DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 257 and 399

[Docket Nos. OST–95–179 & OST–95–623]

RIN 2105–AC10

Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule strengthens the Department's current consumer notification rules and policies to ensure that consumers have pertinent information about airline code-sharing arrangements and long-term wet leases in domestic and international air transportation. The rule, among other things, does the following: First, requires travel agents doing business in the United States, foreign air carriers, and U.S. air carriers: To give consumers reasonable and timely notice if air transportation they are considering purchasing will be provided by an airline different from the airline holding out the transportation, and to disclose the identity of the airline that will actually operate the aircraft.

Second, for tickets issued in the United States, requires U.S. and foreign air carriers and travel agents to provide written notice of the transporting carrier's identity at the time of purchase of air transportation involving a code-sharing or long-term wet-lease arrangement.

DATES: This regulation is effective July 13, 1999. Comments on the information collection requirements must be received on or before May 14, 1999.

ADDRESSES: Comments should be sent to Jack Schmidt, Office of Aviation and International Economics (X–10), Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–5420 or (202) 366–7638 (FAX).

FOR FURTHER INFORMATION CONTACT: Laura Trejo, Office of International Law, Office of the General Counsel, Room 10118, (202) 366–9183, or Timothy Kelly, Aviation Consumer Protection Division, Room 4107, (202) 366–5952, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Department issued a Notice of Proposed Rulemaking (NPRM), 59 FR 40836 (August 10, 1994), to obtain comments and reply comments on requiring the disclosure of code-sharing arrangements and long-term wet leases. In these operations, the operator of a flight differs from the airline in whose name the transportation is sold. The NPRM proposed to strengthen the current disclosure rules.

The NPRM, among other things, proposed (1) to require travel agents doing business in the United States, foreign air carriers, and U.S. air carriers (a) to give consumers reasonable and timely notice if air transportation they are considering purchasing will be provided by an airline different from the airline holding out the transportation, and (b) to disclose the identity of the airline that will actually operate the aircraft; and (2) for tickets issued in the United States, to require U.S. and foreign air carriers and travel agents to provide written notice of the transporting carrier's identity at the time of purchase of air transportation involving a code-sharing or long-term wet-lease arrangement. The NPRM also stated that the Department wants to consider seriously a requirement that the transporting carrier's identity be printed on the flight coupon for services involving a code-sharing or long-term wet-lease arrangement.

This action was taken to ensure that consumers have pertinent information about airline code-sharing arrangements and long-term wet leases on domestic and international flights.

We received comments on the NPRM and reply comments from ten U.S. airlines (Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Frontier Airlines, Inc.[1], Northwest Airlines, Inc., Southwest Airlines Co., Trans World Airlines, United Air Lines, Inc., and USAir, Inc.), eight foreign airlines (Aerovias de Mexico, S.A. de C.V., British Airways, Qantas Airways Limited, SwissAir, LTU Lufttransport-Unternehmen GmbH. & Co. KG, British Midland Airways, Ansett Australia Holdings, and Lan Chile), the International Association of Machinists and Aerospace Workers, three associations (Regional Airline Association, International Airline Passengers Association, and National Air Carrier Association), three CRS vendors (Galileo International Partnership, Worldspan, and System One Information Management, Inc.), nine travel agent/industry groups (Action 6, Admiral Travel Bureau, American Automobile Association, American Society of Travel Agents, Mercury Travel, Omega World Travel, Rogal Associates, Township Travel, and USTravel), and five other groups or individuals (Americans for Sound Aviation Policy, the City of Philadelphia, Donald Pevsner, the British Embassy, and Congresswoman Rosa De Lauro).[2]

The comments persuaded us that we should change one aspect of the proposal. The proposed rule would have allowed airlines operating under network names, e.g., American Eagle or Delta Connection, to identify themselves to the public only by those names. Supporters of this original proposal argued that giving passengers the actual corporate name, e.g., Atlantic Coast Airlines, could add to confuse passengers' confusion, because there are typically no airport signs using that name that would tell passengers where to check in.

Some commenters, however, argued that the public should know precisely who is operating the aircraft. They asserted that permitting the commuters to operate only under a network name obscures, rather than clarifies, the nature of the operation.

We issued a supplemental notice proposing to require all operators to disclose their corporate name. 60 FR 3359 (January 17, 1995). The notice also requested comments on whether, to avoid any airport-related confusion, we should also require disclosure of the network name where there is one. The purpose of this proposal was to help ensure that consumers will not assume that a major airline is the transporting carrier when purchasing transportation operated by one of its regional airline partners.

We received comments on the supplemental notice from Northwest Airlines, American Airlines and AMR Eagle, Trans World Airlines, United Air Lines, USAir, Inc., Midwest Express Airlines and Astral Aviation doing business as Skyway Airlines, Delta Air Lines, Continental Airlines and System One, the International Association of Machinists and Aerospace Workers, the Port Authority of New York and New Jersey, Gulfstream International Airlines, Inc., the American Society of Travel Agents, and the Regional Airlines Association.

The following is a summary of the comments and reply comments and the Department's decision on each component of the NPRM:

[1] Frontier Airlines, Inc. subsequently withdrew its comments.

[2] The Saturn Corporation and PMI Mortgage Insurance submitted letters prior to publication of the NPRM.

Written Notice on the Flight Coupon

The NPRM announced that the Department was considering a requirement that, where the designator code on the ticket is different from that of the transporting carrier on any flight segment, there must be printed on the flight coupon (1) an asterisk, like the one that already identifies flights listed in computer reservation systems (CRSs) under an airline code different from that of the transporting carrier, and (2) a legend elsewhere on the coupon that states the transporting carrier's identity preceded by the words ''operated by.''

American supported the proposal and stated that the legend ''operated by'' could be printed on the newer ''Automated Ticket and Boarding Pass'' (''ATB'') ticket stock, which accounts for 80 percent of the tickets issued. However, American claimed that there is insufficient room on the older ''Transitional Automated Ticket'' (''TAT''), which still accounts for 20 percent of the tickets issued. American estimated that total modifications to its SABRE computer reservation system (used by travel agents and American's own ticket agents) to comply with the proposed requirement would cost between $250,000 and $300,000. The National Air Carrier Association (''NACA'') also supported the proposal. Mr. Pevsner proposed that an asterisk be placed in the ''CARRIER'' box with a bold-type disclosure elsewhere on the flight coupon.

The American Automobile Association (''AAA''), British Airways, Delta, Galileo, Northwest, Qantas, Worldspan, USAir, the City of Philadelphia, Lan Chile, and SwissAir opposed printing on the ticket. Most of the opposition claimed that there was simply no room on the ticket and that the associated costs would be unduly burdensome. Worldspan argued that it would not be feasible to include the identity of the transporting carrier on a flight coupon, and it opposed American's suggestion that the notice should be carried on the ATB stock but not the TAT stock. Worldspan asserted that if notice were provided on one type of ticket stock but not the other, the result would be more confusing to passengers than providing no notice on either type of stock. Galileo stated that it would be necessary to retrofit about 13,000 ticket printers located in Apollo agencies, costing $500,000, and that the implementation phase would take longer than 60 days. Delta stated that if the Department imposed a new written notice requirement, the industry would need up to one year to comply.

Because American stated that a notice could be placed on ATB stock but not on TAT stock, TWA suggested that the notice be required either on the ticket stock or on the mini-itinerary stapled to the ticket. TWA believes that the mini-itinerary, when stapled to the ticket package, is an adequate substitute for requiring notice of a code-share carrier on the ticket coupon.

United claimed that printing on the tickets would duplicate the written notice on the itinerary and conflict with the movement towards ticketless travel. Further, United disagreed with American's cost estimate, because it was based on only one type of ticket generated on domestic ticket printers. According to United, most carriers would not want to limit such a ticketing change only to the type of ticket issued in the United States but would want it to apply system-wide, and to all types of printers. If the costs of reprogramming and retooling all ticket printers worldwide were taken into account, United estimated that costs would exceed $1 million and that implementation would take more than one year. Continental and System One estimated the costs to System One at more than $300,000 with a six to ten month implementation phase.

Delta argued that the standard ticket format is based on an industry agreement. According to Delta, any changes to the format will require discussions between the carriers and CRSs, which would be time-consuming and potentially costly.

The International Airline Passenger Association (IAPA) stated that if there is insufficient space to print a notice on the ticket, a card could be added after each coupon on which a code-sharing flight appears stating that the flight on the prior coupon is actually being operated by another carrier.

Decision

The Department has decided to defer further consideration of a rule requiring written notice on the face of the ticket until standards for ticketing, evolution of ticketless travel, and the effectiveness of other disclosure measures can better be evaluated. The comments have persuaded us that we could, at best, cover only 80 percent of the tickets issued at this time without imposing substantial costs, since the older TAT ticket stock cannot accommodate our proposed notice. It appears that the major cost of providing the written notification on the coupon is due to the reprogramming of the print command software and retooling the printer hardware. Based on the comments, these costs range from $300,000 to $1,000,000 depending upon the system. The total cost for the written notification on the ticket coupon would approximate $3,800,000 for the largest portion of the U.S. airline/CRS vendor industries.

We believe that we should impose such a cost burden only if it could be shown that the benefits would clearly outweigh the costs. Given the difficulty of estimating the incremental benefit that notice on the ticket would add to the other measures we are requiring, such as the written and oral notice components of the rule, we cannot conclude at this time that imposition of the additional requirement is warranted. Also, as United argued, it is unclear at this point how the ticketless travel movement will develop. Therefore, during the two to three year period following effectiveness of this rule, the Department will monitor (1) the effectiveness of the disclosure rule as adopted, (2) the ticketless travel trend, and (3) the ability of airlines to give adequate consumer notices in a ticketless environment and will revisit this issue then if justified. We can then initiate further rulemaking action if it appears necessary.

Application of Rule to Wet Leases

The NPRM proposed to apply the oral and written notice requirements to wet leases that last more than 60 days because, from the consumer's perspective, wet leasing is indistinguishable from code-sharing: the passenger buys a ticket from one airline, but the aircraft is operated by another.

Continental, System One, British Airways, Qantas, USAir, NACA, the Government of the United Kingdom, Lan Chile, and Northwest opposed this proposal. They argued that wet-lease operations do not cause significant confusion problems and that the proposed notice would actually confuse passengers. In addition, these opponents claimed that it is not technically feasible to give notice, because aircraft used in wet leases are frequently used on different routings and/or on different days of the week, making advance identification impracticable. USAir in particular claimed that it would take at least a year to modify computer software, and it stated that the Department can impose any necessary consumer protection conditions through the present licensing process. British Airways argued that requiring notice will keep airlines from being able to enter into flexible aircraft arrangements. Northwest stated that a wet lease differs from a code-sharing arrangement in that only one carrier is holding out service on the flight. Moreover, Northwest

argued that the lessee carrier is fully responsible for the operation of the flight even though the crew is provided by the lessor carrier, and the wet-lease agreement typically states the lessee's operating requirements.

Americans for a Sound Aviation Policy (''ASAP'') stated that the notification requirement should be triggered by wet leases of two weeks since CRS notification to travel agents can be nearly instantaneous.

LTU, a privately owned German carrier, suggested amending section 257.3(f), the definition of a long-term wet lease, to add at the end the phrase, ''unless such lease is between air carriers with 100 percent common ownership.'' LTU leases aircraft on a long-term basis to an affiliate with identical ownership. The aircraft are then leased back to LTU with crew for the same term. A limited portion of the operations of these aircraft are in scheduled service to the United States. LTU claimed that these are not true wet leases because LTU owns the aircraft it leases, but it noted that LTU's operations would appear to be subject to this proposal. According to LTU, its affiliate does not have a separate commercial identity or a designator code in the Official Airline Guides, and moreover, it and its affiliate have the same managing director and most of the same management. Reasoning that the disclosure requirement would only confuse passengers, LTU suggested amending the proposal as indicated above.

Southwest asked the Department to revise the NPRM to exclude the Southwest-Morris Air arrangement and similar operating arrangements from the public disclosure requirements. Morris Air is now wholly owned by Southwest. Southwest stated that, under their transitional arrangement, Morris Air ceased holding out its services to the public on October 4, 1994, and after that date those services were held out solely in Southwest's name. For a period of six months, some flights would be operated by Morris Air aircraft and crews. This arrangement was to last only long enough to meet the FAA procedures for conversion of the remaining Morris Air aircraft to Southwest's certificate and operations specifications.

Decision

The Department has decided to retain but modify the proposed requirement to disclose the identity of the actual operator of a long-term wet lease. No commenter provided an adequate basis for distinguishing between long-term wet leases and code-sharing arrangements from the consumer's perspective. Northwest's observation that in a wet lease only one carrier is holding out service on the flight does not take into account major U.S. carriers' alliances with commuter carriers (such as United Express or American Eagle). In these alliances, generally only the major carrier holds out service.[3]

The Department will modify the proposal, however, to apply only to those wet leases where the aircraft are dedicated to particular routes. This modification addresses the commenters' concern that giving notice may not be feasible if aircraft are not dedicated to particular routes and that the requirement will keep airlines from entering into flexible aircraft arrangements. Carriers in situations such as those like LTU and Southwest may seek individual relief from the rule from the Department.

We are not adopting USAir's suggestion that the Department impose any necessary consumer protection conditions through the present licensing process, since the purpose of this rule is to impose clear and uniform disclosure requirements, not ad hoc conditions. Moreover, wet leases involving only U.S. carriers are not now subject to any economic licensing process, but are authorized by regulation.

Corporate and Network Names

The Supplemental Notice of Proposed Rulemaking (SNPRM) proposed a requirement that for operations conducted under a network name, such as ''The Delta Connection,'' that is applied to several airlines, the transporting carrier's corporate name itself be disclosed to consumers in code-share and long-term wet lease operations. The Department stated that it expects airlines and ticket agents also to disclose the network name, if that is the name in which service is generally held out to the public. We solicited comments on whether we should make this an explicit requirement in the final rule.

American, AMR Eagle, and the International Association of Machinists and Aerospace Workers (IAM) supported this proposal. IAM based its support on its concern that consumers should have this pertinent information about airline code-sharing arrangements and long-term wet leases on domestic and international flights. American and AMR Eagle asserted that the rule should require the disclosure of both the network name and the identity of the transporting carrier to minimize confusion and to tie the reputation of the major carrier to the service provided by the commuter code-share partner. They stated that the rule is feasible and relatively inexpensive to implement. To this extent, they asserted that in American's timetables, the American Eagle logo is used to indicate that service in a particular city-pair is provided by one of the American Eagle carriers. They noted that a simple chart in the timetable can correlate the flight numbers with each of the four operating entities that make up the American Eagle network. Furthermore, they stated that in the SABRE computer reservations system used by about 24,000 travel agencies world wide, the identity of the individual network carrier is already available for most airlines. According to American and AMR Eagle, SABRE would not have difficulty complying with the proposed rule so long as the individual carriers in code-sharing networks are obligated to provide the required information.

Opponents argued that there would be substantial costs and confusion. TWA stated that the rule would increase costs that are impossible to quantify for consumers, carriers, and travel agents. TWA asserted that the rule would cause consumer delays as they search airports vainly for gates showing the carrier's corporate name. According to TWA, the Department has no basis to believe that passengers experience any confusion when they hear the name of commuter carrier affiliates of major carriers.

Northwest stated that many carriers already voluntarily disclose the corporate identity to passengers who want the information. Northwest claimed that Worldspan and its internal reservation system identify the corporate names in both the availability and booking screens. Northwest also noted that American does not provide the corporate names of its American Eagle network commuters in the Official Airline Guides or of its American Eagle carriers in its system timetable.

United argued that the Department's consumer complaint files do not indicate a consumer demand for identification of network commuters by their corporate names. United stated that it already instructs its reservation agents to provide the corporate name where a passenger books a ticket involving United Express. United noted

[3] Furthermore, Northwest's assertion that the lessee carrier is fully responsible for the operation of the flight even though the crew is provided by the lessor carrier is only partially correct. The Federal Aviation Administration policy requires ''each U.S. air carrier to retain operational control of each wet leased aircraft listed on its operations specifications regardless of whether the aircraft is U.S. or foreign registered.'' Air Transportation Operations Inspector's Handbook, Order 8400.10, August 23, 1988, section 4.309.

that its Apollo CRS displays the commuter carrier's actual name on the screen when the reservation is made.

United stated that the Department should require disclosure of the corporate name in addition to the network name only when a passenger requests it. However, United asserted that if any regulation is deemed necessary, it should be limited to the requirement in proposed sections 257.5(a) and 257.5(c) regarding information in CRSs and in carrier schedules and a written notice. United asserted that it, like most other carriers (except for American), already provides the corporate name in written or electronic schedule information, so adoption of this portion of the rule should not be burdensome. As for written notice, United stated that it does not object to the rule so long as the Department clarifies that United can use, as it does currently, abbreviations where these are used by the commuter carriers themselves. In contrast, United stated that there is no need for proposed section 257.5(b) requiring corporate name information in the oral notices or in advertising as indicated in proposed section 257.5(d). United argued that a requirement to disclose the corporate name would be an undue burden and restrictions on carrier advertising would represent an unconstitutional restraint on freedom of commercial speech. Finally, United noted that the Department did not conduct a cost-benefit analysis for the additional notice proposed in the SNPRM.

The Port Authority of New York and New Jersey asserted that the proposed rule would not avoid consumer confusion. It argued that it is unclear whether the term ''corporate name'' means the name in which the Department issued the applicable certificate or the ''doing business as'' name, which is easy to change .

According to Midwest Express, its only code-share partner is its subsidiary with the official corporate name of Astral Aviation, Inc. doing business as Skyway Airlines. Midwest Express stated that Skyway Airlines is not the name of a network of different commuter operations by different, independent corporations. It urged the Department to exempt from the corporate name identification requirement the situation where only one corporation is using a particular servicemark. Midwest Express argued that requiring it to identify Skyway as ''Astral Aviation/Skyway Airlines'' will not help consumers know that Midwest Express and Skyway are separate operations. It argued that the proposed rule would only confuse consumers and increase costs. Astral estimated that the corporate name disclosure requirement would add about $90,000 annually to its reservation costs based on the assumption of an average increase in ''talk time'' of 15 seconds per call to its reservation number. Astral alleged that the costs are a significant percentage of its projected profits on its forecast 1995 revenues of $35 million. Astral stated that its estimate does not include, among other things, the increased expenses to travel agents, which book about 80 percent of the tickets on Midwest Express/Skyway Airlines.

Delta argued that the proposal represents a significant modification to long-standing industry practice and would impose substantial costs and burdens without bringing any countervailing public benefits. Delta estimated that several hundred hours of programming would be required over several months to include the corporate names of the Delta Connection carriers and all other code-share partners in its primary availability screens. It noted that if the proposed rule requires disclosure of the corporate name of the Delta Connection carrier to be included as part of each relevant flight listing, such requirement would substantially increase the size and costs of the printed schedules. Delta stated that it is unaware of any confusion among the public concerning domestic code-sharing under network names and argued that disclosing the corporate name would not provide additional information concerning the type and size of aircraft, crew qualifications, comfort, and in-flight amenities. If anything, Delta argued, the proposal would promote consumer confusion. Delta also stated that travel agents would likely only disclose what is required (i.e., the corporate name) and argued that requiring disclosure of the corporate name would dilute the value of the network name. Delta suggested that if the Department requires disclosure of the corporate name, it should key the timing of such disclosure to the point at which the customer purchases the transportation rather than requiring such notice before booking transportation.

Continental and System One argued that if the Department adopts any rule requiring disclosure of corporate names, that rule should be limited to code-sharing arrangements. They asserted that corporate names change frequently and are relatively meaningless to the general public. Moreover, like Delta, they also stated that use of network names has long been standard industry practice. They claimed that requiring disclosure of corporate names in electronic and written schedule information provided to the public with respect to long-term wet-lease arrangements would force System One to spend about $200,000 in implementation costs. According to them, written disclosure of corporate names at time of sale and in advertising would also incur substantial costs.

USAir stated that of the 2500 USAir Express departures per day, not one is operated by a USAir commuter affiliate under its own corporate name. Furthermore, USAir argued that there are no public identifiers used for these operations except for the USAir Express network name. According to USAir, if consumers are given both the network name and corporate name, they will be unsure of which name to seek at the airport. In addition, USAir estimated that complying with the proposed rule would cost $255,000 in programming hours and at least six months to a year's time to update USAir's PACER reservations system.

The Regional Airline Association (RAA) supports the disclosure of network names. However, it does not believe that disclosure of the corporate name would have any benefits for the public.

The American Society of Travel Agents (ASTA) argued that the proposed rule was not the most efficient method of notifying travel agents about code-sharing details. ASTA suggested that the Department require that CRS displays clearly indicate the existence of code-sharing by showing all code-shared flights only once in the CRS availability displays and using a double airline code, with the first displayed code indicating the transporting carrier. According to ASTA, the rest of the rule should be deferred until voluntary compliance with their proposal can be monitored. ASTA questioned whether any rule is necessary on this subject if the Department is convinced that agents and airlines are going to disclose the existence of code-sharing situations voluntarily along with the network name.

Gulfstream International Airlines, Inc. (Gulfstream) asserted that the network name is sufficient to alert customers to a code-shared flight. Although it opposes the rule, Gulfstream stated that if the rule is adopted, the Department should make it mandatory for travel agents to inform the public of the network name to avoid airport terminal confusion. As to potential costs for the regional carriers to re-identify themselves in terminal facilities, Gulfstream noted that a major terminal will charge a new airline between $5,000 to $10,000 for a signage package.

According to Gulfstream, any argument that network names might be intentionally masking the true corporate identities is not valid, because all information concerning the corporate name of the transporting carrier is provided at the customer's request by the issuing airline or travel agency. In addition, Gulfstream claimed, all pertinent information is provided by the major carriers' publications and published in the Official Airline Guides.

Decision

The Department has decided to require airlines and ticket agents to disclose to consumers the corporate name of the transporting carrier in code-share and long-term wet lease operations. In addition, we have decided to revise this proposal to require the sellers of air transportation to disclose the network name, if one is used, as well as the corporate name. This requirement will apply to all four notice requirements: information supplied to CRS vendors, oral notice during the decision making portion of the purchase of transportation, written notice, and advertisements.

Internationally, the practice of code sharing is expanding dramatically. The gradual liberalization of our bilateral air services agreements will increasingly enable foreign airlines to offer through service to many interior U.S. points. We expect much of this service, particularly international service to our smaller communities, to be provided through code-sharing arrangements with U.S. airlines.

As discussed below, we are taking this action because we believe strongly that consumers are entitled to know all significant information regarding the air transportation they are purchasing and that consumers can make fully informed choices only when they have all relevant information. Further, we believe that the failure to disclose both the corporate and network names is inherently unfair and deceptive. Failure to disclose would leave many consumers without information important to them and not readily available to them otherwise. The potential for their confusion would increase as the practice of code sharing becomes more widespread.

The Requirement To Disclose the Corporate Name

Service to many U.S. communities is provided by commuter airlines that share the code of major airline partners. Services such as these are marketed using a trade name that is often similar to that of the major airline partner. This ''network'' name may be shared by a number of independent, separately owned and managed carriers. However, the contract of carriage is frequently between the commuter airline and the passenger in domestic transportation, and except in certain circumstances, the major airline may bear no legal responsibility to the passenger. Further, the passenger may erroneously believe that he or she is traveling on that major airline.

Without disclosure requirements, code sharing carriers can obscure their relationships as well as important aspects of the contract of carriage. Indeed, one marketing objective in the domestic code sharing practice of using a network name may well be to draw upon the goodwill and reputation of the major airline to attract passengers to the commuter airline. However, if the relationship is not fully disclosed, it is often unclear to the consumer who is responsible to them in cases of lost baggage, for example, making recovery difficult. Moreover, consumers purchasing air transportation are purchasing a service to be performed in the future: in essence, the consumer is extending credit to the carrier. The use of the network name, without disclosure of the corporate name, could result in a passenger's inadvertently purchasing transportation from a carrier that the passenger believes is not worthy of his or her credit.

Passengers may prefer to avoid certain carriers because of prior negative experiences. Their ability to do so is a critical part of a competitive system. Yet undisclosed or inadequately-disclosed code-sharing, by obscuring the identity of the actual operator, could inhibit the free operation of the market. Finally, passengers can be misled by code-sharing arrangements between commuter carriers and major carriers into thinking that they have purchased jet transportation because they dealt with a major carrier. This confusion has proved particularly troublesome for passengers with disabilities since commuter aircraft are often less accessible than large jets. For all these reasons, we believe that passengers should be told the identity of the company with which they are doing business and that the failure to identify the transporting carrier by its corporate name is inherently unfair and deceptive.

The only passenger groups that have participated in this rulemaking strongly supported requiring disclosure of the corporate name, citing the right of consumers to make fully informed choices.[4] Moreover, we do not understand most other commenters to be advocating that the information be withheld from consumers: the dispute seems to be over when and how it should be provided, and whether a rule requiring disclosure is warranted.

United and Northwest say that some carriers already make the corporate name available to passengers who want the information, if they ask.[5] We believe that the reasons that compelled these carriers to do so, and the interest shown by the consumers who ask, justify requiring that this information be provided to all passengers. Moreover, if several carriers already have a system for providing this information, this would appear to undermine the assertions that the proposal is unduly burdensome.

Like our predecessor, the Civil Aeronautics Board, we have long believed that code-sharing can be misleading if not disclosed to purchasers of air transportation. When it first examined the need for consumer protection in a code-sharing context in 1984, the CAB found that ''code sharing * * * may cause confusion and may be deceptive to consumers in some cases.'' United is mistaken when it suggests that the First Amendment precludes us from requiring airlines to divulge the corporate name: the First Amendment protects only truthful speech, not false and misleading commercial speech.[6]

Moreover, we have recently undertaken a study of the economics of code sharing,[7] and we believe that in the future, code-sharing arrangements will become even more common than they are today. Also, they may be more complex, involving more partners, and potentially global in scope.[8] Although United accurately notes that we had few complaints in 1994, we expect that the trend towards expanded and more complex code-sharing arrangements will result in many more complaints unless we improve disclosure to the consumer.

Thus, we conclude that consumers will benefit from having complete information. Consumers have a right to know what kind of service they are purchasing and with whom they are dealing. Our rule will effectuate this right.

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[4] See, Comments of International Airline Passenger Ass'n. and Americans for Sound Aviation Policy.

[5] Reply comments of Northwest Airlines, Inc. at 3 (Feb. 23, 1995); Comments of United Air Lines, Inc. at 4 (Feb. 16, 1995).

[6] In re RMJ, 455 U.S. 191, 203 (1982).

[7] A Study of International Airline Code Sharing prepared for the Department of Transportation, December 1994.

[8] International Air Transportation Policy Statement, 60 FR 21841 at 21842 (May 3, 1995).

Our analysis indicates that the costs of providing this information should not be substantial, especially over time. Although some commenters claimed that revealing the corporate name to passengers would be unduly burdensome and expensive, they provided very little evidence to support their claims, despite our specific request that they do so.[9] Indeed, Northwest's internal reservation system provides the information already.[10] Continental/System One and USAir provided only conclusory estimates of the costs of reprogramming. United confirmed that it instructs its reservations agents to provide the corporate name when a passenger books a ticket involving a United Express carrier and that its internal reservation system displays the commuter carrier's actual name on the screen at the time the reservation is entered.[11] It did not estimate the cost of reprogramming its systems to display the information at the earlier decision making point.

Reprogramming costs are, of course, one-time costs. The Department is aware, as Midwest/Astral and other commenters point out, that there will be recurring operating costs due to the increase in time that it will take to disclose the additional information required by this rule. Among the commenters, only Midwest Express/Astral provided a more detailed estimate of the increase. Based on increased labor costs ($30,000) resulting from additional talk time of 15 seconds per call for reservation agents and increased telephone line usage charges ($58,000), they calculated an annual increase in operating costs of $88,000.

In order to estimate annual operating costs, we estimated the number of airline tickets that involve code-sharing or long-term wet-lease arrangements since the Department does not collect data on the actual number of tickets that involve these arrangements. We have therefore determined that a reasonable estimate of the number of tickets issued under a code-sharing arrangement could be made based on the number of passenger enplanements. For domestic air transportation, code-sharing arrangements typically involve agreements between a larger major airline and a regional airline. For the year ended December 31, 1994, the U.S. regional airline industry reported 57.1 million passenger enplanements of which 94 percent (or 53.7 million enplanements) were transported by code-sharing regional airlines. As a proxy, the figure 53.7 million enplanements, which are 10.3 percent of the total domestic enplanements, serves as a starting point for estimating the number of code-sharing tickets. We know, however, that this total overstates the number of code-sharing tickets, since many tickets are written to cover a round-trip journey that would encompass two enplanements but only a single ticket. For these passengers, use of the number of enplanements overstates the number of tickets by a factor of two.

To estimate the number of tickets for U. S. and foreign airlines on international routes, which include some travel to or from a U.S. point or points, we began with the total of 89.8 million passengers for the year ended December 31, 1994. Of this total, 48.6 million flew on U.S. flag carriers and 41.2 million used foreign carriers. In estimating the number of code-sharing tickets based on these passenger totals, it is apparent that the number of code-sharing tickets would be overstated for the same reason of round-trip ticketing as stated previously. We also believe that in 1994, on a volume basis, code-sharing was not nearly as prevalent internationally as it was domestically. Since domestic regional enplanements are 10.3 percent of total domestic enplanements, we believe that it is reasonable to assume that code-sharing tickets comprise less than 10.3 percent of total international tickets and have used five percent for purposes of this analysis.

Based on U.S. airlines' estimated code-sharing domestic traffic of 32.2 million (calculated on the assumption that 80 percent of the 53.7 million passengers purchase round-trip tickets), U.S. estimated code-sharing international traffic of 1.5 million (five percent of the total of 48.6 million using the 80 percent round-trip assumption), and 1.2 million estimated code-sharing foreign flag passengers (five percent of the total of 41.2 million with the same 80 percent round-trip assumption), this analysis estimated that there were approximately 34.9 million code-sharing tickets issued in the year ended December 31, 1994.

We then estimated the annual increase in operating costs for the airline and travel agent industries. Using the 15 seconds (0.25 minutes) of additional talk time and assuming that each of the estimated 34.9 million code-sharing purchasers in 1994 made an average of 2.1 phone calls during the process of purchasing tickets, the estimated number of total calls amounted to 73.3 million representing 18.3 million additional minutes or 305,375 additional hours. Based on an hourly rate of $17.44 (salary and fringe benefits) for a travel agent and $24.04 for an airline ticket agent, weighted by the relative number of tickets sold by each, and an assumed rate of $0.25 per minute for the cost of additional telephone line usage, the annual increase in operating costs for the airline and travel agent industries amounted to $10.3 million. In the context of the $68 billion in annual passenger revenues that the U.S. airline industry generated in 1994 or the $94 billion in sales ($56 billion of which pertained to airline sales) that travel agencies produced in 1993, the increased operating cost is clearly not prohibitive.

We also used similar assumptions (duration of call, number of tickets, and number of calls) to estimate the potential increase in cost to the prospective traveler that would result from the loss of productive time due to the additional talk time. Based on the value of time at $34 per hour and $65 per hour for domestic and international travelers, respectively, we estimated that the annual additional cost to travelers would amount to $11.1 million. On a per ticket basis, the average cost to consumers would be $0.30 for domestic travel and $0.57 for an international trip. While the Department would prefer not to take actions which have the potential to increase the cost of travel or result in a loss of productive time, we believe these amounts are minimal and not prohibitive considering that the average ticket price for domestic travel is approximately $140 and the average price for international travel exceeds $400. Based on these, the cost to consumers would represent approximately 0.2 percent and 0.1 percent of the domestic and international ticket prices.

The Department recognizes that code-sharing arrangements and the number of code-sharing trips are likely to increase in the future. We also recognize that the cost for fully informing prospective travelers will impact different segments of the travel industry and the public to varying degrees. However, we believe that the fact that such arrangements are increasing and becoming more sophisticated emphasizes the paramount importance that the traveling public be fully informed. This benefit clearly outweighs the minor cost increases and we further believe that these costs will decrease in the future as consumers and frequent travelers adjust and as new, less-costly, channels of

[9] 60 FR 3361, January 17, 1995.

[10] Motion for Leave to File and Reply Comments of Northwest Airlines, Inc. at 3 (Feb. 23, 1995).

[11] Comments of United Air Lines, Inc. at 10 (Feb. 16, 1995).

distribution become available (such as the Internet.)

Midwest Express/Astral pointed out that the $88,000 increase is significant for an airline the size of Astral. While we recognize that the impact of the rule will vary among airlines and travel agencies, we are reluctant to accept the impact on Astral as stated since the increase in telephone line charges was not documented and was difficult to evaluate in comparison to our research into toll-free calling systems.

The Requirement To Disclose the Network Name

We have also decided to require disclosure of the network name, if any, under which the services are operated. As we noted in our August 1994 NPRM, many carriers have chosen not to advertise or publicize their corporate name, choosing instead to operate under the network name of a major airline.[12] As a result, if a carrier or ticket agent were to identify the code-shared service of a small carrier only by its corporate name, passenger confusion is likely. In particular, we wish to avoid having passengers arrive at the airport and look for a carrier that they know only by its corporate name (or which the ticket or written notice identifies only by its corporate name), when that particular carrier identifies itself at the airport only by its network name. Not only would such passengers be inconvenienced as they attempted to locate the carrier, but in some cases, particularly in the case of a connection, they could miss their flights.

When and How Disclosure Should Be Made

1. *Notice in schedules.* The rule will require airlines involved in code-sharing arrangements or long-term wet leases to ensure that schedule information provided to the public identifies both the corporate name and the network name, if any, of the transporting carrier. We believe that this information is the minimum necessary to enable reservations agents and travel agents to help the consumer make an informed decision about the transportation that they are purchasing.

2. *Oral Notice.* As discussed elsewhere, it is our policy that prospective purchasers of air transportation should know all the relevant facts during the decision making portion of the reservation transaction. We believe that the true corporate identity of the transporting carrier is highly relevant to deciding what air transportation to purchase. Accordingly, the rule will require airlines and travel agents to tell consumers, in any direct oral communication, before booking transportation, that the transportation they are considering involves a code-sharing arrangement or a long-term wet lease, and to identify the transporting carrier by both its corporate name and its network name (if any).

3. *Written Notice.* We will require the transporting carrier to be identified by corporate name and network name (if any) in the written notice requirement of section 257.5(c). Written notice that clearly identifies the carrier by corporate and network name will serve at least two important functions. It will provide consumers with relevant information about the transportation being purchased, and with the written notice as a reminder, the consumer will be more likely to find the proper ticket counter, check-in desk, or gate.

4. *Advertisements.* Advertisements are part of the decision making process. Therefore, we believe that the transporting carrier should be identified in printed advertisements by both its corporate name and its network name, if any. As discussed below, we have decided that a generic disclosure will be acceptable in the case of broadcast advertisements.

Application of Rule to Ticket Agents

The NPRM proposed to require travel agents doing business in the United States, when giving information about air transportation involving code-sharing arrangements and long-term wet leases, to disclose these arrangements and the identity of the transporting carrier.

Delta, Northwest, the RAA, Continental, System One, TWA, Worldspan, Qantas, Mr. Pevsner, and United supported the proposal. United and Qantas asked the Department to clarify that if the agent fails to provide notice, but the carrier has provided it with the necessary code-share information, any Department enforcement action would be directed against the travel agency, not against the carrier.

American, Alaska Airlines, ASTA, and PMI Mortgage Insurance complained about multiple listing of code-sharing arrangements on CRS displays. They claimed that it would be unfair to impose the notice requirement on travel agents unless there is better disclosure in the CRSs and the ''screen clutter'' problem is addressed. Omega World Travel requested that the Department terminate this rulemaking proceeding and prohibit all code-sharing arrangements except those where the carriers are affiliated by more than 10 percent ownership. Omega World Travel stated that the rule was unnecessary because travel agencies already have an interest in providing notice to their customers. Rogal Associates stated that code sharing should be abolished and that the travel agency business should not be burdened further.

Decision

The Department has decided to adopt this requirement. Ticket agents (including travel agents) sell about 80 percent of all airline tickets issued in the United States. They are an important source of information for consumers. Omega Travel stated that travel agents already have a economic incentive to provide information about code sharing. We agree. In order to attract repeat business, agencies have an incentive to give their customers accurate and complete information so that the customers will not be disappointed on their trips. However, not all travel agents may respond to this incentive in the same way. We believe it necessary to have a uniform rule so that all consumers will have complete information no matter who sells the ticket.

United, Qantas, and most travel agencies that commented voiced concerns with the implementation of this rule. Regarding United's and Qantas' concerns, the fact remains that carriers, as principals, bear responsibility for the acts of their agents, the travel agents. In cases involving violations, we will decide whether to take enforcement action, and, if so, against which entity or entities, based on the circumstances of any particular case. The travel agency industry's concerns regarding the resolution of the CRS display issue is outside the scope of this proceeding. Furthermore, that issue has been directly raised in a different proceeding, Dockets 49620 and 49622.

Application of Rule to Foreign Air Transportation

The NPRM proposed to apply the notice requirement to foreign air carriers. Northwest, United, Delta, Continental, System One, and TWA support this proposal. However, Qantas, the British Embassy, and British Airways argue that the disclosure rules should apply only to the sale in the United States of tickets for flights to, from, or within the United States.

TWA stated that British Airways' concern about the applicability of the proposed rule to sales and operations wholly within a foreign country is

[12] 59 FR 40836, 40838 (August 10, 1994).

overstated. According to TWA, the Department's jurisdiction only applies to foreign air transportation (traffic between the United States and another country). TWA noted that the application of the rule to inbound sales made abroad would protect consumers abroad who are buying transportation to the United States and that such transportation, as foreign transportation, is within the jurisdiction of the Department. American argued that the rule should cover all tickets sold in the United States, including segments between non-U.S. points. Continental and System One stated that the rule should apply to foreign carrier sales outside the United States for travel to and from the United States.

Decision

Based on these comments, we have decided that the notice requirement should apply to the marketing of foreign air transportation, within the meaning of the aviation statutes i.e., excluding transportation between two foreign points, in the United States whether the service is offered by a U.S. carrier or a foreign carrier. This provision merely conforms our rules to the Department's existing practice of imposing a notice requirement when we approve applications for code-share authority. Our decision to limit this rule to sales and calls made in the United States is consistent with our overall policy of limiting this type of rule to transactions that take place in the United States. (For example, the Department's recently-adopted rule on special event tours covers only tours in interstate air transportation, or in foreign air transportation originating at a point in the United States. (See 59 FR 61508 (November 30, 1994), 14 CFR Part 381.) We disagree with the arguments that the rule should apply to sales made overseas, because such an application might conflict with foreign consumer protection measures that would make implementation of this rule impractical. However, in view of the comments, we will clarify the rule.

The rule will require four types of disclosure:

1. *Notice in printed or electronic schedules:* The rule will require carriers to provide certain information regarding flights to, from, or within the United States to schedule publishers like the Official Airline Guides and CRSs in the United States, as well as in carriers' own schedules and timetables.

2. *Oral notice:* The requirement to give oral notice will apply to discussions in the United States, including all calls placed from the United States, including those that are routed to carrier reservation agents outside the United States.

3. *Written notice:* The rule will require carriers and travel agents to give written notice in connection with any air transportation sold in the United States—i.e., when either the seller or the buyer is located in the United States.

4. *Advertising:* The requirement to give notice in advertising will be limited to materials published, mailed or broadcast in the United States.

Oral Notice

The NPRM proposed to require disclosure to the prospective consumer in any direct oral communication, before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket, as well as identification of the transporting carrier.

Several commenters expressed concerns with regard to including the phrase ''before booking transportation.'' American and TWA argued that disclosure should be made during any oral communication regarding a code-shared flight. American suggested that the phrase ''before booking transportation'' could be read to imply that a carrier need only disclose the information sometime before the transportation is booked. Current policy has been to require disclosure in any communication, and American supports continuation of that policy. American recommended that the Department make clear that the disclosure must occur during any oral communication that offers or refers to a code-sharing flight, regardless of whether a booking is made by the prospective customer. TWA found American's proposal reasonable because many consumers would be making multiple calls to decide which carrier they should use.

Qantas complained that the proposed rule would require notice to the same potential customer every time there was contact between a seller and purchaser. Qantas argued that only one oral notification should be required to the same consumer.

TWA claimed that the proposed requirement is inadequate because it could be delivered at any time prior to the actual booking of the transportation. According to TWA, notice should be offered at the first instance that the schedule is offered. In addition, TWA stated that the Department should clarify that providing the disclosure to the person requesting schedule/booking information on behalf of the actual consumer (e.g., a secretary acting for an executive) fulfills the requirements of the rule.

Delta argued that the most important time to provide notification of code-sharing arrangements is during conversations prior to booking, because that is the time during which the consumer is evaluating the available options. Delta further argued that the Department should reject the suggestion that notification be given ''at the first instance'' or on each and every occasion that contact is made with an airline representative.

Northwest recommended that the disclosure be made during the booking, rather than before the booking, because it still affords the passenger an opportunity to decline the service if the passenger objects to the code-shared service. TWA disagrees with Northwest and argued that notice during booking is inadequate because it moves the notice to a time after the consumer has made a decision.

American asserted that the current CRS displays of code-shared flights fail to list flight information in a comprehensible manner and noted that ASTA, TWA, Frontier Airlines, and ASAP also discussed the problems of the CRS displays. Therefore, American argued that to implement the oral notice requirement, the Department should mandate improvements to the CRS displays.

Decision

We have decided to make final the proposal that the seller must tell the consumer, before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket and must also identify the transporting carrier. We have decided to apply the rule to carriers and ticket agents to ensure that the notice reaches all consumers of air transportation.

The rule is meant both to amend and to clarify the Department's existing policy of requiring that customers be informed ''in any direct oral communication'' of a code-sharing arrangement. As for American's request for a clarification of the phrase ''in any direct oral communication,'' it continues the Department's existing policy that requires notice ''in any direct oral communication'' concerning a code-shared flight. The phrase ''before booking transportation'' reflects the Department's enforcement policy: during a given encounter (phone call, visit, etc.) the agent or carrier may not wait until after the consumer has decided to make the reservation or purchase the ticket and disclose the code-sharing arrangement only when reading back the flight information. Instead, the disclosure must be made at

the time that the schedule information is being provided to the consumer during the ''information'' and ''decision-making'' portion of the conversation, as TWA and Delta recognize. We therefore reject Northwest's argument that disclosure should only be required during the booking process. Furthermore, the term ''booking'' has no meaning that departs from current policy, since it encompasses a reservation.

Moreover, none of the commenting parties, except for Qantas, claimed that this requirement would impose an undue financial or administrative burden. The comments support the Department's belief that agents can already find the information needed to inform prospective travelers properly.

TWA wanted the Department to clarify that the requirements of the rule are fulfilled by disclosure to persons acting on behalf of a consumer. The rule requires a seller to disclose information only to whomever is booking the transportation, and does not require a seller to seek out, and communicate orally directly with, anyone else.

Written Notice

The NPRM proposed to require written notice of the transporting carrier's identity in conjunction with the sale of any air transportation in the United States that involves a code-sharing arrangement or long-term wet lease. If a separate itinerary is issued with the ticket, the itinerary would have to contain a legend that states ''operated by'' followed by the name of the transporting carrier for any flight segment on which the designator code is not that of the transporting carrier. If no itinerary is issued, the rule would require a separate written notice that clearly identifies the transporting carrier for any such segment.

TWA, IAPA, Northwest, and United supported the written notice requirement. American supported written notice so long as it is to be given at time of ticketing. American noted that three CRSs—SABRE, Galileo International, and System One—each has indicated it can produce itineraries with the required disclosure. Thus, American argued that the cost of a separate notice to passengers who are not already receiving a printed itinerary seems likely to be minimal. In American's view, moreover, the benefit of a written notice is that it stays with the passenger, whereas an oral notice given to someone making travel arrangements for a business traveler may never reach a passenger at all, or a passenger may forget about the code-share before embarking on the trip. According to American, written notice will help the passenger at several critical points, such as at check-in or when boarding the aircraft. Northwest requested that the Department permit carriers to use a standard prepared notice that contains a cross-reference list of ranges of a carrier's flight numbers that are code-share services similar to the way carriers now identify code-share carriers in the Official Airline Guides.

In contrast, British Airways, Delta, and RAA opposed the written notice requirement. They argued that it would impose substantial financial and administrative burdens. Delta argued that the written notice would complicate and lengthen the ticket transaction and result in substantial delays at airport ticket counters and gates.

Continental and System One stated that written notice should be given at the time an itinerary or ticket is issued and opposed separate written notice where no itinerary or other document is issued prior to airport check-in. USAir argued that written disclosure should be required only if an itinerary is provided and claimed that updating software for other written notice would take six months. Where no itinerary is issued, USAir argued that a separate written notice is costly and of minimal benefit to the consumer who has already received oral notice and purchased the service. ASTA stated that in the case of travel agents making courtesy bookings of frequent flyer awards, the airlines should be responsible for providing the written itinerary with the notice of code-share details, because the tickets themselves are issued by the airlines.

TWA suggested that the Department clarify that written notice is to be given at the earliest point in the reservation process that a document is transferred to the consumer. In addition, TWA suggested that the Department consider expanding the role of electronic mail and telecopier in reservations. TWA asserted that the code-share information should be included at the earliest point in the exchange of electronic information as is possible (e.g., when the agent transmits a list of schedule choices to the consumer).

United, Delta, and ASTA contended that the rule must accommodate ticketless travel. United stated that code-shared service sold as a ticketless product will be accompanied by a written notice like the itinerary card that accompanies a ticket. United suggested that a considerable percentage of customers using ticketless travel would not want a written notice, but would prefer to rely entirely on the reservation confirmation number provided to them orally at the time they book the flight. United therefore suggested that the Department allow passengers to waive the right to written notice. ASTA asserted that written notice should be required when an agent obtains a document confirming the purchase. According to ASTA, the term ''provide'' notice as used in proposed section 257.5(c) must be interpreted to mean ''give, transmit or send'' to account for non-face-to-face transactions. In addition, ASTA asked the Department to clarify that an agent who provides written notice to the purchaser of the ticket along with the ticket has complied with the rule, even if the purchaser is not the actual traveler.

In contrast, American argued that written notice would not seriously affect ticketless travel and that the efficiencies of ticketless travel will continue to justify its development even if carriers are required to give written notice. American claimed that much of the efficiency of ticketless travels results from automating the functions represented by the ticket, not by eliminating the piece of paper itself. According to American, none of the costly features of issuing tickets, such as accounting, tracking, or security, applies to the written notice requirement, and the notice can presumably be delivered physically to the passenger by mail, by telecopier, or even by electronic mail.

Some parties voiced concerns with the technical drafting of the written notice. United urged the Department to accept language equivalent to ''operated by'' such as ''via.'' Galileo also wanted the Department to make clear that issuance of only a mini-itinerary, bearing the legend ''VIA XYZ AIRLINE'' would satisfy any written notice requirement. In addition, Galileo wanted the Department to make clear that no special typeface or underlining will be required for the written notice, because it would cost more than $25 million to purchase replacement printers for all Apollo subscribers.

ASTA, American, SwissAir, TWA, and Qantas stated that the term ''time of sale'' needs to be clarified. American stated that in industry parlance ''time of sale'' could be construed as the time of making a reservation rather than the time when the ticket is presented. According to American, written notice should be given when the ticket is presented to the consumer. United, similarly, assumed that ''time of sale'' means when the ticket is presented. ASTA too assumed that ''time of sale'' refers to ''ticket issuance'', which happens when the final itinerary is

normally printed, and it observed that this is also the point, in credit card transactions, at which the purchaser is charged for the ticket. SwissAir suggested that the Department should define the term ''sale'' to mean the delivery of a ticket or itinerary to the passenger, whichever occurs first. Qantas claimed that the phrase ''at the time of sale'' should be replaced with a requirement that prior to or upon the receipt of the ticket, the consumer be provided with the written notice. Qantas also asked the Department to amend the rule to allow carriers and agents to provide notice either in an itinerary or on another piece of paper.

Decision

We will require separate written notice, which can be included on the traveler's itinerary. We agree with American that this requirement will make it more likely that the passenger knows about the code share at critical junctures. The passenger will have either an itinerary or a separate notice that will serve as a reminder at all times before departure.

Moreover, this rule should not be unduly burdensome or entail more than minimal additional costs, since many sellers already provide written itineraries. American's comments confirmed that SABRE already prints out the information the Department would require under the proposed rule for airline personnel and travel agents. Furthermore, Galileo enables Apollo subscribers to generate a standard form itinerary/invoice document that includes the name of the marketing carrier and also a statement such as ''OPERATED BY XYZ AIRLINE'' as well as a mini-itinerary. On the other hand, the opposition (British Airways, Delta, and USAir) did not substantiate their claims of financial and administrative burden. USAir provided no estimate of its costs for the programming changes. Since a significant portion of tickets is issued and distributed by travel agents and many other tickets are sent by mail, we doubt that our rule will cause significant passenger delays at airport counters.

Having reviewed the technical drafting comments, the Department has decided that the use of ''via'' in place of ''operated by'' would be ambiguous, since it does generally connote ''by way of an intermediate point'' as noted by TWA.

We used the term ''time of sale'' in the NPRM in order to accommodate ticketless travel. We acknowledge American's concern that ''time of sale'' could be misconstrued as the time of making a reservation rather than the time when the ticket is presented. Agents taking reservations often refer to ''selling'' a seat when no money has changed hands. Therefore, merely making a reservation without consummating a sale will not trigger the written notice requirement. We will clarify section 257.5(c) by substituting ''purchase'' for ''sale.''

We will also add two paragraphs: one to account for ticketless travel and cases where there is not enough time for the written notice to be mailed, the other to allow for delivery of the written notice by telecopier, e-mail, or other means at the purchaser's request. Paragraph (3) provides for mail delivery of the written notice along with the ticket when transportation is purchased far enough in advance of travel. We expect sellers of air transportation to make a reasonable assessment of whether or not enough time remains for mailing based on their experience with the United States Postal Service. Paragraph (3) provides for delivery of the written notice at the airport if time does not allow for advance delivery by mail or otherwise.

Paragraph (3) also accounts for delivery of the written notice in the case of ticketless travel. Consistent with our policy on other passenger notices, see 62 FR 19473 (April 22, 1997), we will require the written notice of the transporting carrier's identity to be given to ''ticketless'' passengers no later than the time that they check in at the airport for the first flight in their itinerary. Of course, nothing prohibits sellers of air transportation from providing this written notice at an earlier juncture, such as along with any itinerary they send the passenger. We encourage sellers to do whatever they can to see that passengers receive the best possible notice, as early as possible.

Paragraph (4) allows for delivery of the written notice of code-sharing service other than by mail at the passenger's request. This paragraph offers carriers and ticket agents greater flexibility in meeting the written notice requirement.

Several points raised warrant clarification. First, in response to ASTA's concern regarding the liability of travel agents making courtesy bookings of frequent flyer awards, whoever issues the ticket is responsible for giving the written notice. Second, ASTA asked that the Department address the case where the purchaser and the actual traveler are not the same. We clarify that notice with the ticket is acceptable even if the purchaser is not the same as the actual traveler. Third, the Department is not requiring an itinerary in particular, only some form of written notice. We will amend the language in section 257.5(c)(1) as suggested by ASTA.[13] Fourth, regarding Galileo's concern about typefaces, we are not prescribing any particular type-size or requiring bold lettering. Fifth, some commenters expressed concern regarding how this rule will affect the trend toward ticketless travel. On January 19, 1996, the Department published a **Federal Register** notice seeking comment on passenger notice requirements as applied to ticketless travel; see 61 FR 1309. Sixth, we do not accept United's suggestion that we allow passengers to waive the right to written notice. Passengers might not understand what rights they were waiving, and we wish to avoid disputes over whether notice was waived or not. Seventh, as for TWA's concern regarding the timing of the requirement in the exchange of electronic information, the requirement is the same as with telephone transactions: notice in schedules, before booking transportation, and then written notice at the time of purchase as in Paragraph (3) of the rule. Eighth and finally, we do not adopt Northwest's suggestion that the Department permit carriers to use a standard prepared notice. We do not believe that such a notice would inform travelers of the transporting carrier as effectively as the more specific notice because the latter would name the transporting carrier.

Notice in Schedules

The NPRM proposed that, in written or electronic schedule information provided by carriers in the United States to the public, the Official Airline Guides and comparable publications, and, where applicable, computer reservation systems, carriers involved in code-sharing arrangements or long-term wet leases ensure that an asterisk or other easily recognizable mark identifies each flight in scheduled passenger air transportation on which the designator code is not that of the transporting carrier.

Galileo stated that its current Apollo displays appear to be consistent with the proposed requirement, and participating carriers and Apollo subscribers should be able to comply.

ASTA and American suggested requiring that code-shared services be indicated in CRSs by a double-airline code. ASTA suggested that the first

[13] ASTA suggested that the last sentence of proposed section 257.5(c)(1), which states that the indicated form of notice will ''satisfy the requirement of the preceding sentence,'' should state that the form of notice will satisfy ''the requirement of this subparagraph,'' as does the parallel language of section 257.5(c)(2).

displayed code should indicate ''which carrier is in fact operating the flight.'' American estimated that the double-airline code suggestion could be accomplished with under 200 hours of reprogramming and suggested that it would be easier for SABRE to show the transporting carrier's code second. ASTA (supported by Township Travel) also suggested that all code-shared services be displayed only once. American has filed a petition to require this in another docket. Alaska Airlines, Rogal Associates, and TWA supported the double-airline code suggestion.

USAir, British Airways, Continental, System One, United, and Galileo generally opposed this suggestion, because it is beyond the scope of this proceeding. Several parties claimed that it would be costly and force the elimination of other useful information from CRS displays, and that it would be impracticable for blocked-space arrangements where each carrier independently markets its seats on a flight. Galileo estimated that it would take 800 person hours of reprogramming work to redesign the Apollo screen to accommodate two codes for a single flight. Although Worldspan took no position on the merits, it opposed additional requirements concerning the screen display.

TWA said that the name of the code-share carrier should also be included in the CRS display or timetable schedule, rather than merely displaying an asterisk, which would have little meaning to the consumer. TWA proposed that the Department require that the explanation for the asterisk be placed in close proximity to its appearance in the text. Omega stated also that the ''asterisk or . . . other mark'' will not mean anything to the average consumer.

Decision

The Department will clarify the proposed rule by requiring that carriers provide information disclosing the corporate name of the transporting carrier as proposed in the SNPRM. We will not address any proposals regarding CRS displays, including the double-airline code proposal, because they are outside the scope of this proceeding. The NPRM did not propose changes to or seek comments on CRS displays. As for TWA's and Omega's concern that the asterisk does not mean anything to the average consumer, the consumers do not see CRS screens, and the travel agents that do see them are familiar with the meaning of the asterisk. As for timetables distributed to consumers, this provision requires that the name(s) of the carrier be disclosed, so the asterisk would have to lead to a means of determining these names, as is currently done in the Official Airline Guides and in all carrier timetables of which we are aware.

Advertising

The NPRM proposed to require notice, in any advertisement for any service in a city-pair market that is provided under a code-sharing arrangement or by long-term wet lease, that clearly indicates the nature of the service and identifies the transporting carrier(s).

USAir, Delta, United, and British Airways supported the advertising proposal as long as the requirement is limited to printed advertisements, because the cost of including the required information in radio and television advertisement would be exorbitant, and the need is unsupported in light of the other NPRM provisions. TWA questioned why radio or TV advertising should be excluded and noted that even in a TV advertisement, notice of code-sharing could be scrolled over the video. American also argued that there is no basis for limiting the requirement to printed advertisements. Continental and System One supported the requirement as written. Galileo stated that the requirement appears not to affect CRS vendors.

RAA opposed the requirement, claiming that the benefits appear to be limited. RAA assumed that the requirement would not only apply to air carrier advertisements, but to all advertising, which included air travel.

Some carriers sought clarification of the proposed requirement in cases where both code-shared and direct service are offered in a market. Northwest, which supported the advertising requirement, assumed that when carriers advertise service to a group of points and all points are served by the same code-sharing arrangement, it would be sufficient to make a generalized statement. Furthermore, Northwest assumed that if some points are served by code-share and others are served directly, the carrier may use an asterisk or similar device to identify the code-sharing services. In cases where a carrier serves a point both by code-share and directly, Northwest assumed that the carrier may state that some of the flights are operated by another carrier.

United has no objection to the identification of affiliated commuters in print ads as long as adequate time is allowed for implementation (six months). However, United also maintained that the intent of the rule is unclear where a carrier is operating services both with its own equipment and under a code-sharing arrangement in the same city-pair market. United proposed that a notice would not be needed in this situation. USAir supported United's position on this issue.

American recommended that the Department clarify the proposal to require that any advertising, no matter where it occurs, that relates to a city-pair in which service is provided by a code-sharing arrangement must make the required disclosures.[14] TWA stated that the Department should define ''service'' in the phrase ''service in a city-pair market'' so that both price and destination advertising must identify the transporting carrier. TWA suggested that the Department rephrase proposed section 257(d) to state ''In any advertisement of fares or service in a city-pair market''.

Decision

We believe that the basic provision is necessary to ensure that prospective consumers are informed of code-sharing arrangements or long-term wet leases. There is a strong public interest in consumers knowing the nature of the transportation advertised before they begin arranging a trip. As previously stated, the rule will only apply to advertising in the United States.

However, the comments have persuaded us to modify the rule. For print media, the rule will require notice in reasonably sized type (e.g., not in fine-print fare conditions) specifically identifying the transporting carrier. Printed advertisements holding out service to a group of points where some points are served by a code-sharing or wet-lease arrangement must identify each such arrangement. On the other hand, for broadcast media, the disclosure of a code-sharing or wet lease arrangement can be generic; for example, the following statement: ''Some services are provided by other airlines.'' We accept TWA's suggestion that in a TV advertisement, a generic notice such as the one noted above may be scrolled over the video in a legible fashion, or it may be verbal. The requirement applies to all advertising, as assumed by RAA.

Northwest presented three scenarios that would trigger the disclosure requirement. First, Northwest assumed that when a carrier advertised service to a group of points and all points are served by the same code-sharing

[14] We also received on July 5, 1995, a letter from Gayle Michaels, American's Advertising Manager, discussing the proposed ruling on advertising of code shares and claiming , among other things, that under certain situations the rule would be difficult, complex or unduly burdensome.

arrangement, it would be sufficient to make a single statement identifying the transporting carrier. Under this scenario, we would accept a statement at the bottom of the advertisement that says, for example, ''Service provided by Mesaba Aviation.'' However, if all of the service in the advertisement is a Northwest code-share and some is provided by Mesaba and the rest is provided by Simmons, then asterisks or other symbols must identify which service is provided by which carrier.

Second, Northwest assumed that if some points are served by code-share and others are served directly, the carrier may use an asterisk or similar device to identify the code-sharing services. We find the use of an asterisk acceptable. However, as in the first scenario, if the service is provided by more than one code-sharing carrier, an advertisement may have to display separately-numbered footnotes (e.g., footnote 1 next to some cities will refer to a note that states service is by Mesaba, and footnote 2 next to other cities will say the service is by Simmons.) Where service is provided by two or three different carriers, a single generic footnote applying to all cities that states ''Service operated by Mesaba Aviation or Simmons Airlines,'' is not acceptable, since the reader has no way to determine the name of the carrier that is operating the service in the individual markets.

Finally, where a carrier serves a point both by code-share and directly, Northwest assumed that the carrier may state that some of the flights are operated by another carrier. Northwest is correct as long as the name of the transporting carrier is provided.

New Proposals

Commenters offered several new proposals as follows:

1. Notification Beyond the Reservation and Ticketing Process

IAPA suggested that in addition to the Department's proposal, notification of code-sharing arrangements should also be required at airport check-in (whether at the ticket counter or at the gate), during boarding and announcements at the gate, and on board aircraft. According to IAPA, these ''last chance'' announcements will inform the passengers of the actual operator of the flight and allow them to forego the flight if they do not want to fly on the transporting carrier.

2. Notice of Aircraft Type

AAA, IAPA, ASAP, and Frontier suggested requiring notice of aircraft type. IAPA, ASAP, and Frontier asserted that this information is important to passengers who want to avoid certain types of aircraft. IAPA suggested that the notification should commence at the time of reservation and that aircraft type should be listed at least on the itinerary, but also on the ticket if possible. AAA suggested that if equipment is a passenger concern, then perhaps the aircraft type should be identified in every itinerary, not just those involving code-sharing arrangements. United stated that the suggestion is beyond the scope of this proceeding and noted that this information is available in schedules and CRS displays to those passengers who want the information.

3. Treatment of Frequent Flyer Miles

AAA suggested requiring notice when and if frequent flyer miles are affected adversely by a code-sharing arrangement.

4. Airport Signs

British Airways, Qantas, and USAir complained that some airport operators cause passenger confusion by denying some carriers adequate signs for their code-sharing flights in the terminal building. They suggested that the Department consider requiring airports to let airlines post signs to direct passengers to the right terminal, counters, or gates. Qantas argued that it is just as important from a passenger viewpoint to find the right check-in counter and gate at the correct terminal for a code-shared service as it is to be informed of the name of the carrier operating that service. USAir acknowledged that the scope of the NPRM did not encompass new rules applicable to airports, but it requested that the Department address this issue in the final rulemaking decision, even if merely in an advisory manner, arguing that this could obviate more direct regulatory action. The City of Philadelphia opposed the airport sign suggestion on the grounds that adequate notice of code-shared flights is not the responsibility of airports but of airlines. In addition, the City of Philadelphia contended that the proposal is outside the scope of this proceeding and that the Department should go no further than making an advisory reference to airport signs in its final rulemaking decision.

5. Refunds

IAPA, ASAP, and Mr. Pevsner suggested that refunds should be available to consumers who object to the code-sharing or wet-lease arrangements. IAPA stated that this rule would create an incentive for airlines to ensure that passengers are fully informed as to the transporting carrier before they arrive at the airport. Continental and System One opposed such a rule, because it would render non-refundability provisions meaningless for any code-shared flight, and because adoption of the rules proposed should assure early notice to passengers.

Decision

The Department finds all of these proposals outside the scope of this proceeding. In addition, we believe that our new disclosure requirements will assure that consumers receive notice sufficiently ahead of time to make refunds and notification beyond the reservation and ticketing process unnecessary. However, our decision not to incorporate a refund provision now does not mean that carriers are free to apply refund penalties to passengers who are not given notice of code-shared service before purchasing transportation and who choose to cancel when they do discover the actual operator of their flight. Depending on the circumstances, refusal to provide refunds in such a situation could be a violation of the contract of carriage or an unfair or deceptive practice within the meaning of 49 U.S.C. 41712 (previously § 411 of the Federal Aviation Act). We encourage airports to permit carriers to post signs for their code-sharing flights to prevent passenger confusion.

Effective Date

The NPRM proposed that the final rule be effective 60 days after publication. Several commenters requested more time. USAir stated that it needed one year for the wet-lease requirement, six months for the written notice requirement, and six months to a year's time to update its PACER reservation system to accommodate the SNPRM proposal on corporate names. SwissAir stated that it needs 90 days, and Lan Chile stated that it needs three months. United stated that it could comply within 60 days assuming the Department does not adopt substantive changes in its notification requirement beyond those contained in the proposal. Delta stated that if the Department requires carriers to issue a written statement when itineraries are not issued or requires changes in the ticket format, it would need a six-month effective date. In the alternative, Delta suggested that the Department make the rule effective within 60 days with respect to issues unrelated to the written notice requirement and defer the issue of written notice pending additional input from the industry.

Decision

The final rule will be effective 120 days after publication. Some of the commenters made it clear that a 60 days would not be sufficient for compliance. However, the commenters did not provide enough detail to justify allowing any more time than what we shall provide here.

Regulatory Analyses and Notices

The Department has determined that this action is not an economically significant regulatory action under Executive Order 12866 and it has not been reviewed by the Office of Management and Budget. It also is significant under the Department's Regulatory Policies and Procedures because of congressional and public interest. This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment. The Department has placed a regulatory evaluation that examines the estimated costs and impacts of the rule in the docket.

Summary of Regulatory Analysis

Based upon a detailed regulatory analysis, the Department has determined that this rule will result in increased costs. However, the Department has also decided that the enhanced notification benefits of the rule justify the increased costs.

With regard to cost, the Department finds that this rule will result in increased implementation costs as well as increased operating costs for U.S. airlines, foreign airlines, computer reservations systems (CRSs), and travel agents doing business in the United States. The implementation costs will mainly affect the airlines and CRSs by requiring changes to computer systems for the electronic notification. The Department has estimated that these implementation costs could range from $432,000 to $2.3 million.

However, the Department has determined that these implementation costs are not prohibitive since they are one-time, nonrecurring costs that will result in benefit for a large number of travelers in the future.

The Department has also found that this rule will result in increased operating costs for the airlines, travel agents and air travelers. Most of the increased operating costs are attributable to an increase in the amount of ''talk time'' and telephone connection time necessary for airline ticket agents and travel agents to provide the proper disclosure to prospective air travelers. At the same time, air travelers incur a cost through the loss of productive time for the time spent in listening to the notification. Using assumptions of 15 seconds of additional ''talk time'' per telephone call, an average of 2.1 phone calls per ticket, and an estimate of 48.6 million tickets involved in code-sharing arrangements in 1997, the Department has estimated that travel agents and airline ticket agents will expend an additional 339,995 hours and 84,999 hours, respectively, to meet the requirements of this rule. Adding the cost of additional telephone line connection time, the annual increase in operating costs amounted to $12 million for the travel agent industry and $3.4 million for the airline industry. For airline passengers, the annual increase in costs associated with the loss of productive time is estimated at $11.8 million.

While the Department would prefer not to take actions which have the potential to increase the cost of travel or result in a loss of productive time, it believes these amounts are minimal and not prohibitive when considered on a per ticket basis—an average increase of approximately $.56 per ticket. At the same time, the Department has found that it is difficult to quantify the benefits of this rule. The Department recognizes that code-sharing arrangements and the number of code-sharing trips are likely to increase in the future. It also recognizes that the cost for fully informing prospective travelers will impact different segments of the travel industry and the public to varying degrees. However, the Department has determined that such arrangements are increasing and becoming more complex especially in international operations at the same time that other marketing strategies are being developed. This fact emphasizes the paramount importance that the traveling public must be fully informed. This benefit clearly outweighs the cost increases and the Department further believes that these costs will decrease in the future as consumers and frequent travelers adjust and as new, less-costly, channels of distribution become available (such as the Internet).

In analyzing the impact of this final rule, the Department considered several alternatives to this final rule. While most of the alternatives involved less enhanced notification both oral and written, one alternative considered the more costly requirement of written notification on the ticket coupon. The Department has decided that the level of enhanced notification as contained in the final rule provides the best net public benefits. A more limited approach would have provided only a partial response to consumers' needs while still increasing costs. On the other hand, the Department has rejected the alternative of requiring the written notification on the ticket coupon. In effect, this costly disclosure would represent a third level of consumer notification that is not warranted at this time.

Small Business Impact

The Department has evaluated the effects of this rule on small entities. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Although many ticket agents and some air carriers are small entities, the Department believes that the costs of notification will not be burdensome on these two groups. We believe that travel agents already have an incentive to provide this information to their customers and many have found a low-cost means of providing it.

Year 2000 Problem

In an effort to ensure that our regulations do not interfere or delay solutions for the Year 2000 Problem (Y2K), the Department has decided that, in preparing proposed and final rules that mandate business process changes and require modifications to computer systems between now and July 1, 2000, the Department will discuss those rules specifically with reference to Y2K requirements and determine whether the implementation of those rules should be delayed to a time after July 1, 2000.

Since the Department does not have detailed knowledge about the Y2K status of the systems that will need to be changed as a result of this rule, we attempted to gauge the effect based on a review of statements from Annual Reports, 10–K and 10–Q Statements filed with the Securities and Exchange Commission, news reports, press releases, and other documents. We researched this issue with regard to four computer reservations systems, the nine largest airlines, one smaller airline, and five organizations closely associated with airline computerized systems and databases. While this information did not reflect detailed technical assessments, it allowed us to establish a broad baseline against which to judge the issuance of our rule.

Our analysis has shown a widespread effort involved in the Y2K program for air transportation. In general, most of the companies we examined have stated that they expect to be Y2K-compliant in a timely manner. However, most also reflect caution by noting that there are no guarantees or assurances that all systems will be ready and that their

operations could be adversely affected. In response to this possibility, many have established contingency plans that will allow continued operations.

Because of the amount of progress these companies have already made, the Department has determined that it is in the public interest to issue this rule now and not delay its implementation to a time after July 1, 2000. The number and type of marketing practices that include code-sharing arrangements, change-of-gauge services, marketing alliances and other marketing agreements, especially among multiple carriers and involving international operations have grown substantially. These agreements are likewise expected to continue to grow in the future. At the same time, they have increased in complexity as well. For these reasons, the Department has determined that it is now essential to issue this disclosure rule so that prospective travelers have as clear and complete information as possible prior to buying air transportation as well as during the journey.

Federalism

The Department has analyzed this rule under the principles and criteria contained in Executive Order 12612 (''Federalism'') and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Paperwork Reduction Act

This rule contains information collection requirements that are being submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995. In the Notice of Proposed Rulemaking (NPRM) and the Supplemental Notice of Proposed Rulemaking (SNPRM) that preceded this rule, the Department stated that the proposed rule did not contain information collection requirements that required approval by OMB under the then current Paperwork Reduction Act. However, the requirements under the Paperwork Reduction Act of 1995 consider third party notifications as data collections and thus subject to the regulations. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. This final rule is therefore being submitted to the Office of Management and Budget for review. The Department has determined an estimate of the burden hours associated with this rule and is requesting comments on its estimate.

Those potentially affected by this rule include 192 U.S. air carriers, 205 foreign air carriers, five computer reservations systems and approximately 33,500 travel agents doing business in the United States. With respect to the traveling public, we estimate that 102 million phone calls will be affected by this rule. The annual reporting burden hours for this data collection is estimated at 424,994 hours for all travel agents and airline ticket agents and 424,994 for air travelers based on 15 seconds per phone call and an average of 2.1 phone calls per trip.

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology. Comments should be sent to Jack Schmidt, Office of Aviation and International Economics (X–10), Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St. SW, Washington, DC 20590, (202) 366–5420 or (202) 366–7638 (FAX)

List of Subjects

14 CFR Part 257

Air carriers, Consumer protection, Foreign air carriers, Reporting and recordkeeping requirements.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

For the reasons set forth in the preamble, the Department of Transportation amends 14 CFR chapter II, subchapters A and F, as follows:

1. Part 257 is added to read as follows:

PART 257—DISCLOSURE OF CODE-SHARING ARRANGEMENTS AND LONG-TERM WET LEASES

Sec.
257.1 Purpose.
257.2 Applicability.
257.3 Definitions.
257.4 Unfair and deceptive practice.
257.5 Notice requirement.

Authority: 49 U.S.C. 40113(a) and 41712.

§ 257.1 Purpose.

The purpose of this part is to ensure that ticket agents doing business in the United States, air carriers, and foreign air carriers tell consumers clearly when the air transportation they are buying or considering buying involves a code-sharing arrangement or a long-term wet lease, and that they disclose to consumers the transporting carrier's identity.

§ 257.2 Applicability.

This part applies to the following:

(a) Direct air carriers and foreign air carriers that participate in code-sharing arrangements or long-term wet leases involving scheduled passenger air transportation; and

(b) Ticket agents doing business in the United States that sell scheduled passenger air transportation services involving code-sharing arrangements or long-term wet leases.

§ 257. 3 Definitions.

As used in this part:

(a) *Air transportation* means foreign air transportation or interstate air transportation as defined in 49 U.S.C. 40102 (a)(23) and (25) respectively.

(b) *Carrier* means any air carrier or foreign air carrier as defined in 49 U.S.C. 40102(2) or 49 U.S.C. 40102(21), respectively, that is engaged directly in scheduled passenger air transportation, including by wet lease.

(c) *Code-sharing arrangement* means an arrangement whereby a carrier's designator code is used to identify a flight operated by another carrier.

(d) *Designator code* means the airline designations originally allotted and administered pursuant to Agreements CAB 24606 and 26056.

(e) *Long-term wet lease* means a lease by which the lessor provides both an aircraft and crew dedicated to a particular route(s), and which either:

(1) Lasts more than 60 days; or

(2) Is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

(f) *Ticket agent* has the meaning ascribed to it in 49 U.S.C. 40102(40).

(g) *Transporting carrier* means the carrier that is operating the aircraft in a code-sharing arrangement or long-term wet lease.

§ 257.4 Unfair and deceptive practice.

The holding out or sale of scheduled passenger air transportation involving a code-sharing arrangement or long-term wet lease is prohibited as unfair and deceptive in violation of 49 U.S.C. 41712 unless, in conjunction with such holding out or sale, carriers and ticket agents follow the requirements of this part.

§ 257.5 Notice requirement.

(a) *Notice in schedules.* In written or electronic schedule information provided by carriers in the United States to the public, the Official Airline Guides and comparable publications, and, where applicable, computer reservations systems, carriers involved in code-sharing arrangements or long-term wet leases shall ensure that each flight in scheduled passenger air transportation on which the designator code is not that of the transporting carrier is identified by an asterisk or other easily identifiable mark and that the corporate name of the transporting carrier and any other name under which that service is held out to the public is also disclosed.

(b) *Oral notice to prospective consumers.* In any direct oral communication in the United States with a prospective consumer and in any telephone calls placed from the United States concerning a flight that is part of a code-sharing arrangement or long-term wet lease, a ticket agent doing business in the United States or a carrier shall tell the consumer, before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket and shall identify the transporting carrier by its corporate name and any other name under which that service is held out to the public.

(c) *Written notice.* Except as specified in paragraph (c)(3) of this section, at the time of purchase, each selling carrier or ticket agent shall provide each consumer of scheduled passenger air transportation sold in the United States that involves a code-sharing arrangement or long-term wet lease with the following notice:

(1) If an itinerary is issued, there shall appear in conjunction with the listing of any flight segment on which the designator code is not that of the transporting carrier a legend that states ''Operated by'' followed by the corporate name of the transporting carrier and any other name in which that service is held out to the public. In the case of single-flight-number service involving a segment or segments on which the designator code is not that of the transporting carrier, the notice shall clearly identify the segment or segments and the transporting carrier by its corporate name and any other name in which that service is held out to the public. The following form of statement will satisfy the requirement of this paragraph (c)(1):

Important Notice: Service between XYZ City and ABC City will be operated by Jane Doe Airlines d/b/a QRS Express.

(2) If no itinerary is issued, the selling carrier or ticket agent shall provide a separate written notice that clearly identifies the transporting carrier by its corporate name and any other name under which that service is held out to the public for any flight segment on which the designator code is not that of the transporting carrier. The following form of notice will satisfy the requirement of this paragraph (c)(2):

Important Notice: Service between XYZ City and ABC City will be operated by Jane Doe Airlines d/b/a QRS Express.

(3) If transportation is purchased far enough in advance of travel to allow for advance delivery of the ticket by mail or otherwise, the written notice required by this part shall be delivered in advance along with the ticket. If time does not allow for advance delivery of the ticket, or in the case of ticketless travel, the written notice required by this part shall be provided no later than the time that they check in at the airport for the first flight in their itinerary.

(4) At the purchaser's request, the notice required by this part may be delivered in person or by telecopier, electronic mail, or any other reliable method of transmitting written material.

(d) *Advertising.* In any printed advertisement published in or mailed to or from the United States for service in a city-pair market that is provided under a code-sharing arrangement or long-term wet lease, the advertisement shall clearly indicate the nature of the service in reasonably sized type and shall identify the transporting carrier[s] by corporate name and by any other name under which that service is held out to the public. In any radio or television advertisement broadcast in the United States for service in a city-pair market that is provided under a code-sharing arrangement or long-term wet lease, the advertisement shall include at least a generic disclosure statement, such as ''Some services are provided by other airlines.''

PART 399—STATEMENTS OF GENERAL POLICY

2. The authority citation for part 399 is revised to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40109, 40113, 40114, 40115, 41010, 41011, 41012, 41101, 41102, 41104, 41105, 41106, 41107, 41108, 41109, 41110, 41111, 41112, 41301, 41302, 41303, 41304, 41305, 41306, 41307, 41308, 41309, 41310, 41501, 41503, 41504, 41506, 41507, 41508, 41509, 41510, 41511, 41701, 41702, 41705, 41706, 41707, 41708, 41709, 41711, 41713, 41712, 41901, 41902, 41903, 41904, 41905, 41906, 41907, 41908, 41909, 42111, 42112, 44909, 46101, 46102.

§ 399.88 [Removed]

3. Section 399.88 is removed.

Issued in Washington, DC on March 8, 1999.

Rodney E. Slater,

Secretary of Transportation.

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