

Proposed Rules

Federal Register

Vol. 68, No. 30

Thursday, February 13, 2003

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

Office of the Secretary

14 CFR Part 255

[Docket No. OST-2003-14484]

RIN 2105-AD24

Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend its rules governing airline computer reservations systems (CRSs), 14 CFR part 255, by changing the rules' expiration date from March 31, 2003, to January 31, 2004. If we do not revise the expiration date, the rules will terminate on March 31, 2003. This proposed extension of the current rules would keep them in effect while we carry out our reexamination of the need for CRS regulations. We have tentatively concluded that most of the current rules should be maintained on a temporary basis because they may be necessary for promoting airline competition and protecting consumers, although the Department may determine in its reexamination that the need for most or all of the rules has ended. The Department has previously extended the rules from their original December 31, 1997, expiration date, most recently to March 31, 2003.

DATES: Comments must be submitted on or before February 28, 2003. Late filed comments will be considered to the extent possible.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with Docket Number OST-2003-4484) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001.

(2) By hand delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>. Comments must be filed in Docket OST-2003-14484.

However, due to security procedures in effect since October 2001 on mail deliveries, mail received through the Postal Service may be subject to delays. Commenters should consider using an express mail firm to ensure the timely filing of any comments not submitted electronically or by hand.

FOR FURTHER INFORMATION CONTACT:

Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366-4731.

Electronic Access: You can view and download this document by going to the webpage of the Department's Docket Management System (<http://dms.dot.gov/>). On that page, click on "search." On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on "search." An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara/index.html>.

SUPPLEMENTARY INFORMATION:

We adopted rules governing CRS operations, 14 CFR part 255, because almost all airlines operating in the United States relied on the CRSs in marketing their airline services and each system was then controlled by one or more airlines or airline affiliates. 57 FR 43780, September 22, 1992. We found then that rules were necessary to ensure that each of the airlines and airline affiliates that controlled a system did not use the system to unfairly prejudice the competitive position of other airlines and to ensure that travel agents and their customers could obtain accurate and unbiased information from the systems. Our rules contained a

sunset date to ensure that we would reexamine whether the rules remained necessary and, if so, whether they were effective.

As contemplated by the sunset date provision, we began a proceeding to reexamine whether the rules were necessary and effective by issuing an advance notice of proposed rulemaking. 62 FR 47606, September 10, 1997.

We later issued a supplemental advance notice of proposed rulemaking that asked the parties to update their comments. 65 FR 45551, July 24, 2000.

We recently issued a notice of proposed rulemaking where we tentatively concluded that most of the rules may remain necessary, at least in the short term, although we also proposed to eliminate some rules and to change others. 67 FR 69366, November 15, 2002. Our notice contains a lengthy and detailed discussion of the rulemaking issues, including our tentative findings on the relevant features of the airline distribution and CRS businesses. Comments and reply comments on our tentative findings on the need for CRS regulation and our proposals are due March 16 and May 15, 2003, respectively. 67 FR 72869, December 9, 2002.

By this notice we are proposing to extend the rules' expiration date to January 31, 2004, so that they will remain in force while we complete the rulemaking where we are reexamining the existing CRS rules. We have established a date for comments in that rulemaking proceeding that is only two weeks before the rules' current expiration date, and the reply comments are due several weeks after the current sunset date. We clearly cannot complete that rulemaking by March 31. Allowing the rules to sunset may be contrary to the public interest. Extending the sunset date will give us time to complete our reexamination of the rules as promptly as possible, so that the rules are updated to reflect current industry conditions and economic realities.

We have set a 15-day comment period so that we can publish a final decision on this proposal before the rules' current expiration date.

Notice of Proposed Rulemaking

Our notice of proposed rulemaking set forth our analysis and preliminary findings on the nature of the airline distribution and CRS businesses and on whether CRS rules appear necessary or

unnecessary. Important changes are occurring in the airline distribution system, especially the Internet's erosion of the airlines' dependence on the systems, and these developments may eliminate the need for many or all of our rules. 67 FR 69376–63977. Nonetheless, we tentatively concluded that at present rules should be maintained to protect airline competition and consumers. We have requested comment on whether we can eliminate some rules since airlines may have more bargaining leverage against the systems than we have found in past rulemakings, 67 FR 69368, and we will consider comments contending that additional rules can be eliminated or that the rules have become unnecessary.

Our notice of proposed rulemaking established a 60-day comment period and a 30-day reply comment period. Sabre and 18 other parties jointly asked us to extend the comment period by 60 days and the reply comment period by 30 days. We granted that request because providing the additional time was reasonable, due to the complexity of the issues, the length of our notice of proposed rulemaking, and the inclusion of three major holidays within the comment period. 67 FR 72869, December 9, 2002. Giving the parties adequate time for preparing comments will help us, since their comments should then be more thorough. The parties' petition to extend the comment period also included a request to extend the sunset date to September 30, 2003. We stated that we saw no reason to rule on that request and that we would consider that issue early this year. 67 FR 72870.

More recently Sabre filed a petition for a fact hearing. Sabre alleged that our notice of proposed rulemaking did not set forth an adequate factual basis for our proposals. We will address Sabre's request in a separate notice.

Proposed Extension of the Rules' Sunset Date

We have previously extended the sunset date five times, most recently to March 31, 2003. 62 FR 66272, December 18, 1997; 64 FR 15127, March 30, 1999; 65 FR 16808, March 30, 2000; 66 FR 17352, March 30, 2001; and 67 FR 14846, March 28, 2002.

We are again proposing to extend the expiration date for our CRS rules, to January 31, 2004, in order to maintain the rules while we complete our reexamination of the need for the rules and their effectiveness. The time needed for the parties' preparation of comments on our proposed rules, for our consideration of their comments and drafting of a final rule, and for the

review by the Office of Management and Budget ("OMB") will prevent us from issuing revised final rules by March 31, 2003. By changing the sunset date, we would preserve the status quo until we determine which rules, if any, should be adopted. We have tentatively determined that doing so would be in the public interest.

As noted above, in our notice of proposed rulemaking we tentatively concluded that the rules appear to be necessary, at least in the near term, to protect airline competition and consumers against potentially unreasonable and unfair CRS practices, despite the on-going changes in airline distribution and the CRS business, although those changes may well eliminate the need for CRS rules in the longer term. Furthermore, our obligation under 49 U.S.C. 40105(b), formerly section 1102(a) of the Federal Aviation Act, then codified as 49 U.S.C. 1502(a), to act consistently with the United States' obligations under bilateral air services agreements may justify a short-term continuation of the rules. 67 FR 69384. We may decide in our rulemaking that the elimination of all or most of the rules would be consistent with our bilateral agreement obligations. We have asked the parties to comment on that issue. *See, e.g.*, 67 FR 69399.

In addition, any expiration of the current rules could be disruptive, since systems, airlines, and travel agencies have been conducting their operations in the expectation that each system will comply with the rules. Our preliminary regulatory impact assessment tentatively concluded that the continuation of the existing rules would not impose substantial costs on the systems. 67 FR 69421. If the rules are effective, they may also lower the costs for airline participants and increase the efficiency of travel agency operations. Thus, we tentatively believe that we should maintain the CRS rules in effect for 10 more months, during which we intend to make our final decision on whether CRS rules should be readopted and, if so, with what changes. As stated above, we recognize the importance of adopting final rules that reflect current conditions in the CRS and airline distribution businesses, and we intend to complete our reexamination of our rules as soon as reasonably possible.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. The

proposal is also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

Maintaining the current rules for an additional 10 months should not, however, burden the systems with significant costs. Our notice of proposed rulemaking includes a preliminary regulatory assessment that explains why the existing rules do not appear to impose a significant burden on the systems or their users. 67 FR 69418–69423. We think the regulatory assessment included in our notice of proposed rulemaking should be applicable to our proposal to extend the rules' sunset date and that no new regulatory impact statement appears to be necessary. However, we will consider comments from any party on that analysis before we make this proposal final.

This rule would not impose unfunded mandates or requirements that would have any impact on the quality of the human environment.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. airlines and smaller travel agencies.

This notice of proposed rulemaking sets forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposed rule.

Our notice of proposed rulemaking on our overall reexamination of the CRS rules contains a tentative regulatory flexibility analysis on the rules' impact. That analysis appears to be valid for our proposed extension of the rules' termination date. Accordingly, we adopt that analysis as our tentative regulatory flexibility statement. We will consider any comments filed on that analysis in response to this proposal.

Our proposed rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other Federal rules that duplicate, overlap, or conflict with our proposed rules.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law No. 96-511, 44 U.S.C. chapter 35.

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule will not limit the policymaking discretion of the States. Nothing in this proposal would directly preempt any State law or regulation. We are proposing this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. We believe that the policy set forth in this proposed rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute. Comments on these conclusions are welcomed and should be submitted to the docket.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and record-keeping requirements, Travel agents.

Accordingly, the Department of Transportation proposes to amend 14 CFR part 255 as follows:

PART 255—[AMENDED]

1. The authority citation for part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

255.12. Termination.

The rules in this part terminate on January 31, 2004.

Issued in Washington, DC on February 7, 2003, under authority delegated by 49 CFR 1.56a(h)2.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03-3606 Filed 2-12-03; 8:45 am]

BILLING CODE 4910-62-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA086-SIP; FRL -7450-8]

Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority in section 110(k)(5) of the Clean Air Act (CAA or Act), EPA is proposing to find that the California State Implementation Plan (SIP) is substantially inadequate for all nonattainment air pollution control districts in the State and for all attainment area districts that have an approved Prevention of Significant Deterioration (PSD) program because the State cannot provide "necessary assurances" that it or the districts have authority to carry out the applicable nonattainment New Source Review (NSR) or PSD portions of the SIP. Specifically, sections 110(a)(2)(C) and (I) and 172 of the Act require the applicable implementation plan to contain a program for issuing permits to major stationary sources of air pollution pursuant to parts C and D of title I of the Act. In addition, section 110(a)(2)(E) requires that each SIP provide necessary assurances that the State or districts have adequate authority to carry out the SIP and that no state law prohibits the State or districts from carrying out any portion of the SIP. The California SIP does not meet these requirements because California Health & Safety Code section 42310(e) exempts new and modified major agricultural sources from all permitting, including PSD and NSR permitting otherwise required by parts C and D of title I of the Act. If EPA finalizes this proposed finding of substantial inadequacy, California will be required to amend its state law to eliminate the permitting exemption as it pertains to major agricultural sources of air pollution and submit the necessary assurances by November 23, 2003 to support an affirmative finding by EPA under section 110(a)(2)(E). If the State

fails to submit the necessary assurances of authority or if EPA disapproves any such submittal in response to a final SIP call, sanctions will apply statewide pursuant to section 179 of the Act.

DATES: Comments must sent by March 17, 2003. EPA will respond to comments in its final action on this proposal.

ADDRESSES: Send comments to: Gerardo Rios, Permits Office (AIR-3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can review and copy the existing SIP rules at EPA's Region 9 office from 8:30 am to 5 pm, Monday-Friday. A reasonable fee may be charged for copying.

Copies of the SIP rules are also available for inspection at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Please call Gerardo Rios, EPA Region IX, at (415) 972-3974 or send e-mail to rios.gerardo@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

- I. Background
 - A. What action is EPA proposing?
 - B. How does the California Health & Safety Code exemption affect the adequacy of the SIP?
 - C. How can California correct the SIP inadequacy?
 - D. Are individual districts required to revise approved SIP rules?
 - E. What are the consequences if we finalize this proposed finding of substantial inadequacy?
- II. Statutory and Executive Order Reviews
 - A. Executive Order 12866, Regulatory Planning and Review
 - B. Regulatory Flexibility Act
 - C. Unfunded Mandates Reform Act
 - D. Executive Order 13132, Federalism
 - E. Executive Order 13175, Coordination with Indian Tribal Governments
 - F. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
 - G. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use
 - H. National Technology Transfer and Advancement Act

I. Background

A. What Action Is EPA Proposing?

CAA section 110(k)(5) provides that whenever EPA finds the applicable implementation plan "is substantially inadequate to attain or maintain the relevant national ambient air quality