TABLE 1.—APPLICABILITY OF CERTAIN AIRPLANES—Continued

Model
747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes.
757–200 and 757–200PF series airplanes.
767–200 and 767–300 series airplanes.

(2) Boeing Model 747–400 series airplanes, serial numbers 23719, 23720, 23814, 23816, 23817, 23818, 23819, 23820, 23999, 24061, and 24062.

Unsafe Condition

(d) This AD was prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with a specific polyethyleneteraphthalate (PET), ORCON Orcofilm® AN–26 (all variants, including AN–26, AN–26A, and AN–26B), hereafter referred to as ''AN–26'', which may contribute to the spread of a fire when ignition occurs from sources such as electrical arcing or sparking. We are issuing this AD to ensure that insulation blankets constructed of AN–26 are removed from the fuselage. Such insulation blankets could propagate a fire that is the result of electrical arcing or sparking.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacement

(f) Except as provided in paragraph (g) of this AD, within 72 months after the effective date of this AD, remove all insulation blankets from the pressurized areas of the fuselage and install a new insulation blanket using applicable maintenance manual procedures. The new insulation blankets must comply with 14 Code of Federal Regulations (CFR) 25.856(a). The areas where the affected insulation blankets are installed include, but are not limited to, the following areas:

(1) Crown area of the airplane;

(2) Areas behind flight deck panels and circuit breaker panels;

(3) Areas behind sidewalls, lavatories, closets, and galleys;

(4) Cargo compartment areas;

(5) Air ducting;

(6) Waste and water tubing; and

(7) Areas attached to the underside of floor panels.

Exception

(g) The actions described in paragraph (f) are not required for any insulation blanket that is determined not to be constructed of AN–26, using a method approved by the Manager, Seattle Aircraft Certification Office (ACO).

Note 1: Insulation material that is part-marked with a date of manufacture indicating that it was manufactured before July 1981 or after December 1988 is not constructed of AN–26.

Parts Installation

(h)(1) As of the effective date of this AD, no person may install any insulation blanket constructed of AN–26 on any airplane unless it has been modified to comply with 14 CFR 25.856(a), in accordance with a method approved by the Manager, Seattle ACO.

(2) As of six months after the effective date of this AD, if any insulation blanket is removed for any reason, it may not be re-installed unless:

(i) It has been determined not to be constructed of AN–26 using a method approved by the Manager, Seattle ACO; or

(ii) It has been modified to comply with 14 CFR 25.856(a), in accordance with a method approved by the Manager, Seattle ACO.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on March 29, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6674 Filed 4–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 256

[Docket No. OST–2005–20826]

RIN 2105–AD44

Display of Joint Operations in Carrier-Owned Computer Reservations Systems Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department's rules currently prohibit each airline that owns, controls, or operates a computer reservations system (''CRS'' or ''system'') from denying system access to two or more carriers whose flights share a single designator code and discriminating against any carrier because the carrier uses the same designator code as another carrier. The Department recently determined that its comprehensive rules governing CRS operations should be terminated because they are no longer necessary. The Department is initiating this proceeding to consider whether it should also terminate the rules governing the treatment of code-sharing airlines by airlines that own, control, or operate a system.

DATES: Comments must be submitted on or before May 4, 2005. Reply comments must be submitted on or before May 19, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number OST–2005–20826 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: 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.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov.* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or 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.

Due to security procedures in effect since October 2001 on mail deliveries, mail received through the Postal Service may be subject to delays. Commenters should consider using an express mail firm to ensure the timely filing of any comments not submitted electronically or by hand. Late filed comments will be considered to the extent possible.

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

Electronic Access: You can view and download this document by going to the

website 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 five 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's 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:

A. Introduction

We have had two sets of rules governing airline computer reservations systems (''CRSs'' or ''systems'') (although the systems now are also commonly called global distribution systems, or GDSs, we will refer to them as CRSs for purposes of this rulemaking). One set of rules, 14 CFR Part 255, established comprehensive requirements governing the systems' relationships with airlines and the systems' travel agency customers. These rules covered any system that was owned or marketed by an airline or airline affiliate. 14 CFR 255.2. The other set, 14 CFR Part 256, concerned the systems' treatment of airlines that share the same two-symbol designator code, the code used by the systems and other sources of airline information to identify the airline offering the seats being sold (the codes for America West and U.S. Airways, for example, are HP and US). This set of rules prohibits the airlines that own, control, or operate each system from denying access to the system to two or more airlines whose flights share a single designator code and from discriminating against any airline because that airline uses the same designator code as another airline.

The federal agency formerly responsible for the economic regulation of the airline industry, the Civil Aeronautics Board (''the Board''), adopted both the comprehensive rules (Part 255) and the rules governing the treatment of airlines that code-share (Part 256) in the same year, 1984, on the basis of a common economic and competitive analysis. 49 FR 12675 (March 30, 1984) (Part 256); 49 FR 32540 (August 15, 1984) (Part 255). The Board adopted the rules barring systems from discriminating against code-sharing airlines in an expedited proceeding to keep Apollo, the system then controlled by United, from carrying out its plan to deny access to any airline that used another airline's code.

Our comprehensive CRS rules included a sunset date to ensure that we would reexamine whether the rules remained necessary and were effective. 57 FR 43780, 43829–43830 (September 22, 1992). As a result of our most recent reexamination of those rules, completed in 2003, we determined that the CRS rules had become unnecessary. We allowed most of the rules to expire on January 31, 2004, their sunset date, and terminated the remaining rules on July 31, 2004. 69 FR 976, 977 (January 7, 2004).

The rules governing the systems' treatment of code-sharing airlines, Part 256, have not had a sunset date. However, because the Board adopted those rules and the comprehensive rules governing CRS operations, Part 255, on the basis of the same factual analysis and competitive rationale, our findings that industry changes have made the comprehensive rules unnecessary requires us to reexamine whether the rules on the treatment of code-sharing airlines are still necessary. After considering that question, we are proposing to terminate these rules as well.

We ask the parties to submit comments that thoroughly discuss the factual and policy issues raised by our proposal to eliminate the rules and to provide detailed information on the proposal and on the amount of its likely benefits and costs.

Comments will be due thirty days after publication of this notice, and reply comments will be due fifteen days thereafter. After considering the comments, we will issue a final rule.

B. Background

As we have explained in our other CRS rulemakings, the systems efficiently provide travel agents with comprehensive information and booking capabilities on airlines and other travel suppliers, such as hotel and rental car companies. *See, e.g.*, 67 FR 69366, 69370 (November 15, 2002). Each system provides information and booking capabilities on the airlines that ''participate'' in the system, that is, agree to make their services saleable through the system and to pay the fees required for participation. A CRS presents displays that integrate the services of all participating airlines. The displays show schedules and fares and whether specific flights and fares are available. A travel agent can compare the services offered by different airlines and determine which would best meet a customer's needs. The agent can reserve seats and issue tickets through the system. 67 FR 69370.

The basis for our past adoption of CRS regulations was the systems' important role in the distribution of airline tickets (and their ownership by airlines). Airlines obtained a large majority of their bookings from travel agents, and travel agents relied on a system to determine what services and fares were available for their customers and to make bookings. Each travel agency office typically relied entirely or almost entirely on one system to carry out these functions. If an airline did not participate in one of the systems, the travel agents using that system could not readily obtain information and make bookings on that airline, which would therefore lose a significant amount of business. As a result, almost every airline had to participate in each of the systems, so airlines had no bargaining leverage with the systems. 67 FR 69375–69382; 69 FR 980.

With one small exception, each of the systems operating in the United States was developed and owned by one airline, which had the ability and incentive to operate its system in ways that would prejudice airline competition. 67 FR 69367, 69375–69376.

Soon after the systems were first offered to travel agencies, the systems' impact on airline competition became a matter of concern. For example, an airline owning a system would bias the system's display of airline services so that flights operated by rival airlines were difficult to find, even when a competitor's flights met the travel agency customer's needs better than did the owner airline's flights. The Board therefore began a rulemaking to determine whether it should adopt regulations governing the systems' role in airline distribution. The Board first issued an advance notice of proposed rulemaking. 48 FR 41171 (September 14, 1983). After considering the comments responding to that notice, the Board decided that it should propose comprehensive rules governing CRS operations, and submitted a draft notice of proposed rulemaking to the Office of Management and Budget for review. While the Board's proposal was under review at OMB, several smaller airlines complained to the Board that Apollo, the system controlled by United, had announced that it would no longer display services operated by one airline under another airline's code. They alleged that Apollo's change in policy would substantially injure their marketing efforts. 49 FR 9430–9431.

As a result of the competitive harm that could result from Apollo's proposed policy change, the Board proposed and, after reviewing the comments, adopted as Part 256 the rules that prohibit airlines that own, control, or operate a system from discriminating against an airline because the airline offered its services under another airline's code. As noted, the Board relied on the industry and competitive analysis developed in its rulemaking on the comprehensive CRS regulations. 49 FR 9430; 49 FR 12675.

Soon after the Board proposed the rules governing the treatment of code-sharing airlines, the Board issued its notice of proposed rulemaking on the adoption of comprehensive CRS rules. 49 FR 11644 (March 27, 1984). The Board later adopted those proposed rules, with some revisions, as Part 255. Among other things, those rules barred systems from biasing their primary displays and from charging discriminatory booking fees. 49 FR 32540 (August 15, 1984).

The Board adopted both the comprehensive rules and the rules governing the treatment of code-sharing airlines under its authority under section 411 of the Federal Aviation Act, then 49 U.S.C. 1381, later recodified as 49 U.S.C. 41712, to prohibit unfair and deceptive practices and unfair methods of competition (we will refer to the section under its traditional name, section 411).

The Court of Appeals affirmed the Board's adoption of Parts 255 and 256. *United Air Lines* v. *CAB,* 766 F.2d 1107 (7th Cir. 1985).

C. Basis for Proposed Termination of Rules

The factual basis for our recent decision to terminate all of the comprehensive CRS rules suggests that we should also terminate the rule governing the treatment of code-sharing airlines. As noted above, we concluded that the on-going developments in airline distribution and the CRS business in recent years had substantially eroded the basis for CRS regulations and made the rules unnecessary. The two major developments were the increasing importance of the Internet in airline distribution and the divestiture by U.S. airlines of all CRS ownership interests.

The Internet's growing use by consumers and travel agents has created alternative channels for airline bookings and the dissemination of information on schedules and fares. Airlines have been encouraging many consumers to book their travel directly through an airline website rather than through a travel agent. 67 FR 69373–69374. Travel agents are increasingly checking Internet sites to see whether better fares and flights are available than those displayed in the system they use. 69 FR 980. Airlines also began offering special discounts, commonly known as webfares, to consumers who booked tickets through the airline's own website, and they have used their control over access to their webfares to obtain better terms for CRS participation. 67 FR 69373; 69 FR 979–980. Because these developments are establishing market discipline for the terms and quality of the systems' services offered airlines, we concluded that the comprehensive rules had become unnecessary. 69 FR 984.

Secondly, all of the U.S. airlines that held an ownership interest in a system have divested those interests. The Board had adopted the original rules because each significant system was then controlled by an airline, and the airline owner had the incentive and the ability to use its system to distort airline competition. 67 FR 69373. Now, in contrast, none of the systems is owned or controlled by any U.S. airline or airline affiliate, and only Amadeus has any airline owners. 69 FR 979. In our final decision in our reexamination of the comprehensive rules, we found that the systems should have no incentive to operate in ways designed to distort airline competition, because none of them are owned or controlled by U.S. airlines or airline affiliates. 69 FR 990–991. While Amadeus is owned in part by three European airlines, it also has substantial public ownership, its airline owners should have no motive to undermine airline competition within the United States, and its U.S. market share is less than ten percent. 69 FR 986. We recognized that a system might be willing to take steps to prejudice airline competition if compensated for doing so by an airline, for example, by selling display bias, but there is no certainty that such conduct will occur or, if it did, that it would substantially harm consumers. We accordingly concluded that the possibility of display bias did not warrant the continuation of industry-wide rules, especially in light of the systems' declining market power. 69 FR 994. While we could not predict precisely how systems will respond to the industry's deregulation, we expected that consumers and participants in the airline distribution business will benefit from the rules' termination. 69 FR 978. We stated, moreover, that we intend to monitor the effects of the CRS industry's deregulation and that we will take appropriate action if a system engages in conduct that would violate section 411. 69 FR 978, 986.

The rules on the treatment of code-sharing airlines, unlike the comprehensive rules, have never contained a sunset date that would cause us to reconsider whether the rules remained necessary. However, the findings on which we based our decision to terminate the comprehensive rules suggest that we should also terminate the Part 256 rules governing the systems' treatment of airlines that share codes. The Board adopted those rules largely to protect airline competition from potential efforts by the airlines that controlled the systems to create displays that discriminated against competing airlines that shared codes. As noted, the Board began the rulemaking due to United's plan to eliminate code-sharing airlines from Apollo's displays. The complete divestiture of their CRS ownership interests by the U.S. airlines that had controlled the systems has eliminated the primary basis for the Board's original adoption of these rules.

Furthermore, as we found in our reexamination of the comprehensive rules, because the Internet has created alternative sources of information and booking capabilities for airlines and travel agents, market forces are beginning to discipline the systems' prices and terms for airline participation. If an airline believes that a system's display of its services is unreasonable or unfair, the airline should have some ability at least to lower its level of participation. The airlines' ability to reject unacceptable terms for CRS participation should continue to grow. Furthermore, travel agencies have an interest in obtaining full, accurate, and useful information on airline services, and they have the ability to choose between systems. 69 FR 1005. These factors should encourage the systems to display information on airline services in a manner that will meet the needs of travel agents. Eliminating the rules may give a system additional flexibility to tailor its displays to meet travel agent and consumer demands and may result in more useful displays. We therefore have tentatively determined that the rules governing the systems' treatment of code-sharing airlines are no longer necessary and should be ended.

In addition, as noted above, these rules cover only airlines that own, control, or operate a system, not the systems themselves, and Amadeus' airline owners are therefore the only firms required to comply with the rules. Applying the rules only to Amadeus' owner airlines appears illogical and

potentially inequitable, when Amadeus has the smallest market share in the United States and has airline owners that should have little interest in distorting competition within this country.

We do not expect systems to adopt the practices now barred by Part 256, denials of system access to airlines that code-share and discrimination against such airlines. Code-sharing has become a widespread practice and, among other things, has formed the basis for the development of international alliances between U.S. and foreign airlines, such as the Star Alliance, oneworld, and SkyTeam. We have found that code-sharing can provide significant consumer benefits. 67 FR 69396–69397. As a result, we assume that travel agents will demand that systems provide displays that show airline services marketed under code-share arrangements. Systems may also choose to offer displays that limit the display of code-share services, as some have being doing. 69 FR 1005. Any decision by a system to change or limit the display of code-sharing services, however, should reflect the system's response to market demands, not a decision to distort airline competition by creating displays that discriminate against all code-share services. The systems' vigorous competition for travel agency customers should cause them to provide displays that satisfy travel agent preferences.

Regulatory Process Matters

Regulatory Assessment and Unfunded Mandates Reform Act Assessment

1. Unfunded Mandates Reform Act Assessment

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

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

2. Regulatory Assessment

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

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

This proposed regulation would be a significant regulatory action under the Executive Order, since CRS rules have long been a subject of public controversy. The Department's tentative assessment of the likely costs and benefits for this proposal is set forth below. This proposal has been reviewed by the Office of Management and Budget under the Executive Order.

This preliminary economic analysis seeks to assess the potential economic and competitive consequences of our proposed rules on computer reservations systems, airlines, and travel agencies and to evaluate the benefits to the industry and the traveling public. We tentatively find, as discussed below, that the elimination of the rules barring airline-owned systems from discriminating against airlines that code-share should not harm airlines, travel agencies, or consumers, or have a material effect on firms in the airline or airline distribution businesses or on consumers.

The Civil Aeronautics Board originally adopted the rules barring discrimination against airlines that shared the same code when each of the systems was owned by an airline and when each airline owner had the ability and the incentive to use its system to prejudice the competitive position of rival airlines. The systems' conduct at that time justified the Board's action. The Board proposed these rules as a result of United's plan to eliminate code-share services from the displays offered by Apollo, the system then owned by United, a plan that would harm several of United's competitors. Airlines then relied on travel agents for the large majority of their revenues, and travel agents relied on the systems to determine what airline services were available, to make bookings, and to issue tickets.

The industry conditions that caused the Board to adopt the rules barring discrimination against code-sharing airlines no longer exist. No system is currently owned by a U.S. airline or airline affiliate. No system should have an incentive to discriminate against code-share services in order to distort airline competition. The share of airline revenues produced by travel agents has been falling. Many travel agents now use multiple sources of information to investigate options for their customers and no longer rely almost entirely on one of the systems to determine what airline flights and fares are available. As a result, airlines have been obtaining some bargaining leverage against the systems, and a system's failure to display airline services in an unbiased manner will no longer deny travel agents the ability to electronically obtain complete information on airline service options. The systems' competition for travel agency customers will give the systems an incentive to provide displays that meet the travel agents' needs for more accurate, complete, and useful information. The airlines' growing bargaining leverage with the systems should encourage systems to provide access to their services on terms which are consistent with airline marketing strategies.

The rules barring discrimination against code-sharing airlines may limit the ability of Amadeus, the only system now subject to the rules, to respond to travel agency preferences to create displays less cluttered with code-shares, and may keep travel agents from obtaining displays that meet their needs. Even if the rules impose no burden on Amadeus, however, there is no apparent justification for maintaining them.

For the same reasons on which we based our decision to terminate the comprehensive rules, our elimination of the rules barring discrimination against airlines that share codes should have no significant economic impact on airlines, travel agencies, or consumers. First, because the existing rule covers only airlines that own, operate, or control a system, only the smallest of the four systems operating in the United States—Amadeus—is subject to the rule. Secondly, no system should have an incentive to distort competition in the U.S. airline industry, because no system is owned or controlled by a U.S. airline or airline affiliate. Amadeus' principal owners are three European airlines. In addition, public shareholders own a

substantial amount of Amadeus' stock, and Amadeus' management must operate the business for the benefit of all of its shareholders, not just its airline shareholders. Code-sharing is a much more widespread practice now than it was when the Board adopted these rules, and no system is likely to block the display of services operated under code-share arrangements. For these reasons, we do not expect Amadeus or any other system to begin discriminating against airlines that share codes.

We request interested persons to provide us with detailed information about the possible consequences of this proposal, including its benefits, costs, and economic and competitive impacts.

Initial Regulatory Flexibility Statement

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

Our proposed termination of the existing rules would not have a significant economic impact on a substantial number of small business entities. The rules impose obligations only on airlines that own, control, or operate a system, and none of the airlines that now own, or have owned, a system has been a small entity. The rules may indirectly affect smaller airlines and travel agencies, which are small entities, because they may affect how code-share services are displayed in the systems used by travel agents. Eliminating the rules should have no significant impact on smaller airlines or travel agencies.

First, the rules currently govern only Amadeus, the system with the smallest market share in the United States, because the other three systems have no airline owners. Secondly, the rules prohibit a system from discriminating against code-share services offered by airlines. The Board adopted the rules because one of the airline-owned systems was then planning to stop displaying flights operated by any airline if they were sold under another airline's code, a change that would undermine the marketing efforts of a major competitor of the system's airline owner. 49 FR 9435. It seems unlikely that any system would adopt a similar policy on the display of code-share services, because all major U.S. and European airlines have code-share operations. Furthermore, travel agencies have a substantial degree of bargaining leverage with the systems, as shown by the record in our last reexamination of the comprehensive rules, 69 FR 981–983, which should cause the systems to offer displays that meet the needs of travel agents. Airlines are obtaining more bargaining power with the systems, which should also keep systems from offering displays that would significantly interfere with airline marketing programs. Because code-sharing is now a widespread practice, a system's refusal to display services operated under code-share arrangements would probably undermine that system's ability to obtain travel agency customers, and it would displease its major airline customers. Finally, the Internet has provided new sources of airline information for travel agents to use, so travel agents no longer rely so greatly on the systems for airline information. Furthermore, as discussed, there no longer appears to be any rationale for maintaining these rules.

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

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

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

Assistance for Small Entities

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

Paperwork Reduction Act

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

Federalism Implications

Our proposal would have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, dated August 4, 1999, we have determined that it does not present sufficient federalism implications to warrant consultations with State and local governments.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Consultation and Coordination With Tribal Governments.

This proposed rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period, we will undertake appropriate consultations with the affected Indian tribal officials.

Energy Effects

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

Environment

The proposed rule would have no significant impact on the environment.

PART 256—[REMOVED AND RESERVED]

1. Accordingly the Department proposes to remove 14 CFR art 256 and reserve art 256.

Issued in Washington, DC, on March 27, 2005.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 05–6650 Filed 4–1–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2001N–0548] (formerly Docket No. 01N–0548)

Food Labeling; Guidelines for Voluntary Nutrition Labeling of Raw Fruits, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until June 3, 2005, the comment period for a proposed rule published in the **Federal Register** of March 20, 2002. In that document, FDA proposed to amend its voluntary nutrition labeling regulations by updating the names and nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States. Since publication of the proposed rule, the agency has received new data in comments that it intends to use to further update the nutrition labeling values. The agency also intends to use additional data from the U.S. Department of Agriculture (USDA) for certain nutrients in raw produce. Those data became available after the close of the comment period. FDA is reopening the comment period to allow all interested parties the opportunity to review its tentative nutrition labeling values based upon data FDA received within and after the comment period, and to comment on the additional nutrient data for some of the 20 most frequently consumed raw fruits, vegetables, and fish. FDA will evaluate any new data submissions during this reopened comment period and will consider use of those data in a final rule.

DATES: Submit written or electronic comments by June 3, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 2001N–0548, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2001N–0548 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/hand delivery/courier [for paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number or regulatory information number for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the relevant docket number, 01N–0548, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Brandt, Center for Food Safety and Applied Nutrition (HFS–840), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1788.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 20, 2002 (67 FR 12918) (the proposed rule), FDA proposed to amend its voluntary nutrition labeling regulations by updating the names and nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States based upon new data submitted or made available to the agency. In that document, we requested comments on the proposal by June 3, 2002. In the **Federal Register** of June 6, 2002 (67 FR 38913), we corrected the proposed rule that published with an incorrect docket number (i.e., Docket No. 01N–0458) and provided additional time to submit comments, until August 20, 2002.

In a comment to the proposed rule, USDA submitted nutrient data from its 2001–2002 nationwide sampling of fruits and vegetables (see *http://www.fda.gov/ohrms/dockets/dailys/02/Aug02/080602/01n-0548-c000006-vol1.pdf*). USDA provided data for 16 of the 20 most frequently consumed fruits: Apple, avocado (California), banana, cantaloupe, grapefruit, honeydew melon, kiwifruit, nectarine, orange, peach, pear, pineapple, plums, strawberries, sweet cherries, and watermelon; and 12 of the top 20 vegetables: Bell pepper, broccoli, carrot, celery, cucumber, iceberg lettuce, leaf lettuce, onion, potato, radish, sweet potato, and tomato. At the time USDA submitted the comment, the data results for vitamin C, sodium, and potassium were not yet available, and the analysis of carotenoids for carrots, sweet potatoes, cucumbers, onions, and sweet peppers had not been completed. In June and July of 2003, after the close of the comment period, USDA provided sodium, potassium, and some carotenoid values that it did not submit earlier (Ref. 1). It also submitted vitamin C values for pineapple.

In other comments to the proposed rule, the Citrus Research Board and Food Research, Inc., provided nutrient data from 1998 for oranges, grapefruit, tangerines (Mandarin oranges), and lemons (see *http://www.fda.gov/ohrms/dockets/dailys/02/Aug02/081602/8001f4e1.pdf, http://www.fda.gov/ohrms/dockets/dailys/02/Aug02/082902/01N-0548-cr00001-01-vol1.htm*, and *http://www.fda.gov/ohrms/dockets/dailys/02/Aug02/082902/8002574a.doc*).

Two comments recommended that Chinook salmon be included with the revised species of fish (see *http://*