

(e) For Model 412CF helicopters:

(1) Within 100 hours TIS or 90 days after the effective date of this AD, whichever occurs first, remove the two existing retention nuts retaining the bellcranks, P/N 212-011-705-001, and install retention nuts, P/N MS14145L6 or MS17826-6, in accordance with paragraphs (1) through (5) of the Accomplishment Instructions in Bell Helicopter Textron, Inc. ASB 412CF-00-10, Revision A, September 13, 2000 (412CF ASB). A used nut may not be installed.

(2) At intervals not to exceed 100 hours TIS after accomplishing paragraph (e)(1) of this AD, inspect the retention nuts and CPC coating in accordance with paragraph (6) of the Accomplishment Instructions in the 412CF ASB. Reapply the CPC coating if deficiencies are found in the coverage and protection of the area. Replace any retention nut with any corrosion, mechanical damage, a crack, or looseness with an airworthy new nut before further flight.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on February 28, 2001.

Eric Bries,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST-2001-9054]

RIN 2105-AC75

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 revise its rules governing airline computer reservations systems (CRSs) by changing the rules' expiration date

from March 31, 2001, to March 31, 2002. If the expiration date is not changed, the rules will terminate on March 31, 2001. The proposed extension of the current rules will keep them in effect while the Department carries out its reexamination of the need for CRS regulations. The Department has tentatively concluded that the current rules should be maintained because they appear to be necessary for promoting airline competition and helping to ensure that consumers and their travel agents can obtain complete and accurate information on airline services. The rules were previously extended from December 31, 1997, to March 31, 1999, then to March 31, 2000, and then to March 31, 2001.

DATES: Comments must be submitted on or before March 19, 2001. 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-2001-9054) by only one of the following means:

(1) By mail to the Docket Management Facility, US 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-2001-9054.

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: In 1992 the Department adopted its 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. 57 FR 43780 (September 22, 1992). We determined that the rules were necessary to ensure that each of the airlines and airline affiliates that then owned and controlled the systems did not use the systems to unfairly prejudice the competitive position of other airlines or to provide misleading or inaccurate information to travel agents and their customers. Travel agents depended on CRSs to provide airline information and make bookings for their customers, and almost all airlines received most of their bookings from travel agencies. CRS rules were necessary for these reasons. Our rules as revised will expire on March 31, 2001, unless we readopt them or extend the expiration date. 64 FR 15127 (March 30, 1999). We began a proceeding to determine whether the rules are necessary and should be readopted and, if so, whether they should be modified, by issuing an advance notice of proposed rulemaking. 62 FR 47606 (September 10, 1997). We are proposing here to extend the rules' expiration date to March 31, 2002, so that they will remain in force while we complete our reexamination of the rules.

We have set a ten-day comment period so that we can publish a final decision on this proposal before the rules' current expiration date. Our advance notice of proposed rulemaking and our supplemental advance notice of proposed rulemaking have given interested persons an opportunity to comment on whether the rules should be maintained.

The CRS Business

Four firms provide CRS services in the United States. Three of them are owned in whole or part by one or more U.S. or foreign airlines, and the two systems with little or no airline ownership are marketed by one or more U.S. airlines. A CRS provides information on airline services and other travel services sold through the system to its users. While most system users are travel agents (both traditional agencies and on-line agencies), consumers using Internet reservations services and corporate travel departments also use systems. Someone using a CRS can investigate what airline seats and fares are available and can book a seat on each airline that

“participates” in the system, that is, that makes its services saleable through the CRS. Travel agents access a CRS through computer terminals.

The systems obtain most of their revenues from the fees paid by airlines and other travel suppliers participating in a system when a system user books travel services through the system or changes an existing booking (these fees are called “booking fees”). Many, but not all, travel agencies subscribing to a system also pay fees. Since the systems compete for subscribers, market forces discipline subscriber fees, and some travel agencies can obtain CRS equipment and services at little or no charge.

Regulatory Background

The Civil Aeronautics Board (“the Board”), the agency formerly responsible for the economic regulation of the airline industry, initially adopted CRS rules because the systems had become essential for airline distribution in the early 1980s due to the travel agents’ reliance on the systems for investigating and booking airline services. 49 FR 32540 (August 15, 1984). At that time each system operating in the United States, with one minor exception, was owned by a single airline, and each owner airline used its system to prejudice competing airlines and to give consumers biased or incomplete information in order to obtain more bookings. The Board found that regulations were essential to keep the systems from substantially injuring airline competition and from misleading consumers. In adopting its regulations the Board primarily relied on its authority under section 411 of the Federal Aviation Act, later recodified as 49 U.S.C. 41712, to prevent unfair methods of competition and unfair and deceptive practices in air transportation and the sale of airline transportation. The Board’s rules were affirmed on review. *United Air Lines v. CAB*, 766 F.2d 1107 (7th Cir. 1985).

The Board’s major rules required each system to make participation available to all airlines on non-discriminatory terms, to offer at least one unbiased display, and to make available to each airline participant any marketing and booking data from bookings for domestic travel that it chose to generate from its system. The rules also prohibited certain CRS contract terms that unreasonably limited the travel agencies’ ability to switch systems or use more than one system.

To ensure that the rules would be reexamined, the Board’s rules contained a sunset date, December 31, 1990. After we assumed the Board’s responsibilities

for airline economic regulation, we conducted such a reexamination. During our reexamination we maintained the rules by extending their expiration date. 55 FR 53149 (December 27, 1990); 56 FR 60915 (November 29, 1991); 57 FR 22643 (May 29, 1992).

Our reexamination caused us to readopt the rules with several revisions designed to strengthen them. 57 FR 43780 (September 22, 1992). We determined that the rules were still necessary. Market forces did not discipline the price or level of service offered participating airlines by the systems. In addition, without rules CRS owners could use their control of the systems to prejudice airline competition, and the systems could bias their displays of airline services. 57 FR at 43783–43787.

Like the Board’s rules, our rules included a sunset date, December 31, 1997. 14 CFR 255.12; 57 FR at 43829–43830 (September 22, 1992). To begin our current reexamination of the rules, we published an advance notice of proposed rulemaking requesting comments on whether we should readopt the rules and, if so, whether they should be changed. 62 FR 47606 (September 10, 1997). We then amended the rules twice to further promote competition. 62 FR 59784 (November 5, 1997); 62 FR 66272 (December 18, 1997). Last year we published a supplemental advance notice of proposed rulemaking that asked the parties to update their comments in light of recent developments and to comment on whether any rules should be adopted regulating the use of the Internet in airline distribution. 65 FR 45551 (July 24, 2000).

We have also been conducting informal studies of recent developments in airline distribution and of the proposed business plan and operational strategy of Orbitz, a travel website being developed by five major U.S. airlines.

Almost all of the parties responding to our advance notice of proposed rulemaking and supplemental advance notice of proposed rulemaking urged us to maintain CRS rules, although they also argued that the rules required changes, mostly changes that would strengthen them. Few parties have argued that we should eliminate the rules or that the continued regulation of the CRS business is unnecessary. An extension of the current rules pending completion of the current reexamination of those rules would be consistent with the positions taken by most of the commenters.

Previous Extension of the Rules’ Sunset Date

Because we could not complete our reexamination of the rules by the original sunset date, December 31, 1997, we have amended the rules three times to extend them, first to March 31, 1999, then to March 31, 2000, and then to March 31, 2001. 62 FR 66272 (December 18, 1997); 64 FR 15127 (March 30, 1999); and 65 FR 16808 (March 30, 2000). We concluded that these extensions were necessary to prevent the harm that would arise if the CRS business were not regulated and that extending the rules would not impose substantial costs on the industry. The only party that commented on the first proposed extension—America West Airlines—supported it, as did three parties that commented on the second proposed extension—Amadeus Global Distribution System, America West, and the Association of Asia-Pacific Airlines. Worldspan’s comment on the second proposed extension did not oppose the extension. The parties that took a position on the last proposed extension—Delta, Amadeus, Worldspan, and the American Society of Travel Agents—all supported the proposal.

Our Proposed Extension of the CRS Rules

We are again proposing to change the expiration date for our CRS rules to March 31, 2002, to keep the rules in effect while we complete our reexamination of the need for the rules and their effectiveness. The time needed to complete our overall reexamination of our rules, including the need to give parties an adequate opportunity to file comments and reply comments in response to our future notice of proposed rulemaking, will require more time than the few months remaining before the current expiration date, March 31, 2001. In addition, we wish to complete our informal studies of airline distribution developments before we determine whether to propose readopting the rules.

We are aware that the delay in completing the rules’ reexamination is unfortunate due to the importance of adapting our rules on CRS operations to current industry conditions and of considering whether the rules should be extended to the Internet, which is becoming increasingly important in airline distribution. We have had to address other airline competition issues that appeared to be more urgent. While the current rules should be updated, they do appear to address the most serious potential competitive and consumer protection issues created by

the use of computer reservations systems in airline distribution.

We have taken steps to enable us to move forward promptly on the rules' reexamination. As noted, we issued a supplemental notice last year asking the parties to update their comments in light of recent developments, including the Internet's growing importance in airline distribution. We are also completing our informal studies of airline distribution.

A number of parties have requested prompt action on certain additional CRS regulations, such as rules limiting airline booking fees and giving travel agency subscribers additional rights to cancel CRS contracts. *See, e.g.*, the petition filed by America West on airline booking fees; the Emergency Petition for Rulemaking filed by the Association of Retail Travel Agents in Docket OST-98-4775 on travel agency contracts; and the petition filed by Amadeus in Docket OST-99-5888 on the tying of an airline's corporate discount fares with the agency's use of that airline's CRS. As indicated, we are also studying Orbitz, since we have received a number of informal complaints that its proposed plan of operation would undermine the current distribution system. We recognize that the importance of some issues, such as our review of Orbitz, may require us to decide them before we complete our overall reexamination of the rules.

We tentatively conclude that we should amend the rules to change the sunset date from March 31, 2001, to March 31, 2002. This amendment would preserve the status quo until we determine which rules, if any, should be adopted. Allowing the current rules to expire would be disruptive, since the systems, airlines, and travel agencies have been conducting their operations in the expectation that each system will comply with the rules. Systems, airlines, and travel agencies, moreover, would be unreasonably burdened if the rules were allowed to expire and we later determined that those rules (or similar rules) should be adopted, since they could have changed their business methods in the meantime.

Our principal reason for extending the rules is the need to protect airline competition and consumers against unreasonable and unfair practices. Our past examinations of the CRS business and airline marketing convinced us that CRSs were still essential for the marketing of the services of almost all airlines. 57 FR 43780, 43783-43784 (September 22, 1992). We found that rules were needed because the airlines depended on travel agencies as their principal distribution arm, because

travel agencies relied on CRSs, because most travel agency offices used only one CRS, because creating alternatives for CRSs and getting travel agencies to use them had been difficult, and because non-owner airlines were unable to cause agencies to use a CRS that provided airlines better or less expensive service instead of another that provided poorer or more expensive service. 57 FR at 43783-43784, 43831. If an airline did not participate in a system used by a travel agency, that agency was less likely to book its customers on that airline. Since marginal revenues are important in the airline industry, an airline could not afford to lose access to a significant source of revenue. An airline (or other firm) could not practicably create a system that could compete with the existing systems. Almost all airlines therefore had to participate in each CRS, and CRSs did not need to compete for airline participants. 57 FR at 43783-43784.

We believe that these findings are still valid. Travel agencies still make most airline bookings in the United States, travel agencies still rely heavily on CRSs to determine what airline services are available and to make bookings, and few travel agency offices make extensive use of more than one CRS. That CRS participation is essential for almost all airlines is demonstrated by the decision of the low-fare airlines to participate in each system, even though several initially believed that they could reduce their costs while not forfeiting much traffic by declining to participate in the systems. 62 FR at 47608. The rapid growth in the use of the Internet by consumers may not reduce the importance of the systems, for Internet sites (except many airline sites) typically use a system as their booking engine.

We recognize, of course, that Sabre no longer has any airline owner, due to American's spin-off of its Sabre stock, and that airlines own less than a quarter of Galileo's stock. American and Southwest market Sabre, however, and United markets Galileo, so these two systems each have significant airline ties which could potentially lead to deceptive or unfair competitive practices if our rules expired. Whether the rules should be readopted in light of the changes in system ownership is, of course, an issue that we will consider carefully in our reexamination of the rules. 65 FR at 45554, 45556.

As noted above, most of the parties that responded to the advance notice of proposed rulemaking and the supplemental advance notice of proposed rulemaking stated that the rules remained necessary, and most of

them urged us to strengthen them further to protect airlines and travel agencies against potential abuses by system owners.

Thus, while our staff has not completed its current study of the CRS business and we have not issued a notice of proposed rulemaking finding that the rules should be readopted, we tentatively find that our past findings on the need for CRS rules are still valid, at least for the purpose of a short-term extension of the rules' expiration date. Maintaining the current rules will protect airline competition and consumers against the injuries that would otherwise occur, given our earlier findings on the market power of the systems and each airline owner's potential interest in using its affiliated CRS to prejudice the competitive position of other airlines. Continuing the rules in effect should not impose significant costs on the systems and their owners, since they have already adjusted their operations to comply with the rules and since the rules do not impose costly burdens of a continuing nature on the systems.

Finally, our obligation under section 1102(b) of the Federal Aviation Act, recodified as 49 U.S.C. 40105(b), to act consistently with the United States' obligations under treaties and bilateral air services agreements further supports our continuation of the rules. Many of those bilateral agreements assure the airlines of each party a fair and equal opportunity to compete. We have held that the fair and equal opportunity to compete includes, among other things, a right to have an airline's services fairly displayed in CRSs. Our rules against display bias and discriminatory treatment help to provide foreign airlines with a fair and equal opportunity to compete in the United States. 57 FR at 43791-43792. The European Union, Canada, and Australia, for example, have adopted rules regulating CRS operations that help give U.S. airlines a fair opportunity to sell their services in the countries covered by the rules.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. The proposal is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

Keeping the current rules in force should not impose significant costs on

the systems. They have already taken all the steps necessary to comply with the rules' requirements on displays and functionality, and complying with those rules on a continuing basis does not impose a substantial burden on the systems. Maintaining the rules will benefit participating airlines, since otherwise they could be subjected to unreasonable terms for participation, and will benefit consumers, who might otherwise obtain incomplete or inaccurate information on airline services. The rules also contain provisions that are designed to prevent abuses in the systems' competition with each other for travel agency subscribers.

When we conducted our last major CRS rulemaking, we included a tentative economic analysis in our notice of proposed rulemaking and made that analysis final when we issued our final rule. We believe that analysis remains applicable to our proposal to extend the rules' expiration date. As a result, no new regulatory impact statement appears to be necessary. However, we will consider comments from any party on that analysis before we make our proposal final.

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

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress 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. Our 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.

Furthermore, maintaining the current rules will not modify the existing regulation of small businesses. Our final rule in our last major CRS rulemaking contained a regulatory flexibility analysis on the impact of the rules. As a result of that analysis, we determined that this regulation did not have a significant economic impact on a substantial number of small entities. Our 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 and will consider

any comments filed on that analysis in connection with this proposal.

The continuation of our existing CRS rules will primarily affect two types of small entities, smaller airlines and travel agencies. To the extent that airlines can operate more efficiently and reduce their costs, the rules will also affect all small entities that purchase airline tickets, since airline fares may be somewhat lower than they would otherwise be, although the difference may be small.

Continuing the rules will protect smaller non-owner airlines from several potential system practices that could injure their ability to operate profitably and compete successfully. No smaller airline has a CRS ownership interest. Market forces do not significantly influence the systems' treatment of airline participants. As a result, if there were no rules, the systems' airline owners could use them to prejudice the competitive position of other airlines. The rules provide important protection to smaller airlines. For example, by prohibiting systems from ranking and editing displays of airline services on the basis of carrier identity, they limit the ability of each system to bias its displays in favor of its owner airlines and against other airlines. The rules also prohibit charging participating airlines discriminatory fees. The rules, on the other hand, impose no significant costs on smaller airlines.

The CRS rules affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. The rules prohibit CRS contracts that have a term longer than five years, give travel agencies the right to use third-party hardware and software, and prohibit certain types of contract clauses, such as minimum use and parity clauses, that restrict an agency's ability to use multiple systems. By prohibiting display bias based on carrier identity, the rules also enable travel agencies to obtain more useful displays of airline services.

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 recordkeeping 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 March 31, 2002.

Issued in Washington, DC on March 2, 2001, under authority delegated by 49 CFR 1.56a(h)2.

Susan McDermott,

Deputy Assistant Secretary for Aviation and International Affairs.

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