

PROPOSED ADDITION TO PORT AUTHORITY  
AIRPORT RULES AND REGULATIONS

The Airport Rules and Regulations are proposed to be amended by adding the following new Rule and Regulation as Chapter XV.A.8. (*Commercial and Non-Commercial Activity – Street Pricing*):

(1) (x) No concessionaire operating in a Port Authority Airport terminal operated by the Port Authority, shall charge prices to its customers in excess of 115% of “Street Price(s),” and (y) no party operating a Port Authority Airport terminal under agreement with the Port Authority (“Terminal Operator”) shall permit any concessionaire operating at a Port Authority Airport terminal operated by the Terminal Operator (whether or not through a concessions manager acting on behalf of the Terminal Operator) to charge prices to its customers in excess of 115% of “Street Price(s),” except, in each case, as set forth in subsection (6). For the purposes of this regulation, “Street Price(s)” shall mean:

(A) if the concessionaire conducts a similar business in off-airport location(s) in the Greater New York City-Northern New Jersey Metropolitan Area (the “Metro Area”), the price regularly charged by the concessionaire for the same or similar item in the Metro Area;

(B) if the concessionaire does not conduct a similar business in off-airport location(s) in the Metro Area, the average price regularly charged in the Metro Area by similar retailers for the same or similar item;

(C) if neither the concessionaire nor other similar retailers sell a particular item in the Metro Area, the price regularly charged by the concessionaire or similar retailers for the same or similar item in any other geographic area, with a reasonable adjustment for any cost-of-living variance between such area and the Metro Area; and

(D) if a concessionaire is in the business of selling duty-free goods, the price regularly charged by the concessionaire or other similar concession operator for the same or similar duty-free item at other major airports serving large urban areas in the United States of America, not including the Port Authority airports.

(2) (x) Every concessionaire operating in an Airport terminal operated by the Port Authority which offers food & beverage products or travel essentials (VFM Concessionaire) shall comply with the Port Authority’s Value for Money Options Program (VFM) which seeks to ensure that lower priced items are available for purchase. Details of the VFM Program and manner of compliance are further specified by the Port Authority in Airport General Manager’s Bulletins issued from time to time and in a Customer Service Standards Manual, the then-current version of which will constitute an applicable standard for operation of a concession offering food and beverages or travel essentials at an Airport and (y) every Terminal Operator shall cause each VFM Concessionaire at the Port Authority Airport terminal operated by that Terminal Operator to comply with the Port Authority’s VFM Program.

(3) Every VFM Concessionaire operating in an Airport terminal operated by the Port Authority shall submit to the Port Authority, from time to time in accordance with the guidelines issued by the Port Authority, an annual (or other periodic) pricing report demonstrating compliance with this

Street Pricing regulation, as it may be amended from time to time. Every Terminal Operator shall cause each VFM Concessionaire at the Port Authority Airport terminal operated by that Terminal Operator to submit to the Port Authority, from time to time in accordance with the guidelines issued by the Port Authority, an annual (or other periodic) pricing report demonstrating compliance with this Street Pricing regulation, as it may be amended from time to time. In each case, for purposes of establishing the Street Price of an item, any difference in the size or quality of a product or service shall constitute a basis for a price differential.

(4) Every concessionaire operating in an Airport terminal operated by the Port Authority shall cooperate with the Port Authority and, in particular, its internal audit staff, to assess compliance by that concessionaire with this Street Pricing regulation. Every Terminal Operator shall cause each concessionaire at the Port Authority Airport terminal operated by that Terminal Operator to cooperate with the Port Authority and, in particular, its internal audit staff, to assess compliance by that concessionaire with this Street Pricing regulation.

(5) Street Pricing Violations. Each concessionaire may be subject to the following enforcement actions:

(A) Violation Notices.

(i) In Port Authority Airport terminals operated by a Terminal Operator, notice of a violation of this Street Pricing regulation may be provided in writing to the concessionaire (a “Notice of Street Pricing Violation”) by the Terminal Operator or its agent or representative if the Terminal Operator finds any areas of non-compliance with the Street Pricing regulation during periodic price reviews, which may include spot-checks.

(ii) The Port Authority may also provide written notice (a “Port Authority Notice of Street Pricing Violation”) to the concessionaire and the Terminal Operator, if applicable, if the Port Authority finds any areas of non-compliance with the Street Pricing regulation during periodic price reviews, which may include spot-checks by Port Authority staff or contractors.

(iii) For purposes hereof, non-compliance with the Street Pricing regulation may be in the form of failure to submit required forms and information for approval, failure to cooperate with compliance assessments and investigations, failure to maintain required signage, and charging prices that are not in compliance with this “Street Pricing” regulation or failure to comply with the VFM Program.

(B) (x) A concessionaire operating in an Airport terminal operated by the Port Authority shall correct any areas of non-compliance within forty-eight (48) hours of its receipt of any Port Authority Notice of Street Pricing Violation and provide written documentation of the resolution of such non-compliance to the Port Authority. Every Terminal Operator shall cause each concessionaire at the Port Authority Airport terminal operated by that Terminal Operator to correct any areas of non-compliance within forty-eight (48) hours of its receipt of any Notice of Street Pricing Violation and provide written documentation of the resolution of such non-

compliance to, the Terminal Operator and, if applicable, any concession manager to the Terminal Operator.

(C) A Terminal Operator that has issued a Notice of Street Pricing Violation shall provide Corrective Actions Forms to the Port Authority with respect to all Street Pricing regulation discrepancies, as noted in any Notice of Street Pricing Violation, as well as copies of the written documentation of the resolution of such discrepancies.

(D) In the absence of approved pricing consistent with the Street Pricing regulation:

(i) The Port Authority may (x) designate similar retailers consistent with the Street Pricing regulation, (y) calculate the average price for similar products or service consistent with the Street Pricing regulation and (z) direct the maximum pricing that the concessionaire charges for that product or service (and may direct the Terminal Operator to so direct a concessionaire in a Port Authority Airport terminal operated by such Terminal Operator).

(ii) The concessionaire may submit to the Port Authority for the Port Authority's consideration (or in the case of a concessionaire operating in Port Authority Airport terminal operated by a Terminal Operator may submit to the Terminal Operator for its consideration) a written justification of its price determination, however the concessionaire shall be required to and shall adopt the maximum prices established by the Port Authority (or the Terminal Operator) until the evaluation of such justification is completed and alternative pricing is approved by the Port Authority (or the Terminal Operator).

(E) If the concessionaire does not make appropriate adjustments to comply with the Street Pricing policy within three (3) days of its receipt of any Notice of Street Pricing Violation or Port Authority Notice of Street Pricing Violation (as the case may be), the products and services which are not in compliance with the Street Pricing regulation may be required to be removed from the relevant concession space and the Port Authority reserves the right to consider additional enforcement mechanisms for breaches of this regulation, as needed.

(F) The Street Pricing regulation is hereby promulgated to address the restricted concessions options for Airport users due to operational constraints at the Airport and is an essential element in providing a high-level customer experience at the Airport. As such, compliance with the Street Pricing regulation is a condition to operation by concessionaires (and Terminal Operators which manage concessionaires).

6. Notwithstanding the definition of "Street Price(s)" in subchapter (1), no concessionaire or Terminal Operator shall be in violation of this Street Pricing regulation if it includes on any customer bill or invoice a fee (referred to as an "Employee Benefit and Retention Surcharge") not to exceed 3% of the pre-tax total thereof on account of the particular costs of doing business at the Airport as compared to off-airport locations. The Employee Benefit and Retention Surcharge will not constitute "Gross Receipts" under any agreement with the Port Authority pursuant to which the Port Authority receives a portion of any concessionaire's or Terminal Operator's "Gross Receipts".