6. *Foreclosures.* Consumers who have been victims of abusive practices must be afforded adequate opportunity to assert their rights in order to avoid unwarranted foreclosures. State law and local practice generally govern the procedures followed for foreclosures. Some states require actual notice to the consumer, but in other states notice by publication is sufficient. Even when consumers do receive notice, they may not get adequate information about their legal options.

• What would be the effect of setting minimum federal standards for foreclosures involving a consumer's primary dwelling? For example, a creditor might be required to provide the consumer with actual notice of (1) the applicable foreclosure procedures; (2) any legal rights the consumer may have to avoid the foreclosure; and (3) the specific amount that, if paid in accordance with the notice, will terminate the foreclosure.

7. *Misrepresentations regarding borrower's qualifications.* There is some concern that many borrowers who obtain high-cost loans may actually qualify for lower cost credit. Some brokers or creditors may provide consumers with false or materially misleading information that the consumer does not qualify for a lower cost loan based on the creditor's underwriting criteria. Such a practice generally would be illegal under state laws that protect against fraud and deception. What benefit to consumers might be achieved if the Board issued a rule that prohibited such misrepresentations as unfair and deceptive under HOEPA?

8. *Reporting borrowers' payment history.* Some creditors do not report to consumer reporting agencies subprime borrowers' good payment history in order to avoid having the borrowers solicited by competitors for a refinancing on more attractive terms. What would be the effect of requiring creditors that choose not to report borrowers' positive payment history to disclose that fact?

9. *Referral to credit counseling services.* What regulatory action would better enable consumers in general, or HOEPA borrowers in particular, to take advantage of any available credit counseling services?

10. *HOEPA disclosures.* In their 1998 report to the Congress, the Board and HUD recommended amendments to the required disclosures, including adding references to the availability of credit counseling, using more ''user-friendly'' text in the narrative reminders about the potential consequences for not making payments, and requiring the consumer's monthly income to be disclosed in close proximity to the consumer's monthly payment. Comment is requested on those recommendations. Comment also is solicited on whether additional information in the current HOEPA disclosures would benefit consumers. For example:

• The consumer must receive HOEPA disclosures three days before loan closing, specifying the APR and monthly payment amount. Due to the marketing practices of some lenders, consumers may not be aware of high up-front costs that will be financed. What would be the effect of the Board's requiring that the disclosure also include additional information, such as the total loan amount on which the disclosed monthly payment is based?

• For HOEPA loans, what would be the effect of requiring that consumers receive a complete Truth in Lending disclosure statement three days before closing?

11. *Open-end home equity lines.* HOEPA does not cover home-equity lines of credit. Is there evidence that lenders are using open-end credit lines to evade HOEPA? If so, what benefit might be derived from prohibiting the practice of structuring a home-secured loan as open-end credit in order to evade the provisions of HOEPA? How could such practices be identified and what limitations on these practices would be appropriate to effect the purposes of HOEPA?

Community Outreach and Consumer Education

In addition to issues concerning the Board's regulatory authority under HOPEA, views will also be elicited at the hearings about nonregulatory approaches to curbing predatory lending, such as community outreach and consumer education. Accordingly, the Board seeks comment on the following:

What community outreach activities and consumer education efforts are being pursued currently? Which types of products, programs, and delivery systems have been most effective? What other strategies might be implemented to reach the targeted populations? How might outreach and education efforts be tailored to address some lenders' and brokers' aggressive marketing practices? What role can government agencies play in increasing the effectiveness of these programs?

Additional Data

The Board seeks information about any studies or data pertaining to subprime lending or HOEPA loans that would be useful in determining how the Board might use its regulatory authority under HOEPA. For example, are there data regarding the percentage of HOEPA loans that result in foreclosures? Are there data regarding the effect of HOEPA disclosures showing the percentage of transactions cancelled by borrowers based on disclosures provided before closing?

III. Form of Statements and Comments

These hearings are open to the public to attend. Invited speakers will participate in panel discussions. In addition, about two hours is reserved for brief statements by other interested parties, starting at approximately 2:30 p.m. To allow as many persons as possible to offer their views during this period, oral statements should be brief (five minutes or less); written statements of any length may be submitted for the record. Interested parties who wish to participate during this ''open-mike'' period are asked to contact the Board in advance of the hearing date, to facilitate planning for this portion of the hearings. The order of speakers generally will be based on their registration at the hearing site on the day of the hearing.

Comment letters should refer to Docket No. R–1075, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS-or Windows-based format.

By order of the Board of Governors of the Federal Reserve System, July 19, 2000.

Jennifer J. Johnson,

Secretary to the Board.

[FR Doc. 00–18659 Filed 7–21–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Dockets Nos. OST–97–2881, OST–97–3014, and OST–98–4775]

Computer Reservations System (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Supplemental advance notice of proposed rulemaking.

SUMMARY: The Department is inviting interested persons to submit supplemental comments in this proceeding where the Department is reexamining its rules on computer reservations systems. The Department is issuing this supplemental advance notice for two reasons: to invite parties to update the comments submitted earlier in this proceeding and to address the impact of industry developments that have occurred since the comments were filed, and to invite them to comment on whether the Department should consider adopting rules governing the use of the Internet for airline distribution.

DATES: Comments must be submitted on or before September 22, 2000. Reply comments must be submitted on or before October 23, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with docket numbers OST–97–2881, OST–97–3014, and OST–98–4775) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov. Comments must be filed in Dockets OST–97–2881, OST–97–3014, and OST–98–4775, U.S. Department of Transportation, 400 7th St. S.W., Washington, D.C. 20590. Late filed comments will be considered to the extent possible.

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

Electronic Access

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

SUPPLEMENTARY INFORMATION:

Eight years ago the Department readopted the regulations governing CRSs, 14 CFR Part 255, because each of the systems was then controlled by one or more airlines and airline affiliates and because, if CRS firms were unregulated, their owners could use the systems to injure airline competition and deny consumers and travel agents access to accurate and complete information on airline services. Those rules called for a Department reexamination of whether the rules were necessary and effective. We began a proceeding to reexamine our regulations to see whether they are still necessary and, if so, whether they should be changed, by publishing an advance notice of proposed rulemaking. 62 FR 47606 (September 10, 1997).

The comment period set by our advance notice closed two years ago. We recognize the importance of reexamining our rules to see whether they remain necessary and effective in light of the changes in the computer reservations system business and airline distribution. We now wish to move forward on the rulemaking. Doing so requires us to ask the parties to submit updated comments due to the significant changes that have occurred in airline distribution and the computer reservations system business in the last two years.

In addition, we wish to obtain comments on whether we should adopt any rules covering the distribution of airline services through the Internet. The use of the Internet for airline distribution raises issues that are similar to those traditionally considered in our CRS rulemakings. On-line travel agencies, for example, use the systems as their booking engines.

We therefore ask all interested persons to submit comments in response to this supplemental advance notice of proposed rulemaking. Commenters should discuss the specific issues set forth in this notice and, to the extent necessary to address changes in the CRS business and airline distribution practices, the issues listed in the advance notice, 62 FR at 47609–47610.

The advance notice described the CRS business and summarized our findings in earlier proceedings on the need for CRS rules. In this notice we will describe the history of CRS regulation and our past findings insofar as necessary to explain our requests that the supplemental comments address certain specific issues.

The CRS Business

A CRS provides information on the travel services sold through the system and enables users to book those services. Traditionally the most important users of the systems have been travel agents, but corporate travel departments and consumers also use the systems. Travel agents and corporate travel departments usually access a system through computer terminals linked with the system's database, while consumers access systems through on-line services, such as Expedia and Travelocity. Airline transportation is the most important service sold through a system, but the systems also provide information and make bookings on rental cars, hotels, and other travel services. A CRS enables users to find out what airline seats and fares are available, to book a seat, and to purchase transportation on each airline that ''participates'' in the system, that is, that makes its services saleable through the CRS.

The four CRSs operating in the United States—Sabre, Galileo, Amadeus, and Worldspan—were each developed by one or more airlines. When we last reexamined our rules, each of the systems was owned and controlled by one or more airlines and airline affiliates. 57 FR 43780, 43782–43783 (September 22, 1992). Since then, however, the systems' ownership has changed—public shareholders now own all of Sabre's stock, and two of the other three systems have some public shareholders.

History of the Department's Regulation of CRSs

The Civil Aeronautics Board (''the Board'') concluded that CRS rules were essential to protect airline competition and prevent consumer deception due to the systems' role in airline distribution. 49 FR 32540 (August 15, 1984). Airlines relied on travel agencies for distribution, travel agencies relied on the systems to obtain information on airline flights and fares and make bookings, and each system's owner airline had the ability and incentive to use the system to prejudice airline competition and give consumers misleading or incomplete information in order to obtain more airline bookings. The Board adopted its rules 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 (we will refer to the statute by its traditional and still commonly-used name, section 411). On review the Seventh Circuit upheld the Board's rules. *United Air Lines* v. *CAB,* 766 F.2d 1107 (7th Cir. 1985).

We assumed the Board's responsibility to enforce section 411 and its regulation of the systems upon the Board's sunset on December 31, 1984. After reexamining the rules, as they required us to do, we readopted them with changes designed to strengthen them. 57 FR 43780 (September 22, 1992). We did not expand the coverage of the rules, which govern systems operated by airlines or airline affiliates insofar as they provide services to travel agencies. 57 FR at 43794–43795. We concluded that CRS rules remained necessary to promote airline competition and to help ensure that consumers did not receive inaccurate or misleading information on airline services. Like the Board, we found that CRSs remained essential for the marketing of the services of virtually all airlines. 57 FR at 43783–43784.

We based our decision to continue regulating the systems on their control by airlines and airline affiliates. One or more airlines or airline affiliates then owned and controlled each of the systems, and the systems' owners could still use their control of the systems to prejudice airline competition if there were no rules. 57 FR at 43783–43787, 43794.

Our rules included a sunset date, December 31, 1997, to ensure that we would reinvestigate the need for the rules and their effectiveness. 14 CFR 255.12; 57 FR at 43829–43830 (September 22, 1992).

Advance Notice

To begin the formal reexamination of our rules, we issued an advance notice of proposed rulemaking that asked interested persons to comment on whether our CRS rules are still necessary and, if so, whether they should be changed. 62 FR 47606 (September 10, 1997). We intended to focus ''on rule proposals that will increase competitive market forces in the CRS industry rather than on proposals for detailed regulation of CRS practices.'' 62 FR at 47609. To help us resolve the issues, we listed a series of questions that we asked the parties to address in their comments, 62 FR at 47609–47610.

We received comments from over sixty parties, virtually all of whom stated that we should maintain CRS rules.

In addition to those comments, we have received petitions for rulemaking from America West Airlines on booking fee issues, Docket OST–97–3014, and by the Association of Retail Travel Agents on certain travel agency contract issues, Docket OST–98–4775. We will consider the issues raised by those petitions in this proceeding.

Amadeus Global Travel Distribution filed a petition asking that we interpret the existing rules as prohibiting the tying of a travel agency's access to an airline's corporate discount fares with the travel agency's choice of the CRS affiliated with that airline, Docket OST–99–5888. We are reviewing that petition to determine how best to proceed with the issue that it raises.

We have maintained the current rules in place while we conduct our reexamination of the need for the rules and the rules' effectiveness. 62 FR 66272 (December 18, 1997); 64 FR 15127 (March 30, 1999); 65 FR 16808 (March 30, 2000).

Factual Background

Our rules currently require each system to allow all airlines to participate 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 chooses to generate from its system. The rules also prohibit certain contract terms that restrict the travel agencies' ability to choose between systems. They give travel agencies the right to use third-party hardware and software, subject to certain compatibility conditions, and to access any system or database with airline information from the agency's terminals, unless the terminals are owned by a system. The rules cover systems controlled by an airline or airline affiliate insofar as the systems provide information and booking services to travel agencies.

Our rules are designed to prevent practices by systems and airlines related to CRS operations that are either anti-competitive or likely to cause consumers to be misled. We have not otherwise tried to prescribe how airlines must distribute their services, with the exception of the requirement that airlines with a significant ownership interest in a system must participate in competing systems, section 255.7. As a result, airlines with no significant system ownership interest are free to decide whether to participate in any system and to choose their level of participation. Southwest, for example, has been unwilling to pay for participation in any system but Sabre. And we adopted a rule barring system from unreasonably restricting the ability of participating airlines to choose a different level of service in each system. 62 FR 59784 (November 5, 1997).

Airlines have chosen to use a wide variety of channels for distributing their services, and they do not treat all firms within each channel the same. Airlines, for example, commonly give favored travel agencies access to discount fares and marketing benefits not made available to other agencies and enable favored agencies to waive some restrictions on discount fares and to book customers on oversold flights. General Accounting Office, ''Effects of Changes in How Airline Tickets Are Sold'' (July 1999), at 15; Secretary's Task Force on Competition in the U.S. Domestic Airline Industry, ''Airline Marketing Practices'' (February 1990), at 25, 26. Travel suppliers have also used consolidators to sell seats at low fares not made directly available from travel agencies and airline reservations agents. Bear, Stearns, ''Point, Click, Trip: An Introduction to the On-Line Travel Industry'' (April 2000) at 58.

Our CRS rules with few exceptions regulate neither the manner in which travel agencies operate nor their use of the information and transaction capabilities provided by a system. Those regulations do not prescribe the kind of advice that travel agencies must give customers seeking information on airline services and do not prohibit travel agencies from reshaping the information provided by a system into displays biased in favor of the agency's preferred suppliers. 57 FR at 43809. *See also* Midwest Express Comments at 26 (one major travel agency allegedly biases its displays in favor of its preferred suppliers). We have, however, adopted rules applicable to both traditional and on-line travel agencies that state that certain practices will be considered unfair and deceptive. *See, e.g.*, 14 CFR Part 257 and section 399.80.

Travel agencies, of course, have different operating strategies—some primarily handle corporate travel while others primarily handle leisure travel. Some hold themselves out as generalists while others specialize, for example, on travel to a particular destination. In doing business over the Internet, on-line travel agencies must cope with an environment different from that within which traditional travel agencies operate. On-line agencies must use new methods of attracting customers, such as creating links with web portals like Yahoo! On-line agencies have also begun to buy blocks of airline seats and

hotel rooms at negotiated prices substantially below the supplier's published rates. Bear, Stearns, ''Point, Click, Trip,'' at 48, 49. While giving consumers an opportunity to bid on a ticket price, Priceline only sells seats according to negotiated deals with airlines and other suppliers. *Id.* at 53–55.

Legal Background

When we readopted the rules in 1992, we primarily relied on our authority under section 411 to prohibit unfair and deceptive practices and unfair methods of competition in air transportation and the sale of air transportation. We also relied to some extent on our obligation to act consistently with the United States' international obligations when we adopted our current rules. 57 FR at 43791–43792.

Section 411 reads, ''[T]he Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation.'' Section 411 authorizes us to regulate the practices of U.S. and foreign airlines and ''ticket agents.'' The statute, 49 U.S.C. 40102(a)(40), defines a ticket agent as a person ''that as principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation.''

An unfair method of competition is a practice that violates the antitrust laws or antitrust principles. *United Air Lines* v. *CAB, supra.* We concluded in our last rulemaking that the practices barred by the rules were unfair methods of competition, since those practices—display bias and discriminatory booking fees, for example—violated antitrust principles. Those practices were analogous to conduct prohibited by the antitrust laws: a firm's refusal to allow competitors to obtain access to an essential facility on reasonable terms and monopoly leveraging (the use of market power in one line of business to obtain unfair competitive advantages in a second line of business). These antitrust analogies were applicable because each of the systems was controlled by airlines that competed with other airlines whose ability to successfully market their services depended on their ability to participate in the systems on reasonable terms. 57 FR at 43789–43791.

Congress modeled section 411 on the Federal Trade Commission's authority under section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, to prohibit unfair methods of competition and unfair and deceptive practices in most U.S. industries. *See, e.g., United Air Lines,* 766 F.2d at 1111–1112. As a result, the judicial decisions on the scope of the FTC's authority are relevant to the analysis of our own authority under section 411. The courts have held that the FTC may not prohibit practices as unfair methods of competition in order to improve competitive conditions in an industry unless the FTC finds that the practices violate antitrust laws or antitrust principles. *E.I. DuPont de Nemours & Co.* v. *FTC,* 729 F.2d 128 (2nd Cir. 1984). The Second Circuit has held that the FTC may not regulate the conduct of a firm with monopoly power in one industry in order to promote competition in a second industry unless the firm competes in the second industry as well. *Official Airline Guides, Inc.* v. *FTC,* 630 F.2d 920 (2nd Cir. 1980). *But see LaPeyre* v. *FTC,* 366 F.2d 117 (5th Cir. 1966).

Moreover, section 411 does not gives us the authority to determine how airline services should best be distributed. Since airline deregulation began twenty years ago, the airlines have been generally free to determine how to distribute and sell their services, including sales through travel agencies. This result is consistent with the antitrust laws, which generally allow individual firms to choose how to distribute their products and services. *See, e.g., Paschall* v. *Kansas City Star Co.,* 727 F.2d 692 (8th Cir. 1984) (en banc); *Auburn News Co.* v. *Providence Journal Co.,* 659 F.2d 273, 278 (1st Cir. 1981).

As noted above, we also relied on our section 411 authority to prohibit unfair and deceptive practices when we readopted the rules. 57 FR at 43791. Section 411 gives us broad authority to prohibit unfair and deceptive practices by airlines and ticket agents. *See United Air Lines.*

We also held that 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 supported our continuation of the CRS regulations. 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. Foreign governments—the European Union, Canada, and Australia, for example—have similarly adopted rules giving airlines fair and non-discriminatory access to CRS services.

Congress, moreover, recently reaffirmed the importance of preventing anticompetitive and discriminatory practices by systems and affiliated airlines that would distort international competition. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–181 (April 5, 2000) (''AIR 21''), includes a provision, section 741, that expands our authority under 49 U.S.C. 41310 to take countermeasures against an activity that involves airline service of a foreign system or foreign airline owning a system that constitutes an unjustifiably discriminatory or anticompetitive practice against a U.S. CRS or represents the imposition of unjustifiable restrictions on access by a U.S. system to a foreign market.

Industry Developments

We are interested in obtaining supplemental comments for two reasons: our decision to consider Internet issues in this proceeding and our wish to consider the changes that have occurred in the CRS business and airline marketing practices since we issued our advance notice of proposed rulemaking.

One of these changes is the airlines' diminishing control of the systems. Since we published our advance notice, airlines affiliated with the systems have substantially divested their CRS ownership interests. As a result, Sabre is now entirely owned by the public, and only one-fourth of Galileo's stock is owned by airlines and airline affiliates. October 7, 1999, United Supplemental Comments at 4. While Amadeus is still controlled by three foreign airlines, Lufthansa, Air France, and Iberia, Continental has sold all of its stock, and the public now holds a significant portion of Amadeus' stock. Only Worldspan is still owned entirely by airlines and airline affiliates. However, every system still has ties with one or more airlines. American and Southwest market Sabre, and United provides some marketing support for Galileo.

A second major change is the increasing use of the Internet for airline distribution. The Internet gives airlines, like other travel suppliers, new ways to sell their services and inform consumers as well as opportunities to significantly cut distribution costs. The Internet similarly makes it easier for many travellers to obtain information and make bookings. General Accounting Office, ''Effects of Changes in How

Airline Tickets Are Sold'' (July 1999) at 13.

Many airlines have websites, and a number of airlines offer special discount fares and other benefits to travellers who book seats through their own websites instead of another distribution channel. Southwest now obtains one fourth of its bookings on-line, and several other airlines—Alaska and America West, for example—obtain at least one-tenth of their bookings on-line. February 28, 2000, Southwest Airlines Press Release. In addition, five major airlines are creating a website in which dozens of airlines and other travel suppliers will participate. Several major on-line travel agencies now exist, including Travelocity, affiliated with Sabre; Expedia, developed by Microsoft; and Priceline, a firm that allows consumers to bid for tickets at fares they choose.

Using the Internet for bookings appears to be much less costly for airlines than the traditional methods of selling airline tickets. According to a 1999 study, for example, each booking made through traditional travel agencies cost America West $23, a booking made through an electronic travel agency cost $20, a booking made through the airline's reservations agents cost $13, and a booking made through the airline's website cost $6. GAO, ''Effects of Changes in How Airline Tickets Are Sold'' at 17. The Internet also benefits the marketing efforts of travel suppliers, especially smaller suppliers. A tourism official for the Maldive Islands thus stated, ''Marketing is quite expensive and we are working on a very small budget. Because of the Internet we are able to do a lot of marketing with less expense.'' ''Travel industry suffers Internet growing pains,'' March 15, 2000, Reuters story published on Yahoo (we are placing in the docket a copy of this article and other less widely-available material cited in this notice).

Distribution through the Internet, however, seems unlikely to end the airlines' dependence on CRS participation. The on-line travel agencies so far have not provided airlines a way of bypassing the systems, because on-line agencies use one of the systems as a booking engine. Expedia, for example, uses Worldspan, and Travelocity uses Sabre. Even the website being established by five major airlines—United, Delta, Northwest, Continental, and American—will use Worldspan as its booking engine. Thus airlines continue to need CRS access and remain obligated to pay CRS fees, although future developments may in time lessen their reliance on the systems.

While the growing use of the Internet and other changes in distribution practices will likely make it harder for some travel agencies to remain in business, these changes should not cause travel agencies to disappear. A Sabre official has predicted, for example, that travel agencies will account for 65 percent of all airline bookings in 2005 (45 percent by traditional travel agencies and 20 percent by travel agency websites). ''Sabre: Agents could retain 65% of air sales by 2005,'' TRAVEL WEEKLY (April 3, 2000) at 10. An independent research firm specializing in on-line travel issues recently stated that consumers prefer using a travel agency website since they believe that they are likely to get a better price from a travel agency website than from an airline website. April 17, 2000, PhoCusWright Press Release. Travel agents provide services that benefit many travellers. The GAO found, for example, that consumers are more likely to obtain the lowest available fare from a travel agent than from other sources of airline information. General Accounting Office, ''Effects of Changes in How Airline Tickets Are Sold'' (July 1999) at 13.

The Department's Plans To Study Distribution and CRS Developments

We have been monitoring the airlines' increasing use of the Internet and other changes in airline distribution practices as part of our obligation to keep informed of developments in the airline industry. Our staff has been studying the CRS business and airline marketing practices. See Order 94–9–35 (September 26, 1994). The staff has reviewed relevant documents obtained from the systems pursuant to Order 94–9–35 and has interviewed officials from the systems, airlines, travel agencies and travel agency groups, as well as other industry experts. The staff has learned a great deal from this work, which will help us consider the issues in this proceeding. We plan to incorporate the staff's findings into the notice of proposed rulemaking rather than publish a separate report as originally intended. Proceeding in this manner should expedite this rulemaking.

In addition, we have begun to study airline distribution issues in other contexts. The cited staff study of the CRS business has not focused on the Internet's role in airline distribution. Due to concerns raised by travel agency groups and others about the airlines' use of the Internet, our staff will be informally studying the airlines' use of the Internet for marketing their services. The staff's findings will, if practicable, be included in the notice of proposed rulemaking and be used in other contexts where we will be addressing airline distribution and Internet issues. A related staff study is reviewing Orbitz, the joint website being created by five major airlines.

Other agencies have also investigated airline distribution issues. The Department's Inspector General conducted a study of travel agency override commissions. Office of the Inspector General, U.S. Dept. of Transportation, ''Report on Travel Agent Commission Overrides'' (March 2, 1999). While the report largely dealt with issues outside the scope of this proceeding, the report noted that airlines use the marketing and booking data sold by the systems to implement their override commission programs. *Id.* at 8.

The General Accounting Office (''GAO'') issued a report on several issues: whether consumers have been affected by changes in the airlines' methods of selling tickets, whether airlines require travel agencies to follow different rules on selling tickets than are followed by airline reservations agents, what the airlines' policies are for making discount fares available to consumers and travel agencies, and how the airlines use data on travel agency sales. General Accounting Office, ''Effects of Changes in How Airline Tickets Are Sold'' (July 1999). The GAO's findings thus touch on some of the matters that we intend to consider in this proceeding.

In 1998 Congress requested the Transportation Research Board (''TRB'') of the National Research Council to update its 1991 report on airline competition, ''Winds of Change: Domestic Air Transport since Deregulation.'' The TRB did so by publishing a report, ''Entry and Competition in the U.S. Airline Industry: Issues and Opportunities'' (1999), which addresses among other competition issues the impact of changes in airline distribution. TRB Report at 124–129.

In addition, Congress has required three studies of issues related to airline distribution. The Department of Transportation and Related Agencies Appropriations Act, 2000, Public Law 106–69, 113 Stat. 985 (1999), requires the Department's Inspector General to submit a report ''on the extent to which actual or potential barriers exist to consumer access to comparative price and service information from independent sources on the purchase of passenger air transportation.'' 113 Stat. at 1014.

Section 207 of AIR 21 requires the Secretary to review airline marketing

practices that may keep small and medium-sized communities from receiving quality, affordable airline services. Section 228 of AIR 21 will create the National Commission to Ensure Consumer Information and Choice in the Airline Industry. The commission will study (i) whether the financial condition of travel agencies is declining and, if so, the effect on consumers; and (ii) whether there are impediments to information on airline services and the effect of any such impediments on travel agencies, Internet-based distributors, and consumers. The Commission shall make recommendations it considers necessary to improve the condition of travel agents, especially smaller travel agents, and to improve consumer access to travel information.

To the extent that the findings and recommendations of these studies are relevant, we will take them into account in developing our notice of proposed rulemaking in this proceeding, if practicable. If not, we will consider them in other proceedings.

Finally, two travel agency trade associations have filed formal complaints involving airline distribution practices related to the issues in this proceeding. The American Society of Travel Agents filed a complaint against several airline practices that assertedly constitute unfair methods of competition because they will allegedly eliminate travel agencies as a source of unbiased information for consumers (Docket OST–99–6410). The Association of Retail Travel Agents has filed a complaint against the airlines that plan to create a joint website for the sale of airline tickets and other travel services (Docket OST–99–6691). It alleges that any joint airline site will threaten competition and therefore be an unfair method of competition. Despite whatever action is taken by the Enforcement Office on these complaints, we also intend to analyze some of these issues in this proceeding, and the staff will be examining some in their informal study of the airlines' use of the Internet and other distribution practices.

Request for Supplemental Comments

While the studies being undertaken by our staff and by other agencies will assist us in analyzing the issues in this rulemaking, we cannot wisely resolve those issues without the parties' comments. We therefore invite the parties to file supplemental comments in response to our advance notice of proposed rulemaking and this notice. Since we will decide the issues on the basis of all of the comments, both those filed so far and the supplemental comments requested by this notice, the parties need not repeat the factual and legal arguments contained in their original comments. The supplemental comments should focus on discussing the issues in this proceeding in light of the changes in the CRS business and airline distribution that have occurred since the end of the original comment period.

In addition, as we have stated, parties are free to make any rule proposal related to the questions being considered in this proceeding and to present any relevant factual, policy, and legal arguments. 62 FR at 47610. We also asked the parties, however, to comment on the specific questions set forth in our advance notice. 62 FR at 47609–47610. We are now asking the parties to address two additional issues, the effect of the reduced ties between the systems and the airlines that have controlled them, and the advisability of regulating airline distribution practices involving the Internet.

The discussion of the issues set forth in this notice is, of course, tentative. We have made no decision on the questions at issue in this proceeding.

We wish to ensure that travellers will continue to benefit from a competitive airline industry and have access to accurate and comprehensive information on airline services. However, as explained above, under section 411 to adopt a rule we must consider whether the practice at issue harms consumers by significantly reducing competition or potentially causing deception and whether market forces (or alternative less intrusive rules) may correct the perceived problem. Furthermore, in examining rule proposals we must analyze whether they would produce benefits outweighing their costs. We will be hesitant to adopt rules when compliance or enforcement is likely to be impracticable.

The Legal Basis for the Department's Rules. The changes in the systems' ownership and our wish to consider whether any rules are needed with respect to Internet practices require us to reexamine the legal predicates for our regulation of system operations.

The systems' growing independence from airline control raises two questions about our authority—(i) whether section 411 authorizes us to regulate the conduct of a system that is not owned, controlled, or marketed by an airline or airline affiliate, and (ii) whether our determinations that the system practices prohibited by our rules are unfair methods of competition are still valid, when those determinations relied on the systems' control by airlines that competed with airlines dependent on the systems for distribution.

Factual and policy considerations led to our determination in 1992 and the Board's determination in 1984 to limit the scope of the rules to systems owned or marketed by airlines. 57 FR 43794; 49 FR 32549. As a result, neither we nor the Board have ruled on whether we may regulate a system that has no links to airlines except insofar as airlines participate in the system. The changes in the systems' ownership now appear to require us to consider this issue.

The Reduced Ties between the Systems and Airline Owners. As discussed above, we readopted CRS rules because the airlines controlling the systems could use them to distort airline competition and provide misleading information, as shown by the systems' use of discriminatory fees and display bias. The airlines controlling the systems had an incentive to take such action, since they competed with the airlines whose services are sold through the systems.

The ties between the systems and their former airline owners have since diminished greatly, at least with respect to Sabre and Galileo, as discussed above. United accordingly has suggested that Galileo is no longer covered by the rules, since no airline or airline affiliate allegedly controls it, despite United's ownership of seventeen percent of Galileo's stock (Galileo, however, has not endorsed this suggestion). October 7, 1999, United Supp. Comments at 5, n. 5. Amadeus already has public owners and may sell additional shares to the public. Finally, the willingness of many airlines, including Continental and US Airways, to divest their system interests suggests that airlines may no longer believe that control of the systems is essential for protecting their ability to market their services.

Given these developments, we ask the parties to comment on whether CRS rules remain necessary and, if so, the basis for our maintenance of such rules as to systems that would have few, if any, affiliations with airlines. The parties should present their factual and legal arguments on whether the reduction in airline control of the systems has reduced or eliminated the need to maintain rules governing system operations. If commenters believe that the rules remain necessary for other reasons, they should explain why and further show that readopting rules would be consistent with our authority under section 411.

Parties should additionally discuss whether the rules, if any, should be the same for each system regardless of the

degree of its ties with one or more airlines. That issue involves the question of whether subjecting some systems but not others to regulation would impose an unreasonable competitive handicap on the systems subject to more regulation. As on all other issues, parties seeking to convince us that a regulated system will suffer competitive disadvantages (or that a regulated system will not suffer such disadvantages) should provide a persuasive factual basis for their assertions.

If we may not regulate non-airline systems directly, our authority to regulate airline practices under section 411 may allow us to prevent potential abuses. For example, with respect to the regulation of Internet sites, potential problems could perhaps be alleviated by barring airlines from seeking or obtaining preferential displays or discriminatory fees. If justified by the record, we could impose a similar ban on airlines with respect to system services provided travel agencies. We ask whether such a regulation would adequately resolve any potential problems that might arise from the operation of systems that have no airlines or airline affiliates as owners or marketers. Conceivably certain types of contract clauses in agreements between travel agencies and a system could also be prohibited as agreements analogous to contracts that unreasonably restrain trade in violation of section 1 of the Sherman Act.

Internet Issues. The Internet—an increasingly important channel for airline distribution—provides efficiency benefits for consumers and travel suppliers. We will consider whether there is a significant risk that some practices associated with the use of the Internet are likely to reduce competition in the airline industry or result in consumers obtaining incomplete or misleading information. The relevant questions may include the following: whether airlines are able to participate in on-line services on reasonable terms, whether consumers have a reasonable opportunity to obtain non-deceptive information on airline services and to make bookings, and whether the Internet's use presents questions about the competitiveness of the airline and distribution industries.

The proposals for Internet regulation generally fall into two categories—proposals for regulating websites, including those operated by on-line travel agencies, and proposals for regulating the airlines' use of the Internet, both with respect to airline websites and third-party websites. No one has yet suggested, however, that we adopt rules governing websites operated by individual airlines, although some contend that we should bar airlines from offering fares available only through their own websites.

Various parties have alleged in their comments that the operation of websites by travel agencies and the systems creates a potential for abuse, since the site operator may be induced to bias its displays of airline information. Our CRS rules currently apply to system services provided to websites operated by travel agencies, 14 CFR 255.1 and 255.2, but, as noted above, do not govern the use made by travel agencies of the information and displays made available by a system. Commenters should also state whether any travel agency websites are currently biased or provide deceptive information and, if so, provide supporting evidence.

Parties contending that additional rules are necessary for Internet services should explain why on-line agencies should be treated differently than traditional agencies. As we explained in our advance notice, consumers use CRSs differently than they do Internet services. 62 FR at 47610. Consumers relying on travel agencies for information and advice do not see the displays used by the travel agent, but consumers using a website do see displays created from the information provided by a system. In our past rulemakings we found CRS regulation necessary because, among other things, most travel agencies used only one system, travel agencies could not easily switch systems or use more than one system, and the time pressures on travel agents tend to cause them to book one of the first flights shown on a display, even if flights displayed later may better suit the traveller's needs. 57 FR at 43783, 43785–43786. These factors seem unlikely to be as true for consumer use of Internet booking sites. Some studies nonetheless have shown a substantial variance between the fares quoted by different websites. *See* ''Frictions in cyberspace,'' ECONOMIST (November 20, 1999).

In addition to the proposals for regulating websites and the airlines' use of the Internet, Delta has asked us to forbid systems from tying participation in the system services provided on-line travel agencies and other websites with participation in the system services provided traditional travel agencies. Our advance notice asked parties to comment on that proposal, 62 FR 47610, and a number of parties discussed the proposal in their comments. We will consider it along with the parties' other proposals.

Regulatory Process Matters

Regulatory Assessment

Our CRS rules were a significant regulatory action under section 3(f) of Executive Order 12866 and were reviewed by the Office of Management and Budget under that order. As required by section 6(a)(3) of that Executive Order, we prepared an assessment of the rules' costs and benefits. The rules were also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

As we stated in our advance notice, we do not know now whether we will propose new rules that would have a substantial impact and would thus be considered significant under the Executive Order. OMB has waived review of this supplemental advance notice of proposed rulemaking.

The comments submitted in response to this notice should address the potential effects any changes would have on the economy, costs or prices for consumers and the government, and adverse effects on competition.

We do not expect that this rulemaking will impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Regulatory Flexibility Analysis

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

Any rules adopted by us regulating CRS operations are likely to affect the operations of many small entities, primarily travel agencies, even though they would not be regulated directly if we readopted the existing rules. When we publish a notice of proposed rulemaking in this proceeding, we will include an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act.

That act also requires each agency to periodically review rules which have a significant economic impact upon a substantial number of small entities. 5 U.S.C. 610. This rulemaking will constitute the required review of our CRS rules.

Paperwork Reduction Act

The current rules contain no collection-of-information requirements subject to the Paperwork Reduction Act, P.L. No. 96–511, 44 U.S.C. Chapter 35. *See* 57 FR at 43834.

Federalism Implications

This request for comments 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.

Issued in Washington, D.C. on July 17, 2000.

A. Bradley Mims,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–18573 Filed 7–21–00; 8:45 am]

BILLING CODE 4910–62–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 580

RIN 3141–AA04

Environment, Public Health and Safety

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (Commission) proposes regulations that provide for adequate protection of the environment, public health and safety under the Indian Gaming Regulatory Act (Act). These regulations would implement the provisions of the Act which require that tribal gaming facilities be constructed, maintained and operated in a manner which protects the environment, public health and safety. The primary effect of this action is to have gaming tribes regulated by the Act develop and implement environment, public health and safety standards at their gaming operations. This regulation will establish a process through which the Commission and tribal government(s) exercise concurrent regulatory authority in enforcing these standards.

DATES: Comments may be submitted on or before November 30, 2000. A public hearing will be held on October 25, 2000 at 10:00 am.

ADDRESSES: Comments may be mailed to: Environment, Public Health and Safety Comments, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9:00 a.m. and noon, and between 2:00 p.m. and 5:00 p.m., Monday through Friday. The public hearing will be held in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christine Nagle at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA, or the Act), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Under the Act, the Commission is charged with regulating gaming activities on Indian lands. The Act expressly authorizes the Commission to ''promulgate such regulations and guidelines as it deems appropriate to implement provisions of this (Act).'' 25 U.S.C. 2706(b)(10).

The regulations proposed today would implement the Commission's authority to issue environment, public health and safety regulations. This criteria is set forth in 25 U.S.C. 2710 (b)(2)(E) and provides that tribal ordinances or resolutions submitted for the Chairman's approval ensure that ''the construction and maintenance of the gaming facility, and the operation of that gaming (facility) (sic) is conducted in a manner which adequately protects the environment and the public health and safety.''

On April 27, 1999, the Commission issued an Advance Notice of Proposed Rulemaking regarding the establishment of environment, public health and safety procedures. After reviewing the information solicited through this notice, the Commission decided to move forward with proposed regulations. In November 1999, a Tribal-Commission Advisory Committee was formed to consult on the project. The Commission attempted to assemble a diverse advisory committee that represented the interests of a broad range of gaming tribes. During the period from November 1999 through May 2000, the Commission and the Tribal Advisory Committee met four times to develop a regulatory proposal. Ultimately, the Commission and the Committee selected an approach that strikes a balance between the inherent authority of tribal governments and the statutory authority of the Commission. This approach enables the Commission to meet its regulatory responsibilities without creating a set of substantive standards that may be inconsistent with existing provisions of tribal law or tribal-state gaming compacts.

The Commission's decision to propose this regulation is based primarily on three considerations: (1) The need to ensure that adequate environment, public health and safety programs are in place at all Indian gaming operations; (2) the need to set forth applicable standards for these programs so that the tribes and the Commission will have notice of compliance requirements; and (3) the impediment to effective enforcement that exists in the absence of a clear statement of applicable standards.

In proposing this regulation, the Commission is aware that many tribes have taken steps to ensure that their gaming facilities are constructed, maintained, and operated in a manner, which protects the environment, and public health and safety. The Commission notes, however, that there is no existing regulatory mechanism to ensure that adequate protections are in place at all Indian gaming facilities. In the view of the Commission, the most effective means of ensuring that adequate programs are implemented on an industry wide basis is to promulgate a rule which would be applicable to all gaming tribes. In addition, in the last several years the Commission has encountered a number of potential threats to the environment, public health, and safety at Indian gaming facilities. In assessing these matters it is apparent that, absent a rulemaking which sets forth applicable standards, neither tribal governments nor the Commission have a viable means of determining whether tribes are in compliance with requirements of the Act. Moreover, the absence of a clear statement of applicable standards creates an impediment to effective enforcement for both tribes and the Commission.

The proposed rule applies whenever an Indian tribe undertakes the ownership, operation, regulation, or licensing of gaming facilities on Indian lands as defined by the Act. Under this regulation, tribal government(s) are encouraged to assume the full responsibility for the development, and implementation of environment, public health and safety laws, codes, ordinances and resolutions applicable to their gaming operation(s). To comply with this rule, a gaming tribe must prepare and submit to the Commission an environment, public health and safety plan (Plan) which sets forth the