CFR part 255, Carrier-owned Computer Reservations Systems as follows:

PART 255—[AMENDED]

1.The authority citation for part 255 continues to read as follows: Authority: 49 U.S.C. 1301, 1302, 1324, 1381, 1502.

2. Section 255.6 is amended by adding paragraph (e) to read as follows:

§ 255.6 Contracts with participating carriers.

* * * * *

(e) No system may require a carrier to maintain any particular level of participation in its system on the basis of participation levels selected by that carrier in any other system.

Issued in Washington, DC, on August 8, 1996.

Federico F. Peña,

Secretary of Transportation.

[FR Doc. 96–20737 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–62–P

14 CFR Part 255

[Docket No. OST–96–1145 [49812]; Notice No. 96–21]

RIN 2105–AC56

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

AGENCY: Office of the Secretary, Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to adopt two rules to further ensure that travel agents using computer reservations systems (CRSs) can better obtain a fair and complete display of airline services. One proposed rule would require each CRS to offer a display that lists flights without giving on-line connections any preference over interline connections. The second proposed rule would require that any display offered by a system be based on criteria rationally related to consumer preferences. As an alternative to the latter proposal (or as an additional rule), the Department is also proposing to 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 acting on the basis of informal complaints made by Frontier Airlines, Alaska Airlines, and Midwest Express Airlines.

DATES: Comments must be submitted on or before October 15, 1996. Reply comments must be submitted on or before November 12, 1996.

ADDRESSES: Comments must be filed in Room PL–401, Docket OST–96–1145 (49812), U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file twelve copies of its comments.

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

SUPPLEMENTARY INFORMATION: Airline travelers in the United States usually rely upon travel agents to advise them on airline service options and to book airline seats. Travel agents in turn largely depend on CRSs to determine what airline services and fares are available in a market, to book seats, and to issue tickets for their customers. Travel agents rely so much on CRSs because they can perform these functions much more efficiently than any other means currently available. Each of the CRSs operating in the United States is owned by, or is affiliated with, one or more airlines, each of which has the incentive to use its control of a system to prejudice the competitive position of other airlines. We therefore found it necessary to adopt regulations governing CRS operations, 14 CFR Part 255, in order to protect competition in the airline industry and to help ensure that consumers obtain accurate and complete information on airline services. 14 CFR Part 255, adopted by 57 FR 43780 (September 22, 1992), after publication of a notice of proposed rulemaking, 56 FR 12586 (March 26, 1991). Our rules readopted and strengthened the rules originally adopted by the Civil Aeronautics Board (''the Board'') and published at 49 FR 11644 (March 27, 1984) (the Board was the agency that formerly administered the economic regulatory provisions of the Federal Aviation Act, now Subtitle VII of Title 49 of the U.S. Code).

One of our major goals in adopting the rules was to assure that CRS displays would provide an accurate and complete display of airline services when a travel agency customer requested airline information. When the CRSs were unregulated, each system biased its display of airline services in favor of its airline owner's flights in order to generate more bookings for its owner. Our rules, like the Board's rules, accordingly prohibit each CRS from using factors related to carrier identity in editing and ranking airline services in its displays. Section 255.4.

While our display rules also impose some other restrictions on CRS displays in order to reduce the likelihood of bias, our rules generally do not regulate the criteria used by each system to edit and rank the airline services shown in its displays. In particular, we have not prescribed the display algorithm that each system must use (the algorithm is the set of rules for editing and ranking airline services in a particular display). In our last CRS rulemaking we declined to adopt stronger rules on CRS displays, in part because we believed that the systems' competition for subscribers (the travel agencies using a CRS) would keep each system from offering irrational displays designed to gain additional bookings for its owner airlines.

Recent experience suggests that the systems' competition for subscribers may not adequately check the desire of the airline owners of each system to create displays that will increase their airline bookings, even if those displays list airline services in a way that is contrary to consumer preferences. We are therefore proposing to revise our rules on CRS displays. One rule would require each CRS to offer a display that does not give on-line connections a preference over interline connections. The other rule would require that any display offered by a system be based on criteria rationally related to consumer preferences. As an alternative to the latter proposal (or as an additional rule), we are also asking for comments on a possible rule prohibiting 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.

In considering these issues, we are relying in large part on the findings made in our 1991–1992 rulemaking, in the Board's rulemaking, and in our 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) (*Airline 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 proposing to impose additional requirements on CRS displays because our reexamination of CRS issues and further experience with

CRS practices have caused us to believe that further regulation is necessary, despite our finding to the contrary in the previous rulemaking.

We have also relied on the pleadings filed in Docket 48671 in connection with Galileo's use of its exemption authority to change the display of single-plane flights in a way that assertedly benefits the interests of Galileo's principal owners, United Air Lines and USAir, at the expense of competing airlines like Alaska Airlines and Midwest Express Airlines, and denies travel agents using Galileo and their customers a useful display of airline services.

Background

We have found it necessary to regulate CRSs because of their predominant role in the marketing of airline services to consumers. Travel agents sell about 70 percent of all airline tickets sold in the United States. Travel agencies generally hold themselves out as neutral sources of travel information rather than as promoters of the services of one or a few airlines, so travelers rely on them for impartial advice on airline service options. 57 FR at 43782.

To determine what airline services are available when a customer requests information, travel agents usually rely on a CRS, because the CRSs provide information on the services offered by the great majority of airlines more efficiently than any other source. 56 FR at 12587. Most travel agency offices, moreover, rely entirely or predominantly on one CRS rather than use multiple CRSs. 57 FR 43783.

Each of the four CRSs operating in the United States is owned by one or more airlines or airline affiliates. The parent corporation of American Airlines owns the largest system, Sabre. Apollo, the second largest system, is operated by Galileo International Partnership, which is owned by United Air Lines, USAir, Air Canada, and several European airlines. 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.

The editing and ranking of airline flights in creating CRS displays are important because a flight's display position affects the number of bookings made on the flight. No system can display all of the available airline services in most markets on a single screen, for a CRS can display only five or six flights on each screen. If a travel agent wants to see additional service options, the agent must call up additional screens of information. The CRS therefore must use some method for ranking flights.

Travel agents are more likely to book a flight when it appears on the first screen of the display, and the flight most often booked is the first flight shown on the first screen. The first flights displayed are booked more frequently in part because those flights are likely to be the flights that best meet the customer's needs, but, as the airlines owning the systems have long known, those flights will also be booked more often merely because of their better display position. 56 FR at 12608.

Given the importance of CRSs to airline marketing, the airlines owning each system have an incentive to use it to prejudice the competitive position of rival airlines. Downgrading the display position of the flights operated by competing airlines would be an effective method of distorting airline competition if there were no CRS rules. As the Board found, before CRS displays were regulated, each of the airline-owned systems biased its displays in favor of the owner airline. At least one of the systems, Apollo, was attempting to make its bias both more effective and less visible to travel agents. Systems sometimes used display bias to prejudice specific airline competitors as well. For example, Sabre had imposed a substantial display penalty on all of New York Air's flights in order to force New York Air out of one important American market. 56 FR at 11656, 12593. Consumers obviously suffer when a system hides or eliminates information on potentially attractive service options.

Regulatory Background: The Board's Rulemaking and Subsequent Events

The injuries caused consumers and airline competition by display bias were among the factors that caused the Board to adopt rules regulating CRS operations. In adopting its rules the Board relied primarily on its authority to prevent unfair methods of competition and unfair and deceptive practices in the marketing of airline transportation under section 411 of the Federal Aviation Act, codified then as 49 U.S.C. 1381, since recodified as 49 U.S.C. 41712. 57 FR at 43789–43791. On review the Seventh Circuit affirmed the Board's prohibition of display bias (and its other CRS rules). *United Air Lines* v. *CAB,* 766 F.2d 1107 (7th Cir. 1985).

The Board's principal rule on CRS displays prohibited each system from using carrier identity as a factor for editing and ranking airline services. To reduce the likelihood of bias and incomplete or misleading displays of airline services, the Board adopted several other rules related to CRS displays. These rules required each system, among other things, to use a minimum number of connect points in constructing displays of connecting services for any market and, on request, to give participating airlines and subscribers a description of its display algorithms.

The Board determined that these rules 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—the airlines which paid fees in order to have their services displayed and available for sale through a CRS—also did not have the power to keep the systems from biasing their displays. 49 FR at 32543–32544, 32547–32548.

The Board's rules did not end efforts by the airlines controlling the CRSs to improve the display position of their own flights at the expense of the flights operated by competitors. First, the Board's rules applied only to each system's principal display and did not regulate other displays offered by a CRS. Some systems created biased secondary displays in order to regain the benefits of display bias. This caused the Department to obtain each system's agreement not to offer biased secondary displays. *Marketing Practices* at 81–82. We later amended the rules to extend the prohibition on display bias so that it barred biased secondary displays. 57 FR at 43802.

Another example of CRS manipulation involved flight times. Since the systems commonly ranked flights on the basis of elapsed time, some airlines allegedly began publishing schedules with unrealistically short elapsed times so that their nonstop flights would be displayed before the flights of airlines using accurate schedules. To stop this abuse each system agreed that it would no longer rank nonstop flights on the basis of elapsed time. *Airline Marketing Practices* at 83.

Despite the Board's prohibition of carrier-specific display bias and our later actions on displays, an airline with an ownership interest in a system could still give its own flights better display positions by choosing facially-neutral display criteria matching the predominant characteristics of its airline operations. While other airlines with similar operational characteristics would also benefit, those airlines that had chosen different strategies would suffer, although that result was not inevitably unfair. The Justice Department thus stated in its initial

comments in our last reexamination of the CRS rules, Comments of the Department of Justice on the Advanced Notice of Proposed Rulemaking at 17:

> [V]endors continue to manipulate their algorithms to improve their own flights' display relative to that of other carriers. The CRS vendors select for their algorithm the particular non-carrier-specific criteria, such as elapsed time, departure time, circuitry, and connect time, that due to differences in the route configurations and schedules of carriers, optimize the position of their airlines' flights in the display.

While the Board chose not to adopt detailed rules on CRS displays, European governments took a different approach when they adopted their own CRS rules. The European Union's rules, which were derived from guidelines adopted by the European Civil Aviation Conference (''ECAC''), impose more detailed regulations than did either the Board in its rulemaking or we when we revised the Board's rules in 1992. Insofar as displays are concerned, the European Union rules allow each system to offer only one display, the so-called ECAC display, unless the travel agency customer's needs require the use of a different display. The ECAC display lists all nonstop flights first, followed by single-plane flights (such as one-stop flights), with connecting services being shown last. The display may not use an on-line preference.

Regulatory Background: The Department's Rulemaking

Several years ago we held a proceeding to reexamine the Board's CRS rules. We determined to readopt them with several changes designed to promote competition in the airline and CRS businesses. 57 FR 43780 (September 22, 1992) and 56 FR 12586 (March 26, 1991). Like the Board, we adopted the CRS rules under our authority to prevent unfair methods of competition and unfair and deceptive practices in the marketing of airline transportation under section 411 of the Federal Aviation Act, now 49 U.S.C. 41712. 57 FR at 43789–43791.

Among the issues considered in our rulemaking were CRS display issues. Our notice of proposed rulemaking recognized, as the Department of Justice pointed out, that vendors could be choosing seemingly neutral display criteria in order to improve the display position of their own flights. However, we did not propose a rule prescribing the ranking and editing criteria that must be used in CRS displays. We doubted that there was a single best way for displaying airline services, and we agreed with the Justice Department that it would be inefficient for us to try creating the best possible display. We also believed that the vendors' ability to choose their display criteria was not causing significant competitive harm in the airline industry. 56 FR. at 12609.

While we did not propose a rule banning the use of an on-line preference, we invited the parties to comment on whether the preference should be banned. We noted that giving on-line connections a preference over interline connections was consistent with consumer preferences, since travellers generally preferred on-line service. 56 FR at 12609. Nonetheless, we also recognized that the systems' use of the preference could overstate travellers' usual preference for on-line service. We further noted that the systems' use of on-line preferences could put small airlines at a competitive disadvantage, 56 FR at 12610:

> The on-line preference may also unduly strengthen the vendor carriers' competitive position against smaller U.S. carriers, since the vendors have nationwide route systems with several hubs that enable them to offer on-line service to points throughout the nation. Smaller carriers, on the other hand, cannot match that service since they have few hubs and often operate only in one region.

In their comments on our notice of proposed rulemaking, some airlines argued that stricter display rules were essential because the systems' owners were using ranking and editing criteria that favored their own services at the expense of competing services.

ECAC and three airlines asked us to prescribe the algorithm that would be used for all CRS displays. We declined to take such action, largely on the basis of the reasoning set forth in the notice of proposed rulemaking. However, we also noted that the systems' competition for travel agency subscribers appeared to make additional display regulation unnecessary: ''[S]ubscriber demands seem to be causing vendors to offer travel agents alternative displays using some algorithms similar to European standards.'' 57 FR at 43803.

We also decided not to prohibit the use of an on-line preference. Despite our concern with the preference's potential impact on U.S. airline competition, no U.S. airline filed comments opposing the preference, and one smaller airline—Alaska Airlines—filed comments supporting the preference. 57 FR at 43804.

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.

In addition, we found that our new rule on third-party hardware and software, § 255.9, would give travel agencies the ability to use software programs that could improve the quality of airline service displays. If travel agencies obtained programs that reconfigure the information provided by a system, they could create displays that might be more useful for their customers by better reflecting consumer travel preferences. 57 FR at 43797.

As explained below, recent developments in the CRS business have caused us to question the validity of our previous finding that no additional regulation of CRS displays was needed. But before explaining the basis for our doubts, we will describe the algorithms offered by each system.

With respect to one provision in the rules, we have allowed three of the systems to provide a display that differs from the rules' requirements. We have given several systems exemptions from one provision of our rules, § 255.4(b)(1), which requires that the system use the same algorithm for displaying services in all markets. Orders 90–8–32 (August 14, 1990) and 94–3–44 (March 24, 1994) (Sabre); Order 93–8–2 (August 13, 1993) (Galileo); Order 91–7–41 (July 26, 1991) (Worldspan). As a result, as described below, some of the systems use one algorithm for airline services within North America and a different algorithm for services not entirely within North America, such as transatlantic flights.

The Vendors' Current Algorithms

Sabre. Sabre offers two displays, a category display and an integrated display. Sabre's category display ranks airline services as follows: nonstop flights are listed first, direct flights (single-plane flights) are listed second, and connections are listed last. Sabre uses several factors to rank flights within each category, such as displacement time (the difference between the flight's departure time and the traveller's requested departure time). Sabre also uses elapsed time to a limited extent in ranking airline services other

than nonstop flights (and in selecting flights from the data base for the display), although flights whose elapsed time does not exceed the elapsed time of the fastest service in that category by more than 90 minutes are treated as having the same elapsed time as the fastest service. Sabre uses this display for both international and domestic services, and the display has used an on-line preference only for ranking connecting services within North America. April 20, 1994 letter of David Schwarte, Associate General Counsel, Docket 49318.

Sabre's other display—the integrated display—is available only if both the origin and the destination of the traveller's itinerary are within North America. Like the category display's algorithm, the algorithm uses factors like displacement time and elapsed time to rank flights and to determine which flights in the data base are displayed, but it does not automatically show connecting services after all nonstop flights and single-plane flights. The algorithm ranks each service on the basis of the penalty points assigned the flight on the basis of how well the flight satisfies the ranking criteria; for example, a flight with a departure time close to the traveller's requested departure time will receive fewer penalty points than a flight with a departure time that is farther away from the requested departure time. When a connecting service has fewer penalty points than a nonstop flight, the algorithm will display it before the nonstop flight. The integrated display uses an on-line preference.

Apollo. Apollo also offers travel agents in the United States two displays, the Basic Display and the U.S. ECAC Display. The Basic Display ranks flights by category—first nonstop flights, then single-carrier ''one-stop service'' (Apollo treats as one-stop service both one-stop flights and single connections between two nonstop flights), then interline ''one-stop service'', then on-line ''two-stop service'', then interline ''two-stop service'', then on-line service with three or more stops, and finally interline service with three or more stops.

Despite its name, Apollo's U.S. ECAC Display does not apply ECAC's display guidelines. Like the Basic Display, the U.S. ECAC Display displays flights by category: nonstop flights are listed first, then one-stop services (that is, one-stop single-plane flights and connections between two nonstop flights) are displayed, followed by two-stop services, with services involving three or more stops being shown last. This display does not use an on-line preference.

The display offered travel agents in Europe using Apollo's affiliated system, Galileo, complies with the ECAC display guidelines. Like Apollo's U.S. ECAC display, it lists all nonstop flights first, but, unlike the U.S. display, it then lists all single-plane flights before showing any connecting services.

Some airlines and many travel agents believe that both of the Apollo displays offered U.S. travel agents unreasonably rank airline services in order to give Apollo's airline owners a competitive advantage over other airlines. These airlines and travel agents consider the algorithms unreasonable because they give no preference to single-plane flights over connecting services and select flights from the database in a manner which gives a better display position to flights with less displacement time, as explained below. As a result, two airlines—Alaska and Midwest Express—and a major travel agency trade association have complained about the Apollo displays, as described below.

Worldspan. Worldspan also offers U.S. subscribers two types of displays, one referred to as an EEC display, the other referred to as a U.S. display. The so-called EEC display is consistent with the European CRS rules (and so has no on-line preference). The U.S. display that comes in two variants. In one variant of the U.S. display (and the only version available for airline services not entirely within North America), the display ranks airline services by category but uses an on-line preference.

In the other variant, which can be used only for services entirely within North America, the algorithm assigns penalty points to different services on the basis of such factors as displacement time, elapsed time (except that all nonstop flights are treated as having the same elapsed time), numbers of stops, and number of connections required. The algorithm uses an on-line preference.

System One. System One, like Worldspan, offers an ECAC display that is consistent with the European CRS rules. System One also offers a second display, the departure time display, which is also a category display. The departure time display ranks airline services in the following order: nonstop flights, then single-plane flights, then two-segment nonstop on-line connections, then two-segment nonstop interline connections, and so on.

Problems With Current CRS Displays

As noted, several airlines and a major travel agency trade association, the American Society of Travel Agents (''ASTA''), have complained about Apollo's display practices. Although these complaints only involve Apollo, we believe that a rulemaking is appropriate because other systems may be considering the adoption of similar display practices. Apollo's conduct suggests that travel agent and consumer desires for reasonable displays do not provide as much of a check on unreasonable CRS displays as we had thought and that systems may therefore create displays that serve the interests of their airline owners while possibly denying the system's users a reasonable ranking and display of airline services.

We will discuss first the on-line preference used by Apollo and other systems and then the problems caused by Apollo's other display practices.

The Systems' On-line Preference

Frontier Airlines has complained that Apollo's display algorithm gives an unreasonable preference to on-line connections and that this preference is worsened because connections between code-sharing partners (two airlines using one airline's code for both airlines' service) are treated as on-line connections. Frontier considered Apollo's display unfair because it injured Frontier's ability to compete in North Dakota markets. Frontier was offering jet service from North Dakota points to Denver in competition with a commuter airline operating under United's code. Since the commuter airline's flights were listed in CRSs under United's two-letter code, connections between the commuter airline and United at Denver, United's hub, were treated as on-line connections and given preference in Apollo's display over connections between Frontier and United at Denver. United had provided most of the nonstop service to points beyond Denver, so the poor display position given the connections between Frontier and United made it difficult for Frontier to obtain bookings from consumers who travelled to or from North Dakota points over Denver. Since Frontier, unlike the United commuter airline, used jet aircraft to serve the Denver-North Dakota routes, Frontier considered its service more attractive to travellers. According to Frontier, travellers nonetheless often were unaware of Frontier's service because Apollo's penalty for interline connections gave an unreasonably poor display position to connections over Denver between Frontier and United or another airline.

While a system's use of an on-line preference is usually consistent with the preferences of many travellers, an on-line preference also benefits the airlines with CRS ownership interests, since it reflects the characteristics of their

services. Each of those U.S. airlines is one of the largest U.S. airlines and operates a hub-and-spoke route system, that is, it operates 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.

We recognize, as we have stated before, that consumers generally prefer on-line services over interline services. 56 FR at 12609. However, a system's use of an on-line preference also promotes the interests of its airline owners, and a system's preference may overstate the desirability of on-line service.

We believe that Apollo's treatment of interline connections, in combination with Apollo's other ranking and editing criteria, may cause consumer harm. The on-line preference used in the Apollo Basic Display makes it harder for travel agents to find interline connections, even though such connections at times may offer the best service for consumers, since the display shows all on-line connections in a category (for example, services involving a single connection) before displaying any interline connections in that category. Since consumers usually prefer on-line connections, giving on-line connections a preference in CRS displays will often be rational. In some markets, however, many consumers may consider an interline connection the best service. Frontier, for example, was offering service with jet aircraft, which many travellers prefer to the commuter aircraft operated by United's code-sharing affiliate (of course, other travellers may prefer the more frequent flights and on-line service offered by United's code-sharing partner). In addition, as we discussed in our last rulemaking, the systems' on-line preferences may well overstate the attractiveness of on-line connections. On-line connections should normally appear before interline connections in a display that uses elapsed time as a principal ranking factor, even without an on-line preference, 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.

Apollo's Treatment of Single-Plane Flights

The other complaint involving Apollo's displays originated in the dissatisfaction of Alaska Airlines, Midwest Express Airlines, and the American Society of Travel Agents (''ASTA''), the largest travel agent trade association, with Apollo's treatment of single-plane services. In essence, Apollo has created displays that give a better display position to the hub-and-spoke operations of its major U.S. owners, United and USAir, and a poorer position to the services of carriers like Alaska Airlines and Midwest Express Airlines that do not operate a hub-and-spoke route system.

Apollo's algorithms often give an unreasonably low display position to single-plane flights that are more convenient for the traveller than connecting services given a better display position. This results from the undue importance given displacement time (the time difference between the traveller's requested departure time and the departure time of the flight being displayed) in ranking flights.

Although the complaint involves only Apollo's displays, the material submitted by vendors and airlines in our current CRS study suggests that another vendor may be considering creating a similar display, a factor that makes it appropriate to address this issue (and the issue informally raised by Frontier) through a rulemaking proceeding.

Apollo offers U.S. travel agents two different displays, the Basic Display and the U.S. ECAC Display. The algorithms for both displays build displays in groups (work areas or ''playpens'') of sixteen flight items (a flight item is a nonstop flight, a single-plane flight, or one of two or more connecting flights). In creating the group of sixteen flight items, Apollo proceeds first by category. Thus all nonstop flights are displayed before any other services. The next category includes both one-stop flights and single connections. Within each category the system uses only displacement time (the time difference between the traveller's requested departure time and the flight's departure time) in selecting flights from the database for each work area. In ranking the flight items within each work area, Apollo uses both displacement time and elapsed time in the Basic Display and only elapsed time in the U.S. ECAC Display.

The current Apollo algorithms replace algorithms that placed nonstop flights and single-plane flights in the top category and connecting services in a lower category. Since Apollo now puts single-plane flights in the same category as connecting services and uses a method for selecting flights from the database for each playpen that gives heavy weight to displacement time, Apollo's current displays give a relatively high display position to connecting services leaving close to the traveller's requested departure time and a low position to single-plane flights involving a greater displacement time, even if the latter involve less elapsed time.

When Apollo downgraded the position of single-plane flights, two airlines that operate a relatively large number of single-plane flights and do not have large hub-and-spoke systems, Alaska Airlines and Midwest Express Airlines, urged us to compel Apollo to restore its earlier placement of single-plane flights in the same category as nonstop flights. ASTA supported their request. They alleged that Galileo changed the displays in order to benefit its U.S. airline owners, United and USAir. Those two airlines rely on hub-and-spoke systems. In the markets they serve, some of their flights will inevitably have departure times close to any traveller's requested departure time and thus will gain a high display position solely because of the undue weight given displacement time when flights are selected from the database. Alaska and Midwest Express, on the other hand, operate a smaller number of single-plane flights that may not depart as close to a traveller's requested departure time but which would still be preferred by most travellers if their arrival times are comparable to those of the competing connecting services. 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. Alaska estimated that it may 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.

As a result of the initial complaints made by Alaska and Midwest Express, we partially revoked the exemption that Galileo had obtained in order to make the Basic Display usable only for

services within North America, Order 94–8–5 (August 3, 1994). When Apollo responded to that order with display changes that generated further complaints from Alaska, Midwest Express, and ASTA, we required Galileo to provide information on its justification for changing the treatment of single-plane flights and on related issues. Order 94–11–9 (November 15, 1994).

We have tentatively determined that Galileo's ability and willingness to create seemingly unreasonable and unfair displays requires us to propose an additional rule on CRS displays. Our proposal, as explained below, would require CRSs to use editing and ranking criteria in their displays that reasonably reflect consumer preferences. Before discussing our proposal we will explain why Apollo's displays appear to be so troublesome.

First, the information submitted by the parties in Docket 48671 included the following four examples where Galileo's algorithm for the Apollo Basic Display produced an unreasonable display of airline services.

Seattle to Burbank. Alaska operated two one-stop flights that each had an elapsed time of about 3¼ hours and left Seattle at 1:40 p.m. and 4:15 p.m. However, if a travel agent requested a display of services in that market with a departure time of 3 p.m., the Alaska flights appeared only on the third screen after the display of seven on-line connections. The first screen showed three connections, one operated by Alaska and two by United. One of the two United connecting services left Seattle almost two hours before Alaska's 4:15 flight and arrived at Burbank sixteen minutes after the Alaska flight. Another United connection given a higher display position left Seattle more than one hour before the 4:15 Alaska flight and arrived at Burbank almost one hour later than the Alaska flight. October 5, 1994 Letter of Marshall Sinick.

San Francisco to New Orleans. A travel agent using the Apollo Basic Display with a requested departure time of 8 a.m. would not see an 8:40 one-stop Delta flight until the sixth screen; the earlier screens listed nineteen on-line connections, 18 of which had a longer elapsed time than the Delta flight. One of the connecting services listed on the third screen was an 8 a.m. connection over O'Hare that arrived at New Orleans more than one hour after the Delta flight. January 12, 1995 Letter of Marshall Sinick.

Milwaukee to Los Angeles. If a travel agent requested a display of service departing at 8 a.m., the first screen offered by the Apollo Basic Display showed two United connections that arrived at 11:52 a.m. and 12:49 p.m. and had elapsed times of 5:42 and 6:39, respectively. Midwest Express operated a single-plane flight in the market that arrived at 11:45 a.m., earlier than either United connection, and had a shorter elapsed time, 5:05. That flight, however, did not appear until Galileo's fourth screen, three screens after the less convenient connections. Midwest Express Comments (December 5, 1994) at 5.

Orange County to Seattle. Alaska operated a one-stop flight that departed at 1:59 p.m. and arrived at 5:42 p.m., while Reno Air operated a one-stop flight that departed at 2:10 p.m. and arrived at 6 p.m. An agent using the Apollo Basic Display to see what service was available with a 1 p.m. departure time would not see either of those flights until the fifth screen, after the display of over three screens of connecting services. The first connecting service listed consisted of a 1:30 p.m. United flight to Los Angeles connecting with a second United flight arriving at Seattle at 6:01 p.m. Among the other connecting services given preference over the two one-stop flights were connections over Salt Lake City and Phoenix, each of which departed from Orange County about one hour before either one-stop flight and arrived at Seattle at least 55 minutes after Reno's flight. Galileo Response to Order 94–11–9 (November 23, 1994).

In cases like these examples, the Apollo displays harm competition by favoring the services offered by the carriers that rely on hub-and-spoke networks, which are usually the largest carriers, and disfavoring the flights offered by airlines that do not rely so much on hub-and-spoke networks. When the better single-plane service is displayed after less convenient connecting services, airlines will have more difficulty competing for passengers on the basis of the merits of their service.

The displays also harm consumers and travel agents by making it difficult for agents to find single-plane flights that are likely to be more attractive for consumers than the connecting services given a better display position. ASTA, a major spokesman for travel agents, states that Galileo's displays ''make it harder for travel agents to find flights meeting the priority goals of air travel consumers.'' ASTA continues, ''We have 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.

We directed Galileo to support its claims that it changed the Apollo displays in order to benefit travel agents and their customers. Order 94–1–9 (November 15, 1994) at 5. Galileo primarily claims that travel agents would be disadvantaged 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 Response to Order 94–11–19 at 8–9. Galileo, however, provided no evidence that travel agents complained when its displays listed all single-plane flights before displaying any connections. Moreover, as we noted earlier in that proceeding, few markets have many single-plane flights, according to the statistics provided by Galileo itself. Airlines operate an average of only 1.5 single-plane flights each day in each of the hundred largest domestic city-pair markets. Order 94–8–5 at 16. Since so few single-plane flights are offered in most markets, a travel agent wishing to see connecting flights instead of single-plane flights could easily get to the connecting service listings. Thus the earlier inclusion of single-plane flights in the same display category as nonstop flights could have caused little, if any, inconvenience for travel agents. While Galileo cites three markets—Washington, D.C.-San Francisco, Phoenix-Washington, D.C., and Boston-Greensboro—as examples of how its new displays are easier for travel agents to use, we believe these examples are unrepresentative and cannot show that the new displays' treatment of single-plane flights provides better displays in general.

Our Proposed Revisions to the CRS Display Rules

Given the apparent unreasonableness of Apollo's current displays, the possibility that other systems may adopt similar displays, and the likelihood that every system has created an algorithm designed in part to benefit the services of airline owners, we have decided to consider changes to the CRS display rules that should give non-vendor airlines (and travel agents) a greater assurance that they can obtain a fair and adequate display of airline services. At the same time, however, we do not want to limit each system's ability to offer different displays to travel agents, since travel agents are likely to disagree on

the factors that should be emphasized in editing and ranking airline services. Travel agents, moreover, must respond to the preferences of their customers, and different customers will consider different factors important in judging the quality of airline services. As explained, we also do not intend to tightly regulate CRS algorithms.

Nonetheless, even though travellers and their travel agents will disagree on which factors are the most important in choosing airline flights, we think that any display made available to travel agents should be based on rational criteria and that at least one display should rank airline services in a manner which does not favor the service characteristics of the biggest airlines, which happen to be the owners of each of the U.S. systems.

We propose to revise our current display rules in two respects. First, we propose to require each system to offer a display that does not use an on-line preference in ranking and editing connecting services. This display must be at least as easy to use as any other display offered by the system. We are proposing to make this display an alternative to the other displays offered by a system, not the primary or default display. Secondly, we propose to require that the criteria used by a system for editing and ranking airline services in any integrated display be rationally related to consumer preferences (under section 255.4(a), every integrated display offered by a CRS must comply with our display rules). As noted, however, we also request comments on a possible alternative (or addition) to this rule, which would prohibit 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.

Our proposal to require each system to offer a display without an on-line preference will 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. That will benefit airlines like Frontier that depend more on obtaining interline passengers. As indicated, Apollo—the target of Frontier's complaints—already offers a display without an on-line preference, the U.S. ECAC Display. However, that display's seemingly unreasonable treatment of single-plane flights and its heavy reliance on displacement time as the basis for pulling services out of the data base make the display difficult to use. The rule will also require Sabre to create a new display without an on-line preference, if, as has been the case, Sabre's displays for services within North America all use an on-line preference.

The second rule—the requirement that a system's display criteria be rationally related to consumer preferences—should keep systems from offering unjustifiable displays. Although we are proposing to require the criteria used by a system in constructing an algorithm to be rationally related to consumer preferences, we do not intend to embark on an extensive review of CRS editing and ranking criteria. We would expect to take enforcement action under the rule only in cases where a system was using an algorithm that was likely to mislead a significant number of consumers by causing services that would meet the consumers' travel needs significantly better than other services to be displayed after the inferior services, if those criteria appear designed to improve the display position of the services of the system's airline owners.

This proposal should benefit smaller airlines like Alaska and Midwest Express that do not own a CRS and cannot cause a system to adopt algorithms using ranking criteria consistent with the nature of their own airline operations and inconsistent with the nature of competitors' airline operations. More importantly, the rule should benefit travel agents and their customers by barring systems from using algorithms that make it unreasonably difficult for travel agents to find the best service for their customers. That rule, if adopted, should force Apollo to change its algorithms, for we do not see in light of our current knowledge how that system's current displays could satisfy the rule's requirements.

We do not intend to use our proposed rule requiring displays to be based on rational criteria to second-guess all algorithm criteria that airlines find objectionable. We would likely find that a system had violated the rule only if the algorithm's unreasonable ranking of airline flights was likely to cause a number of travellers in a number of markets to choose flights that normal travellers (and travel agents) would consider significantly inferior to flights given a lower display position and if the display seemed designed to benefit the competitive position of the system's airline owners. The comments filed by U.S. and foreign airlines in our last major CRS rulemaking demonstrate that airlines often disagree over which characteristics of airline services should be emphasized in editing and ranking airline services. We probably would not consider complaints that an algorithm's ranking and editing criteria violate this proposed rule if the system using the criteria can make a showing that the challenged criteria are consistent with the preferences of a substantial portion of travellers. For example, we would not investigate complaints that an on-line preference violated the rule, since, as shown, an on-line preference is often (but not always) consistent with consumer preferences. Similarly, we would be unlikely to investigate a complaint that an algorithm was unreasonable where the displays did not seem to provide any competitive advantage for the airlines controlling the system. And on some issues any algorithm's choice is likely to be arbitrary—one possible example is the choice of a default time for use as the departure time when the travel agent does not specify a departure time in submitting a customer's request for flight information. Because no algorithm can result in a perfect display of airline services for every market, we would be satisfied if there is a rough correlation between consumer travel preferences and an algorithm's editing and ranking criteria. A system could use such evidence as travel agent and traveller surveys or the results of focus groups to demonstrate that the algorithm's criteria reflect consumer preferences, although we assume that less evidence would often be needed to show that the display was reasonable.

While we find it necessary to consider stricter rules for CRS displays, we believe it would be unwise for us to attempt to regulate CRS displays more closely. Each of the vendors currently offers different displays to its subscribers, and we are unwilling to reduce the choices currently available to travel agents. Moreover, as we stated in our last rulemaking, we doubt that we could create a display that would be the best possible display for all markets. 56 FR at 12609.

Our proposal to require that the editing and ranking criteria used by each algorithm be rationally related to consumer preferences reverses our decision in our last rulemaking on a similar proposal made by the Orient Airlines Association. Our experience with Apollo's displays has convinced us, however, that neither the vendors' competition for subscribers nor other factors may be strong enough to keep systems from creating unfair displays in order to increase their airline owners' airline revenues. We also doubt that our proposal, if adopted, would substantially increase our workload or our oversight of CRS operations.

As an alternative to, or in addition to, the proposal that editing and ranking criteria be based on consumer preferences, we are also considering the addition to the CRS rule of a specific prohibition against the kinds of unfair displays created by Apollo's algorithm. Under this alternative, the CRS rules would prohibit an algorithm that neither uses elapsed time as a significant factor in selecting service options from the database nor gives single-plane flights a preference over connections in ranking services in displays. 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.

Since, to date, the Apollo editing and ranking criteria are the only ones on which we have received specific complaints that they result in unfair displays, it may be wise to limit our proscription to the immediate and more clear-cut problem. This proposal 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 receive a better display position since such flights generally require less travel time than connecting services. This proposal accordingly would no longer cause significantly inferior connecting services to be given a better display position than single-plane flights requiring substantially less travel time.

Comments on the merits and drawbacks of the combined requirements or each alternative, including the language of the specific prohibition against an algorithm that does not use elapsed time as a significant factor in selecting flights from the database and does not give single-plane flights a preference over connecting services, are invited.

Since each system provides a display without an on-line preference, at least for flights not entirely within North America, we doubt that requiring a display without an on-line preference would impose significant programming costs on the U.S. systems. Only Sabre apparently offers no display of North American services without an on-line preference. We also do not expect the proposed requirement that displays be reasonably related to consumer preferences to increase system costs significantly. Only Apollo currently offers displays that would seem to violate such a requirement, and Apollo's own willingness to change displays in recent years suggests that reprogramming would not be costly.

Alternatives to Rulemaking

As discussed above, we believe that vendors can use—and apparently have used—their discretion to create displays that injure consumers and airline competition. If consumers, travel agencies, and participating airlines could easily avoid the harm caused by these displays, we would not propose new rules on CRS displays. We tentatively find, however, that CRS users cannot readily do so.

Travel agents could overcome Apollo's unreasonable ranking of airline services by carefully searching through several screens for each market before recommending a flight to their customer (or by requesting a display of single-plane flights). Travel agents are often pressed for time, however, and do not believe they can afford to spend a lot of time looking for the best service when doing so involves looking at several screens or taking extra steps. *Cf. Airline Marketing Practices* at 69–70. And Apollo's treatment of single-plane flights at times causes one-stop flights to receive such a poor display position that even a diligent agent is unlikely to search long enough to find the flight, especially since the agent may not know that the single-plane flight even exists. ASTA Reply at 2–3.

Travel agents could also avoid the problem if they requested a display of direct flights only or asked for display with different departure times. Taking these steps, however, involves additional work that the agent prefers to avoid. Apollo's owners benefit from the displays precisely because they know that travel agents often will not undertake the additional work needed to offset the unreasonable ranking of flights offered by Apollo.

Travel agents also cannot avoid one system's poor displays by switching to another system that provides a more reasonable ranking of airline services. First, the CRS firms' contracts with travel agencies make it difficult for an agency to switch systems or to use an additional system. The contracts typically last for five years, and an agency terminating the contract before the end of the five-year term must pay substantial damages to the system. The systems' contracts use pricing formulas which give travel agencies lower prices for the CRS but discourage them from using additional systems. In addition, travel agencies often consider it necessary to use the system of the major airline in the agency's area, even if another system offers lower CRS prices or better service. *Airline Marketing Practices* at 24–26.

When we reexamined CRS regulation in our last rulemaking, we adopted a rule, section 255.9, which allows travel agencies to use third-party software and hardware in conjunction with CRS services, subject to certain conditions to protect the integrity of the system. This rule enables travel agencies to use programs that can reconfigure the system's information on airline services. Travel agencies dissatisfied with a system's display algorithms accordingly can purchase software that would create a more satisfactory display. 56 FR at 12605–12606. However, we have no evidence that many travel agencies have chosen to use programs that will create displays more useful for consumers.

More importantly, a system's use of an unreasonable and unfair display harms two other groups—participating airlines and consumers—who have no ability to offset the harm caused by unreasonable CRS displays. Travel agency customers rely on the travel agent to tell them what services are available, and other airlines have little control over the recommendations made by an agent. As we have found in our earlier examinations of the CRS business, most airlines find it essential to participate in each system and therefore have no ability to bargain for reasonable participation terms.

Legal Authority for Adopting the Proposed Rules

Our governing statute authorizes us to investigate and determine whether any air carrier or ticket agent has been or is engaged in unfair methods of competition or unfair or deceptive practices in the sale of air transportation. 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act (and codified then as 49 U.S.C. 1381). Our authority, modelled on the Federal Trade Commission's comparable powers under 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 same statutory provision gives us broad authority to prohibit deceptive practices in the sale of air transportation. In adopting the original CRS rules, the Board relied upon both its authority to prohibit deceptive practices and its authority to prohibit unfair methods of competition. The Seventh Circuit affirmed the Board's adoption of those rules under what was then section 411 of the Federal Aviation Act. *United Air Lines*, 766 F.2d 1107

(7th Cir. 1985). As a result, we may clearly regulate CRS display practices that create a risk that consumers will be deceived. 57 FR at 43791.

We are proposing these 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 proposed rules would promote airline competition by ensuring that CRS displays provide a reasonable and fair ranking of airline services. When a CRS offers a display that irrationally ranks airline services 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, additionally suggest that an unreasonable and unfair display can cause substantial damage to competing airlines.

When consumers book airline flights on the basis of information provided by an irrational display of airline services, they are likely to book inferior airline services because the display has hidden superior services. Our statute gives us the authority to prohibit conduct which has the potential to cause this kind of consumer deception.

We believe our tentative findings in this notice are sufficient to support our adoption of our proposed rules on CRS displays.

Regulatory Assessment

This rule may be a significant regulatory action under section 3(f) of Executive Order 12866 and has 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 proposal is also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

The proposed rule should benefit airline competition and consumers. It 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, by giving travel agents a better ability to obtain useful displays rationally related to traveller preferences, the rule would make travel agency operations more efficient. The rule would benefit consumers by making it more likely that travel agencies will recommend more convenient airline service. By promoting airline competition, the rule would produce additional savings and other benefits for consumers.

The Department does not have adequate information to enable it to quantify the potential benefits of the proposed 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, the revised Apollo display is also causing many travellers to take connecting services instead of one-stop flights that may be more convenient.

While the Department expects the rule to provide significant benefits, it does not expect the rule to increase CRS costs significantly. The Department does not have sufficient information to estimate the systems' programming expenses for complying with the proposed rules. However, a rule requiring each system to offer a display without an on-line preference should not impose significant programming expenses on the systems, since each system currently has a display, at least for international services, that does not have such a preference.

A rule requiring systems to use rational criteria for editing and ranking flights would only impose significant costs on a system if an airline or travel agency subscriber submitted a justified complaint about its displays. If the complaint were invalid, it would likely be dismissed without a hearing. Only in cases where the display appeared to be unreasonable would the system be exposed to an enforcement proceeding, which could include a formal hearing, and to potential liability.

The other proposal, which would bar systems from using 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, should impose no costs on any system, except the cost of reprogramming displays that do not comply with the proposal. At this time Apollo appears to be the only system that would incur such costs. We doubt that the reprogramming costs would 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.

The Department asks interested persons to provide information on the costs and benefits.

Initial 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. Our notice of proposed rulemaking sets forth the reasons for our proposal of additional CRS display rules and the objectives and legal basis for our proposed rule.

The proposed rule would, as explained above, give smaller airlines a better opportunity to obtain a fair display position in CRSs, all of which are currently owned or affiliated with one or more large U.S. and foreign airlines. Smaller airlines would then be likely to obtain more bookings and therefore compete more successfully with larger airlines.

The proposed rule would also 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.

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

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

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

Paperwork Reduction Act

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

Federalism Implications

The rule proposed by this notice would 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 proposed rule does 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 proposes to amend 14 CFR Part 255, Carrier-owned Computer Reservations Systems as follows:

PART 255—[AMENDED]

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

Authority: 49 U.S.C. 1302, 1324, 1381, 1502.

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

§ 255.4 Display of information.

[Alternative 1]

(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) The criteria used by a system for editing and ranking airline services in any integrated display must be rationally related to consumer preferences. In considering whether an algorithm violates this provision, the Department shall consider, among other things, whether the editing and ranking criteria are likely to mislead a significant number of consumers by causing services that would meet the consumers' travel needs significantly better than other services to be displayed after the inferior services and whether those criteria seem designed systematically to improve the display position of the system owners' airline services at the expense of the services offered by other airlines.

* * * * *

[Alternative 2]

(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) A system may not offer an integrated display that neither uses elapsed time as a significant factor in selecting service options from the database nor gives single-plane flights a preference over connecting services in ranking services in displays.

* * * * *

Issued in Washington, DC, on August 8, 1996.

Federico F. Peña,

Secretary of Transportation.

[FR Doc. 96–20736 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209827–96]

RIN 1545–AU22

Treatment of Section 355 Distributions by U.S. Corporations to Foreign Persons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations revising the final regulations under section 367(e)(1) with respect to section 355 distributions of stock or securities by domestic corporations to foreign persons. The IRS is also modifying the temporary regulations under section 6038B to provide that distributions described under section 367(e)(1) are subject to rules under section 6038B. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by November 7, 1996. Outlines of topics to be discussed at the public hearing scheduled for November 20, 1996, at 10 a.m. must be received by October 31, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL 0020–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (INTL–0020–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Philip L. Tretiak at (202) 622–3860; concerning submissions and the hearing, Evangelista Lee at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed