condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of ''30 days after the effective date of this AD'' will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 3,093 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate can accomplish this AD, as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9), the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM or POH.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–25–03 Raytheon Aircraft Company: Amendment 39–10226; Docket No. 97–CE–20–AD.

Applicability: Models 65–90, 65–A90, 65–A90–1, 65–A90–3, 65–A90–4, B90, C90, C90(SE), C90A, C90B, E90, F90, H90, 99, 99A, A99, A99A, B99, C99, 100, A100, A100A, A100C, B100, 200, 200C, 200CT, 200T, A200, A200C, A200CT, B200, B200C, B200T, B200CT, 300, B300, B300C, 1900, 1900C, 1900D, and 2000 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent nose down pitch and a descent rate leading to aircraft damage and injury to personnel caused by the power levers being positioned below the flight idle stop or the power levers being lifted while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

Do not lift the power levers in flight. Lifting the power levers in flight or moving the power levers in flight below the flight idle position could result in nose down pitch and a descent rate leading to aircraft damage and injury to personnel.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10226) becomes effective on January 21, 1998.

Issued in Kansas City, Missouri, on November 25, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31682 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket OST–96–1639]

RIN 2105–AC56

Fair Displays of Airline Services in Computer Reservations Systems (CRSs)

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is adopting two rules to further ensure that travel agents using computer reservations systems (CRSs) can obtain a fair and complete display of airline services. One rule will require each CRS to offer one display that lists flights without giving all on-line connections a preference over interline connections; the other rule will bar systems from creating displays that neither use elapsed time as a significant factor in selecting flights from the data base nor give single-plane flights a preference over connecting services in ranking flights. The Department believes that these rules are necessary to promote airline competition and ensure that travel agents and consumers can obtain a reasonable display of airline services. The Department is not now adopting

another display requirement that it had proposed—a requirement that any display offered by a system be based on criteria rationally related to consumer preferences—and will instead consider that proposal further as part of the Department's overall reexamination of its CRS rules. The Department is acting on the basis of informal complaints made by Frontier Airlines, Alaska Airlines, and Midwest Express Airlines.

DATES: These rules are effective February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, D.C. 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: Airline travellers in the United States usually buy airline services through travel agencies, and travel agents almost always use a CRS to determine what airline services and fares are available and to make bookings. When a travel agent asks a CRS to show what services are available in a particular city-pair market, the system will display a listing of such services created according to the system's editing and ranking criteria for displays. Each of the CRSs operating in the United States is entirely or predominantly owned by one or more airlines or airline affiliates that would have the ability and incentive to use the systems to prejudice the competitive position of other airlines if the systems were not regulated. A prime method for prejudicing competition would be the use of display criteria that gave the services operated by the owner airline or airlines a higher display position than the position given competing airline services, even if the latter better met the consumer's travel needs. Since travel agents are more likely to book a flight when it has a better display position, display bias causes the airlines benefited by the bias to obtain more bookings than would be obtained if the display were neutral. To prevent the systems' airline owners from injuring airline competition through display bias (and other misuses of the systems), we adopted rules prohibiting display bias and other harmful CRS practices. 14 CFR part 255.

Our rules on display bias do not prohibit all potentially unfair and deceptive display practices, although they do specifically prohibit ranking and editing displays on the basis of carrier identity and impose certain other requirements on displays in order to limit the potential for bias. 14 CFR 255.4. When we last reexamined our CRS rules, there then seemed to be no need to engage in stricter regulation of displays. More recent experience indicates that further regulation is necessary. We therefore issued a notice of proposed rulemaking in this proceeding which proposed three additional display rules: a rule requiring each system to offer at least one display that did not give on-line connections a preference over interline connections, a rule requiring each display to be rationally related to consumer preferences, and a rule requiring each system to either give single-plane flights (such as one-stop flights) a display preference over connecting flights or to use elapsed time as a substantial element in the selection of flights from the database (for convenience, we will refer to these proposals respectively as the ''on-line preference rule'', the ''consumer preference rule'', and the ''elapsed time rule''). 61 FR 42208 (August 14, 1996).

After considering the comments on our proposal, we have determined to adopt the on-line preference and elapsed time rules but to consider the consumer preference rule further in our upcoming reexamination of the CRS rules, a proceeding begun by our publication of an advance notice of proposed rulemaking, 62 FR 47606 (September 10, 1997). Although we are not adopting the consumer preference rule now, that does not mean that systems may create unfair or deceptive displays as long as they comply with our rules' existing requirements. We have the authority under 49 U.S.C. 41712 to take enforcement action against unfair and deceptive practices in the marketing of airline transportation, including deceptive CRS displays, whether or not we adopt the proposed consumer preference rule. As we stated in the notice of proposed rulemaking, ''Other CRS editing and ranking abuses, if not covered by the rule, could be pursued in an enforcement context under the general prohibition against unfair and deceptive practices and unfair methods of competition in 49 U.S.C. 41712.'' 61 FR at 42215.

In this proceeding we are relying in part on the findings published in our 1991–1992 rulemaking, 57 FR 43780 (September 22, 1992) and 56 FR 12586 (March 26, 1991); the findings made in the earlier rulemaking conducted by the Civil Aeronautics Board, the agency that had been responsible for airline CRS issues; and on our staff's last study of the CRS business, *Airline Marketing Practices: Travel Agencies, Frequent-Flyer Programs, and Computer Reservation Systems*, prepared by the Secretary's Task Force on Competition in the Domestic Airline Industry (February 1990) (''*Marketing Practices*''). That study and our rulemaking notices present a detailed analysis of CRS operations and their impact on airline competition and consumers. We are also relying on the pleadings filed in Docket 48671 in connection with Galileo's use of its exemption authority to change the displays of single-plane flights in its Apollo CRS in a way that assertedly benefits the interests of Galileo's principal owners, United Air Lines and US Airways, at the expense of competing airlines like Alaska Airlines and Midwest Express Airlines, and misleads travel agents using the Apollo system and their customers.

Legal Authority for Adopting the Proposed Rules

We are adopting these rules, like our other CRS rules, under our statutory authority to prohibit unfair methods of competition and unfair or deceptive practices in the sale of air transportation. 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act (codified then as 49 U.S.C. 1381). We may adopt rules regulating CRS displays under both parts of the authority granted by 49 U.S.C. 41712, that is, in order to eliminate practices that prejudice airline competition and practices that are likely to mislead consumers and their travel agents.

The statute, modelled on section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, allows us to define practices that do not violate the antitrust laws as unfair methods of competition if they violate the spirit of the antitrust laws. The statute also gives us broad authority to prohibit deceptive practices in the sale of air transportation. We may prohibit practices that in our judgment tend to deceive a significant number of consumers without proof of actual deception, as the Seventh Circuit held in affirming the Civil Aeronautics Board's original CRS rules. *United Air Lines*, 766 F.2d 1107, 1113 (7th Cir. 1985).

We are adopting additional display rules in order to prevent travel agency customers from being deceived and to keep the airlines controlling the systems from using their control over CRS displays to unreasonably prejudice the competitive position of other airlines. The rules will strengthen airline competition by ensuring that CRS displays provide a reasonable and fair ranking of airline services. When a CRS offers a display that ranks airline services deceptively or unfairly for the benefit of its airline owners, the CRS makes it more difficult for airlines to compete on the basis of price and service with the airlines controlling the

system. The revenue loss estimates provided by Alaska and Midwest Express with respect to Apollo's changed displays, if accurate, suggest that an unreasonable and unfair display can cause substantial damage to competing airlines. 61 FR at 42212.

When consumers book airline flights on the basis of information provided by an unfair or deceptive display of airline services, they are likely to book inferior airline services because the display has hidden services that would better meet their travel needs. Our notice of proposed rulemaking discussed in particular how Apollo's treatment of single-plane flights has the potential to have that effect. 61 FR at 42212–42213. Our statute gives us the authority to prohibit conduct which has the potential to cause this kind of consumer deception.

The CRS Industry and CRS Displays

As we explained in the notice of proposed rulemaking, we have imposed regulations on CRSs because of their predominant role in the marketing of airline services. Travel agencies sell about seventy percent of all airline tickets, and travel agents almost always use a CRS to investigate airline service options for their customers and to make bookings. Each travel agency office, moreover, usually relies entirely or predominantly on one CRS. 61 FR at 42209; 57 FR at 43782–43783.

Each of the four CRSs operating in the United States is predominantly owned by one or more airlines or airline affiliates (airlines that directly or indirectly hold CRS ownership interests are referred to as ''vendor airlines''). The parent corporation of American Airlines owns the largest system, Sabre. Apollo, the second largest system, is operated by Galileo International, which is owned by United Air Lines, US Airways, Air Canada, and several European airlines. Both Sabre and Galileo have some public shareholders. Worldspan is owned by Delta Air Lines, Northwest Airlines, Trans World Airlines, and Abacus, a group of Asian airlines. System One is controlled by Amadeus, a major European CRS firm, in which Continental Air Lines has an ownership interest. 61 FR at 42209.

Many different airline service options are available in most markets. In addition, each screen in the display can only display around seven lines of information. If a travel agent wants to see additional service options, the agent must call up additional screens of information. As a result, a system must have some method for editing and ranking airline flights in constructing its displays. A system's choices of editing and ranking practices are important to airline competition, because a flight's display position affects the number of bookings made on the flight. Travel agents are more likely to book a flight when it has a higher display position and are most likely to book the first flight listed. The first flight in a display is booked more frequently in part because it is likely to be the flight that best meets the customer's needs, but, as the airlines owning the systems have long known, the flight will also be booked more often merely because of its better display position. 61 FR at 42209.

Because CRSs are essential for airline marketing, the airlines owning each system have an incentive to use it to prejudice the competitive position of rival airlines. Giving their own flights a better display position than the flights operated by competing airlines would be an effective method of distorting airline competition if there were no CRS rules. Thus, before CRS displays were regulated, each of the airline-owned systems biased its displays in favor of the owner airline. Consumers obviously suffer when a system hides or eliminates information on potentially attractive service options. 61 FR at 42209.

An airline that ''participates'' in a system—that is, that contracts with the system to make its flights saleable through the system—has little, if any, ability to cause the system to display its flights on a non-discriminatory basis. With a few exceptions, Southwest Airlines being the main one, all airlines must participate in each system in order to avoid losing a significant share of the bookings made by the travel agencies using that system. Each system in effect has a monopoly over electronic access to the great majority of its travel agency subscribers. 57 FR at 43783–43784.

Finally, while travel agencies have the right under our rules to use third-party software to create more useful displays for their employees and customers, relatively few agencies appear to be modifying the displays provided by their CRSs. As a result, the system's choice of editing and ranking criteria is likely to establish the display seen by most travel agents. 61 FR at 42215.

Regulatory Background

The Civil Aeronautics Board (''the Board'') adopted the original CRS rules in large part to prevent display bias. The Board determined that rules on display bias were necessary because travel agencies and their customers could neither prevent the systems from offering biased displays nor offset the effect of bias. The airlines participating in a system also did not have the power to keep the systems from biasing their displays. 49 FR 32540, 32543–32544, 32547–32548 (August 15, 1984).

The Board's principal rule against display bias prohibited each system from using carrier identity as a factor for editing and ranking airline services. Although the Board did not prescribe general editing and ranking criteria for CRS displays, the Board adopted several specific rules governing CRS displays in order to reduce each system's ability to create displays that would favor its airline owner or owners. These rules included requirements to use a minimum number of connect points in constructing displays of connecting services for any market. Section 255.4, adopted at 49 FR 32540.

Several of the airlines controlling CRSs responded to the Board's rules by finding new ways of improving the display position of their own flights at the expense of the flights of competing airlines. In particular, since the Board's rules applied only to each system's principal display, not to other displays offered by a CRS, some systems created biased secondary displays in order to regain the benefits of display bias. The Department later obtained each system's agreement not to offer biased secondary displays. *Marketing Practices* at 81–82.

The Board's prohibition of carrier-specific display criteria, however, did not prevent a system from giving its airline owners' flights a better display position by choosing facially-neutral display criteria that matched the predominant characteristics of their airline operations. A system's use of such criteria would benefit other airlines that had similar operating strategies, but it would harm those airlines that chose different strategies. 61 FR at 42209–42210, citing the Justice Department's Comments on the Advanced Notice of Proposed Rulemaking. Nonetheless, the systems' choices of such criteria would not necessarily harm consumers or prejudice airline competition.

At the beginning of the 1990s we held a rulemaking to reexamine the Board's rules. 57 FR 43780 (September 22, 1992) and 56 FR 12586 (March 26, 1991). We readopted them with several changes designed to promote competition in the airline and CRS businesses, including some changes strengthening the rules on CRS displays, although we did not adopt other changes proposed by commenters. We rejected arguments that we did not need to regulate CRS displays, including the argument that the systems' competition for travel agency subscribers would prevent display bias. 56 FR at 12602. And we pointed out how display criteria could

affect airline bookings by noting that American's request to reduce the use of elapsed time by other systems as a ranking factor could be explained by internal documents showing that the use of elapsed time tended to give American's flights a poorer display position. 56 FR at 12610–12611.

We did adopt additional rules where systems used display criteria that injured competition and consumers. Thus we amended the rules to prohibit biased secondary displays. 57 FR at 43802. We also adopted additional rules governing the display of connecting services. Some systems had arbitrarily limited the number of connect points that non-owner airlines could designate and imposed unreasonable and burdensome procedural requirements on requests to add connect points in constructing displays of connecting services. Our new rules prohibited such practices and increased the number of connect points that had to be used in displaying services in individual markets. We also reaffirmed each system's obligation to use non-discriminatory criteria for selecting connect points for displays. 56 FR at 12612–12613; 57 FR at 43807–43808.

In other areas we determined that the systems' practices did not appear to be causing substantial competitive harm and on that basis concluded that additional display rules were unnecessary. 56 FR at 12609; 57 FR at 43803. We recognized, as the Department of Justice pointed out, that vendors could be choosing seemingly neutral display criteria to improve the display position of their own flights. The systems' choice of display criteria nonetheless did not seem to be distorting competition. 56 FR at 12609; 57 FR at 43803. We also believed that the systems' competition for travel agency subscribers appeared to make additional display regulation unnecessary, since travel agency demands seemed to cause vendors to offer alternative displays. 57 FR at 43803. We did not propose or adopt a rule prescribing the ranking and editing criteria that must be used in CRS displays, in part for these reasons, in part because we doubted that there was a single best way for displaying airline services. 56 FR at 12609; 57 FR at 43803.

After considering whether to bar systems from giving on-line connections a preference over interline connections, we determined not to take such action. We noted, on the one hand, that travellers generally preferred on-line service, so the preference was consistent with consumer demands. On the other hand, the systems' use of the preference could overstate travellers' usual preference for on-line service. The on-line preference additionally appeared to place smaller airlines at a competitive disadvantage. 56 FR at 12609–12610. However, no U.S. airline asked us to prohibit the preference, and Alaska Airlines filed comments supporting it. 57 FR at 43804. At that time, however, all of the systems had at least one display that did not use an on-line preference, and Sabre had no display that used an on-line preference. 57 FR at 43803.

Finally, we declined to adopt the proposal by the Orient Airlines Association that we require each system to demonstrate that its ranking and editing criteria met consumer demands. We thought that that specific proposal was unwise, since it could require us to review and second-guess system decisions on display criteria. We also considered the proposal unnecessary, since it ''would be unlikely to lead to significant changes in the vendors' display algorithms.'' 57 FR at 43803. But, while we chose not to require vendors to demonstrate that they were basing their algorithms on consumer preferences, we expressly stated that the vendors would not have unlimited discretion to select display criteria. An airline dissatisfied with a vendor's algorithm could complain to us. 57 FR at 43803.

The Origins of Our Proposed Display Rules

We proposed the new display rules in this proceeding primarily in response to two informal complaints, one about the systems' on-line preference and the other about Apollo's treatment of single-plane flights.

Frontier Airlines had complained that Apollo gave an unreasonable preference to on-line connections. Frontier additionally charged that Apollo's treatment of connections between code-sharing partners (two airlines using one airline's code for both airlines' service) as on-line connections worsened the impact of the preference. The on-line preference injured Frontier's ability to compete in Denver markets where Frontier offered jet service in competition with a commuter airline operating under United's code and using turboprop aircraft, for Apollo treated connections between the commuter airline and United at Denver, United's hub, as on-line connections, while connections between Frontier and United at Denver were treated as interline connections and given a lower display position. Since United was the hub airline at Denver and thus provided most of the service beyond Denver, the display position of connections between Frontier and United under the on-line preference made it harder for Frontier to compete for travellers using Denver as a connecting point on their journeys. The connections between Frontier and United received such a low display position that many travel agents (and their customers) allegedly did not learn of Frontier's services. 61 FR at 42211–42212.

The other complaint—made by Alaska Airlines, Midwest Express Airlines, and the American Society of Travel Agents (''ASTA''), the largest travel agent trade association—concerned Apollo's treatment of single-plane flights. They complained that Apollo's displays made it harder to find single-plane flights that were superior to connecting services given a better display position by Apollo. This benefited the hub-and-spoke operations of Apollo's major U.S. owners, United and US Airways, at the expense of airlines like Alaska Airlines and Midwest Express Airlines that did not operate a hub-and-spoke route system. As we explained in detail in our notice of proposed rulemaking, the Apollo displays had that effect because they relied heavily on displacement time (the time difference between the traveller's requested departure time and the departure time of the flight being displayed) in ranking flights. 61 FR at 42212–42213.

We discussed several examples of Apollo displays that showed that Apollo's algorithm harmed airline competition and consumers by causing displays to list relatively inconvenient connecting services before more attractive single-plane flights. 61 FR at 42213. In addition, we pointed out that ASTA, the largest travel agency trade association, alleged that the Apollo displays ''make it harder for travel agents to find flights meeting the priority goals of air travel consumers.'' ASTA, moreover, stated that it had ''never heard or seen an argument that would overcome the consumer benefits of one-stop single-plane service over on-line connections and * * * only a compelling reason (which is difficult to imagine) would warrant displacing such superior services in favor of on-line connections of longer elapsed time.'' According to ASTA, ''[t]ravel agents should not have to search through five screens of information to find a one-stop single plane service with superior elapsed times to intervening connections,'' and ''[t]his waste of time is a disservice to agents and their clients with no apparent offsetting benefit.'' Furthermore, when single-plane flights receive the poor display position cited in Alaska's examples, ''the existence of

the one-stop flight may not become known to the agent at all.'' ASTA Reply (December 19, 1994) at 2–3, Docket 48671, quoted at 61 FR 42213.

We found Galileo's defense of the displays unpersuasive. Galileo argued that travel agents would be hurt if all single-plane flights were listed before all connecting services, because an agent must then scroll through the complete listing of single-plane flights before seeing any connecting services, even though few, if any, of the single-plane flights leave at the time desired by the agency customer. Galileo had provided no evidence that travel agents had complained when its displays listed all single-plane flights before displaying any connections, and in any event few markets have many single-plane flights. Order 94–8–5 at 16, cited at 61 FR 42213.

The Apollo displays therefore appeared to conflict with consumer preferences, since travellers tend to prefer the single-plane flights because they typically require less travel time than connecting services and because they avoid the inconveniences and risks of missed connections and lost baggage that can arise when travellers use connecting services. 61 FR at 42212. The displays also appeared to prejudice airline competition. Alaska thus estimated that it could lose $15 million in potential revenues each year as a result of the new Apollo displays, while Midwest Express estimated that its annual revenue losses would equal several million dollars. *See* Order 94–8–5 (August 3, 1994) at 17. Although we issued an order questioning the fairness of the displays, Order 94–8–5 (August 3, 1994), Galileo chose not to eliminate the features that generated the complaints from Alaska and others. 61 FR at 42212–42213.

Our Rulemaking Proposals

Galileo's conduct suggested to us that travel agent and consumer desires did not adequately check unreasonable CRS displays, thus allowing systems to create displays serving the interests of their airline owners while possibly denying the system's users reasonable displays of airline services. 61 FR at 42211. In addition to the concerns raised by Apollo's current displays, it seemed possible that other systems might adopt similar displays. We therefore decided to consider changing the CRS display rules to give non-vendor airlines (and travel agents) a greater assurance that they can obtain displays of airline services that are neither unfair nor deceptive.

We did not intend, however, to limit each system's ability to offer different displays to travel agents, since travel agents were likely to disagree on the factors that should be emphasized in editing and ranking airline services, in part because different travel agency customers would have different travel preferences, nor did we intend to tightly regulate CRS algorithms. 61 FR at 42213–42214.

We proposed the on-line preference rule, the consumer preference rule, and the elapsed time rule because we tentatively found that those rules would promote airline competition and enable travel agents and their customers to obtain fairer displays of airline services and that the proposals would not unduly burden the systems.

Rule Requiring a Display Without an On-Line Preference

Our proposed requirement that each system offer a display without an on-line preference would eliminate the ability of one of the large airlines owning a CRS to force the system to use an on-line preference in all displays of domestic airline services. This change should benefit airlines like Frontier that depend more on obtaining interline passengers. While one of the two displays offered by Apollo for services within North America did not have an on-line preference, the combination of that display's downgrading of single-plane flights and its heavy reliance on displacement time as the basis for selecting flights from the data base made the display difficult to use. Our proposed rule would require Sabre to recreate a display without an on-line preference for services within North America, since all of Sabre's current displays for such services used an on-line preference (at the time of our last rulemaking, none of Sabre's displays had an on-line preference, as noted above). 61 FR at 42214.

We recognized that an on-line preference was usually consistent with the preferences of many travellers, but we pointed out that it also benefited the airlines with CRS ownership interests. Each of those U.S. airlines was among the largest U.S. airlines and operated a hub-and-spoke route system—each operated a large number of flights connecting over a hub and relatively few point-to-point flights that do not either depart from or arrive at a hub. An airline operating a hub-and-spoke route system has little interest in capturing interline traffic, since its route structure and flight schedules are designed to keep travellers on its own connecting flights when nonstop and single-plane flights are unavailable. Such an airline benefits from CRS displays that show on-line connections before interline connections. 61 FR at 42211–42212.

The on-line preference could harm consumers in some cases, even though consumers usually prefer on-line connections. The on-line preference makes it harder for travel agents to find interline connections, which sometimes may offer the best service for consumers. For example, many consumers might find Frontier's faster jet service more attractive than the service offered by United's commuter airline affiliate. 61 FR at 42212.

In addition, as we discussed in our last rulemaking, the systems' on-line preferences may well overstate the attractiveness of on-line connections. Even without an on-line preference, on-line connections should normally appear before interline connections in a display that uses elapsed time as a principal ranking factor, because the airline offering on-line connecting service usually coordinates the flight arrival and departure times to minimize layover time at the intermediate airport. 56 FR at 12609. Since on-line connections do not necessarily offer the best service, however, the systems' use of algorithms that always give on-line connections a preference over interline connections will at times interfere with a travel agent's ability to find the best service for the agent's customers.

The Consumer Preference Rule

Our second rule proposal—the consumer preference rule—would require each system's display criteria to be rationally related to consumer preferences. We expected that such a rule would keep systems from offering unjustifiable displays. That would help both smaller airlines like Alaska and Midwest Express, which could not influence system decisions on displays, and consumers and their travel agents, who would no longer find it unreasonably difficult to see the best airline service. We expected that the rule would force Apollo to change its algorithms, for Apollo's current displays appeared to be contrary to the proposed rule's requirements. 61 FR at 42214.

We did not intend to engage in a detailed regulation of CRS displays if we adopted this proposed requirement. We expected to take enforcement action only when a system was using an algorithm that was likely to mislead a significant number of consumers by causing services that would best meet their travel needs to be displayed after significantly inferior services and if the display's criteria appeared designed to improve the display position of the services of the system's airline owners. We doubted that we would consider

complaints that a display violated this proposed rule if the system could show that its display criteria were consistent with the preferences of a substantial portion of travellers. 61 FR at 42214.

Elapsed Time Rule

As an alternative to, or in addition to, the consumer preference rule, we also proposed a rule specifically prohibiting the kinds of unfair displays created by Apollo's algorithm. That rule would prohibit an algorithm that neither used elapsed time as a significant factor in selecting service options from the database nor gave single-plane flights a preference over connections in ranking services in displays. In proposing this rule, we noted that adopting such a limited rule could be reasonable, since we had only received specific complaints about Apollo's editing and ranking criteria. We expected that this rule would require Apollo to change its displays, since its current displays do not use elapsed time as a factor in selecting flights from the database yet give single-plane flights no preference over connecting services. If Apollo used elapsed time as a significant factor in selecting flights from the database, single-plane flights would usually receive a better display position since such flights generally require less travel time than connecting services. This proposal accordingly would no longer cause connecting services to be given a better display position over single-plane flights requiring substantially less travel time. 61 FR at 42215.

Comments

In their comments Sabre, American, Galileo, Apollo Travel Services, United, Worldspan, Delta, TWA, and AAA opposed the proposals, primarily on the ground that further regulation of CRS displays is assertedly unnecessary. These parties generally argued that systems responded to subscriber demands in constructing their displays and could not offer a display that travel agents considered bad. Several of these parties additionally contended that no further CRS rules should be adopted until we complete our pending study of the CRS business. United and Apollo Travel Services argued that Apollo's treatment of single-plane services was reasonable.

Continental supported the on-line preference and consumer preference rules, and Amadeus supported the latter proposal. Alaska supported a rule requiring systems to list all single-plane flights before connecting services and to use elapsed time in ranking flights; Alaska also supported the consumer preference rule. Midwest Express agreed with Alaska that we should require single-plane flights to be displayed before connecting services, and it supported the elapsed time rule. Reno supported the on-line preference rule and argued that we should require systems to use elapsed time in ranking flights. Frontier believed that our proposals are inadequate, and it urged us to regulate display practices relating to code-sharing, for example, by requiring systems to treat connections between code-share partners as interline connections.

The Need To Regulate CRS Displays

For the reasons given below, we have determined to adopt the on-line preference rule and the elapsed time rule while deferring action on the consumer preference rule. Before explaining our basis for these specific decisions, we will discuss the overall objections made by some commenters to the rule proposals.

Several of the parties opposing our proposals contend that no additional regulation of CRS displays is necessary. They argue in particular that market forces—the demands of travel agencies for displays that allow them to respond efficiently and accurately to customer information requests—make it unnecessary and even counterproductive for us to impose new rules on displays.

We disagree with these contentions. As noted above, we found in our last rulemaking that the systems' competition for travel agency subscribers did not eliminate the need for display rules. 56 FR at 12602. No one has given us evidence refuting that finding. Despite the systems' competition with each other for subscribers, the systems tend to select display criteria that benefit the interests of their airline owners. The Apollo algorithms exemplify that. As explained in our notice of proposed rulemaking, Apollo has created displays that often show less convenient connecting services before more desirable single-plane flights. Apollo has never offered a satisfactory justification for these displays. The displays, moreover, seem to provide no offsetting advantages for travel agents and their customers. They do, however, provide obvious benefits for Apollo's owner airlines. If market forces determined the nature of CRS displays, as argued by the parties opposing our proposals, we doubt that Apollo would offer such displays. ASTA, after all, has continuously supported the complaints by Alaska, Midwest Express, and others about the Apollo displays.

Furthermore, the parties opposing our proposals have not presented a detailed analysis showing that subscriber demands have influenced CRS algorithms. While systems offer more than one display as a result of travel agency demands, the commenters opposing our proposals cited no other instances where a system changed its displays as a result of travel agency desires.

Even if subscriber demands at times influence CRS display choices, the systems nonetheless appear to have a significant ability to ignore them. Furthermore, even if travel agents were satisfied with the displays offered by the systems, their customers and non-vendor airlines suffer when systems offer displays that do not enable travel agents to efficiently find the best service for travellers.

We also note that the parties opposing the proposals have not denied that display position affects travel agent bookings and that the airlines owning the systems (directly or indirectly) have an incentive to use displays to benefit their own services. We note in that regard that the stronger opposition to our display rule current proposals has come not from the systems but from their airline owners.

American and United contend that industry developments have eliminated the need for more CRS regulation. They claim that airlines and consumers now have other options for the electronic communication of information and booking transactions, primarily the Internet. American Comments at 2–3; United Reply at 17.

We recognize, of course, that the Internet has given airlines new ways to communicate with consumers that bypass CRSs and travel agents, but, as American notes, relatively few consumers currently book airline travel through the Internet. American Comments at 2. As long as travel agencies remain the predominant method by which travellers obtain information on airline services and book seats, CRS regulation will remain essential for airline competition and ensuring that consumers receive accurate and fair advice on available service options. While travel agents can access airline information through Internet sites, as United claims, we believe that the greater efficiency of using CRSs will cause travel agents to continue relying on CRSs as the tool for giving customers information on the services offered by airlines in a market. We note, moreover, that some of the Internet booking services cited by American, such as the Microsoft website, use a CRS for providing

information and transaction capabilities to consumers. The impact of the Internet, however, is an issue that we intend to consider in detail in our upcoming examination of the CRS rules. 62 FR at 47610.

American also cites the rise of low-fare airlines that have by-passed CRS participation. American Comments at 3. In general, however, the low-fare airlines seem to have decided that CRS participation is necessary, as shown by the recent decisions of Western Pacific and ValuJet to distribute their services through CRSs and the earlier decisions by Frontier and Reno to use CRSs for distribution. 62 FR at 47608.

Sabre, citing the public's ownership of twenty percent of its stock, alleges that rules are unnecessary since it is no longer owned entirely by one airline. Sabre Comments at 4. We disagree. AMR, American's parent corporation, continues to own eighty percent of Sabre's stock and obviously has the ability to control Sabre's operations, subject to Sabre's obligations to its public shareholders.

Some parties opposing further display regulation additionally claim that our proposals represent a radical departure from our past policy of keeping our hands off CRS displays. According to them, in all earlier rulemakings we refused to engage in detailed regulation of CRS displays since we recognized that overseeing displays was unnecessary and likely to cause harm. *See, e.g.,* United Comments at 4–5. We think that these commenters have mischaracterized our past decisions on CRS displays.

We have, of course, been cautious about regulating CRS displays, since regulations can be burdensome and counter-productive. But a major predicate for our decision against adopting additional rules in our last major CRS rulemaking was our determination that the systems' choice of display criteria did not appear to be causing significant competitive harm. 57 FR at 43802, 43803. We have always recognized that the airlines controlling the systems have the incentive and some ability to create displays that favor their own services at the expense of competing services. 57 FR at 43802. We have also adopted specific display rules when that appeared necessary to prevent systems from offering misleading displays, such as our rule imposing detailed rules on the systems' choice of connecting points in constructing displays. Our recent experience with Apollo's displays suggests that the systems can and will adopt displays that cause competitive harm when doing so benefits their airline affiliates.

The Need To Act on the Display Proposals

We think that the record shows that the on-line preference and elapsed time rules should be adopted now to prevent on-going harm to consumers and airline competition. This is particularly true since Galileo ignored our past suggestion to create a more reasonable display and has resisted all complaints from airlines and travel agents about the current Apollo displays.

Several of the opponents argue, however, that we should delay a decision on our display proposals until the completion of our CRS study and our forthcoming reexamination of the CRS rules. Sabre Comments at 1–2; Delta Comments at 2–4. Their arguments in favor of delay are unpersuasive.

First, the record in this proceeding is adequate to enable us to make a final decision on the two rules we are adopting here. All of the parties have had an ample opportunity to address the issues in this proceeding by filing comments and reply comments on our notice of proposed rulemaking. Thus there is no need for us to delay our decision here until the completion of our CRS study.

Furthermore, deferring a decision on the on-line preference and elapsed time rules until the completion of the study and the major rulemaking would lead to a significant delay in remedying the competitive and consumer injury being addressed by these rules. We have decided to defer consideration of the consumer preference rule, but our immediate concerns with CRS displays should be resolved through the adoption of the on-line preference and elapsed time rules, thus making a final decision on the consumer preference rule less urgent. We are just beginning the reexamination of the CRS rules, and that proceeding will take substantial time to complete, as did our last major reexamination of the CRS rules. Midwest Express points out, moreover, that three years have passed since we originally questioned the fairness of the Apollo displays and that Galileo has not eliminated their problems. Midwest Express Comments at 12. This makes any further delay in resolving this issue unreasonable to the airlines and travel agents harmed by the display practices at issue.

The Need for Rules

Several parties contend that the notice of proposed rulemaking presents no case for adopting additional rules applicable to all systems, since the notice focuses on problems created by Apollo's current displays. Since there seems to be no apparent dissatisfaction with any other system's displays, these commenters contend that we should not adopt new rules covering all of the systems. In their view, we should take enforcement action against Galileo to compel it to correct its displays. Delta Comments at 8–9; TWA Comments at 3.

While our notice focused on the apparent problems with the Apollo displays, we noted the possibility that other systems might adopt algorithms that produce similarly misleading displays. We think that this potential for unreasonable displays is sufficient to justify the adoption of the additional rules creating unambiguous standards in these areas. We do not believe that we must wait until additional abuses occur before we can adopt rules. *Cf. GTE Service Corp.* v. *FCC,* 474 F.2d 724, 731–732 (2d Cir. 1973); *Mt. Mansfield Television, Inc.* v. *FCC,* 442 F.2d 470, 486–487 (2d Cir. 1971). And at this time the only system whose displays of services within North America all include an on-line preference is Sabre. We also note that the two rules will apparently affect only Sabre and Apollo, and Sabre will incur only the relatively small expense of recreating a display of North American services that, like Sabre's existing display of overseas services, has no on-line preference (by ''overseas'' in this rule we mean services not entirely within North America, such as transatlantic and transpacific services). Finally, the adoption of the elapsed time rule should promptly eliminate the problems with Apollo's displays, given the terms of the rule and the statements made in this proceeding by Galileo and United.

The Adoption of the On-Line Preference Rule

We have determined to adopt the first of our three proposals, the rule requiring each system to offer a display without an on-line preference. We are not requiring the display without the on-line preference to be the default display or the primary display, although it must be at least as easy to use as every other display offered by a system.

While consumers usually prefer on-line service, there are situations where interline connections may better meet a consumer's travel needs. In addition, the on-line preference gives an advantage to the hub-and-spoke services operated by larger airlines over the services of smaller airlines that have less extensive route systems. The on-line preference may also overstate consumer preferences for on-line

service. These problems will be alleviated if each system must offer a display without an on-line preference as an option for travel agents.

Our notice of proposed rulemaking described how the on-line preference makes it more difficult for consumers and their travel agents to learn about connections between United and Frontier's jet service, since the preference causes the connections between United and the service offered by United's code-sharing partners to receive a better display position. 61 FR at 42211–42212. Reno Air's comments provide additional examples where the on-line preference causes systems to give a lower display position to services that would better meet consumer needs than the on-line connections given a better display position. Reno, for example, stated that a traveller seeking to fly from Newark to Reno after 12:30 p.m. would see an Apollo display listing seventeen on-line connections before a connection between an American flight and a Reno flight, yet that connection arrives earlier than any of the on-line connecting services listed above it in the display and arrives more than four hours earlier than nine of them. Reno Comments at 3.

The cost of implementing this rule will be small. The only system that will have to create a new display is Sabre, which estimates the cost of doing so at $120,000. Sabre Comments at 5. We note, however, that the rule will only require Sabre to conform its display of services within North America with its display of overseas services, since the latter has no on-line preference. In addition, as noted above, Sabre previously offered displays without an on-line preference for North American services. 61 FR at 42210–42211.

We are not persuaded by the arguments against this rule. In particular, we think the adoption of this rule is consistent with the usual preference of travellers for on-line service. As we have explained, on-line connections should tend to receive a better display position than interline connections, since the airline operating the on-line connections normally coordinates the schedules to provide for more efficient service and shorter layovers for passengers. 61 FR at 42212. *See also* Reno Comments at 2. If, on the other hand, an on-line connection does not offer these advantages, as shown by Reno's examples, then we see no reason why every display offered by a system should give the on-line connection a better display position if there are interline connections offering more convenient arrival times and shorter layovers for travellers.

We also disagree with Sabre's argument that we should not adopt this rule since Sabre assertedly would offer a display without an on-line preference if travel agencies demanded it. Sabre Comments at 5. The systems, however, have never adopted display algorithms in response only to travel agency demands and instead tend to choose display criteria that benefit the system's airline owner or affiliate. Given the display shortcomings that can result from the on-line preference, notwithstanding consumer preferences for on-line service, we think the requirement to offer a display without an on-line preference is necessary to ensure that travel agents can access more useful displays and to better enable airlines to compete on service and price.

Deferral of Consumer Preference Rule

We have decided at this time to defer acting on the proposed rule that would require display criteria to be rationally related to consumer preferences. A number of parties, including some non-vendor airlines, asserted that this proposal was too vague to be useful. *See, e.g.,* Sabre Comments at 6–7; American Comments at 5–7; Galileo Comments at 3–6; United Comments at 15–16; Delta Comments at 14–15; AAA Comments at 3–4; Midwest Express Comments at 2. On the other hand, ASTA, one system, and some airlines supported it. Amadeus Comments at 2–3; Alaska Comments at 2; Continental Comments at 2–3.

We have determined that the proposal would better be considered as part of our overall reexamination of the rules. We also believe that the most serious current display problem—Apollo's treatment of single-plane services—should be eliminated by our adoption of the elapsed time rule. Thus there appears to be no immediate need to act on this proposal. We do intend, however, to consider the proposal further in the upcoming rulemaking, so no one should construe our deferral as a decision to abandon it. In that rulemaking we can consider modifications to the proposal that may potentially make it more effective and enforceable. In addition, even without the rule, we may still take action against anticompetitive or deceptive displays under our authority to prohibit unfair and deceptive practices in the marketing of airline transportation.

The Elapsed Time Rule

We are adopting the rule requiring systems to give single-plane flights a preference over connecting services if they do not make substantial use of elapsed time in selecting flight options from the database. We proposed this rule as an alternative to the consumer preference rule, since it would provide clearer standards for displays and eliminate the problems caused by Apollo's current displays. 61 FR at 42215.

Galileo and United state that our adoption of this proposal will substantially alleviate the dissatisfaction with Apollo's current displays. Galileo Comments at 6–7; United Comments at 3, 14. United thus states, ''United is confident that an adjustment of the Apollo display algorithm to incorporate elapsed time as a factor in selecting flights from the database will fully resolve the situations discussed in the Notice where the Department tentatively finds that the current algorithm produces unreasonable results.'' United Comments at 14.

United and Apollo Travel Services have tried to defend the Apollo displays. Their arguments are unconvincing. United relied primarily on the argument that single-plane flights are not invariably faster than connecting services and cited numerous examples of markets where there are some connecting services requiring less travel time than some single-plane flights. United Comments at 10–12; United Reply. While we assume that United's examples are accurate, in general single-plane flights should have a shorter elapsed travel time than connecting services. Furthermore, the examples of Apollo displays discussed in our notice of proposed rulemaking show that all too often Apollo gives a better display position to connecting services that require much more travel time than competing single-plane flights. 61 FR at 42213. Many other examples of similarly unreasonable Apollo displays exist. Alaska Comments at 7–10; Midwest Express Comments at 7–9; Reno Comments at 4–5.

United's argument, moreover, wrongly ignores the other advantages offered consumers by single-plane flights—a reduced risk of lost luggage and the elimination of the possibility of missed connections. Alaska Comments at 3. Furthermore, even if United's position is correct, our rule is consistent with it, since the rule encourages systems to make greater use of elapsed time in creating their displays.

United also argues that the Apollo algorithm can give travel agents notice on the first screens that additional airlines serve a market. United Comments at 7–9, citing our example of the Orange County-Seattle market. United's claim is unreasonable. Apollo's display of Orange County-Seattle

services gives a high display position to America West's connecting service, whose connection between an Orange County-Phoenix flight and a Phoenix-Seattle flight would enable a traveller to reach Seattle from Orange County. America West's connecting services benefit from the weight given displacement time in constructing the display. Other airlines, unlike America West, offer single-plane service in the market. The better display position given connecting services like those offered by America West causes the single-plane flights to be given a poorer position, even though they are likely to be preferred by most travellers. Few travellers would be interested in learning about America West's service in the market, when the single-plane flights offer a more convenient and faster way to reach Seattle. Moreover, in other cases the Apollo algorithm keeps travel agents from learning that an airline serves a market (and does so with single-plane flights that are often more convenient). Midwest Express Reply at 7, n. 4.

United also tried to defend the Apollo algorithm on the basis that the algorithm takes into account displacement time, a factor allegedly important to travellers because departure time is a major consideration in selecting service. United Comments at 8. We think United has overstated the importance of displacement time. *See* Reno Comments at 4. More importantly, the Apollo algorithm gives too little weight to elapsed time, a factor that it is usually more important to travellers. *See, e.g.,* Amadeus Comments at 6. And, as shown, ASTA, the travel agents' major trade association, has repeatedly complained that Apollo's current displays provide misleading and poor rankings of airline services. Though United claimed that ASTA's opinion is entitled to less weight than AAA's position, United Reply at 2, n. 1, we disagree, and in any event AAA did not even allege that Apollo's current displays are reasonable or useful.

Equally unpersuasive is Apollo Travel Services' claim that the Apollo displays cannot cause problems because travel agents can easily obtain an alternative display with a few keystrokes. Apollo Travel Services Comments at 7. Travel agents, as we have repeatedly noted, are often pressed for time and therefore unwilling to take additional steps to obtain better displays. *See, e.g.,* 57 FR at 43786; *Marketing Practices* at 69.

American and Sabre contend that this rule will be too vague, since it requires systems to use elapsed time as a ''significant factor'' in selecting flights from the database if single-plane flights are not given a preference over connecting flights in displays. American Comments at 8–9; Sabre Comments at 8. This objection is not substantial enough to defeat our proposal, since the rule will give systems some guidance. We are reluctant to be more precise, since that would be contrary to our long-standing wish to avoid regulating ranking and editing criteria in detail.

TWA objected to the proposal on the ground that Apollo allegedly does not have integrated displays and thus would not be covered by the rule. TWA Comments at 7. TWA has overlooked the definition of integrated displays given in our rules, 14 CFR 255.3. While we sometimes use the term ''integrated display'' to refer to displays that do not show all services within a category of services, such as non-stop flights, before another category of services, such as connecting flights, in this instance we are using the definition already given by the rules.

Alaska and Midwest Express asked us to modify our proposal so that it would require systems to always place single-plane flights above connecting services. Alaska Comments at 1; Midwest Express Comments at 1–2. We proposed to give systems the option either of displaying all single-plane flights before connections or of using elapsed time as a significant factor in selecting flights from the database. We did not propose a rule requiring systems to always give a better display position to single-plane flights. In addition, we have not received complaints about a Sabre display that does not give single-plane flights a preference over connecting flights; that display uses elapsed time in selecting flights from the database. United also observes that some single-plane flights are routed in a manner which does not give travellers convenient service. United Comments at 12, citing an Alaska San Diego-Seattle-Portland flight. However, if Alaska and others wish us to address this matter further in our overall reexamination of the rules, we will, of course, consider their comments.

Despite the objection of one commenter, we believe this rule is consistent with the systems' agreement not to rank nonstop flights on the basis of elapsed time, since the use of that factor had encouraged airlines to submit unrealistic flight schedules to the systems. *See* 56 FR at 12610. We have not prohibited the use of elapsed time in ranking connecting services, and we do not believe our rule will undermine the systems' agreement on the ranking of nonstop flights. Our concern in adopting this rule involves displays that sometimes list more convenient single-plane flights after less convenient connecting services.

Finally, United has proposed revising the language of the proposed rule so that it imposes an affirmative obligation on systems. United Comments at 15. We think that proposal is reasonable, so we will adopt it. As used in the revised language, ''or'' means ''or'' and ''and''.

Alternatives to Rulemaking

We explained in our notice of proposed rulemaking that consumers, travel agencies, and non-vendor airlines could not avoid the harm caused by displays that injure consumers and airline competition. Travel agents could only overcome Apollo's predetermined ranking of airline services either by taking the time to search through multiple screens or by requesting with additional keystrokes a display that lists single-plane flights before connecting services, but this additional work will be unattractive for many agents due to the time pressures of their job. Indeed, vendor airlines have an incentive to create displays giving their flights a better display position precisely because they know that travel agents often will not override the system's primary ranking of airline flights. Travel agencies also have little ability to switch systems if they become dissatisfied with the poor displays offered by the system they are currently using. 61 FR at 42215.

Travel agency customers have no independent ability to offset the harm caused by unreasonable CRS displays. They rely on the travel agent to tell them what services are available and do not usually see the display used by the agent. Since few agency offices use more than one system, travellers have no ability to ask the agent to use a different system. *Ibid.*

Similarly, non-vendor airlines have little control over an agent's use of CRS displays and no bargaining leverage with any system over display algorithms. *Ibid.*

While some of the commenters challenged these points, as discussed above, we are not persuaded by their objections. Among other things, we do not believe that the use of the Internet by consumers (and travel agents) is widespread enough to substantially reduce the impact of CRS practices on airline competition and the quality of information given consumers on airline service options. Moreover, many Internet sites use a CRS as a booking engine.

Rules Suggested by the Parties

Several of the parties suggested other rules. Frontier, for example, argues that we should require major airlines to

code-share and offer joint fares on a non-discriminatory basis with other airlines at their hubs, that we should require elapsed time to be the basis for ranking flights, or that we should prohibit code-sharing. Frontier Comments at 5. Amadeus (supported by Continental) urges us to regulate the displays offered by on-line computer services and Internet sites. Amadeus Comments at 8–15. Reno alleges that other CRS practices, such as high booking fees, injure airline competition. Reno Comments at 6–7.

We may adopt only the rules proposed by our notice of proposed rulemaking, so we could not adopt any of these suggested additional changes without first issuing a new notice of proposed rulemaking. Since we have begun a proceeding for the overall reexamination of our CRS rules, including the display rules, we think that the parties' additional proposals would best be considered in that proceeding. We note, moreover, that the advance notice specifically asks parties to comment on the Internet issue raised by Amadeus and the booking fee issue raised by Reno. 62 FR at 47610.

Regulatory Assessment

The two rules we are adopting are a significant regulatory action under section 3(f) of Executive Order 12866 and have been reviewed by the Office of Management and Budget under that order. Executive Order 12866 requires each executive agency to prepare an assessment of costs and benefits under section 6(a)(3) of that order. The rules are also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

We tentatively found that the proposed rules would benefit consumers, travel agents, and non-vendor airlines and that they would not impose significant costs on the systems. We asked commenters to give us more detailed information on the costs and benefits of the proposed rules. 61 FR at 42216.

The two rules that we are adopting should benefit airline competition and consumers. They will provide airlines a greater opportunity to obtain passengers on the basis of the quality of their service and their fares by reducing the possibility that unreasonable CRS display positions will determine the number of bookings received by an airline. In addition, the rules should make travel agency operations more efficient by enabling travel agents to find the best service with less work. The rules will benefit consumers by making it more likely that travel agencies will recommend more convenient airline service. By promoting airline competition, the rules will produce additional savings and other benefits for consumers.

The Department does not have enough information to enable it to quantify the potential benefits of the rule. However, giving travel agents and their customers a better ability to find the best available airline service can result in substantial consumer savings, as the Justice Department noted in its comments in our last CRS rulemaking. 56 FR 12606. Moreover, Alaska and Midwest Express have estimated that Apollo's display reduces their revenues by millions of dollars each year. If their estimates are valid, Apollo's current displays are also causing many travellers to take connecting services instead of one-stop flights that may be more convenient.

While we expect the two rules to provide significant benefits, we do not expect them to impose significant costs on the systems. The only system that provided an estimate on its programming expenses is Sabre, which states that the required creation of a display without an on-line preference will cost it $120,000. Sabre, however, until recently offered a display of North American services without an on-line preference; our rule will only require it to use the same criteria on this point as its displays of overseas services, which have no on-line preference. Galileo did not estimate the cost of the programming changes needed to comply with the elapsed time rule. We doubt that its reprogramming costs will be significant.

The Department does not believe that there are any alternatives to this proposed rule which would accomplish the goal of giving each participating carrier a greater opportunity to have its services fairly displayed in CRSs. These rules do not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies.

In our notice of proposed rulemaking we stated the reasons for proposing the additional CRS display rules and the objectives and legal basis for those proposals. We tentatively found that the proposals would give smaller airlines a better opportunity to obtain a fair display position in CRSs and thereby enable them to obtain more bookings and compete more successfully with larger airlines. We also determined that the proposals would benefit smaller travel agencies by making it easier for them to serve their customers more efficiently and to give them better advice on airline service options.

Several commenters submitted their views on the proposed rules' impact on small business entities. We considered their comments in deciding whether to make our proposals final.

We have determined to make final our tentative findings that the rule proposals would benefit smaller airlines and travel agencies. As explained earlier, the proposed rules will give smaller airlines a better opportunity to compete and will make it easier for travel agencies to serve their customers.

Our rules contain no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

The Department certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities. The rule will enable travel agencies to operate more efficiently and will give smaller airlines a greater assurance that their services will be fairly displayed by the systems, as explained above. The rule will impose no requirements on smaller airlines or travel agencies and will not other wise increase their costs.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, P.L. No. 96–511, 44 U.S.C. Chapter 35.

The rules we are adopting will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, we have determined that the rules do not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation amends 14 CFR Part 255, Carrier-owned Computer Reservations Systems, as follows:

PART 255—[AMENDED]

1. The authority citation for part 255 is revised to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712, recodifying 49 U.S.C. 1301, 1302, 1324, 1381, 1502 (1992 ed.).

2. Section 255.4(a) is revised to read as follows:

§ 255.4 Display of information.

(a) All systems shall provide at least one integrated display that includes the schedules, fares, rules and availability of all participating carriers in accordance with the provisions of this section. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor. No system shall make available to subscribers any integrated display unless that display complies with the requirements of this section.

(1) Each system must offer an integrated display that uses the same editing and ranking criteria for both on-line and interline connections and does not give on-line connections a system-imposed preference over interline connections. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other display maintained by the system vendor.

(2) Each integrated display offered by a system must either use elapsed time as a significant factor in selecting service options from the database or give single-plane flights a preference over connecting services in ranking services in displays.

* * * * *

Issued in Washington, DC on November 26, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–31674 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–62–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

Federal Sector Equal Employment Opportunity

CFR Correction

In title 29 of the Code of Federal Regulations, parts 900 to 1899, revised as of July 1, 1997, on page 275, in § 1614.204, in paragraph (d)(1), in the fourth line, ''shall be'' should read ''shall not be''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–082]

RIN 2115–AE47

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Manasquan River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Brielle Railroad Bridge across the New Jersey Intracoastal Waterway, Manasquan River at mile 0.9, in Point Pleasant, New Jersey. Beginning January 12 through March 13, 1998, this deviation allows the bridge to remain closed to navigation between the hours of 8 a.m. to 9:45 a.m.; 10 a.m. to 11:45 a.m.; 1 p.m. to 2 p.m.; and 2:15 p.m. to 3:30 p.m., Monday through Friday excluding holidays. This closure is necessary to facilitate extensive repairs and maintain the bridge's operational integrity while still providing for the reasonable needs of navigation.

DATES: The deviation is effective from 8 a.m. on January 12, 1998 until 3:30 p.m. on March 13, 1998.

SUPPLEMENTARY INFORMATION: The Brielle Railroad Bridge is owned and operated by New Jersey Transit (NJ Transit). On October 7, 1997, a letter was forwarded to the Coast Guard by NJ Transit requesting a temporary deviation from the normal operation of the bridge to implement extensive repairs. Presently, the draw is required to open on signal at all times. These repairs entail replacement or reinforcement of stringers, floor beams, laterals and bearings. Removing the existing rivets and installing bolts is a major portion of the work. To perform these repairs, and use equipment and labor safety, maintaining the drawbridge span in the closed position is needed part of the time.

Discussions with marine interests revealed that approximately four commercial party vessels transit through the bridge during the winter months. However, these vessels normally depart between the hours of 6 a.m. and 8 a.m. Vessels engaged in half day transits return around noon, with full day transits returning at 6 p.m. Therefore, these vessels are not expected to be negatively impacted by the temporary deviation.

From January 12 until March 13, 1998, this deviation allows the draw of the Brielle Railroad Bridge to remain closed to navigation between the hours of 8 a.m. to 9:45 a.m.; 10 a.m. to 11:45 a.m.; 1 p.m. to 2 p.m.; and 2:15 p.m. to 3:30 p.m., Monday through Friday excluding holidays.

Dated: November 12, 1997.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 97–31738 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI94

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1997–98 academic year should be increased by 6% over the rates payable for the 1996–97 academic year. The