Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. 27791; Notice No. 96–3]

RIN 2120–AF69

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); withdrawal.

SUMMARY: The FAA is withdrawing the ANPRM, published on April 16, 1996, that proposed to amend provisions of the regulations on passenger facility charges (PFCs). These provisions address the collection, handling, and remittance of PFCs.

FOR FURTHER INFORMATION CONTACT: Joe Hebert, Passenger Facility Charge Branch (APP–530), Room 619, Airports Financial Assistance Division, Office of Airports Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–8902.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1994, the Airport Transportation Association of America (ATA) petitioned for a rule change to 14 CFR 158.53(a) to extend the handling fee of $0.12 per each PFC remitted to a public agency, for an additional 3 years. Under the terms of § 158.53, the handling fee dropped to $0.08 per PFC remitted on June 28, 1994. The ATA also proposed that after the third year, they would file comments to determine if the entire airline industry had fully recovered the cost necessary to maintain the PFC collection system. Further, the ATA requested that § 158.53(a) be amended to allow air carriers to retain a handling fee for each refunded PFC. On June 24, 1994, the FAA published a summary of the ATA's petition in the **Federal Register** (59 FR 32668). Air carriers and public agencies were asked to provide specific data to the FAA, so that the agency could determine an adequate rate of airline compensation. The FAA received 12 comments in response to this notice, but determined that these comments did not constitute sufficient information to make a decision.

As a result, the FAA issued an ANPRM (61 FR 16678) on April 16, 1996, providing additional guidance on the quantity and quality of information that the FAA needed in order to make a decision regarding the ATA's petition on adequate compensation for PFC revenue collecting, handling, and remitting. The FAA also used the ANPRM to solicit comments on a number of ancillary issues pertaining to the handling and transfer of PFC revenues and on other changes in Part 158 to accommodate new legislation and industry practices. Specifically, these issues included the following proposals to amend sections of Part 158: require separate handling of PFC collections by air carriers to facilitate PFC remittance in the event of air carrier bankruptcy; implement the statutory prohibition on collection of PFCs from passengers traveling on frequent flyer awards; establish that PFC remittance occurs at the time that a public agency receives PFC collections from an air carrier; and codify current industry practice by providing for appropriate PFC adjustments when a trip itinerary change is initiated by the passenger.

To further analyze whether a change in PFC compensation is necessary, the FAA requested detailed and persuasive data from air carriers that, in total, represented at least 75 percent of enplanements at PFC locations. The FAA determined that information on 75 percent of total PFC enplanements was necessary to give an adequate view of current industry cost and would provide adequate cost data to determine if a change in collecting, handling, and remitting compensation is necessary. In particular, the PFC statute requires that the handling fee be a ''uniform amount'' that ''reflects the average necessary and reasonable handling expenses (net of interest accruing to the carrier and agent after collection and before remittance).'' A sample of less than 75 percent, if it included a disproportionate representation from carriers with higher PFC handling costs, would not yield an accurate average handling cost calculation for the industry. (61 FR 16678).

Reasons for Withdrawal

The FAA received responses with data from 10 air carriers. The FAA also received responses from 18 public agencies and 5 industry organizations. The airline responses represented 62 percent of the enplanements at PFC locations, which was 13 percent below the minimum response required by the FAA. As a result of the lack of information provided, the FAA cannot conclude that the current compensation level of $0.08 for each PFC remitted to a public agency does not provide adequate compensation to air carriers. The FAA has no justification to change the PFC collecting, handling, and remitting compensation level either by adjusting the uniform average handling fee itself or changing the basis on which the fee is paid from PFC remitted (which does not include refunded PFCs) to PFC collected (which would include refunded PFCs). Thus, the compensation level remains at $0.08 for each PFC remitted to a public agency, and this compensation cannot be claimed by the air carrier for refunded air travel tickets.

In addition, Congress recently passed H.R. 1000. When signed into law, this legislation, among other items, will establish higher PFC charge levels of $4 and $4.50, will set additional criteria for the review and approval of charges at the higher levels, and will make other miscellaneous changes to the prior PFC legislation. In the ''Statement of Managers for the Conference Report accompanying H.R. 1000,'' the FAA was charged with reviewing the compensation level for air carriers collecting, handling, and remitting PFCs to airports. The FAA will shortly commence a new rulemaking to examine air carrier compensation in response to this requirement.

Many commenters addressed the three proposals the FAA made regarding bankruptcy. The first proposal would prohibit air carriers from commingling PFC revenue with other sources of revenue and require air carriers to establish separate trust accounts. Commenters viewed this proposal as the least costly of the three. The Metropolitan Washington Airports

Authority (MWAA) stated that establishing separate trust accounts would strengthen airport public agencies' claim to PFCs which had been collected. The MWAA preferred trust accounts to escrow accounts, if the PFC funds could be protected sufficiently through trust accounts. Other airports shared the MWAA's view. However, the commenters did not quantify the amount of additional cost that implementation of this proposal would entail to air carriers. Moreover, the degree of additional protection offered to public agencies from such trust accounts in the event of air carrier bankruptcy was not felt to be significantly greater than the current practice. Based on these comments, the FAA cannot determine if the benefits of implementing this proposal would justify higher costs to air carriers.

The second proposal was to require that carriers establish third-party escrow accounts to hold PFC revenue between collection of that revenue and remittance to the public agency. United Airlines indicated that this proposal would increase the air carrier's cost while reducing the compensation available to recover such cost. The FAA notes that public agencies, in their contractual arrangements with air carriers serving their airports, may require PFC escrow accounts or security deposits provided that such security requirements apply to the air carriers in a manner that is not unjustly discriminatory. However, the FAA does not have sufficient data on the costs or expected benefits of such accounts at this time to pursue mandatory implementation.

The third proposal concerning bankruptcy would require the Airline Reporting Corporation (ARC) clearinghouse to remit PFC revenue directly to the public agencies when travel agencies' tickets are processed through the clearinghouse. This proposal presented a problem to some commenters because the majority of travel agency ticket sales are purchased with credit cards, with no funds being collected from the purchaser at time of sale. Travel agents report these credit sales through ARC without remitting any funds to ARC. The ARC clearinghouse bills credit card sales on the air carriers' behalf and reports the amounts billed to the air carriers. However, credit card issuers remit directly to the air carrier. At no point in this credit sale cycle does ARC have liquid funds from the credit card sales. As with the other proposals, the FAA does not have sufficient data on the costs or expected benefits of this proposal to pursue its mandatory implementation.

In the ANPRM, the FAA proposed to implement the statutory prohibition on collection of PFCS from passengers traveling on frequent flyer awards that was promulgated in the Authorization Act of 1994. The FAA also proposed to change §§ 158.45(a)(3) and 158.47(c)(4) to delete a provision in the original PFC rule that is no longer applicable under current industry ticketing practice. The FAA did not receive any opposition on these issues from air carriers or airports. The FAA notes that it already imposes the statutory requirement pertaining to non-collection of PFCs on frequent flyer award tickets in its PFC Records of Decision and the presence of the obsolete provisions has not adversely affected ticketing and remittance practices. Consequently, a separate rulemaking to address these issues may be postponed until the changes may be combined with other changes to Part 158 when appropriate. The frequently flyer provision and technical correction to §§ 158.45(a)(3) and 158.47(c)(4) will be implemented as part of a future rulemaking on the PFC program when the need arises to address additional issues by rulemaking.

The final issue addressed changing the phrase ''remitted to'' to ''received by'' when addressing the deadline for monthly transfer of PFC revenue from air carriers to public agencies. Commenters contended that using the term ''received by'' would make it easier for them to enforce late payment penalties. However the term ''remitted by'' is common and effective in several U.S. tax laws, so the FAA has denied this request. The FAA notes that a public agency's authority to establish due dates for receipt of remitted monies and collect penalties and interest on PFC revenue that is past due depends on local law or the public agency's contractual relationship with the air carrier, although the due date cannot be in advance of the requirements of § 158.51. The FAA does not consider Part 158's silence on this subject to preclude the collection of penalties and interest based on local law or contract, and the FAA does not object to this practice as long it is applied in a manner that is not unjustly discriminatory.

Conclusion

Therefore, as a result of reviewing comments to the ANPRM Notice No. 96–3, regarding the collection, handling, and remittance of PFCs, the FAA has decided to withdraw this ANPRM. Accordingly, the ANPRM, Notice No. 96–3, published on April 16, 1996 (61 FR 16678), is withdrawn.

Issued in Washington, DC on March 31, 2000.

Catherine M. Lang,

Director, Office of Airport Planning and Programming.

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FEDERAL TRADE COMMISSION

16 CFR Part 250

Guides for the Household Furniture Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''Commission'') requests public comments about the overall costs and benefits and the continuing need for its Guides for the Household Furniture Industry (''the Household Furniture Guides'' or ''the Guides''), as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 9, 2000.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments should be identified as ''Household Furniture Industry Guides, 16 CFR Part 250—Comment.''

FOR FURTHER INFORMATION CONTACT: Ingrid Whittaker-Ware, Attorney, Federal Trade Commission, Southeast Region, 60 Forsyth Street, S.W., Atlanta, Georgia 30303, telephone number (404) 656–1364, E-mail address: *''Furniture@FTC.gov''.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the Guides for the Household Furniture Industry on December 21, 1973, 38 FR 34992 (1973), under the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 41–58. [1] The Guides became effective on March 21, 1974. Prior to promulgating the Guides, the Commission released proposed Guides to allow interested or affected parties an opportunity to inform the Commission of their views, suggestions, objections, or other information regarding the proposed

[1] The FTC Act makes it unlawful for one to engage in ''unfair methods of competition and unfair or deceptive acts or practices in commerce.''