

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, and concluded that that obligation might justify a short-term continuation of the rules. 67 FR 69384. We stated our awareness of the importance of adopting final rules that reflect current conditions in the CRS and airline distribution businesses.

Comments

Three of the systems—Amadeus, Galileo, and Sabre—supported our proposal to change the sunset date to January 31, 2004, as did ASTA, the largest travel agency trade association, and U.S. Airways. American and Orbitz, the on-line travel agency owned by American, Continental, Delta, Northwest, and United, supported a shorter extension of the rules. American proposed August 31 as the new sunset date, while Orbitz proposed September 30. The other commenters—Delta, Northwest, United, and LanChile—opposed any extension of the rules. United particularly opposed any continuation of the non-discriminatory booking fee and mandatory participation rules.

Sabre filed a reply challenging several of the factual assertions made by several airline commenters concerning the systems' alleged market power and unreasonable practices.

Final Rule

We have determined to adopt our proposal to change the sunset date to January 31, 2004. We obviously cannot complete our overall reexamination of the rules by March 31, and we continue to believe that we may well need an additional ten months to complete that proceeding. The comment period for reply comments will end on May 15, and we must then analyze the comments, decide what final rules should be adopted, and draft a final rule. The final rule must be reviewed by the Office of Management and Budget ("OMB"). This entire process may require ten months for completion, especially given the complex and controversial issues presented in that rulemaking.

We will, of course, try to issue a final rule as soon as possible rather than wait until the new January 31 sunset date. Adopting a shorter extension at this time might well require us to conduct an additional rulemaking to change the date again, which would be an inefficient use of Government resources and interfere with our intent to focus on

completing the overall reexamination of the rules as promptly as possible. A shorter extension might also keep us from thoroughly and carefully examining the issues before making our final decision on whether CRS rules remain necessary and, if so, how they should be changed.

We recognize that the rules may have become unnecessary. As we continue our reexamination, we will maintain the rules based on a tentative finding that some of the rules may serve the public interest. It may remain true, for example, that the systems have market power that could be used to prejudice airline competition. American thus states, "CRS market and pricing power remain intact * * *." American Comments at 1. If so, ending the rules would not necessarily enable airlines to obtain better terms for participation. United, however, has pointed out that we proposed to eliminate the non-discriminatory booking fee and mandatory participation rules because we tentatively found that they may prevent airlines from obtaining lower prices. We cannot adopt United's suggestion that any extension of the sunset date exclude those two rules, since that would amount to a change in the existing rules that we do not wish to adopt until we have had the opportunity to consider the comments on the issue. Nor can we agree now, before the end of the comment period for our proposals on changing the rules, with the assertions by several other commenters that the rules preserve and enhance the systems' market power. *See, e.g.,* Orbitz Comments. We have found in past rulemakings that rules were needed to curb the systems' market power, most recently in the parity clause rulemaking completed five years ago. 62 FR 59784, November 5, 1997. We tentatively concluded in our recent notice of proposed rulemaking that we see some evidence that the systems may still have market power. At issue is whether some or all of the rules affect the exercise of such market power, to the extent it exists, and whether they do so in a manner that serves the public interest.

Effective Date

We have determined for good cause to make this amendment effective on March 31, 2003, rather than thirty days after publication as required by the Administrative Procedure Act except for good cause shown. 5 U.S.C. 553(d). To keep the current rules in force, we must make this amendment effective by March 31, 2003. Since the amendment preserves the status quo, it will not require the systems, airlines, or travel

agencies to change their operating methods. Making this amendment effective on less than thirty days notice accordingly will not impose an undue burden on anyone.

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.

Our notice of proposed rulemaking in this proceeding cited the tentative findings of the preliminary regulatory assessment in our notice of proposed rulemaking for the overall reexamination of the rules that the existing rules do not appear to impose a significant burden on the systems or their users. 68 FR 7326, citing 67 FR 69418–69423. We stated our belief that that regulatory assessment should be applicable to our proposal to extend the rules' sunset date and that no new regulatory impact statement appears to be necessary. We invited interested persons to comment on those findings. No commenter specifically commented on our regulatory assessment, which we will make final.

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

Our notice of proposed rulemaking on this extension proposal cited the tentative regulatory flexibility analysis on the rules' impact that was included in our notice of proposed rulemaking for the reexamination of the rules. We stated that that analysis appeared to be valid for our proposed extension of the rules' termination date. 68 FR 7326–7327. We stated that we would consider