaking for Update of Overflight Fee Rates (Amended Comments)

Dear Ms. Ferritto,

The Aircraft Owners and Pilots Association (AOPA), the world’s largest aviation membership association, respectfully submits the following supplement to our initial comments of October 26, 2015, in response to the Notice of Proposed Rulemaking (NPRM) for updating the overflight fee rate.

AOPA recommends that FAA revise the NPRM to exempt U.S. registered general aviation aircraft from overflight fees altogether, thus implementing long-standing and explicit Congressional intent. Specifically, House and Senate Committees have stated that Congress did not intend to authorize such fees on general aviation when it granted FAA the authority to establish overflight fees in the first place. For example, the Senate Committee on Appropriations specifically stated in Senate Report 105-55 that ***“House and Senate committees have made clear to FAA that, for safety reasons, Congress did not intend to authorize foreign overflight fees on general aviation when it granted FAA authority to establish overflight fees...To date, FAA has failed to follow the direction of Congress in this matter.”*** Accordingly, the proposed rule should exempt U.S. registered general aviation aircraft from these overflight fees.

This action would ensure that U.S. registered general aviation aircraft arriving in or departing from the U.S. may make intermediate stops outside the U.S. without being assessed overflight fees. The NPRM would impose fees upon U.S. registered general aviation operations that land in or depart from the U.S. but make intermediate stops enroute for fuel or human physiological needs. The action we recommend would avoid this result.

Furthermore, under the proposed rule, general aviation operators who have not received an overflight fee invoice from FAA because their operations did not meet the \$250 minimum threshold for invoicing may now receive an invoice for conducting the exact same flight operations solely because of the overflight fee increase. The proposed rule increases overflight fees but does not increase the \$250 minimum fee amount that must be met or exceeded by an aircraft in a calendar month in order for the fees to become payable to FAA. Accordingly, AOPA recommends directly exempting general aviation from fees or accomplishing the same result for most of general aviation by increasing the amount set

forth in Section 187.55(b) of the proposed rule from \$250 to at least \$450. We also recommend a provision be included to adjust this amount proportionally to any future increase in overflight fees.

Our more detailed comments are set forth below:

1. Congress Did Not Intend to Authorize Foreign Overflight Fees On General Aviation.

The authorization provided by the FAA Reauthorization Act of 1996 (P.L. 104-264) that enabled the FAA to collect overflight fees was not intended to impact U.S. registered general aviation aircraft. Specifically, in 1997 the Senate Committee on Appropriations made clear that Congress intended to exclude general aviation from overflight fees and admonished FAA for acting contrary to this direction. The Committee stated:

House and Senate committees have made clear to FAA that, for safety reasons, Congress did not intend to authorize foreign overflight fees on general aviation when it granted FAA authority to establish overflight fees. In addition, the Committee believes general aviation operations should be exempted from the rule since the administrative cost of including such operations likely would exceed the anticipated fees from general aviation sources. *To date, FAA has failed to follow the direction of Congress in this matter.* (Emphasis added.) U.S. Senate. Committee on Appropriations. Department of Transportation and Related Agencies Appropriation Bill, Report (To accompany S. 1048). (105 S. Rpt. 55).

Likewise, the leadership of the House Transportation and Infrastructure Committee, and its Aviation Subcommittee, wrote FAA following that bill's passage and stated that "imposing a fee on general aviation was certainly not our focus when we drafted the Federal Aviation Administration Reauthorization Act."

AOPA believes that Congress intended that overflight fees be limited to commercial airlines transiting U.S. airspace and that the effective extension of such fees to U.S. registered general aviation aircraft lacks a basis in law.

Accordingly, we urge FAA to comply with the intent of Congress and exempt all U.S registered general aviation flights from the overflight fees contemplated by the proposed rule.

2. The Proposed Rule Will Have an Adverse Impact on General Aviation.

The NPRM proposal would impose overflight fees upon 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. For example, an 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.

Further, 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. This is not in the best interest of safety. In light of these implications, AOPA believes the proposed rule should permit U.S. registered general aviation aircraft arriving in or departing from the United States to make intermediate stops without being assessed overflight fees. Unless the proposed rule is amended to exempt general aviation operations entirely, which is our preferred approach, AOPA alternatively recommends increasing the amount set forth in Section 187.55(b) of the proposed rule from \$250 USD to at least \$450 USD, as well as including a provision to adjust this amount proportionally if and when FAA seeks future increases in overflight fees.

Conclusion

AOPA respectfully requests that the proposed rule be amended to exempt U.S. registered general aviation flights completely from overflight fees. This would be consistent with the intent of Congress when it granted FAA authority to establish overflight fees in the first instance. Alternatively, the proposed rule could be amended to permit U.S. registered general aviation aircraft arriving in or departing from the United States to make intermediate stops enroute for fuel or human physiological needs without being assessed overflight fees and increase the amount set forth in Section 187.55(b) of the proposed rule from \$250 to at least \$450. The amendment should also provide for automatic upward adjustments in the exempt amount to correspond to any future increase in overflight fees. These actions would effectively exempt most general aviation operations from overflight fees.

Thank you for the opportunity to comment on this important issue. If you have any questions, please do not hesitate to contact me at (202) 905-0515.

Sincerely,



Jim Coon
Senior Vice President of Government
Affairs and Advocacy

cc. Ms. Aleksandra Damz, U.S. Department of Transportation

The Aircraft Owners and Pilots Association (AOPA) is a not-for-profit individual membership organization of General Aviation Pilots and Aircraft Owners. AOPA's mission is to effectively serve the interests of its members and establish, maintain and articulate positions of leadership to promote the economy, safety, utility and popularity of flight in general aviation aircraft. Representing two thirds of all pilots in the United States, AOPA is the largest civil aviation organization the world.