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14 CFR Part 258

Disclosure of Change-of-Gauge Services; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 258

[Docket Nos. OST–1995–177, 47546, 45911, 45912, and 45913]

RIN 2105–AC17

Disclosure of Change-of-Gauge Services

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

SUMMARY: This rule codifies and augments the Department of Transportation's disclosure rules and policies concerning change-of-gauge services—i.e., services with one flight number that require a change of aircraft—in order to ensure that prospective airline consumers are given pertinent information on the nature of these services. The rule applies to U.S. air carriers, foreign air carriers, and, where appropriate, ticket agents (including travel agents) doing business in the United States. It includes the following requirements: That transporting carriers include notice of required aircraft changes in their written and electronic schedule information provided to the public, to the Official Airline Guide (OAG) and comparable publications, and to computer reservations systems, that consumers be given reasonable and timely oral notice that a service with a single flight number that they are considering booking entails a change of aircraft en route, and that written notice of the aircraft change be provided along with any ticket.

DATES: This regulation is effective July 13, 1999. Comments on the information collection requirements must be received on or before May 14, 1999.

ADDRESSES: Comments should be sent to Jack Schmidt, Office of Aviation and International Economics (X–10), Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–5420 or (202) 366–7638 (FAX).

FOR FURTHER INFORMATION CONTACT: Betsy L. Wolf, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings (202–366–9349), Office of the General Counsel, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Department issued a Notice of Proposed Rulemaking (NPRM), 60 FR 3778 (January 19, 1995), in which it requested comments and reply comments on a proposed rule requiring various forms of disclosure of change-of-gauge services. Change-of-gauge service is scheduled passenger air transportation for which the operating carrier uses one single flight number even though passengers do not travel in the same aircraft from origin to destination but must change planes at an intermediate stop. Operationally, in addition to one-flight-to-one-flight change-of-gauge services, airlines also schedule change-of-gauge services that involve aircraft changes between multiple flights on one side of the change point and one single flight on the other side. Change-of-gauge services with multiple origins or destinations are called ''Y'' (i.e., two-for-one), ''W'' (i.e., three-for-one), or ''starburst'' (i.e., unrestricted) changes of gauge, depending on the shape of the route patterns. Popularly, they are also called ''funnel flights.'' As with one-for-one change-of-gauge services, the carrier assigns a single flight number for the passenger's entire itinerary even though the passenger changes planes, but in addition, the single flight to or from the change point itself has multiple numbers: one for each segment with which it connects and one for the local market in which it operates.

49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act, authorizes the Department to identify and ban unfair or deceptive practices or unfair methods of competition on the part of air carriers, foreign air carriers, and ticket agents. Under section 41712, the Department has adopted various regulations and policies to prevent unfair or deceptive practices or unfair methods of competition. The Department's current rules governing computer reservations systems (CRSs), adopted in September of 1992, require that CRS displays give notice of any flight that involves a change of aircraft en route. Computer Reservations System (CRS) Regulations, Final Rule, 57 FR 43780, 43835 (September 22, 1992); 14 CFR 255.4(b)(2). In addition, the Department requires as a matter of policy that consumers be given notice of aircraft changes for change-of-gauge flights. See Order 89–1–31 at 5.

In the NPRM, our response to American Airlines, Inc.'s petition in Docket 47546 to ban ''funnel flights,'' we concluded that no type of change-of-gauge service should be banned per se. Nevertheless, we tentatively found that even with our current policy requiring disclosure of aircraft changes, effective disclosure is not always made, resulting not only in bookings that otherwise might not be made but also in confusion and hardship during travel. We tentatively found that the failure to disclose required aircraft changes in scheduled passenger air transportation in a timely manner is an unfair or deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. 41712, and we proposed to require U.S. air carriers, foreign air carriers, and, where applicable, ticket agents (including travel agents) doing business in the United States to make the following disclosures of all change-of-gauge services:

(1) Notice by carriers of required aircraft changes in written and electronic schedule information provided to the public, to the Official Airline Guide and comparable publications, and to computer reservations systems,

(2) In any direct oral communication with a consumer concerning a change-of-gauge service, notice before booking transportation that the service requires a change of aircraft en route, and

(3) A prescribed written notice at the time of sale of such service.

We received comments on the NPRM from four air carriers (American Airlines, Inc., Delta Air Lines, Inc., United Air Lines, Inc., USAirways, Inc.), the Port Authority of New York and New Jersey (Port Authority), the American Society of Travel Agents, Inc. (ASTA), Americans for Sound Aviation Policy (ASAP), two travel agencies (Red Carpet Travel and Fran's Travel), and two individuals (Donald L. Pevsner and E. Sakaria). We received reply comments from two air carriers (American and Continental Airlines, Inc.). Having reviewed all of these documents, we have decided to adopt the proposed rule with some modification and clarification.

Allowing Change-of-Gauge Services

In the NPRM, we declined to ban either single or multiple change-of-gauge services outright. We noted that in general, we have declined to foreclose carriers' marketing and service innovations unless these violate 49 U.S.C. 41712 or otherwise contravene the public interest, and we tentatively found that problems of passenger deception or confusion or distortion of competition arising from ineffective disclosure could and should be addressed by our proposed rule. We noted various public benefits that can flow from change-of-gauge services: a lower likelihood of missed connections, lower fares, increased scope and

frequency of service, increased competition, our ability to review regulated international air fares, and maximum utilization of U.S. carriers' rights under international bilateral agreements.

Several commenters would have us reconsider our decision not to ban any change-of-gauge services. Some would settle for a ban on multiple change-of-gauge services, while others continue to press for a ban on one-for-one changes of gauge as well.

American supports the proposed rule for one-for-one changes of gauge but calls for a ban on multiple changes of gauge except for those specifically approved by the Department on a case-by-case basis. American doubts that connections are any more likely to be held for late-arriving flights in the case of multiple changes of gauge than they are in the case of ordinary online connecting services. In American's view, the Department should limit the use of single flight numbers to connections whose flights are routinely held in cases of delay. The carrier argues that even with effective disclosure of aircraft changes, travelers will still be misled into thinking that their connecting flights will not leave without them. It cites the support of fifteen parties for its original petition to ban multiple change-of-gauge flights in support of its position here.

American contends that the Department's leverage over fares under the Standard Foreign Fare Level (SFFL) is not a substantive reason to allow all multiple change-of-gauge services. It states that the rules allowing us to stop fare increases based on SFFL do not bear as a practical matter on transportation to and from countries with liberal pricing regimes, and it states that in any event, the Department has other means of protecting the public against unreasonable fares. American also believes that our concern that banning multiple change-of-gauge services would sacrifice valuable route rights is largely unfounded, because many bilateral agreements do not grant such rights. As for our concern that banning multiple change-of-gauge services by foreign carriers would breach some of our agreements, American states that foreign carriers dislike these services and that therefore, the United States could readily renegotiate those agreements that allow carriers of both parties to operate them. American does not oppose Departmental approval of change-of-gauge services to satisfy bilateral obligations.

Joining American in supporting a ban on multiple change-of-gauge services are the Port Authority and ASAP. The Port Authority maintains that these services are inherently unfair and deceptive, that they engender panic and helplessness at airports, and that even with the proposed disclosure requirements, consumers will not grasp the nature of their travel. For essentially the same reasons, Red Carpet Travel, Fran's Travel, Mr. Pevsner, and E. Sakaria favor a ban on all change-of-gauge services, not just those involving multiple flights on one side of the change point. On the other side of this issue, Delta, USAirways, and Continental take the position that no change-of-gauge services should be banned.

We affirm our earlier conclusion that change-of-gauge services are not unfair or deceptive practices or unfair methods of competition within the meaning of 49 U.S.C. 41712, provided that the *en route* change of aircraft is disclosed to consumers clearly and effectively before they book transportation. American provides no evidence to support its hypothesis that in the case of multiple change-of-gauge services, connections are not likely to be held. While American correctly observes that we do not exercise our leverage over fares under SFFL in the case of bilateral agreements with countries that have liberal pricing regimes, it would be contrary to the public interest for us to sacrifice this leverage for all bilateral relationships, including those with countries that do not have liberal pricing regimes. Banning change-of-gauge flights would do just that, because our SFFL reviews do not extend to fares for connecting flights with separate flight numbers.

Similarly, the proportion of our bilateral agreements that specifically provide for change-of-gauge services is irrelevant. What matters is that a significant and growing number of these agreements do. Among these are the 32 open-skies agreements we have concluded with aviation partners on four continents, our landmark agreement with Canada that governs our largest foreign aviation market, and many agreements with other significant aviation partners, such as France and Japan. The United States negotiated for the change-of-gauge provisions in these agreements in consultation with U.S. air carriers for the purpose of enabling them to exploit the agreements' new route opportunities as fully as possible. We would be acting contrary to the public interest if we were to sacrifice these negotiated rights unilaterally. American suggests that we could renegotiate those agreements that allow our partners to provide change-of-gauge services, but this would require making further trades to the foreign governments involved. Such retrenchment would again be contrary to the public interest.

E. Sakaria questions the legality of change-of-gauge service in light of a provision in the Warsaw Convention that tickets must show each point of transfer and a provision in carriers' certificates requiring all operations to be conducted in accordance with all applicable treaties. We do not interpret the certificate condition in question as requiring carriers to issue tickets indicating changes of gauge.

The arguments in the comments fail to persuade us that change-of-gauge services should be banned outright. Moreover, the record lacks evidence that this position has broad support in the industry. We do not agree that the disclosures required by our rule will fail to give consumers effective notice of the change of aircraft en route. We do share the concerns of the Port Authority and other commenters that airports may not be posting notices of change-of-gauge services that clearly and effectively direct passengers to their ongoing aircraft. We do urge the carriers offering these services to work with airports where the aircraft changes are made to remedy this problem. In our view, however, this concern does not warrant sacrificing all of the benefits that change-of-gauge service can offer to the traveling public. For these reasons, and owing to the long history and acceptance of the practice (see NPRM, supra, 60 FR at 3778–3779), we will not ban change-of-gauge service.

The Need for a Rule

At the other end of the scale, Delta, USAirways, and Continental take the position that the Department should not adopt any disclosure rule, arguing that they already make effective disclosure of change-of-gauge services, that the disclosure required by the rule would come at a high cost, and that there is not enough evidence that consumers are being deceived, confused, or otherwise harmed to justify this burden on sellers of air transportation. ASTA, too, argues against the rule. Some commenters also oppose individual components of the rule; we address these contentions below.

Delta argues that existing rules and policies requiring notice of aircraft changes in CRSs and disclosure of change-of-gauge services to consumers give the latter adequate protection. Delta states that it fully discloses its change-of-gauge services in CRSs, the OAG, the ABC World Airways Guide, other similar publications, and its own

timetables. An owner of Worldspan, Delta states that this CRS directs travel agents to tell passengers of the aircraft change and where it will occur. Delta also states that passengers on its change-of-gauge services receive a separate boarding pass for each flight segment that involves a different aircraft and contends that these constitute effective written notice of the aircraft change. Delta also argues that apart from existing regulatory requirements, carriers have commercial and competitive incentives to inform consumers fully about the services that they provide. The carrier thus concludes that the rule is unnecessary.

Delta also contends that the Department has not justified the rule with empirical evidence that consumers are being confused or deceived or that they are not being informed of change-of-gauge services in a timely fashion. If anything, Delta argues, the evidence suggests the contrary. The carrier states that of the almost 7,000 consumer complaints that the Department received in 1994, only 30 involved ''direct flight-undisclosed connection'' (a category that Delta believes encompasses other services in addition to changes of gauge), and only 3 of these involved ''unsatisfactory information.'' Delta states that its own records indicate few if any complaints about change-of-gauge services in recent years. Absent evidence, Delta claims, the Department has relied on generalized and unsubstantiated conclusions, which are not valid grounds for imposing a redundant, unnecessary, intrusive, and very costly regulation on the industry, especially in view of carriers' recent record losses.

USAirways, like Delta, contends that the Department has not shown a need for the rule and notes that change-of-gauge service was not identified as a ''Significant Consumer Issue'' in Secretary Peña's letter to carriers of December 20, 1994. Also like Delta, USAirways maintains that consumers already get all of the information they need to make informed decisions about change-of-gauge services. The carrier states that it complies with existing rules and policies by making full disclosure of change-of-gauge services in CRSs, the OAG, and its timetables and by having its agents tell passengers of required aircraft changes before booking change-of-gauge flights. Like Delta, USAirways contends that all carriers have a strong incentive to inform passengers effectively.

Continental states that it already provides adequate notice of its change-of-gauge services. Continental also agrees with Delta and USAirways that other carriers have the incentive to do so as well, that the additional costs of the rule would be a substantial burden for both carriers and travel agents, and that the Department has not justified the rule.

ASTA argues that the rule is not necessary to meet consumers' needs for information and that it will make normal communication with travel agents ''a negative and distasteful experience for the consumer, rife with warnings of disruptions and other difficulties.'' Rather than adopt the entire rule, in ASTA's view, the Department should just require CRS vendors to enhance the systems' disclosure of change-of-gauge services to travel agents and then see if market-based incentives solve the deception problem inherent in these services.

American takes issue in its reply comments with those who oppose the rule. American maintains that the Department is justified in deciding as a matter of policy that sellers of air transportation must expressly inform consumers, before they commit themselves to buying seats on change-of-gauge flights, that they will be changing planes en route. Otherwise, American claims, with a single flight number and single boarding pass, passengers will often make the mistaken assumption that they will not be making a connection. United, for its part, endorses the Department's objectives and agrees with the Department that without effective disclosure, change-of-gauge services can mislead consumers.

We remain of the view that the rule is a necessary complement to change-of-gauge services to assure compliance with 49 U.S.C. 41712. We are not persuaded that our existing policies and regulation result in effective disclosure all of the time, commercial incentives notwithstanding, nor are we persuaded that the costs of compliance with the rule will outweigh the benefits it will bring. As we noted in the NPRM, we currently have a rule that requires notice of en route aircraft changes in CRS displays (14 CFR 255.4(b)(2)) and a requirement as a matter of policy that consumers be given notice of aircraft changes for change-of-gauge flights (see Order 89–1–31 at 5).

The rule, however, does not expressly require travel agents, the sellers of most air transportation, to disclose the aircraft change to consumers. Neither does our policy, as articulated in our orders, expressly apply to travel agents:

> As a preliminary matter, we affirm the legitimacy of holding out change-of-gauge services under single flight numbers, provided that notice is given of the change of aircraft en route * * * (footnote omitted).

Id. While our Enforcement Office could bring an action under 49 U.S.C. 41712 against any seller of air transportation with a pattern of failing to disclose change-of-gauge services effectively, we believe that our adopting a rule with affirmative disclosure requirements will result in broader, more immediate, and more reliable protection both to the traveling public and to airline competition. As American recognizes, the failure to inform consumers of aircraft changes en route is inherently deceptive and should be prohibited whether or not it has precipitated a high volume of complaints.

The most recent evidence available to us indicates, moreover, that change-of-gauge service is not always effectively disclosed. In 1995, the Department's Aviation Consumer Protection Division received 42 complaints about changes of gauge, more than 5 times as many complaints as the 8 we received about code sharing, or the sharing of airline designator codes. In 1996, we received 16 complaints about code sharing and 47 complaints about change-of-gauge services; in 1997, we received 8 complaints about code sharing and 55 complaints about change-of-gauge services; in 1998, we received 7 complaints about code sharing and 47 complaints about change-of-gauge services. When one considers that the relevant set of passengers is not all passengers (several hundred million) but only those on change-of-gauge flights, the 191 complaints that we have received in four years indicate that all is not well. Furthermore, we do not know how many complaints the carriers may have received about change-of-gauge services since the issuance of the NPRM.

For all of these reasons, and because no party submitted any evidence in support of its claim of undue costs, we will adopt the rule with the modifications and clarifications discussed below.

Notice in Schedules

In the NPRM, we proposed to adopt the following requirement for carriers' schedules:

> § 255.5(a) *Notice in Schedules.* Carriers operating change-of-gauge services to, from, or within the United States shall ensure that in the written and electronic schedule information they provide to the public, to the Official Airline Guide and comparable publications, and to computer reservations systems, these services are shown as requiring a change of aircraft.

Delta, USAirways, and Continental object to this requirement. Delta and USAirways state that they already meet

it in its entirety; Continental's reply comments indicate that the carrier meets this requirement for everything except its own printed schedules. In addition to agreeing with Delta and USAirways that the requirement is redundant and unnecessary, Continental claims that it is costly in terms of customer service and administrative expenses.

United does not object to this requirement even though it will have to change its city timetables by adding an annotation to indicate change-of-gauge flights. The carrier states that it is already meeting the requirement's other components. Not only does United endorse this requirement, but it would have the Department go further and require an additional notice of aircraft changes for multiple change-of-gauge services. United reasons that without such a notice, at the airport where they change planes, passengers might not know to look for a flight with several different numbers. United contends that additional notice of multiple change-of-gauge services in written and electronic schedules will help sellers of air transportation provide both written and oral notice that is more responsive to consumers' needs than the notice required by the rule. (We address United's views on these requirements below.) United also claims that carriers do not always have control over the displays of flight information at airports and asks that we make clear in our final rule that this requirement does not apply to airport displays.

ASTA asks us to require CRS vendors to enhance their disclosure of change-of-gauge services to travel agents. American endorses the requirement and observes that none of the carriers that filed comments is claiming that disclosure of aircraft changes in schedules is unnecessary, burdensome, or unduly expensive.

We will adopt the requirement. We will modify the proposed language to make clear that the rule applies to carriers that hold out change-of-gauge service even if they do not actually operate it themselves, such as in the case of code-sharing. No commenter questions the benefit of disclosing aircraft changes in written and electronic schedules. The carriers who filed comments all comply with at least most of the requirement's components already, so their unsubstantiated claims of undue cost fail to persuade us. Continental provides no estimate or other support for its assertion that including notice of aircraft changes in its printed schedule will mean great expense in the areas of customer service and administration. United is correct in assuming that this requirement does not apply to those airport displays over which carriers do not have control.

We will not adopt the additional requirement suggested by United. From the consumer's perspective, there is no real functional difference between one-for-one and multiple changes of gauge. We have no evidence that flight listings at airports are more likely to be accurate and complete in the case of one-for-one changes of gauge than in the case of multiple changes of gauge, especially now that code-sharing has become so common in international travel. Contrary to United's assumption, we think that having different indicators for one-for-one and multiple change-of-gauge services is more likely to confuse passengers than having one universal indicator to alert them to the need to change aircraft en route. If, after the rule's implementation, experience indicates otherwise, we can always revisit this issue in a later rulemaking. In the meantime, we encourage carriers to take whatever additional steps they can to make sure that travel agents as well as consumers understand the nature of their services.

Oral Notice

In the NPRM, we proposed to adopt the following oral notice requirement for change-of-gauge services:

§ 258.5(b) *Oral Notice to Prospective Consumers.* In any direct oral communication with a consumer in the United States concerning a change-of-gauge service, any carrier or ticket agent doing business in the United States shall tell the consumer before booking scheduled passenger air transportation to, from, or within the United States that the service requires a change of aircraft en route.

This requirement drew opposition from Delta, United, USAirways, ASTA, and Continental and support from American. Delta argues that since air carriers are already required to inform consumers of aircraft changes en route, this requirement constitutes a redundant, unnecessary, overbroad, and highly intrusive regulatory action that will impose significant costs and burdens on the industry. Delta contends that this notice certainly is not necessary for every oral communication between consumer and airline and concludes that if the requirement is adopted, it should be limited to communications taking place before transportation is purchased.

United believes that the Department has significantly understated the added cost to the industry of the oral notice requirement, especially when coupled with the oral notice requirements proposed for code-share flights and insecticide spraying. The carrier estimates that it carries over 500,000 passengers on change-of-gauge services each year and believes that other carriers carry even more, and it suggests that the notice requirement will likely affect some tens of millions of reservations transactions. With the Department's estimate of one to two extra minutes per transaction, the costs to the industry of compliance with this requirement will be high. United anticipates that much of the burden will fall on travel agents, as in the case of the code-share and insecticide-spraying disclosure requirements, and it suggests that this burden may well outweigh the value of the notice to consumers. United also believes that with improved notice of changes of gauge in CRSs and schedules, travel agents will be better equipped to inform consumers about aircraft changes, which will reduce the need for any oral notice requirement.

USAirways states that it already has its sales agents tell consumers of aircraft changes en route before the latter book transportation and argues that all carriers have an incentive to do likewise. It therefore objects to this requirement. ASTA argues that the requirement is unnecessary and that travel agents have an incentive to disclose aircraft changes to consumers provided that the carriers make this information readily available to the agents. Continental, too, opposes this requirement and agrees with the reasoning of Delta, United, and USAirways. In addition, Continental notes that in the NPRM (60 FR, supra, at 3781), the Department found that it was complying with existing disclosure requirements.

American supports the oral notice requirement. The carrier finds inconsistency in the commenters' arguments (1) that the requirement is unnecessary because they already provide oral notice and (2) that the requirement is unduly burdensome and costly. American does suggest that we clarify our intention regarding when the requirement applies; it assumes that we mean for disclosure to be made not during every oral communication but only at some point before the consumer decides to book a change-of-gauge flight.

We will adopt the requirement as proposed and clarify that we do intend for the notice to be given when the seller is giving the consumer schedule information—i.e., before the consumer makes a decision to book a particular flight. No commenter argues that consumers should not be told about any change of aircraft en route before they decide which flight to book, and we believe the public benefit of this

requirement to be axiomatic. The carriers' assertions that compliance will be unduly costly lack evidentiary support. Moreover, these assertions are substantially undercut, if not altogether belied, by several factors. One, the carriers themselves say that they are already making the required disclosure voluntarily. Two, ASTA and the other travel agent commenters do not claim that compliance with this requirement will be unduly costly for travel agents. Three, in our parallel rulemaking on code-sharing (Docket 49702, *Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases, Notice of Proposed Rulemaking,* 59 FR 40836 [August 10, 1994]), with the exception of Qantas Airways Limited, no commenter—air carrier or travel agent—has claimed that a similar oral notice requirement for code-share services will impose an undue financial or administrative burden.

Written Notice

In the NPRM, we proposed to adopt the following written notice requirement:

§ 258.5(c) *Written notice.* At the time of sale in the United States of a change-of-gauge service, the selling carrier or ticket agent shall provide written notice stating the following:

Notice: Change of Aircraft Required

For at least one of your flights, you must change aircraft en route even though your ticket may show only one flight number and have only one flight coupon for that flight. Further, in the case of some travel, one of your flights may not be identified at the airport by the number on your ticket, or it may be identified by other flight numbers in addition to the one on your ticket. At your request, the seller of this ticket will give you details of your change of aircraft, such as where it will occur and what aircraft types are involved.

Delta, USAirways, and Continental object to any written notice requirement. United does not object in principle, and American supports a written notice requirement. All maintain that if such a requirement is adopted, the language should be left to each carrier rather than dictated by the Department. Delta, United, and Continental also question the wisdom of a written notice requirement given the trend toward ticketless travel.

Delta claims that a written notice requirement is redundant in view of the disclosures that carriers already make, and especially in its own case, since it issues passengers a separate boarding pass for each segment that involves a different aircraft. It claims that written disclosure is also unduly burdensome in terms of cost. In addition, Delta contends that the written notice requirement goes contrary to current trends towards reducing paperwork, especially ticketless travel, and that if carriers are required to issue a separate written notice at the airport, ticketing and check-in could be delayed. If we do adopt written notice requirements over its objections, Delta takes the position that we should not specify the language: in Delta's view, the above language is too long and potentially confusing to consumers.

United agrees in principle with a requirement that written notice of aircraft changes en route be provided along with the ticket, but it objects to being required to use the language set forth above. That language refers generically to change-of-gauge flights that could involve either one-for-one or multiple changes of gauge. United does not operate multiple change-of-gauge service, and it strongly objects to being required to use language that suggests otherwise. United also characterizes the language as too long and too complicated to be effective. It proposes that each carrier be permitted to create its own written notice to reflect its own operations and procedures, subject to review by our Enforcement Office, possible enforcement action, and, should it prove necessary, another rulemaking at some later date. United also believes that a standard notice is more likely to be ignored than read.

As for ticketless travel, United questions the need for and utility of any written notice to passengers who do not receive tickets. The carrier states that its ticketless passengers still receive written confirmation of their reservations but that its marketing research has determined that many passengers do not want this. In United's view, the Department should not require a written notice in the case of ticketless travel unless the passenger is receiving written confirmation of his or her reservation.

USAirways strongly objects to the written notice requirement as ineffective, redundant, and costly and to the Department's language as wordy and confusing. USAirways states that many travel agents already give passengers written itineraries and that it does so on request. The carrier recognizes that itineraries, if given, would be more complete if they reminded passengers of aircraft changes en route. It argues, however, that where no itinerary is issued, carriers and agents should not be required to provide a separate written notice simply to remind passengers of changes of gauge after transportation has been purchased, because such a requirement is burdensome and costly. USAirways states that it would have to modify its computer system and add a prompt to have its sales agents get passengers' addresses. This in turn would increase the length of each call. Additional costs would be incurred for printing the notice and mailing it, and changes in travel arrangements would require additional written notice. For last minute travel arrangements, the cost of sending written notice by express service would be even higher. Continental agrees with USAirways' arguments.

American supports a written notice requirement. American disagrees with Delta and USAirways that notice in schedules coupled with oral notice should suffice to inform passengers of aircraft changes en route, contending that few consumers actually look at carriers' schedules when booking transportation and also that the person making a reservation is often not the person traveling. In American's view, the cost of written notice is justified, at least when passengers receive tickets, to ensure that they understand the nature of their flights and can navigate their way through their connections at the intermediate airports. For the many consumers who already get written itineraries from carriers and travel agents, American reasons that the burden of providing written notice is minimal.

American believes that carriers should have the choice of using the Department's language or writing their own notice, subject to the Department's review. The carrier addresses USAirways' concern about the expense of processing itineraries and mailing them to passengers who ordinarily would not get them by suggesting that we amend the beginning of the first sentence of § 258.5(c) to read as follows:

At the time of delivery in the United States of a ticket covering a change-of-gauge service, * * *.

American does acknowledge that this approach would increase the risk of a traveler's not learning of the aircraft change until arriving at the airport and thus having to use a service he or she might not otherwise have chosen. The carrier also sees merit in United's argument that written notice should not be required for passengers who do not receive written confirmation of their reservations. It suggests that perhaps we should require in such cases that sellers document that they have given oral notice.

We will adopt the written notice requirement with minor modifications to correct an inadvertent omission and to account for ticketless travel. We are

not persuaded by any of the unsubstantiated claims of undue burden and cost. In the many cases where consumers already receive itineraries along with their tickets, any increase in sellers' costs should be minimal, as American correctly notes. American is also correct in reasoning that any burden associated with written notice is outweighed by the benefit of the increased likelihood that consumers will understand the nature of their transportation and be able to change from one plane to another without confusion or mishap. Written notice should prove especially beneficial in the many cases where the person booking the transportation is someone other than the traveler.

We will require all sellers of air transportation to use the written disclosure as proposed rather than allow carriers (or other sellers) to substitute their own language. This generic language has three elements: it discloses an aircraft change, it alerts the consumer to the possibility that the number of the ongoing flight might not be listed clearly—or at all—at the intermediate airport, and it directs the consumer to the seller for more information. Because we have no evidence that airport problems are more likely to occur with multiple changes of gauge than one-for-one changes of gauge, we deem it necessary that all three elements appear in all written notices, United's position to the contrary notwithstanding. This being the case, we cannot agree that the language is either too long or too complicated.

If we were to allow sellers of air transportation to use their own language subject to our review, not only would the sellers availing themselves of this option incur the expense of drafting alternate language to express the same three elements, but reviewing and processing individual applications from the potential legions of air carriers, foreign air carriers, and travel agents would strain the Department's resources. Furthermore, allowing the disclosure to exist in many variations would more likely confuse consumers than enlighten them. Requiring all sellers to use the Department's language is thus the most cost-effective and straightforward means of ensuring that consumers receive effective written disclosure.

We will modify this provision in two respects. First, we will rectify an inadvertent omission in the proposed rule by adding language to make clear that the written notice requirement, like the other two, applies to those change-of-gauge services that are to, from, or within the United States. Second, to account for ticketless travel, we will change the proposed rule to require that the written notice be provided (1) to ''ticketed'' passengers, at the time of sale of any ticket that includes a covered change-of-gauge service and (2) to ''ticketless'' passengers, no later than the time when they check in at the airport for the first flight of an itinerary that includes a covered change-of-gauge service. This change reflects our policy on other passenger notices in the case of ticketless travel, which we adopted after issuing this NPRM. See Ticketless Travel: Passenger Notices, 62 FR 19473 (April 22, 1997). Of course, nothing prohibits sellers of air transportation from providing this written notice to ''ticketless'' passengers at an earlier juncture, such as along with any itinerary they send the passenger at the time of sale. We encourage sellers to do whatever they can to give passengers the best possible notice as early as possible.

Year 2000 Problem

In an effort to ensure that our regulations do not interfere or delay solutions for the Year 2000 Problem (Y2K), the Department has decided that, in preparing proposed and final rules that mandate business process changes and require modifications to computer systems between now and July 1, 2000, the Department will discuss those rules specifically with reference to Y2K requirements and determine whether the implementation of those rules should be delayed to a time after July 1, 2000.

Since the Department does not have detailed knowledge about the Y2K status of the systems that will need to be changed as a result of this rule, we attempted to gauge the effect based on a review of statements from Annual Reports, 10–K and 10–Q Statements filed with the Securities and Exchange Commission, news reports, press releases, and other documents. We researched this issue with regard to four computer reservations systems, the nine largest airlines, one smaller airline, and five organizations closely associated with airline computerized systems and databases. While this information did not reflect detailed technical assessments, it allowed us to establish a broad baseline against which to judge the issuance of our rule.

Our analysis has shown a widespread effort involved in the Y2K program for air transportation. In general, most of the companies we examined have stated that they expect to be Y2K-compliant in a timely manner. However, most also reflect caution by noting that there are no guarantees or assurances that all systems will be ready and that their operations could be adversely affected. In response to this possibility, many have established contingency plans that will allow continued operations.

Because of the amount of progress these companies have already made, the Department has determined that it is in the public interest to issue this rule now and not delay its implementation to a time after July 1, 2000. The number and type of marketing practices that include change-of-gauge services, code-sharing arrangements, marketing alliances and other marketing agreements, especially among multiple carriers and involving international operations have grown substantially. These agreements are likewise expected to continue to grow in the future. At the same time, they have increased in complexity as well. For these reasons, the Department has determined that it is now essential to issue this disclosure rule so that prospective travelers have as clear and complete information as possible prior to buying air transportation as well as during the journey.

Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or the Department's Regulatory Policies and Procedures. It has not been reviewed by the Office of Management and Budget. This rule does not impose unfunded mandates or requirements that will have any effect on the quality of the human environment. The Department has placed a regulatory evaluation that examines the estimated costs and effects of the rule in the docket.

The Department has evaluated the effect of this rule on small entities. I certify that this rule will not have a significant economic effect on a substantial number of small entities. Although many ticket agents and some air carriers are small entities, the Department believes that the costs of notification will be minimal. We believe that air carriers and travel agents already have some incentive to provide this information to their customers and that many have found low-cost means of doing so.

The Department has analyzed this rule under the principles and criteria contained in Executive Order 12512 (''Federalism'') and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Paperwork Reduction Act

This rule contains information collection requirements that are being submitted to OMB for approval under

the Paperwork Reduction Act of 1995. The Department has determined an estimate of the burden hours associated with this rule and is hereby requesting comments on its estimate.

This rule contains information collection requirements that are being submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Collection-of-information requirements include reporting, recordkeeping, notification, and other similar requirements. In the Notice of Proposed Rulemaking (NPRM) that preceded this rule, the Department stated that the proposed rule did not contain information collection requirements that required approval by OMB under the then-current Paperwork Reduction Act. However, the requirements under the Paperwork Reduction Act of 1995 consider third party notifications as data collections and thus subject to the regulations. This final rule is therefore being submitted to the Office of Management and Budget for review. At the same time, the Department is hereby inviting public comment upon its estimate of the annual burden hours associated with this rule. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Those potentially affected by this rule include 192 U.S. air carriers, 205 foreign air carriers, and approximately 33,500 travel agents doing business in the United States, as well as the traveling public. The Department has estimated that 24.7 million to 74.1 million phone calls would be affected by this rule. The annual reporting burden hours for this data collection are estimated to range from 102,954 hours to 308,861 hours for all travel agents and airline ticket agents and from 102,954 hours to 308,861 hours for air travelers based on 15 seconds per phone call and an average of 2.1 phone calls per trip.

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology.

List of Subjects in 14 CFR Part 258

Air carriers, Consumer protection, Foreign air carriers, Reporting and recordkeeping requirements, Ticket agents.

For the reasons set forth in the preamble, the Department amends Title 14, Chapter II, Subchapter A by adding a new Part 258, to read as follows:

PART 258—DISCLOSURE OF CHANGE-OF-GAUGE SERVICES

Sec.
258.1 Purpose.
258.2 Applicability.
258.3 Definitions.
258.4 Unfair and deceptive practice.
258.5 Notice requirement.

Authority: 49 U.S.C. 40113(a) and 41712.

§ 258.1 Purpose.

The purpose of this part is to ensure that consumers are adequately informed before they book air transportation or embark on travel involving change-of-gauge services that these services require a change of aircraft en route.

§ 258.2 Applicability.

This part applies to the following:

(a) Direct air carriers and foreign air carriers that sell or issue tickets in the United States for scheduled passenger air transportation on change-of-gauge services or that operate such transportation; and

(b) Ticket agents doing business in the United States that sell or issue tickets for scheduled passenger air transportation on change-of-gauge services.

§ 258.3 Definitions.

As used in this part:

(a) *Air transportation* has the meaning ascribed to it in 49 U.S.C. 40102(5).

(b) *Carrier* means any air carrier or foreign air carrier as defined in 49 U.S.C. 40102(2) or 49 U.S.C. 40102(21), respectively, that engages directly in scheduled passenger air transportation.

(c) *Change-of-gauge service* means a service that requires a change of aircraft en route but has only a single flight number.

(d) *Ticket agent* has the meaning ascribed to it in 49 U.S.C. 40102(40).

§ 258.4 Unfair and deceptive practice.

The holding out or sale of scheduled passenger air transportation that involves change-of-gauge service is prohibited as an unfair or deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. 41712 unless, in conjunction with such holding out or sale, carriers and ticket agents follow the requirements of this part.

258.5 Notice requirement.

(a) *Notice in schedules.* Carriers holding out or operating change-of-gauge services to, from, or within the United States shall ensure that in the written and electronic schedule information they provide to the public, to the Official Airline Guide and comparable publications, and to computer reservations systems, these services are shown as requiring a change of aircraft.

(b) *Oral notice to prospective consumers.* In any direct oral communication with a consumer in the United States concerning a change-of-gauge service, any carrier or ticket agent doing business in the United States shall tell the consumer before booking scheduled passenger air transportation to, from, or within the United States that the service requires a change of aircraft en route.

(c) *Written notice.* At the time of sale in the United States of transportation that includes a change-of-gauge service to, from, or within the United States, or, if no ticket is issued, no later than the time when the passenger checks in at the airport for the first flight in an itinerary that includes such a service, the selling carrier or ticket agent shall provide the following written notice:

Notice: Change of Aircraft Required

For at least one of your flights, you must change aircraft en route even though your ticket may show only one flight number and have only one flight coupon for that flight. Further, in the case of some travel, one of your flights may not be identified at the airport by the number on your ticket, or it may be identified by other flight numbers in addition to the one on your ticket. At your request, the seller of this ticket will give you details of your change of aircraft, such as where it will occur and what aircraft types are involved.

Issued under authority delegated in 49 CFR 1.56a(h)(2) in Washington, DC on March 5, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

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