§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–51 Bombardier, Inc. (Formerly Canadair): Amendment 39–12688. Docket 2002–NM–70–AD.

Applicability: Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes, serial numbers 10005 through 10039 inclusive, 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 as indicated, unless accomplished previously.

To ensure that the flight crew has the procedures necessary to address uncommanded fuel transfer between the wing fuel tanks and the center fuel tank, which could cause the center tank to overfill, and fuel to leak from the center tank vent system or to become inaccessible, and result in engine fuel starvation; accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 2 days after the effective date of this AD, revise the Limitations and Abnormal Procedures sections of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to include the following information included in paragraphs (a)(1) and (a)(2) of this AD (this may be accomplished by inserting a copy of this AD into the AFM):

(1) Revise the ''Limitations—Power Plant,'' Paragraph 6, ''Fuel'' to include the following information, per Canadair Temporary Revision (TR) RJ 700/23–1, dated March 7, 2002: ''Dispatch with the fuel quantity gauging system inoperative is prohibited.''

(2) Revise the ''Abnormal Procedures—Fuel,'' Paragraph H, ''L or R Main Ejector'' to include the following information, per Canadair TR RJ 700/23–1, dated March 7, 2002:

''H. L or R MAIN EJECTOR	
(1) Left and right boost pumps	Confirm operating
(2) Affected engine instruments	Monitor
(3) Fuel tank quantity	Monitor and balance, if required
If centre tank quantity increases abnormally (by more than 227 kg (500 lb)):	
(4) Land at the nearest suitable airport.	
If centre tank quantity continues to increase (by more than 454 kg (1000 lb)):	
(5) Affected engine thrust	IDLE
(6) Consider shutting down affected engine to prevent centre tank transfer.	
• Ensure both BOOST PUMPs are operating.	
If centre tank quantity further continues to increase (by more than 680 kg (1500 lb)):	
(7) Land immediately at the nearest suitable airport.''	

Revision of Minimum Equipment List (MEL)

(b) Within 2 days after the effective date of this AD, remove the relieving requirements specified in MEL CL–600–2C10 for the following items.

- Transfer Ejectors (Center Tank) (Ref. Master Minimum Equipment List (MMEL) Item 28–13–07).
- Fuel Transfer shutoff values (SOV) (Center Tank) (Ref. MMEL Item 28–13–08).
- Xflow Pump (Ref. MMEL Item 28–13–10).
- Engine Indication and Crew Alerting System (EICAS) Fuel Tank Quantity Readouts (Left, Right, and Total) (Ref. MMEL Item 28–41–01).
- EICAS Center and Total Fuel Tank Quantity Readouts (Ref. MMEL Item 28–41–02).
- Fuel Computer Channels (Ref. MMEL Item 28–41–03).

Operational Limitation

(c) Within 2 days after the effective date of this AD, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to limit operation of the airplane to flight within 60 minutes of a suitable alternative airport. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

Operational Requirement

(d) Within 2 days after the effective date of this AD, and prior to each further flight, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to ensure that the normal mission fuel requirements are increased by 3,000 pounds. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

Special Flight Permits

(f) 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. The operational limitations and requirements of paragraphs (c) and (d) of this AD will be applicable to all special flight permits.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–19, dated March 8, 2002.

Effective Date

(g) This amendment becomes effective on April 2, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–06–51, issued on March 12, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 21, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7409 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–2002–11577]

RIN 2105–AD09

Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is amending its rules governing airline computer

reservations systems (CRSs), by changing the expiration date from March 31, 2002, to March 31, 2003. If the expiration date were not changed, the rules would terminate on March 31, 2002. This extension of the current rules will keep them in effect while the Department carries out its reexamination of the need for CRS regulations. The Department has concluded that the current rules should be maintained for another year because they appear to be necessary for promoting airline competition and helping to ensure that consumers and their travel agents can obtain complete and accurate information on airline services. The rules were most recently extended from March 31, 2001, to March 31, 2002.

DATES: This rule is effective on March 31, 2002.

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

SUPPLEMENTARY INFORMATION:

Electronic Access

You can view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on ''search.'' On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on ''search.'' An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara/ index.html*.

Section 255.12 of the rules establishes a sunset date for the rules to ensure that we will reexamine the need for the rules and their effectiveness. The original sunset date was December 31, 1997. We have changed it four times, and the current sunset date is March 31, 2002. 62 FR 66272 (December 18, 1997); 64 FR 15127 (March 30, 1999); 65 FR 16808 (March 30, 2000); and 66 FR 17352 (March 30, 2001). We concluded that these extensions were necessary to prevent the harm that would arise if the CRS business were not regulated and that extending the rules would not impose substantial costs on the industry.

We are now changing the sunset date to March 31, 2003, because we have been unable to complete our reexamination of the current rules by March 31, 2002. Since we believed that the rules should remain in effect until we complete that process, we proposed that additional extension of the rules' expiration date. 67 FR 7100 (February 15, 2002). We are continuing to work actively on completing our overall reexamination of the rules. Upon completion of the rulemaking process, we will decide whether the rules are necessary and, if so, how they should be updated.

Comments were filed by Worldspan, Amadeus Global Travel Distribution, United, Delta, Northwest, America West, the Air Carrier Association of America (''ACAA''), the American Society of Travel Agents (''ASTA''), RADIUS, the National Business Travel Association (''NBTA''), and a number of individual travel agents. The commenters disagree over whether the rules should be extended, as discussed below.

Background

We adopted our rules governing CRS operations, 14 CFR part 255, on the basis of our findings that they were necessary to protect airline competition and to ensure that consumers can obtain accurate and complete information on airline services. 57 FR 43780 (September 22, 1992). Market forces did not discipline the price and quality of services offered airlines by the systems, because almost all airlines found it essential to participate in each system. Travel agents relied on CRSs to obtain airline information and make bookings for their customers, and typically each travel agency office entirely or predominantly used one system for these tasks. Moreover, one or more airlines or airline affiliates owned each of the systems and could operate the system in ways designed to prejudice the competitive position of other airlines.

Our rules included a sunset date to ensure that we would reexamine whether the rules were necessary and effective after they had been in force for several years. 14 CFR 255.12; 57 FR 43829–43830 (September 22, 1992). To conduct that reexamination, we began a proceeding to determine whether the rules are necessary and should be readopted and, if so, whether they should be modified, by issuing an advance notice of proposed rulemaking. 62 FR 47606 (September 10, 1997). We later published a supplemental advance notice of proposed rulemaking that asked the parties to update their comments in light of recent developments, primarily the changes in the systems' ownership, which meant that airlines had little or no control over some systems, and the increasing importance of the Internet in airline distribution, and to comment on whether any rules should be adopted regulating the use of the Internet in airline distribution. 65 FR 45551, 45554–45555 (July 24, 2000). Almost all of the parties responding to our supplemental advance notice of proposed rulemaking (and the initial advance notice of proposed rulemaking) contended that CRS rules remained necessary. Some of the parties argued that the continued regulation of the CRS business would be harmful and unnecessary.

In addition to issuing the two advance notices of proposed rulemaking, we have been informally studying recent developments in airline distribution. We have also been investigating the business plan and operations of Orbitz, the on-line travel agency developed by five major U.S. airlines.

Our Proposed Extension of the CRS Rules

We have been unable to finish our overall reexamination of our rules by March 31, 2002, their current expiration date. We therefore proposed to change the rules' expiration date to March 31, 2003, so that they would remain in effect while we complete our reexamination of the need for the rules and their effectiveness. 67 FR 7100 (February 15, 2002).

We reasoned that changing the rules' sunset date to March 31, 2003, would preserve the status quo until we determine whether the rules should be readopted and, if so, how they should be modified. Keeping the current rules in place would be consistent with the expectations of the systems and their users that each system would operate in compliance with the rules. The systems, airlines, and travel agencies, moreover, would be unreasonably burdened if we allowed the rules to expire and later determined that those rules (or similar rules) should be adopted, since they could have changed their business methods in the meantime.

We tentatively determined that extending the rules appeared necessary to protect airline competition and consumers against unreasonable and unfair practices. 67 FR 7103. Our past examinations of the CRS business and airline marketing showed that CRSs were still essential for the marketing of the services of almost all airlines. 67 FR 7102, citing 57 FR 43780, 43783–43784 (September 22, 1992). CRS rules were necessary because the airlines relied heavily on travel agencies for

distribution, because travel agencies relied on CRSs, because most travel agency offices used only one CRS, because creating alternatives for CRSs and getting travel agencies to use them would be difficult, and because non-owner airlines were unable to induce agencies to use a CRS that provided airlines better or less expensive service instead of another that provided poorer or more expensive service. If an airline did not participate in a system used by a travel agency, that agency was less likely to book its customers on that airline. As a result of the importance of marginal revenues in the airline industry, an airline could not afford to lose access to a significant source of revenue. Almost all airlines therefore had to participate in each CRS, and CRSs did not need to compete for airline participants. We believed that these findings were still valid despite such developments as the increasing importance of the Internet for airline distribution. 67 FR 7102. We noted that most of the commenters that responded to the advance notice of proposed rulemaking and the supplemental advance notice of proposed rulemaking contended that the rules remained necessary. 67 FR 7102. We therefore tentatively concluded that our past findings on the need for CRS rules are sufficiently valid to justify a short-term extension of the rules' expiration date. 67 FR 7103.

We additionally noted that an extension would be consistent with our obligation under section 1102(b) of the Federal Aviation Act, recodified as 49 U.S.C. 40105(b), to act consistently with the United States' obligations under treaties and bilateral air services agreements. Many of the United States' bilateral agreements assure the airlines of each party a fair and equal opportunity to compete. Our rules provide an assurance of fair and nondiscriminatory treatment for foreign airlines. 67 FR 7103.

We stated, however, that we have not determined in our review of the current rules whether they should be readopted. 67 FR 7102.

Comments

Amadeus, America West, ACAA, ASTA, NBTA, and RADIUS either explicitly support the proposed extension or implicitly do so by urging us to modify the existing rules in ways that would assertedly promote competition and protect consumers. Several travel agencies and travel agents argue that we must strengthen the rules to protect travel agencies and their customers. United, Delta, and Northwest oppose the proposed extension. Worldspan contends that we should suspend the rules for two years on an experimental basis.

Amadeus Global Travel Distribution, one of the systems, supports the proposed extension of the rules. Amadeus asks us to act promptly on one issue, the alleged tying by some airlines that own or market a system of access to their corporate discount fares with the use by a travel agency or corporate travel department of their affiliated systems. Amadeus additionally argues, among other things, that we have the statutory authority to regulate all systems, whether or not owned or controlled by an airline.

America West states that it supports our proposed extension of the rules, since ''the current CRS regulations remain necessary to protect airline competition and to protect consumers from unreasonable and unfair practices.'' America West Comments at 1. The airline argues that we should address the booking fee issue promptly, since the systems have been increasing the fees imposed on airline participants.

ACAA, a trade association commenting on behalf of low-fare airlines, argues that we should immediately suspend section 255.10(a) of our rules, which requires each system to make available to all participating airlines any marketing and booking data generated from the bookings made through the system. ACAA asserts that the data sold by the systems enable the large airlines to eliminate competition from low-fare airlines.

ASTA, the largest travel agency trade association, supports the proposed extension of the rules, which are assertedly essential for maintaining competition and preventing abuses of market power in the system-travel agency subscriber relationship. ASTA also asks us to take immediate action on two CRS issues due to Delta's recent elimination of base commissions for all travel agencies. ASTA urges us to ban productivity pricing provisions in contracts between systems and travel agencies that effectively penalize travel agents for making bookings through the Internet instead of the system used by the agency (productivity pricing clauses typically require travel agencies to pay substantially higher fees for CRS service if they do not make a minimum number of bookings each month through the system). The productivity pricing clauses deter travel agents from booking tickets through the Internet, often the only source for the airlines' E-fares, which are usually the lowest available fares. Secondly, ASTA asks us to prohibit systems from selling marketing and booking data to airlines that show the bookings made by individual travel agencies.

RADIUS, which states that it is the world's largest travel management company, argues that we should apply the rules to all Internet sites used for the sale of airline tickets. RADIUS contends that we should also require airlines to make available through the systems all of the fares offered to the public through airline websites. RADIUS agrees with ACAA and ASTA that we should prohibit airlines from obtaining data showing bookings made by individual travel agencies.

The NBTA, which represents corporate travel managers at large companies, urges us to rule that travel agencies and corporations should have full access to the airlines' E-fares by requiring airlines to make those fares saleable through the systems. Each airline now typically makes its E-fares available only through its own website and Orbitz. NBTA additionally asks us to prohibit systems from enabling large airlines to get data on the bookings made by individual travel agencies and corporate travel departments.

Several individual travel agencies and travel agents have submitted comments in this docket urging us to require airlines to give travel agencies the ability to sell their E-fares. Worldspan, one of the systems, suggests that we suspend the operation of the rules for two years so that we can see from experience whether the rules are still needed. Such an experimental suspension would additionally eliminate the anomalies allegedly now created by the rules. One such anomaly is that the rules' continuing applicability to Sabre and Galileo depends on whether they continue to be marketed by airlines; Worldspan, in contrast, is clearly subject to the rules, since it is owned and controlled by three airlines. Worldspan's three owners—American, Delta, and Northwest—are the only U.S. airlines still subject to the mandatory participation rule, since the U.S. airlines that formerly held an ownership interest in other systems have divested their CRS stock (the mandatory participation rule requires airlines with a significant ownership interest in one CRS to choose the same level of participation in competing systems that they choose in their own system, if the competing systems' terms for participation are commercially reasonable). Worldspan further contends that there is no evidence that a system would be operated in a way that would prejudice airline competition or mislead consumers.

Delta alleges that the Internet and other developments have substantially eroded the original basis for the rules' adoption. Delta agrees with those parties supporting the rules' abolition due to the requirement that Delta, as a system owner, participate in each system competing with Worldspan while other airlines that market a system have no obligation to participate in systems competing with their affiliated system. As an alternative, Delta supports Worldspan's proposal that we suspend the rules for a two-year period. Delta also opposes suggestions for regulating the Internet, particularly proposals that airlines must make their E-fares (or webfares) available for sale by travel agents through the systems. Delta points out that travel agents can book Delta's E-fares through the website created by Delta for travel agent use.

United argues that we no longer have a legal or factual basis for regulating the systems. United asserts that the rules were originally adopted because airlines controlled each of the systems and that two of the four systems are no longer controlled by any airlines. While conceding that the rules by their terms cover systems marketed by an airline, United asserts that no evidence exists showing that a marketing relationship between an airline and system creates a risk of anticompetitive conduct. United additionally argues that the other two systems' ownership by three airlines means that they are also unlikely to engage in anticompetitive conduct. The growth of the Internet has assertedly given airlines alternatives to CRS participation and thereby ended the systems' market power as to airlines. Finally, United contends that the rules in effect protect the systems from competition and enable them to impose high fees on participating airlines.

Northwest contends that letting the rules sunset would better serve competition and the public interest than would their continuation. If we nonetheless maintain the rules, Northwest argues that we must repeal the mandatory participation rule, clearly require all systems to comply with the same rules, prohibit systems from tying access to their travel agency subscribers with the airlines' provision of other fares and services, and not regulate use of the Internet in airline distribution.

Final Rule

We are changing the rules' sunset date to March 31, 2003, as we proposed. Although we have not determined whether we should readopt the rules at the end of our reexamination of them, our past findings on the need for the rules and evidence submitted in Docket 2881, the docket for the reexamination of the rules, indicate that allowing the rules to expire now could create a significant risk that the systems and their airline owners would engage in unfair methods of competition and that the systems would engage in unfair and deceptive practices by biasing their displays of airline services, as explained below. That possible risk justifies another short-term extension of the rules while we finish our reexamination of the need for the rules and their effectiveness.

The comments submitted on our proposed extension of the rules underscore the need to complete our review of the rules promptly and determine on the basis of the extensive record in the proceeding whether the rules should be readopted (with or without changes) or allowed to expire. Our staff is moving forward expeditiously to bring the rulemaking to completion. In our reexamination we are doing what Delta requests—we are ''carefully examin[ing] each section and subpart of the current rules one-by-one to determine if it is essential to protect airline competition in today's marketplace.'' Delta Comments at 4.

Among the issues that we are addressing are those raised by commenters in this docket: whether we should keep, expand, or abolish the mandatory participation rule, whether we should regulate the Internet, whether airlines should make their E-fares saleable through the systems used by travel agents, whether the systems should be able to sell detailed marketing and booking data to airlines, and whether we should regulate booking fee levels. Although some of the commenters assert that individual rulemaking issues require action by us before we complete our overall reexamination of the rules, we think that we can most efficiently resolve the issues by addressing all of them in a single proceeding, which we are now doing. For the same reason we will consider there whether the rules should be temporarily suspended, as suggested by Worldspan and Delta. Since we did not propose a two-year suspension of the rules in our notice, we doubt that we could adopt their suggestion as our final decision in this docket. We will consider the parties' comments in this docket along with those filed in Docket 2881 in our review of the current rules.

As stated above, we have not determined whether all or some of the rules should be kept. We are nonetheless unwilling at this time to allow the rules to expire, as requested by United, because the record suggests that the Internet, the changes in the systems' ownership, and other airline distribution developments may not have eliminated the potential for anticompetitive conduct or deceptive practices by the systems. We also are unwilling at this point to agree with United that we have no jurisdiction to regulate systems not owned and controlled by one or more airlines. The current rules govern systems owned or marketed by an airline, and require each airline that owns or markets a system to ensure that the system complies with the rules. The rules by their terms also directly impose requirements on the systems. No one challenged our decision in our last overall rulemaking to apply the rules to systems owned or marketed by airlines.

The fundamental basis for our readoption of the rules was each system's market power with respect to almost all airlines. Most airlines rely on travel agencies for the sale of the majority of their tickets, travel agents rely on the systems to determine what airline services are available and to make bookings, and few travel agency offices make extensive use of more than one system, as we stated when we proposed the extension. 67 FR 7102–7103. For the purposes of a one-year extension of the rules, these findings still seem valid. Northwest, which opposes the extension, agrees that the systems still have market power, Northwest Comments at 6:

> There continue to be only four computer reservation systems used by U.S. travel agents. Sales to consumers over the Internet, via both airline websites and online agents, have provided significant new competition to CRSs, but each CRS typically remains the only means by which to reach the travel agents who use that system. Each CRS therefore continues to have significant market power based on the travel agents to which it has exclusive access.

United has not persuaded us that the Internet has ended the systems' ability to engage in anti-competitive conduct. Consumers are, of course, increasingly using the Internet for airline bookings, and, as United asserts, some low-fare airlines are now obtaining a large share of their total revenues from Internet bookings. All of the on-line travel agencies, however, use one of the systems at least for some booking functions. Furthermore, even the low-fare airlines, except for Southwest and JetBlue, have found it necessary to continue participating in the systems, notwithstanding the high fees charged by the system. 62 FR 47608. The network airlines like United thus far have not succeeded as well in encouraging consumers to use the Internet. United itself does not claim

that the Internet has made it possible for United to end its reliance on participation in the systems, and United admits that most airline tickets are still sold by travel agents. United Comments at 12. As long as travel agencies are an important distribution channel, most airlines will need to participate in the systems used by the agencies, since airlines cannot afford to lose access to any important distribution channel. 57 FR 43783; Orbitz Supp. Reply, Daniel Kasper Statement at 7 (Docket 2881); 62 FR 59789, quoting comments submitted by the Justice Department.

Since we are not convinced yet by United's argument that the systems no longer have market power, we do not agree with United's contention that the rules themselves enable the systems to impose high fees on airline participants, because the rules allegedly eliminate any need for the systems to negotiate with airlines over the price and terms of airline participation. United Comments at 8–9. United's own conduct seems inconsistent with its claim that airlines could obtain better terms without the rules. United is no longer subject to the mandatory participation rule and so could lower its level of participation in any of the systems, or withdraw entirely, if it believes that the price and terms for participation are unreasonable. United has not done that. That suggests that United is not free for business reasons to withdraw, since its services would then no longer be readily saleable by the travel agents using the system. We are not persuaded by United's claim that any withdrawal by United would be ineffective due to our rule barring systems from discriminating against some airline participants. United is so large an airline that its insistence on obtaining better terms should have an effect, even if the system would have to apply the same terms to other airline participants. However, one of the key issues in our overall reexamination of the rules is the extent of the systems' market power and whether that would justify maintaining all or some of the current rules.

We are also not persuaded that we have no legal basis to maintain the rules. United may err in assuming that we may regulate only airlines and travel agencies under 49 U.S.C. 41712, recodifying section 411 of the Federal Aviation Act (''section 411''). Section 411 authorizes us to regulate ''ticket agents'', and the statutory definition of ''ticket agent'' may include the systems. Whether it does is an issue we are considering in our overall reexamination of the rules. While United relies on *Official Airline Guides, Inc.* v. *FTC,* 630 F.2d 920 (2nd Cir. 1980), for the ruling that section 411 does not cover the Official Airline Guide, a publisher of airline schedules, United Comments at 3, n.2, that decision does not resolve the issue of whether section 411 would cover the systems, which do more than just publish schedules. United additionally overstates the court's holding on the scope of the Federal Trade Commission's comparable authority to prohibit unfair methods of competition in other industries. United claims that the FTC (and thus this Department) could never regulate a monopolist's conduct on the basis of that firm's impact on a second industry in which it does not compete. United Comments at 17. However, the Second Circuit suggested that the FTC could regulate a monopolist's conduct in one industry in order to prevent that firm from carrying out an intent to restrain competition in a second industry or from acting coercively. 630 F.2d at 927–928. *See also LaPeyre* v. *FTC,* 366 F.2nd 117 (5th Cir. 1966).

Although United argues that the antitrust principles used to support the rules' original adoption by the Civil Aeronautics Board (''the Board'') and their readoption by us could never be validly applied to the systems, United Comments at 4, 6, the Seventh Circuit held that these antitrust principles did justify the Board's decision to regulate the systems. *United Air Lines* v. *CAB,* 766 F.2nd 1107 (7th Cir. 1985). Whether the principles would again support a readoption of the rules is a question that we are considering in our reexamination of the rules.

As we noted in our proposal, we have an obligation under 49 U.S.C. 40105(b) to act consistently with the United States' obligation under treaties and bilateral air services agreements. Those agreements typically assure the airlines of each party a fair and equal opportunity to compete, and many have provisions designed to ensure that the systems operating in one country do not discriminate against the airlines of the other party. We think the extension of the rules is the most effective way to carry out those provisions, even if the existing rules may not be the only way of doing so.

Despite United's claim to the contrary, there has been evidence that systems marketed by airlines or owned by more than one airline would engage in behavior requiring regulation. Ownership by several airlines in the past has not prevented anti-competitive or deceptive conduct. After United ceased to be the sole owner of Galileo, for example, Galileo gave United access to booking data that were not made available to other participating airlines, in violation of our rules. 57 FR 43788. United also caused Galileo to adopt a display algorithm that unreasonably downgraded the position of single-plane service in order to improve the display position of the connecting services operated by United and other airlines that followed a hub-and-spoke route strategy. Galileo kept using that algorithm even though travel agents then could not easily find the services that best met their customer's needs. 61 FR 42208, 42212–42213 (August 14, 1996).

Similarly, a marketing relationship between an airline and a system may lead to a distortion of competition. There have been cases where an airline marketing a system denied competing systems complete access to its fare data and booking features in order to compel travel agencies in areas where that airline was the dominant airline to use the system affiliated with that airline. 61 FR 42197, 42206 (August 14, 1996). Several of the parties, including Amadeus and some travel agencies, have alleged that some airlines that own or market a system often force travel agencies and corporate travel departments to use the airline's affiliated system in order to obtain access to its corporate discount fares.

The systems, moreover, could potentially engage in deceptive conduct even without any ties to travel suppliers. Northwest alleges, for example, that systems not owned by airlines could sell display bias to individual airlines. Northwest Comments at 7. One of the commenters in the overall rulemaking has alleged that one of his clients, a rental car company, was harmed because a system sold a preferential display position to a competing rental car company. Marshall A. Fein Comments (Docket 2881). United's assertion that publicly-owned systems would have no incentive to create misleading displays for travel agents, United Comments at 7, n. 10, thus is not necessarily valid.

In addition, United's opposition to the proposed extension ignores one basis for our rules, the systems' past adoption of contract practices with their travel agency subscribers that deterred or prohibited travel agencies from using more than one system or from using other databases for obtaining airline information and making bookings, such as the Internet. When we readopted the rules, we found it necessary to prohibit some such contract practices. 57 FR 43822–43826. In addition, the systems had generally required travel agency subscribers to use equipment provided by the system and barred them from

accessing other systems or databases from that equipment. Since keeping separate equipment for accessing different systems was usually impracticable for travel agencies, these practices prevented travel agency offices from making extensive use of more than one system. We accordingly adopted a rule giving travel agencies the right to acquire their own equipment and to access any system or database from that equipment. 57 FR 43796–43797. And to give airlines a greater ability to choose which level of service they would purchase from each system, we barred each system from enforcing certain contract clauses that deny participating airlines that ability, as long as the airline does not own or market a competing system. 62 FR 59784 (November 5, 1997). We adopted these rules in order to reduce the systems' market power and enable airlines to use alternative means of communicating electronically with travel agencies.

We are also not prepared now to accept United's suggestion that we can eliminate the rules by relying instead on our section 411 enforcement authority on an *ad hoc* basis to keep systems and affiliated airlines from engaging in anti-competitive practices. Since the system practices that we have found could constitute unfair methods of competition or unfair and deceptive practices have generally been industry-wide practices, maintaining industry-wide rules would be the more efficient method of addressing potential problems while we complete our reexamination of the rules.

Finally, United implicitly concedes that maintaining the rules for another year will not impose significant costs on the systems and their users, if we do not accept its theory that the rules enable the systems to charge higher fees. United Comments at 8.

We recognize the point of the Worldspan owners' complaint about the applicability of the mandatory participation clause, since the rule currently covers only the owners of Worldspan and Amadeus and does not cover airlines marketing a system. Whether that rule should be kept, and, if so, whether its reach should be extended or narrowed, are issues that we are considering in our review of the rules. In our judgment, the Worldspan owners' continuing obligation to participate in competing systems would not justify allowing the CRS rules to expire. The mandatory participation rule by its terms exempts an airline owner from the obligation to participate in a competing system's feature or functionality if the terms for participation are not commercially reasonable. That should enable Delta and Northwest to avoid participating in system services when the fees are too high or the quality of service is too low. And Delta and Northwest have not shown that the mandatory participation rule is currently causing them harm, for example, by forcing them to participate in expensive and unnecessary system features. In addition, some parties have alleged in the overall rulemaking (Docket 2881) that Northwest and Delta have limited their participation in competing systems, or denied users of competing systems access to the airlines' corporate discount fares, in order to give Worldspan an unfair competitive advantage in areas where Delta or Northwest is the dominant airline. System One Comments at 3–4, 6–7; Galileo Supp. Comments at 12, n. 11; Continental Reply to Amadeus petition at 2. Those allegations (which we are reviewing along with the responses by Delta and Northwest) make us unwilling to suspend the mandatory participation rule before we complete our reexamination of all of the rules.

We are not suspending or amending section 255.10(a) as requested by ACAA, ASTA, RADIUS, and NBTA. That rule requires each system to make available to all participating airlines any data that it chooses to generate from the bookings made by travel agents. Suspending the section would not prevent large airlines from gaining access to the marketing and booking data produced and sold by the systems. Suspending the section would only end the systems' obligation to make the data available to all participating airlines. Unless we adopted a rule prohibiting the release of the data, the systems could continue selling it to airline and non-airline firms. We recognize the importance of reexamining the provision, as we stated in our advance notice of proposed rulemaking, 62 FR 47610, and we are doing so in the context of our overall reexamination of the rules.

Several travel agencies have submitted comments that argue, like NBTA's comments, that we should require each airline to allow travel agencies to sell all of the low fares available on the airline's own website or through on-line travel agencies like Orbitz. The current rules do not impose such a requirement on the airlines. Whether the rules should do so is one of the issues we are now examining.

Finally, we are not taking immediate action on ASTA's request that we bar systems from enforcing productivity pricing clauses in subscriber contracts. Whether and how we should continue regulating subscriber contracts is an issue that we are exploring in the overall rulemaking.

Effective Date

We have determined for good cause to make this amendment effective on March 31, 2002, rather than thirty days after publication as required by the Administrative Procedure Act except for good cause shown. 5 U.S.C. 553(d). To keep the current rules in force, we must make this amendment effective by March 31, 2002. Since the amendment preserves the status quo, it will not require the systems, airlines, or travel agencies to change their operating methods. Making this amendment effective on less than thirty days notice accordingly will not impose an undue burden on anyone.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. The proposal is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034 (February 26, 1979).

In our notice of proposed rulemaking, we tentatively concluded that maintaining the current rules should not impose significant costs on the systems. They have already taken the steps necessary for compliance with the rules' requirements on displays and functionality, and complying with those rules on a continuing basis does not impose a substantial burden on the systems. Keeping the rules in force would benefit participating airlines, since otherwise they could be subjected to unreasonable terms for participation, and consumers, who might otherwise obtain incomplete or inaccurate information on airline services. The rules would also prevent some types of abuses by systems in their competition for travel agency subscribers.

In our last major CRS rulemaking, we published a tentative economic analysis with our notice of proposed rulemaking and included a final analysis in our final rule. Our notice proposing to extend the rules to March 31, 2003, stated that the analysis should be applicable to our proposal and that no new regulatory impact statement appeared to be necessary. We stated that we would consider comments from any party on that analysis before we make our proposal final. 67 FR 7103.

No one filed comments on the economic analysis, so we are basing this rule on the analysis used in our last

overall CRS rulemaking. We will prepare a new economic analysis as part of our reexamination of our existing rules, if we determine that CRS rules remain necessary.

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

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to keep small entities from being unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. airlines and smaller travel agencies.

Our notice of proposed rulemaking set forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposal. We also pointed out that maintaining the current rules would not modify the existing regulation of small businesses. We noted that the final rule in our last major CRS rulemaking contained a regulatory flexibility analysis on the impact of the rules. Relying on that analysis, we tentatively determined that this regulation would not have a significant economic impact on a substantial number of small entities. We stated that that analysis appeared to be valid for our proposed extension of the rules' termination date. We therefore adopted that analysis as our tentative regulatory flexibility statement, and we stated that we would consider any comments filed on that analysis in connection with the proposed extension of the rules. 67 FR 7103–7104.

While maintaining the CRS rules would primarily affect two types of small entities, smaller airlines and travel agencies, the rules would also affect all small entities that purchase airline tickets. If the rules enable airlines to operate more efficiently and to reduce their costs, airline fares may be somewhat lower than they would otherwise be, although the difference may be small.

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

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

We invited interested persons to address our tentative conclusions under the Regulatory Flexibility Act in their comments on the notice of proposed rulemaking. 67 FR 7104.

Since no one commented on our Regulatory Flexibility Act analysis, we are adopting the analysis set forth in the notice of proposed rulemaking.

This rule contains no direct reporting, recordkeeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law No. 96–511, 44 U.S.C. chapter 35.

Federalism Assessment

We stated that we had reviewed our proposed rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the States. Nothing in this rule will directly preempt any State law or regulation. We are adopting this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. Our notice of proposed rulemaking stated our belief that the policy set forth in this rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute.

We invited comments on these conclusions. 67 FR 7104. No one commented on our federalism assessment. We will therefore make it final. Because the rule will have no significant effect on State or local governments, as discussed above, no consultations with State and local governments on this rule were necessary.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation amends 14 CFR part 255 as follows:

PART 255—(AMENDED)

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

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

§ 255.12. Termination.

The rules in this part terminate on March 31, 2003.

Issued in Washington, DC on March 25, 2002, under authority delegated by 49 CFR 1.56a(h)2.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–7510 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–62–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revision of Tennessee Valley Authority Freedom of Information Act Regulations

AGENCY: Tennessee Valley Authority (TVA).