

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 187**

[Docket No.: FAA–2020–1002]

Policy Clarifying Collection and Enforcement of Overflight Fees

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

ACTION: Statement of enforcement policy.

SUMMARY: This document announces that the FAA will pursue all delinquent balances for overflight fees including the collection of interest, penalties, and administrative charges as authorized by law.

DATES: This policy is effective January 1, 2021.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Availability of This Policy**

You can obtain an electronic copy using the internet by—

- (1) Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- (2) Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies/; or
- (3) Accessing the **Federal Register's** website at <https://www.federalregister.gov/>.

You can also obtain a copy 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. Make sure to identify the docket number of this policy.

Background

The FAA must collect fees for air traffic control and related services it provides 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. 49 U.S.C. 45301(a). Title 14 CFR part 187 implements the requirement by prescribing the collection of the fees for such flights that transit United States-controlled airspace (commonly known as “overflights”). 14 CFR 187.51. The FAA

implemented overflight fees in their current form in 2001. *Fees for FAA Services for Certain Flights* final rule, 66 FR 43680 (Aug. 20, 2001). The FAA last updated part 187 in 2016. *Update of Overflight Fee Rates* final rule, 81 FR 85843 (Nov. 29, 2016).

In its 2001 final rule, the FAA stated it would assess administrative charges and interest for delinquent invoices in accordance with 49 CFR part 89. See 66 FR at 43716. The FAA also stated it would pursue all delinquent balances to the extent provided by law. *Id.* Part 89, which contains Department of Transportation (DOT) provisions implementing the Federal Claims Collection Act (31 U.S.C. 3701–3720), sets forth the procedures by which the DOT collects certain claims owed to the United States, and determines and collects interest and other charges on those claims. Section 89.23 requires the FAA, by DOT delegation in § 89.5(c), to charge interest at the Treasury Current Value of Funds Rate (or higher) from the due date, to waive interest charges on debts paid within 30 calendar days of the due date, to charge a late payment penalty of six percent on any portion of the debt that is more than 90 days past due, and to assess administrative charges to cover additional costs incurred in processing and handling the debt beyond the payment due date. While the FAA has collected costs aggressively on the delinquent debts associated with overflight fees, the FAA has not pursued charging interest, late payment penalties, or administrative costs on delinquent debts.

Discussion of the Notification of Enforcement Policy

In accordance with 49 CFR 89.23, the FAA will enforce its rules regarding the collection of interest, administrative charges, and late payment penalties on delinquent overflight fee invoices. The agency will update invoices, consistent with 49 CFR 89.21, to include the interest, penalties, and administrative charges applicable to the billed amount and the date on which these charges begin to accrue. Charging interest, administrative charges, and penalties will compensate the Government for the loss of use of funds when a debt is not paid timely, discourage delinquencies, encourage early payment of the delinquent debt in full, and cover the expenses associated with collecting a debt.

In accordance with 49 CFR 89.23, interest on debt will begin to accrue on an outstanding debt at the Treasury Current Value of Funds Rate on the calendar date following the specified due date of the debt. Interest on debt

will accrue only on the principal of the debt (simple interest) at a fixed rate and will accrue until payment is received. The FAA will waive interest on debt that is paid within 30 calendar days from the due date. 49 CFR 89.23(c).

Administrative charges will consist of a fixed fee of \$16. The FAA will compute these charges to cover the cost of processing and handling delinquent debt. The FAA sends to debtors a total of three progressively-stronger written demand letters consistent with 49 CFR 89.21: An invoice, a delinquency notice, and a Treasury referral notification letter. The invoice includes the due date and debt amount. The FAA sends a delinquency notice to a debtor if the debt remains unpaid by the due date. If the debt remains unpaid 30 days past due date, the FAA sends the debtor a Treasury referral notification letter stating that any portion of the debt that is not paid within another 15 days (45 days from the due date) will be referred to the Treasury for collection. The FAA will refer the debt to Treasury when the debt remains unpaid for 45 days after the due date. The fixed \$16 charge represents the average cost to the FAA to process and handle delinquency notices, Treasury referral notification letters, or Treasury referrals, including labor, mailing, and overhead costs. The FAA will assess the \$16 charge each time the FAA sends delinquency notices, sends Treasury referral notification letters, or refers the debt to the Treasury for collection. The FAA prepared a *White Paper on Administrative Charges Applied to Delinquent Overflight Fee Invoices* that explains the \$16 amount. The paper is available in the public docket that contains this Notification.

The FAA is authorized to charge a penalty on any portion of delinquent debt that is more than 90 days past due. 49 CFR 89.23(a). The FAA sends any delinquent debt to the Treasury for collection before the debt becomes more than 90 days past due. For bills that remain unpaid more than 90 days past due, the FAA applies—and the Treasury Department implements—the six percent penalty. In all cases of referred debt, Treasury applies its own collection charges, which are separate from FAA's penalty charges.

Issued in Washington, DC, on November 23rd, 2020.

Nathan Tash,

Acting Assistant Administrator for Finance and Management.

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