

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 159****[Docket No. 25204; Amdt. No. 159-31]****Charges for Use of Metropolitan Washington Airports****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This Final Rule adjusts the fees and charges for use of Washington National and Washington Dulles International Airports for general aviation operators and for air carriers that do not have a contract for use of the Airports. General aviation users will pay landing fees at the same rate as the contract air carriers. The exemption from landing fees at Dulles for aircraft under 3,500 pounds will be eliminated and a minimum landing fee of \$4.00 imposed. Non-contract air carriers will pay service charges and a differential landing fee of 125 percent of the contract carrier fee.

DATE: Effective date of this Amendment is June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Edward Faggen, Legal Counsel, AMA-7, Metropolitan Washington Airports, Washington National Airport, Hangar 9, Washington, DC 20001, Telephone: (703) 685-8115.

SUPPLEMENTARY INFORMATION:**Background**

On March 5, 1987, interested persons were invited to comment on a proposal to change the regulation which prescribes landing fees at Washington National and Washington Dulles International Airports (Notice 87-1, 52 FR 7446; March 11, 1987). All persons were given an opportunity to participate in the rulemaking by submitting such written data, views or arguments as they desired. Comments have been received and consideration has been given to all of the communications received by FAA on Notice 87-1.

Washington National Airport and Washington Dulles International Airport (the "Airports") are owned and presently operated by the Federal Government. The Secretary of Transportation has control over and responsibility for the care, operation, maintenance, and protection of the Airports and has the authority to issue rules and regulations necessary for these purposes. This responsibility has been delegated to the Administrator of

the Federal Aviation Administration (FAA).

As proprietor of the Airports, FAA establishes the terms and conditions for commercial activities occurring at the Airports. The FAA collects fees and charges from aircraft operators to recover the costs associated with the airfields. It is common for the scheduled carriers to have contracts with FAA which prescribe the formula for calculating their landing fees. Users, including general aviation, who do not have a contractually prescribed landing fee pay the fees prescribed by the regulations in § 159.181 (14 CFR 159.181).

On October 18, 1986, the "Metropolitan Washington Airports Act of 1986" (the "Act") became effective. The Act authorized a long-term lease of the Airports from the Federal Government to a regional authority, the Metropolitan Washington Airports Authority. The Act contains a provision relating to the landing fees of general aviation aircraft which warrants immediate regulatory action on the part of the FAA. Section 6005(c)(10) of the Act provides:

The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft except that the Airports Authority may require a minimum landing fee not in excess of the minimum landing fee for aircraft weighing 12,500 pounds.

In the the current FAA contracts with the air carriers, which expire in December 1989, the carriers have agreed to pay a landing fee for each 1,000 pounds of the maximum authorized landing weight of their aircraft. The fee is calculated to enable the Government to recover the net cost for the landing areas at both Airports. Net costs are determined by totalling the Government's cost for maintenance, operation, utilities, interest and depreciation, fire and crash rescue services, police, and certain other administrative costs allocable to the landing area. From this total, FAA subtracts the revenues from general aviation landing fees, some commissions from the fixed based operator (the private company that services and fuels general aviation), and fees from non-contracting air carriers. The excess costs over revenues constitute the net costs to be recovered in the landing fee. These costs, divided by the estimated total landing weight of the air carrier aircraft for the calendar year, yields the fee per pound of landed weight. During each year of the Government's contract with the air carriers, the fee is adjusted to reflect the current costs less current

revenues allocated to the landing area. The current (1987) air carrier fee at the Airports is \$.5695 per 1,000 pounds of landing weight.

The landing fees for general aviation were last adjusted in 1968. The current fees at National Airport are only \$0.12 per 1,000 pounds for turbo-propeller and reciprocating engine aircraft and \$0.30 per 1,000 pounds for turbo-jet aircraft. There is a \$4.00 minimum fee at National Airport for all aircraft, excluding helicopters. At Dulles Airport, the basic landing fee is \$0.25 per 1,000 pounds for turbo-jet and reciprocating engine aircraft. There is a \$0.75 minimum fee, but there is no fee for non-commercial aircraft weighing less than 3,500 pounds, which accounts for approximately 25 percent of the general aviation aircraft landing at Dulles.

The Act provides that the FAA's regulations will become regulations of the new Airport Authority. Thereafter the Authority may amend these rules and adopt new ones in accordance with its procedures. The FAA has concluded that its regulation of landing fees must be adjusted to conform to the Act's requirements so that on the effective date of the transfer, general aviation will pay for landing at the Airports on the same basis, i.e., cost per thousand pounds, and at the same rate as the air carrier users pay. This final rule will accomplish this. It will also impose a \$4.00 minimum landing fee on general aviation users at Dulles Airport. The minimum fees at both airports will be applicable to helicopters. This rule as adopted by FAA will transfer to the new Authority when its lease becomes effective on or about June 7, 1987.

FAA also proposed to modify the landing fee for those carriers that do not have contracts for regular use of the airports. The signatory carriers (defined herein as carriers operating under Part 121, 127, 129, or providing scheduled or non-scheduled operations under Part 135 that have signed contracts with the Airports) have agreed to pay fees to defray the costs of the Airports' operation. At both Airports signatory carriers pay security fees for pre-boarding security. At Dulles, the carriers also pay fees for the use of the Federal Inspection Service area where United States Customs Service inspections are performed. Also at Dulles, the carriers pay a common use facility fee to pay for the cost of providing the large common hold rooms, baggage claim areas and other baggage handling and sky-cap facilities. A portion of the cost of the mobile lounges to transport passengers between the main terminal and the remote terminals or aircraft is also

See correction

recovered through the common use facility fee. Currently, the signatory carriers each pay a fixed fee of \$3,395.00 a month plus a fee per passenger.

In addition to the fees, the signatory carriers pay rent for the space that they lease for their exclusive use. They have agreed to be responsible for considerable maintenance of Government premises on the Airports including portions of the airfield, the terminals, and the hangars at National Airport. In addition to prescribing significant financial and maintenance responsibilities for the carriers, the contracts advance airport policies regarding the accommodation of new entrant carriers. The signatory carriers who lease space on the Airports have agreed to a process that may require them to accommodate other carriers, including new entrant carriers, in their leased space, if the Director of the Airports determines that it is necessary.

Non-signatory carriers and other irregular users use the same facilities as signatory carriers at the Airports. The non-signatory carriers pay fees to the Airports in accordance with the regulation as opposed to a contract. The existing regulation provides for a landing fee for non-signatory carriers of \$0.25 per 1,000 pounds at Dulles and \$0.30 per 1,000 pounds at National. These fees are substantially below that which the signatory carriers are obligated to pay according to their contracts.

FAA proposed to change its regulation of fees to bring the fees for non-signatory carriers into line with the other fees charged to users who contract to support the Airports. The final rule will require non-signatory carriers to pay 125 percent of the signatory carrier landing fee. The differential would be in lieu of facility charges which are impractical to impose on irregular users. It also recognizes the additional administrative costs associated with non-signatory carriers who operate at the Airports.

Comments

Six comments were received on Notice 87-1. The comments were from the staff of the Federal Trade Commission (FTC), the Air Transport Association, Aeroflot, the Federal Republic of Germany, Butler Aviation and U.S. Jet, Inc. The FTC's Bureau of Economic Competition and Consumer Protection presented general concepts in support of a theory of efficient pricing of airport services. Under their economic theory, the Airports' pricing should reflect the marginal cost that the provision of airport services imposes on users. This theory suggests that in

addition to the cost of providing physical facilities, there is a cost of congestion that an aircraft using the airport imposes on passengers on other flights and a cost of noise imposed on residents living near the airport. If these costs are recognized, the fees for operating during congested peak demand times of the day should be higher than off-peak times. Also, the fees may vary with the amount of noise made by an aircraft. In theory, such pricing would have salutary effects of moving some aircraft operations from high cost to low cost operating times, that is, from peak to off-peak periods of congestion or periods of lower noise sensitivity.

In response, FAA will neither embrace nor reject the efficient pricing theory espoused by the FTC staff. The imposition of landing fees at the Airports based on such a theory is beyond the scope of the present rulemaking. The present rule is intended for the limited purpose of conforming the Airports' existing landing fees with the requirements of the Act. The Act requires that general aviation landing fees be paid at the same rate as air carrier landing fees.

Further, air carrier landing fees at the Airports are fixed by contracts which do not expire until the end of 1989. Therefore, FAA does not have the ability to pursue economic pricing theories such as the one proposed by the FTC staff for either the contract carriers or general aviation. The merits of this comment are more appropriately addressed by the Authority when the air carrier agreements are renegotiated.

The Air Transport Association (ATA) expressed its support for the overall objective of the proposed rule and urged the FAA to adjust the non-signatory, itinerant and general aviation user fees as proposed. ATA views this rule as a "step toward the desirable objective of cost-relatedness of fees and charges, and the recovery by the airport of a 'fair share' of costs from the variety of airport users." ATA did urge the Metropolitan Washington Airports Authority to examine the minimum landing fee of \$4 and suggested that the minimum may not be adequate to recover the cost of services and facilities provided.

Under the Metropolitan Washington Airports Act, the minimum landing fee on general aviation aircraft cannot exceed the fee that would be imposed on a 12,500 pound aircraft. While this fee would be in excess of \$4 (approximately \$6) FAA has elected not to set the minimum fee at the maximum permitted by law. The change to a weight-base methods to calculate fees

produces a fee increase for general aviation users. Furthermore, the imposition of a \$4 minimum at Dulles Airport will also be an increase for some of the smaller aircraft operating at that airport. As stated in the Notice, a future change by the Authority in the minimum landing fee to the level permitted by law may be appropriate if it is determined by the Authority that the cost of providing basic services at National and Dulles to light aircraft is not being recovered by the weight-based landing fee and by the current minimums.

A comment was received from Aeroflot, the Soviet Airline. Aeroflot is a non-signatory carrier at Dulles Airport. Aeroflot did not object to the proposed rule, but noted that Aeroflot would benefit from keeping its non-signatory status. FAA views Aeroflot's comments as supporting the proposed rule. The determination of whether Aeroflot's status is properly that of a signatory carrier or non-signatory carrier is not a regulatory matter. This will be determined by discussions between the carrier and airport management.

The Federal Republic of Germany's Armed Forces Administrative Agency, which operates aircraft on official missions of the German Air Force, expressed concern that the proposed rule would impose a landing fee on German Air Force aircraft landing at Dulles. This is not the situation. The rule will not impose landing fees on public aircraft. Public aircraft are defined by FAA as "aircraft used only in the service of a government, or a political subdivision. It does not include any government-owned aircraft engaged in carrying persons or property for commercial purposes." 14 CFR 1.1. This definition is added to the landing fee rule for continuity after the transfer to the Authority. German Air Force aircraft have been treated as public aircraft in the past and have not paid a landing fee at the Airports. They will continue to be treated as public aircraft under the new regulation.

U.S. Jet, Inc., a provider of on-demand Part 135 service at National Airport, objected to the distinction proposed in the Notice between scheduled and non-scheduled Part 135 operators. U.S. Jet is seeking to become a signatory carrier at the Airports. As originally proposed, only scheduled Part 135 operators could become signatory air carriers; non-scheduled Part 135 operations would remain general aviation for contract and landing fee purposes. This was consistent with the historic operation at the Airports. Non-scheduled Part 135 operators, like U.S. Jet, Inc., often referred to as "air taxis," generally

operate aircraft more typical of general aviation than scheduled carriers. Also, at National, non-scheduled Part 135 operators have not been considered to be air carriers or commuters under the high density rule, 14 CFR 93.123, *et seq.*, for obtaining and operating slots. Nevertheless, FAA sees no reason to enact a regulation which would preclude a non-scheduled Part 135 operator from reaching an agreement with airport management to be a signatory carrier. FAA makes no judgment on the particular contractual relationship between the Metropolitan Washington Airports and U.S. Jet. The matter is to be resolved by airport management and not as an FAA regulatory matter.

U.S. Jet objected to paying fees as a non-signatory carrier if it is not permitted to become a signatory carrier. U.S. Jet's premise is not correct. The definition of a non-signatory carrier, which was in the Notice and is retained in the final rule, does not encompass non-scheduled Part 135 operators. They will continue to be treated as general aviation if they do not reach an agreement with the Airport to be signatory carriers. The non-signatory carrier fee differential is aimed at operators of large aircraft and Part 135 operators that are scheduled. Regularly scheduled operators are encouraged to become signatory carriers at the Airport. Non-scheduled Part 135 operators tend to operate smaller aircraft and function more like general aviation. It would be appropriate for the Authority to reconsider this classification, particularly if non-scheduled Part 135 operators impose costs on the Airports that are not adequately recovered by the general aviation landing fee.

Finally, it was suggested that the landing fees, once calculated, be rounded to the nearest \$0.25. FAA has elected not to adopt this suggestion.

It should be noted that FAA terminology is used in the rule. For instance, the rule refers to the Director of the Metropolitan Washington Airports, an FAA title. After the transfer of the Airports, the Airports Authority, of course, may use different terminology and titles.

Regulatory Evaluation

The final rule is not expected to have any significant impact because it will not impose any significant additional requirements on the users of the airports. A minimal economic impact will befall operation of general aviation aircraft at the airports and there will be a relatively minimal impact on non-signatory carriers who use the airports. A minimal economic benefit will accrue to the signatory carriers because the

increased fees from general aviation and the non-signatory carriers will pay a larger percentage of the costs in the landing fee cost center thereby reducing the total costs to be paid by the signatory carriers. The rule is not expected to have any effect on passengers. For this reason, it has been determined that the economic impact of this amendment is so minimal that a full Regulatory Evaluation is not warranted.

The various regulations in the final rule will have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to ensure, among other things, that small entities are not disproportionately affected by Government regulations. Small entities affected by the final rule are likely to be itinerant non-scheduled Part 135 air taxis who use the Airports from time to time, non-scheduled air taxi operators who are based at the Airports and non-scheduled operators of large aircraft. The rule will not require any change in the operations of these companies as currently conducted. No additional record-keeping requirements would be imposed. The air taxi operators are considered general aviation for landing fee purposes. The increase may have a significant impact on one or more of the air taxis that are based at the Airports, but it will not have a significant impact on a substantial number of small entities which operate aircraft, including large aircraft. The impact on the affected small entities would be substantially less than the threshold for significant impact under agency guidelines. Therefore, under the criteria of the Regulatory Flexibility Act, the final rule will not have a significant impact on a substantial number of small entities.

Conclusions

The final rule is not expected to impose any significant economic impact because it will not impose significant additional cost requirements on persons complying with the rule nor will it impose major changes in the activities it addresses. Therefore, the FAA has determined that this proposed amendment involves a regulation which is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures. (44 FR 1034; February 26, 1979). For the same reasons, it is certified that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because the cost of this

amendment is so minimal it does not warrant a full regulatory evaluation.

Reason for Immediate Adoption

The Administrative Procedure Act allows a rule to be made effective immediately for good cause. Because of the need to modify the landing fees for general aviation users in accordance with the Metropolitan Washington Airports Act of 1986 so that the new fees are in effect on the date of the transfer of the Airports to the new Authority, good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 159

Washington National Airport, Washington Dulles International Airport fees.

The Amendment

Accordingly, Part 159 of the Federal Aviation Regulations (14 CFR Part 159) is amended as follows:

PART 159—(AMENDED)

1. The authority citation of Part 159 is revised to read as follows:

Authority: 49 U.S.C. 2402 and 2424; The Metropolitan Washington Airports Act of 1986, Pub. L. 99-591, October 30, 1986.

2. By revising § 159.181 to read as follows:

§ 159.181 Landing fees.

(a) Except as provided in paragraph (b) of this section, the charges for each landing of an aircraft at Washington National Airport or Washington Dulles International Airport are as follows:

(1) *Signatory carriers.* Unless the carrier has a contract with the Airport management which provides otherwise, the carrier shall pay a landing fee for each of its aircraft that comes to a full stop at the Airport. The fee shall be paid at a rate for each 1,000 pounds or part thereof the maximum authorized landing weight of the aircraft permitted at the Airport. The rate per 1,000 pounds will be calculated by the Director, Metropolitan Washington Airports to recover the net direct and allocated costs of the airfield cost center, including utilities. The fee shall be calculated annually and adjusted for the underrecovery or the overrecovery of the prior year's costs.

(2) *Non-signatory carriers.* Each non-signatory carrier shall pay a landing fee equal to 125 percent of the current fee applicable to signatory carriers under paragraph (a) of this section.

(3) *Other operators.* All other users of the Airport shall pay landing fees on the

same basis and at the same rate as the signatory carriers except that a minimum landing fee shall be applicable as provided in paragraph (a)(4) of this section.

(4) The minimum landing charge at Washington National Airport and Washington Dulles International Airport for all aircraft, including helicopters, shall be \$4.00.

(b) There is no landing charge under this section for the following:

- (1) Public aircraft.
- (2) Aircraft departing from the Airport that are compelled to land at either Airport for safety reasons without landing at any other airport.
- (3) Aircraft operations for which the Director, Metropolitan Washington Airports determines that a charge should not be imposed.

3. By revising § 159.183 as follows:

§ 159.183 Service fees.

Each carrier or general aviation operator which uses the following services shall pay to the Director, Metropolitan Washington Airports the fee established by the Airports for the service as follows unless the carrier or

operator has a contract with the Airport which prescribes a different fee:

(a) Common use facilities—for use of the holdroom areas, baggage claim areas, baggage roadways, and porter facilities: The landing fee prescribed by § 159.181.

(b) Mobile lounge fees per trip: \$50.00.

(c) Federal Inspection Service fees (established annually) for use of the area where the Federal Inspection Services are performed: The fee per passenger paid by the signatory carriers.

4. By adding new § 159.184 as follows:

§ 159.184 Definitions.

For the purpose of §§ 159.181 and 159.183:

(a) A "signatory carrier" is a carrier operating under Part 121, Part 127, Part 129, or providing scheduled or non-scheduled operations under Part 135, that has entered into a contract with the Airport specifying the fees and charges for use of the Airport; and

(b) A "non-signatory carrier" is a carrier operating under Part 121, Part 127, Part 129, or providing scheduled operations under Part 135, that does not have a contract with the Airport

specifying the fees and charges for use of the Airport.

(c) Public aircraft means aircraft used only in the service of a government or a political subdivision. It does not include any government-owned aircraft engaged in carrying persons or property for commercial purposes.

5. By revising § 159.185 as follows:

§ 159.185 Payment for services.

(a) Unless other arrangements for payment have been made with the approval of the airport management, general aviation landing fees shall be paid to the fixed base operator at the Airport and a carrier shall report its weight to an authorized ground handler at the Airport.

(b) Unless satisfactory credit arrangements have been made, a person who has used Airport facilities, or who owes for storage, supplies, repairs, or other services by the Airports, must pay for them before takeoff.

Issued in Washington, DC, on June 4, 1987.

Donald D. Engen,

Administrator.

[FR Doc. 87-13063 Filed 6-4-87; 3:48 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 159****[Docket No. 25204; Amdt. No. [REDACTED]]****Charges for Use of Metropolitan
Washington Airports***Correction*

In rule document 87-13063 beginning on page 21908 in the issue of Tuesday, June 9, 1987, make the following correction:

On page 21910, in the second column, in the ninth line, insert "expected" before "economic".

BILLING CODE 1505-01-D