DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 256

[Docket No. OST–2005–20826]

RIN 2105–AD44

Display of Joint Operations in Carrier-Owned Computer Reservations Systems Regulations (Part 256)

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is eliminating its rule that currently prohibits each airline that owns, controls, or operates a computer reservations system (''CRS'' or ''system'') from denying system access to two or more carriers whose flights share a single designator code and discriminating against any carrier because the carrier uses the same designator code as another carrier. The Department has determined that this rule is no longer necessary. This action is consistent with the Department's decision at the end of 2003 to eliminate its comprehensive rules governing system operations, 14 CFR part 255.

DATES: This rule is effective March 23, 2006.

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

Electronic Access

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SUPPLEMENTARY INFORMATION:

A. Background

Travel agents rely on airline computer reservations systems (''CRSs'' or ''the systems'') to obtain information on airline flights and fares, to book airline seats, and to issue tickets (although the systems now are also commonly called global distribution systems, or GDSs, we are referring to them as CRSs for purposes of this rulemaking). *See, e.g.*, 67 FR 69366, 69370 (November 15, 2002). Each system provides information and booking capabilities on each airline that has agreed to make their services saleable through the system and to pay the fees required for participation. Until recent years, almost every airline obtained the large majority of its revenues from bookings made by travel agents using one of the systems. Each system was originally developed by an airline, and one or more airlines controlled each system until recently.

We have had two sets of CRS rules. The principal set of rules, 14 CFR part 255, set forth comprehensive requirements that governed the systems' relationships with their airline and travel agency customers until we terminated the rules in 2004. 69 FR 976 (January 7, 2004). Those rules covered any system that was owned or marketed by an airline or airline affiliate. 14 CFR 255.2. The other set, 14 CFR part 256, concerned the systems' treatment of airlines that share the same two-symbol designator code, the code used by the systems and other sources of airline information to identify the airline offering the seats being sold (the codes for America West and Alaska Airlines, for example, are HP and AS). These rules bar airlines that own, control, or operate a system from denying access to that system to two or more airlines whose flights share a single designator code and from discriminating against any airline because that airline uses the same designator code as another airline.

The Civil Aeronautics Board (''the Board''), the agency then responsible for the economic regulation of the airline industry, adopted both the comprehensive rules (Part 255) and the rules governing the treatment of code-sharing airlines (Part 256) in the same year, 1984, on the basis of a common economic and competitive analysis. 49 FR 12675 (March 30, 1984) (Part 256); 49 FR 32540 (August 15, 1984) (Part 255). The Board adopted the CRS regulations due to the systems' important role in the distribution of airline tickets and the systems' ownership by airlines, and we readopted the comprehensive rules in 1992 for the same reason. Like the Board, we based our readoption of the rules on 49 U.S.C. 41712, originally section 411 of the Federal Aviation Act, which authorized us (and earlier the Board) to prohibit unfair and deceptive practices and unfair methods of competition in the distribution of airline tickets.

B. Our Proposal to Eliminate the Rules on the Treatment of Code-Sharing Airlines and the Comments on That Proposal

When we again reexamined the need for the comprehensive rules in our most recent rulemaking, we concluded that they had become unnecessary, and we terminated all of them by July 31, 2004. 69 FR 976, 977 (January 7, 2004). Our decision that industry developments had ended the need to maintain the comprehensive rules suggested that we no longer had a basis for maintaining the rules on the systems' treatment of code-sharing airlines, Part 256. We began this rulemaking to examine whether the rules governing the treatment of code-sharing airlines remained necessary. 70 FR 16990 (April 4, 2005). We proposed to terminate those rules as well. We believed that those rules, like the comprehensive rules, had become unnecessary, primarily because the increasing importance of the Internet in airline distribution was reducing the systems' market power over airlines and because U.S. airlines had divested all of their CRS ownership interests. One of the systems, Amadeus, is owned in part by three European airlines, but it also has substantial public ownership, and its airline owners should have no incentive to prejudice airline competition within the United States. In addition, because these rules cover only airlines that own, control, or operate a system, and do not cover systems not owned, controlled, or operated by airlines, Amadeus had become the only system subject to these rules. Maintaining these rules seemed illogical when they did not cover the three largest systems operating within the United States. Finally, we tentatively found that the systems were unlikely to deny access to code-sharing airlines, or to discriminate against them, because code-sharing had become a widespread practice and travel agents would probably be unwilling to use systems that did not display airline services marketed under code-share arrangements. 70 FR 16992–16993.

The only two firms filing comments, Delta Air Lines and Amadeus Global Travel Distribution, support our proposal. Delta agrees with our findings that the rules have become unnecessary due to the U.S. airlines' divestiture of their system ownership interests and the ready access to airline information on the Internet for travel agents and consumers. Delta also cites the policy goal of relying on free market forces rather than regulation to obtain

transportation policy goals. Amadeus supports our finding that no system is likely to discriminate against airlines that code-share, because travel agents and consumers can easily obtain information and book code-share services through the Internet. Amadeus further agrees with our reasoning that the rules are irrational, because they exclude the three other systems from their coverage. Amadeus, however, does not agree that the ending of the systems' ownership by U.S. airlines by itself would have made CRS regulation unnecessary if the airline distribution business had not changed as it has.

C. The Final Rule

This final rule eliminates the rules governing the treatment of code-sharing airlines by systems owned, controlled, or operated by airlines because those rules are no longer necessary. As shown, the commenters agree that the rules should be eliminated and generally agree with our reasoning. Changes in the airline distribution business, particularly the growth of the Internet, and in the systems' ownership have made these rules unnecessary, just as those changes made the comprehensive rules unnecessary. Moreover, as we explained in our notice, systems are unlikely to engage in the conduct prohibited by the rules, which in any event cover only one of the four systems operating in the United States.

As we stated in our final rule terminating the comprehensive rules, we will take appropriate investigative, enforcement, or regulatory action against a system that apparently engages in unfair and deceptive practices or unfair methods of competition. 69 FR 977. We may take such action even if we do not have rules specifically regulating system practices. 69 FR 978. We determined, moreover, that each system is a ticket agent subject to our jurisdiction to prevent unfair and deceptive practices and unfair methods of competition in the airline and airline marketing businesses. 69 FR 995–998. The Court of Appeals has affirmed that determination. *Sabre, Inc.* v. *Department of Transportation*, D.C. Cir. No. 04–1073 (decided November 22, 2005).

Regulatory Process Matters

Regulatory Assessment and Unfunded Mandates Reform Act Assessment

1. Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal or private mandate likely to result in the expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

This rule will not result in expenditures by the private sector or by State, local, or tribal governments because we are eliminating the rules. In addition, no such government operates a system or airline that is or has been subject to our regulations.

2. Regulatory Assessment

Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), defines a significant regulatory action as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more, or that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Regulatory actions are also considered significant if they are likely to create a serious inconsistency or interfere with the actions taken or planned by another agency, if they establish novel policy issues, or if they materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients of such programs.

The Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) outline similar definitions and requirements with the goal of simplifying and improving the quality of the Department's regulatory process. They state that a rule will be significant if it is likely to generate much public interest.

We believed that our proposed regulation was a significant regulatory action under the Executive Order, because CRS rules have long been a subject of public controversy. Our notice of proposed rulemaking set forth our tentative assessment of the likely costs and benefits for our proposal and invited comments on that assessment. The proposal was reviewed by the Office of Management and Budget under the Executive Order.

Our preliminary economic analysis sought to estimate the potential economic and competitive consequences of our proposed rules on computer reservations systems, airlines, and travel agencies and to evaluate the rules' benefits for the industry and the travelling public. We believed that the elimination of the rules should not harm airlines, travel agencies, or consumers, or have a material effect on firms in the airline or airline distribution businesses or on consumers. We reasoned that the industry conditions that originally caused the Civil Aeronautics Board to adopt the rules barring discrimination against code-sharing airlines no longer existed. No system is owned by a U.S. airline or airline affiliate, and no system should have an incentive to discriminate against code-share services. Because the Internet has given travel agents and consumers new sources of readily-available information on airline services and has created new channels for airlines for distributing their services, airlines are gaining more bargaining leverage with the systems. 70 FR 16993–16994.

We requested interested persons to provide us with detailed information on the potential consequences of our proposal, including its benefits, costs, and economic and competitive impacts. 70 FR 16994. No one has submitted comments on our tentative regulatory assessment, so we are making it final. The Office of Management and Budget has reviewed this rule under the Executive Order.

Initial Regulatory Flexibility Statement

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The statute 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 set forth the reasons for our rule proposal and its objectives and legal basis. We tentatively found that our proposed termination of the rules would not have a significant economic impact on a substantial number of small business entities. The rules impose obligations only on airlines that own, control, or operate a system, and none of the airlines that now own, or have owned, a system has been a small entity. While the rules could indirectly affect smaller airlines and travel agencies, which are small entities, because they may affect how code-share services are displayed in the systems used by travel agents, we tentatively found that eliminating the rules should have no significant impact on smaller airlines or travel agencies. The rules cover only one of the four systems operating in the United States, Amadeus, which has the smallest market share in the United States. No system would likely discriminate

against airlines that code-share, or deny access to airlines that code-share, because code-sharing has become a widespread practice since the Board adopted the rules and travel agents and airlines should have some ability to keep systems from discriminating against code-share services. 70 FR 16994. We invited interested persons to submit comments on these findings under the Regulatory Flexibility Act. No one submitted comments on our reasoning.

The Regulatory Flexibility Act requires us to publish a final regulatory flexibility analysis that considers such matters as the impact of a rule on small entities if the rule would have ''a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). For the reasons stated above, I certify that the elimination of our rule on the treatment of code-share operations will not have a significant economic impact on a substantial number of small entities. No final regulatory flexibility analysis is therefore required for this action.

Our final 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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding the proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Thomas Ray at (202) 366–4731.

Paperwork Reduction Act

The final rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. Chapter 35. *See* 57 FR at 43834.

Federalism Implications

Our final rule 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 13132, dated August 4, 1999, we have determined that it does not present sufficient federalism implications to warrant consultations with State and local governments.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Heath Risks and Safety Risks. This rule does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination With Tribal Governments

This rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. No tribal implications were identified during the comment period.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this is not classified as a ''significant energy action'' under that order because it is a ''significant regulatory action'' under Executive Order 12866 and it would not have a significant adverse effect on the supply, distribution, or use of energy.

Environment

This rule will have no significant impact on the environment.

List of Subjects in 14 CFR Part 256

Air carriers, Antitrust.

PART 256—[REMOVED AND RESERVED]

■ Accordingly the Department removes and reserves 14 CFR part 256.

Issued in Washington, DC, on February 8, 2006.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 06–1550 Filed 2–17–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9250]

RIN 1545–BD46

Application of Section 367 in Cross Border Section 304 Transactions; Certain Transfers of Stock Involving Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that address the interaction of section 304 and section 367. These regulations provide that section 367(a) and (b) do not apply to a deemed section 351 exchange resulting from a section 304(a)(1) transaction. These regulations may apply to taxpayers transferring stock to related foreign corporations.

DATES: *Effective Date:* This regulation is effective February 21, 2006.

Applicability Dates: For dates of applicability, see § 1.367(a)–3(e)(1)(G) and § 1.367(b)–6(a)(1).

FOR FURTHER INFORMATION CONTACT: Tasheaya L. Warren Ellison, (202) 622–3870 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2005, the IRS and Treasury published in the **Federal Register** a notice of proposed rulemaking (REG–127740–04; 2005–24 I.R.B. 1254; [70 FR 30036]) under section 367(a) and (b) of the Internal Revenue Code (proposed regulations) pursuant to the regulatory authority under section 367. The proposed regulations would provide that if, pursuant to section 304(a)(1), a U.S person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). The proposed regulations would further provide that if, pursuant to section