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Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–99–5132; Notice No. 99–3]

RIN 2105–AC75

Second Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: For the second time, the Department is proposing to revise its rules governing airline computer reservations systems (CRSs), 14 C.F.R. part 255, by changing the rules' expiration date from March 31, 1999, to March 31, 2000. If the Department does not change the expiration date in the rules (14 CFR part 255), the rules will terminate on March 31, 1999. The proposed extension of the current rules will cause the rules to remain in effect while the Department carries out its reexamination of the need for CRS regulations. The Department tentatively believes that the current rules should be maintained because they appear to be necessary for promoting airline competition and helping to ensure that consumers and their travel agents can obtain complete and accurate information on airline services. The rules were previously extended from December 31, 1997, to March 31, 1999.

DATES: Comments must be submitted on or before March 12, 1999.

ADDRESSES: Comments must be filed in Room PL–401, Docket OST–99–5132, 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 six 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: In 1992 the Department adopted its rules governing CRS operations—14 CFR part 255—because CRSs had become essential for the marketing of airline services for almost all airlines operating in the United States. 57 FR 43780 (September 22, 1992). We determined that the rules were necessary to ensure that the owners of the systems—all of which were then airlines or airline affiliates—did not use them to unreasonably prejudice the competitive position of other airlines or to provide misleading or inaccurate information to travel agents and their customers. We found that regulations were needed because travel agents relied on CRSs to provide airline information and bookings for their customers and because almost all airlines received most of their bookings from travel agencies. Our rules will expire on March 31, 1999, unless we readopt them or extend the expiration date. 62 FR 66272 (December 18, 1997). By issuing an advance notice of proposed rulemaking, we began a proceeding to determine whether the rules are necessary and should be readopted and, if so, whether they should be modified. 62 FR 47606 (September 10, 1997). We are proposing here to extend the expiration date for the current rules to March 31, 2000, so that they will remain in force while we conduct our overall reexamination of the rules.

We have set a short comment period of fourteen days so that we can publish a final decision on this proposal before the rules' current expiration date. Our advance notice of proposed rulemaking has given interested persons an opportunity to comment on whether the rules should be maintained. Almost all of the commenters support a continuation of the rules, albeit with changes, and virtually none urge us to end the rules.

The CRS Business

The CRS business in the United States consists of four CRSs, each of which is affiliated with one or more U.S. airlines. A CRS contains information on airline services and other travel services sold through the system and provides that information to system users. A CRS enables travel agents and other users to find out what airline seats and fares are available and book a seat on each airline that ''participates'' in the system, that is, that makes its services saleable through the CRS. Travel agents—the major users of the systems—access a CRS through computer terminals, which are normally leased from the system. Consumers can also access a CRS through an on-line computer service or an Internet website.

The fees paid by airlines and other travel suppliers participating in a system generate most of the revenues received by each CRS. An airline participant pays a fee whenever a booking on that airline is made through the system (most of the systems also charge fees for related transactions, such as booking changes and cancellations). Other travel suppliers pay similar fees. Many, but not all, travel agencies subscribing to a system also pay fees, but such subscriber fees, unlike airline fees, are generally disciplined by competition.

Regulatory Background

CRSs became essential for airline distribution in the early 1980s, when travel agents came to depend on the systems to find out what services were available and to make bookings. At that time each of the systems operating in the United States, with one minor exception, was owned by a single airline, and each owner airline used its system to prejudice competing airlines and to give consumers biased or incomplete information in order to obtain more bookings. These practices caused the agency formerly responsible for the economic regulation of airlines, the Civil Aeronautics Board (''the Board''), to adopt rules governing the operations of airline-affiliated CRSs. 49 FR 32540 (August 15, 1984). The Board found that regulations were essential to keep the systems from causing substantial harm to airline competition and to prevent consumers from being misled. The Board adopted its regulations primarily under its authority under section 411 of the Federal Aviation Act, later recodified as 49 U.S.C. 41712, to prevent unfair methods of competition and unfair and deceptive practices in air transportation and the sale of airline transportation. The Board's rules were affirmed on review. *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985).

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

We assumed the Board's responsibilities for airline regulation after the Board's sunset on December 31, 1984. See United Air Lines, supra, 766 F.2d at 1109. To ensure that the rules would be reexamined, the Board?s rules contained a sunset date, December 31, 1990. We reexamined the rules and

adopted revised rules. 57 FR 43780 (September 22, 1992). To maintain the Board?s rules in effect pending the completion of that reexamination, we extended their expiration date. 55 FR 53149 (December 27, 1990); 56 FR 60915 (November 29, 1991); 57 FR 22643 (May 29, 1992).

We readopted the rules with revisions, because we found that the rules were still necessary: (1) Market forces did not discipline the price or level of service offered participating airlines by the systems, (2) CRS owners could use their control of the systems to prejudice airline competition if there were no rules, and (3) systems could bias their displays of airline services if there were no rules requiring unbiased displays. 57 FR at 43783–43787.

Our rules, like the Board's rules, included a sunset date, December 31, 1997. 14 CFR 255.12; 57 FR at 43829–43830 (September 22, 1992). To begin our current reexamination of the rules, we published an advance notice of proposed rulemaking asking interested persons to comment on whether we should readopt the rules and, if so, with what changes. 62 FR 47606 (September 10, 1997). Shortly after issuing that advance notice, we amended the rules twice to further promote competition. 62 FR 59784 (November 5, 1997); 62 FR 66272 (December 18, 1997). We adopted those amendments largely because market forces did not appear to discipline CRS firms insofar as terms for airline participation were concerned.

Almost all of the parties responding to our advance notice of proposed rulemaking have urged us to maintain CRS rules, although these parties also argued that various changes should be made to the rules, mostly to strengthen them. No party urged us to eliminate the rules, and few disputed the need for the continued regulation of the CRS business. Thus we believe that an extension of the current rules pending completion of the current reexamination of those rules would be consistent with the positions already taken by the commenters.

Previous Extension of the Rules' Sunset Date

Because we were unable to complete our reexamination of the rules by the original sunset date, December 31, 1997, we amended the rules to extend them until March 31, 1999. 62 FR 66272 (December 18, 1997). We found that the extension was necessary to prevent the potential harm that would arise if the CRS business were not regulated and that it would not impose substantial costs on the industry. The only party that commented on the proposed extension, America West Airlines, supported it.

Our Proposed Extension of the CRS Rules

We are again proposing to change the expiration date for our CRS rules to March 31, 2000, so that the rules will remain in effect while we conduct our reexamination of the need for the rules and the rules' effectiveness. The completion of our overall reexamination of our rules, including the need to give parties an adequate opportunity to file comments and reply comments in response to our future notice of proposed rulemaking, will require substantial time and cannot be finished by the current expiration date, March 31, 1999.

We regret our inability to complete the reexamination of the rules by our target date, since the Department is fully aware of the importance of maintaining rules governing CRS operations that reflect current industry conditions, but the process has taken more time than anticipated. In addition, the Department has had to address other airline competition issues that appeared to be more urgent, such as the development of enforcement guidelines on unfair exclusionary behavior, 63 FR 17919 (April 10, 1998) and the exercise of the Department?s responsibility to review the competitive effects of the three alliances between major U.S. airlines that were announced in early 1998. Furthermore, several recent developments in airline distribution, such as the growth of Internet services and the cuts in travel agency commissions made by major airlines for bookings made both by traditional travel agencies and Internet services, are requiring additional study by the staff.

We recognize that a number of parties contend that there is a compelling need for certain additional CRS regulations, such as rules limiting airline booking fees and giving travel agency subscribers additional rights to cancel CRS contracts. See 62 FR 60195 (November 7, 1997), requesting comments on a petition filed by America West, and the Emergency Petition for Rulemaking filed on November 18, 1998, by the Association of Retail Travel Agents, Docket OST–98–4775. We are considering whether some issues are of such overriding importance that they should be addressed before the completion of the overall reexamination of the rules.

We tentatively conclude that we should amend the rules to change the sunset date from March 31, 1999, to March 31, 2000. As we stated in proposing the earlier extension, a temporary extension of the current rules will preserve the status quo until we determine which rules, if any, should be adopted. Allowing the current rules to expire could be disruptive, since the systems, airlines, and travel agencies have been conducting their operations in the expectation that each system will comply with the rules. Systems, airlines, and travel agencies, moreover, would be unreasonably burdened if the rules were allowed to expire and we later determined that those rules (or similar rules) should be adopted, since they could have changed their business methods in the meantime.

The primary basis for extending the rules is the need to protect airline competition and consumers against unreasonable practices. Our past examinations of the CRS business and airline marketing caused us to conclude that CRSs were still essential for the marketing of the services of almost all airlines. 57 FR 43780, 43783–43784 (September 22, 1992). We found that rules were needed because the airlines depended on travel agencies as their principal distribution arm, because travel agencies relied on CRSs, because most travel agency offices used only one CRS, because creating alternatives for CRSs and getting travel agencies to use them had been difficult, and because airlines were unable to cause agencies to use one CRS instead of another. 57 FR at 43783–43784, 43831. If an airline did not participate in a system used by a travel agency, that agency was less likely to book its customers on that airline. Since marginal revenues are important in the airline industry, an airline could not afford to lose access to a significant source of revenue. An airline (or other firm) could not practicably create a system that could compete with the existing systems. Almost all airlines therefore had to participate in each CRS, and CRSs did not need to compete for airline participants. 57 FR at 43783–43784.

We doubt that industry developments since our last major rulemaking have undermined our earlier findings. We believe that most airline bookings in the United States are still made by travel agencies, that travel agencies still rely almost entirely on CRSs to determine what airline services are available and to make bookings, and that few travel agency offices make extensive use of more than one CRS. For example, while several low-fare airlines initially operated without participating in any system, most of those airlines have concluded that they need to participate in each system. 62 FR at 47608. While consumer use of the Internet to make bookings is growing dramatically,

Internet bookings still make up a very small percentage of total airline bookings. Moreover, Internet sites (except airline sites) typically use a system as their booking engine.

As noted above, almost all of the parties that responded to the advance notice of proposed rulemaking stated that the rules remained necessary, and most urge us to strengthen them further to protect airlines and travel agencies against potential abuses by system owners.

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

Finally, there is an additional basis for our tentative determination that we should maintain the current rules in effect pending our reexamination of the rules. We adopted the rules in part to carry out 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 those bilateral agreements assure the airlines of each party a fair and equal opportunity to compete. We have held that the fair and equal opportunity to compete includes, among other things, a right to have an airline's services fairly displayed in CRSs. Our rules against display bias and discriminatory treatment help to provide foreign airlines with a fair and equal opportunity to compete in the United States. 57 FR at 43791–43792. The European Union, Canada, and Australia, among other countries, have adopted rules regulating CRS operations that help give U.S. airlines a fair opportunity to sell their services in the countries covered by the rules.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. Executive Order 12866 requires each executive agency to prepare an assessment of costs and benefits for each significant rule under section 6(a)(3) of that order. The proposal is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

Maintaining the current rules should impose no significant costs on the CRSs. The systems have already taken all the steps necessary to comply with the rules' requirements on displays and functionality, and complying with those rules on a continuing basis does not impose a substantial burden on the systems. Maintaining the rules will benefit participating airlines, since otherwise they would be subjected to unreasonable terms for participation, and will benefit consumers, who might otherwise obtain incomplete or inaccurate information on airline services. The rules also contain provisions that are designed to prevent abuses in the systems' competition with each other for travel agency subscribers.

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

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

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies. Our notice of proposed rulemaking sets forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposed rule.

In addition, we note that keeping the current rules in force will not modify the existing regulation of small businesses. Our final rule in our last major CRS rulemaking contained a regulatory flexibility analysis on the impact of the rules. As a result of that analysis, we determined that this regulation did not have a significant economic impact on a substantial number of small entities. Our analysis appears to be valid for our proposed extension of the rules' termination date. Accordingly, we adopt that analysis as our tentative regulatory flexibility statement and will consider any comments filed on that analysis in connection with this proposal.

The continuation of our existing CRS rules will primarily affect two types of small entities, smaller airlines and travel agencies. To the extent that airlines can operate more efficiently and reduce their costs, the rule will also affect all small entities that purchase airline tickets, since airline fares may be somewhat lower than they would otherwise be, although the amount may not be large.

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

The CRS rules affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. The rules prohibit CRS contracts that have a term longer than five years, give travel agencies the right to use third-party hardware and software, and prohibit certain types of contract clauses, such as minimum use and parity clauses, that restrict an agency's ability to use

multiple systems. By prohibiting display bias based on carrier identity, the rules also enable travel agencies to obtain more useful displays of airline services.

Our proposed rule contains no direct reporting, 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.

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 will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

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

Federalism Implications

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

List of Subjects for 14 CFR part 255

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

Accordingly, the Department of Transportation proposes to amend 14 CFR part 255, 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 255.12 is revised to read as follows:

§ 255.12 Termination.

Unless extended, these rules shall terminate on March 31, 2000.

Issued in Washington, DC on February 22, 1999, under authority delegated by 49 CFR 1.56a (h) 2.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–4780 Filed 2–25–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 064–1064; FRL–6236–6]

Approval and Promulgation of Implementation Plans; State of Missouri; St. Louis Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the air pollution control State Implementation Plan (SIP) submitted by the state of Missouri. The revised SIP pertains to the St. Louis vehicle I/M program. These revisions require the implementation of an enhanced motor vehicle I/M program in the St. Louis metropolitan area, i.e., Jefferson, St. Louis, and St. Charles counties and St. Louis City. This proposal is being published to meet the EPA's statutory obligation under the Clean Air Act (CAA or the Act).

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: All comments should be addressed to Wayne Leidwanger at the Region VII address. Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region VII, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Stan Walker, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7494.

SUPPLEMENTARY INFORMATION:

I. What Is the Statutory Requirement?

The CAA, as amended in 1990, requires that certain ozone nonattainment areas adopt either ''basic'' or ''enhanced'' I/M programs, depending on the severity of the problem and the population of the area. An I/M program is a way to check whether the emission control system on a vehicle is working correctly and to repair those that are not. All new passenger cars and trucks sold in the United States must meet stringent pollution standards, but they can only retain this low pollution profile if the emission controls and the engine are functioning properly. I/M is designed to ensure that vehicles stay clean in actual customer use. Through periodic vehicle checks and required repairs for vehicles which fail the test, I/M encourages proper vehicle maintenance and discourages tampering with emission control devices.

Since the CAA's inception in 1970, Congress has directed the EPA to set national ambient air quality standards for the six most common air pollutants, one of which includes ozone. The CAA requires these standards to be set at levels that protect public health and welfare with an adequate margin of safety and without consideration of cost. These standards provide information to the American people about whether the air in their community is healthful. Also, the standards present state and local governments with the targets they must meet to achieve clean air. St. Louis is currently designated as a nonattainment area with respect to ozone, i.e., an area which has not achieved the air quality standard for ozone.

Moderate ozone nonattainment areas, e.g., St. Louis, fall under the ''basic'' I/M requirements. However, moderate areas such as St. Louis have the option of implementing an enhanced I/M program. The state of Missouri chose to implement an ''enhanced'' I/M program in St. Louis as part of its overall plan for achieving emission reductions to attain the one-hour ozone standard.

II. What Are the I/M requirements?

Missouri has developed its I/M program not only to meet the requirements of section 182(b)(4) of the CAA but also to meet the reasonable further progress requirements of section 182. Section 182(b)(1) of the CAA requires states, with nonattainment areas classified as moderate and above for ozone, to develop a plan to reduce area-wide volatile organic compound (VOC) emissions from a 1990 baseline by 15 percent. However, the Act prohibits credit toward the 15 percent reduction for correcting deficiencies in previously established basic I/M programs. Missouri decided to pursue an enhanced I/M program to help the state meet the 15 percent plan requirements.