UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Section 145, referrred to below, expired in 2006. Since that time there has been no requirement for airlines to honor the tickets of another airline that ceases operations(although some air carriers do so voluntarily, usually with restrictions and/or a small fee).

HONORING TICKETS OF INSOLVENT AIRLINES PURSUANT TO THE REQUIREMENTS OF SECTION 145 OF THE AVIATION AND TRANSPORTATION SECURITY ACT

NOTICE

This Notice provides further guidance for airlines and the traveling public regarding the obligation of airlines under section 145 of the Aviation and Transportation Security Act, P.L. 107-71, 115 Stat. 645 (November 19, 2001) ("Act"), to transport passengers of airlines that have ceased operations due to insolvency or bankruptcy. In section 8404 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458 (Dec. 17, 2004)), Congress recently renewed the obligation of air carriers under section 145 to provide transportation to passengers of airlines that have ceased operations due to insolvency or bankruptcy. Prior to Congress's most recent action, the Department had issued three notices providing guidance to carriers and the public regarding section 145.[1] The purpose of this notice is to respond to the many inquiries from airlines and the public regarding section 145 received since issuance of those notices, and

[1] Those notices were issued on August 8, 2002, (67 FR 53035, Aug. 14, 2002) November 14, 2002, (67 FR 69805, Nov. 19, 2002) and January 23, 2003 (68 FR 4266, Jan. 28, 2003).

to provide notice that we have reconsidered our earlier estimates of the direct costs to carriers of providing alternate transportation required by section 145 and have accordingly decided that the maximum amount that a carrier may charge a passenger accommodated under the law should be greater than originally believed.

Section 145 requires, in essence, that airlines operating on the same route as an insolvent carrier that has ceased operations transport the ticketed passengers of the insolvent carrier "to the extent practicable." Our earlier notices set forth, among other things, our view that, at a minimum, section 145 requires that passengers who hold valid confirmed tickets, whether paper or electronic, on an insolvent or bankrupt carrier that has ceased operations on a route be transported on a space-available basis by other carriers that operate on the route for which the passenger is ticketed. We also stated our belief that Congress did not intend to prohibit carriers from recovering from accommodated passengers the amounts associated with the actual cost of providing such transportation. We indicated at that time that we did not foresee those costs exceeding $25.00 each way, or $50.00 on a roundtrip basis. However, we also made clear that we recognized that such charges might be determined to be higher, since the cost to a carrier of complying with section 145 could be affected by a variety of factors, including the number of affected passengers, the fuel costs to carriers in effect at the time of a cessation, and the markets and itineraries involved.

Since the renewal of section 145 in December 2004, we have received many inquiries from the airline and travel agent industries, the media, and the public

about various aspects of the law. These questions involve, among other issues, the amount carriers may charge displaced passengers seeking to be accommodated, as well as questions regarding section 145's applicability to international flights, code shared flights, passengers holding frequent flier tickets, and passengers whose transportation involves charter flights. As a result of these and other questions, including those raised on our own initiative, we have reviewed section 145 and are issuing this further notice, which updates and expands upon advice previously provided airlines and the public about the provision. This guidance is being provided in an attached question-and-answer format, which should assist readers in understanding the many issues involved.

Questions regarding this notice may be addressed in writing to Dayton Lehman, Deputy Assistant General Counsel, or Jonathan Dols, Supervisory Trial Attorney, Office of Aviation Enforcement and Proceedings, 400 7th St., S.W., Washington, D.C. 20590, or they may be contacted by telephone at (202) 366-9342 or by email at dayton.lehman@dot.gov or jonathan.dols@dot.gov, respectively.

By:

Karan Bhatia
Assistant Secretary for
Aviation and International Affairs

Dated: June 1, 2005

(SEAL)

An electronic version of this document is available on the World Wide Web at
http://airconsumer.ost.dot.gov

Department of Transportation Guidance Regarding Section 145 of the Aviation and Transportation Security Act

In section 8404 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458 (Dec. 17, 2004)), Congress renewed the obligation of air carriers under section 145 of the Aviation and Transportation Security Act (P.L. 107-71, 115 Stat.645 (Nov. 19, 2001) ("Act")) to provide transportation to passengers of airlines that have ceased operations due to insolvency or bankruptcy. As amended, section 145 states in pertinent part:

> (a) … Each air carrier that provides scheduled air transportation on a route shall provide, to the extent practicable, air transportation to passengers ticketed for air transportation on that route by any other air carrier that suspends, interrupts, or discontinues air passenger service on the route by reason of insolvency or bankruptcy of the other air carrier.
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> (b) … An air carrier is not required to provide air transportation under subsection (a) to a passenger unless that passenger makes alternative arrangements with the air carrier for such transportation within 60 days after the date on which that passenger's air transportation was suspended, interrupted, or discontinued (without regard to the originally scheduled travel date on the ticket).
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> (c) … This section does not apply to air transportation the suspension, interruption, or discontinuance of which occurs after November 19, 2005.[2]

Questions and Answers

Question 1: What is the basic requirement of section 145?

Answer 1: At a minimum, section 145 requires that passengers holding valid confirmed tickets, whether paper or electronic, on an insolvent or bankrupt carrier that has ceased operations on a route by reason of that insolvency or bankruptcy be transported on a space-available basis by other carriers who operate on the route for which the passenger is ticketed.

[2] In the fall of 2005 this date was extended to November 30, 2006.

Question 2: If a U.S. air carrier that has not yet filed for bankruptcy discontinues operating on a route for reasons of "insolvency," must other air carriers operating on that route provide transportation to passengers ticketed by the insolvent air carrier?

Answer 2: Yes.

Question 3: What constitutes "insolvency" for purposes of section 145?

Answer 3: Insolvency is generally the inability to pay one's debts as they become due. This would probably occur with or after a bankruptcy filing, but such a filing need not necessarily occur to trigger section 145 obligations.

Question 4: Does the law apply to passengers of foreign air carriers that cease operations on international routes to or from the United States due to bankruptcy or insolvency?

Answer 4: No. The law only applies to passengers ticketed on U.S. air carriers that cease operations.

Question 5: Do foreign air carriers have any obligation under the law to accommodate passengers ticketed by U.S. carriers that have ceased operations on an international route due to bankruptcy or insolvency?

Answer 5: No. The obligation applies only to U.S. air carriers.

Question 6: Does the law provide relief for passengers who have purchased transportation on a charter flight?

Answer 6: No. We do not believe it was the intent of Congress to include charter transportation within the coverage of section 145. Although the language of section 145 does not, on its face, exclude charter passengers from its protections, the obligation to transport passengers extends only to scheduled carriers, not charter carriers, either direct or indirect. We do not believe Congress would have intended to provide protection for charter passengers without also providing a commensurate obligation on charter carriers, both direct and indirect, to accommodate the passengers of other carriers that might cease operations on a route.

In addition, there are many different types of charters that do not readily lend themselves to the type of protection we believe Congress intended under section 145, including single entity charters that might involve a company transporting its employees or a sports

team, as well as on-demand air taxi charters. Moreover, some charters, such as public charters, which may be sold by charter operators that do not operate their own aircraft, and single entity charters are already subject to required financial protections in the form of surety bonds or letters of credit and/or escrow accounts for passenger funds.

We note that our Aviation Enforcement Office has in one instance advised carriers and the public of its opinion that section 145 applied to the cessation of service of a charter airline that sold transportation directly to the public. That situation involved Southeast Airlines, which ceased service on November 30, 2004. We do not expect our decision here to affect any of Southeast's passengers, whose transportation was interrupted more than 60 days ago, a period of time beyond section 145's coverage. (See section 145(b).)

Question 7: Once in bankruptcy, must an air carrier cease all operations before section 145 obligations are triggered or are section 145 obligations triggered by the cessation of operations only on a particular route or certain routes by an insolvent or bankrupt air carrier?

Answer 7: The plain language of the statute covers cessation on a route-by-route basis. However, we would expect that a carrier that ceases operations on only one or several routes would itself take steps to ensure that its ticketed passengers are transported over other routings or receive a full refund, at the passenger's choice. Moreover, if the carrier continues to hold out for sale service between the points involved, i.e., in the market, the carrier would not be deemed to have ceased operations on "that route." See Answer to Question 10 below.

Question 8: Because section 145 obligations are triggered by the cessation of service on one or more routes, rather than requiring a system-wide cessation of operations, are section 145 obligations triggered when a bankrupt air carrier simply reduces the number of flights it offers on a given route but does not cease *all* service on that route?

Answer 8: No.

Question 9: How does one determine whether a suspension, interruption, or discontinuation of service on a route is the result of bankruptcy or insolvency or of some other event not triggering section 145 obligations, such as a seasonal suspension of service or a contract dispute?

Answer 9: This will depend on the facts of each case.

Question 10: Section 145 refers to carriers that provide scheduled air transportation on the "route" for which a passenger is ticketed. What constitutes a "route"?

Answer 10: Section 145 states simply that an air carrier that provides transportation on "a route" where service is discontinued by another air carrier due to bankruptcy or insolvency shall provide transportation on "that route" to passengers ticketed by the bankrupt air carrier. Since section 145 clearly is intended to help ensure that consumers' expectations are preserved and that they reach their destinations if reasonably practicable, the Department believes that Congress did not intend to limit the section 145 obligations to those carriers operating between the two points on a non-stop basis. Indeed, the service for which the passenger seeks alternate transportation may itself not have been non-stop service. On the other hand, travel on nearly every major carrier can be constructed between most pairs of points, provided one were willing to take a circuitous routing potentially involving numerous connections. We think this kind of substitute service was not what Congress intended. A carrier will be deemed to be providing transportation on "that route" if it holds out service between the two points to the public through its website or GDS services, regardless of the circuity involved.

For example, Carrier A discontinues service between Chicago's O'Hare Airport (ORD) and Philadelphia (PHL) due to bankruptcy. Carrier B does not offer non-stop service ORD-PHL, but does offer for sale service from ORD to PHL via Pittsburgh (PIT). Under section 145, Carrier B must provide "to the extent practicable" transportation ORD-PIT-PHL to passengers ticketed by Carrier A between ORD and PHL. As a counter example, Carrier A discontinues service between San Diego (SAN) and Baltimore-Washington International Airport (BWI) due to bankruptcy. Carrier B does not offer for sale any service between SAN and BWI, but a person could travel on Carrier B between SAN and BWI if he or she were willing to combine flights that operated SAN-Albuquerque (ABQ)-Houston (HOU)-Birmingham (BHM)-BWI. Under section 145, Carrier B does not have to provide transportation to passengers ticketed by Carrier A between SAN and BWI, since it does not hold out service in the SAN-BWI market.

Question 11: Under section 145, must an air carrier that offers only connecting or "backhaul" service on a route, transport passengers ticketed by a bankrupt air carrier on that route?

Answer 11: Yes, under section 145, if an air carrier does not hold out or operate direct service between two cities, but holds out for sale connecting service between them, it must provide alternate transportation under section 145 to passengers ticketed by another air carrier that has discontinued its service on that route, regardless of whether the alternate transportation involves a backhaul. (See Question and Answer 10 above.)

Question 12: Under section 145, must an air carrier operating scheduled service on a route to one airport serving a city provide transportation to passengers ticketed by a bankrupt air carrier on a route to a different airport serving the same city?

Answer 12: Yes, provided that the airports are considered alternate airports for the city and the carrier from which the passenger is seeking accommodation holds out for sale service to the alternate airport. For example, Carrier A discontinues service between Los Angeles International Airport (LAX) and JFK International Airport (JFK) due to bankruptcy. Carrier B, which offers service only between (LAX) and Newark International Airport (EWR), must provide transportation from LAX to EWR to a passenger ticketed by Carrier A between LAX and JFK, since JFK and EWR are considered alternate airports serving New York City and Carrier B holds out for sale service between LAX and EWR, one of the alternate airports. We recognize that the question of whether a particular airport is considered an "alternate airport" may need to be determined on a case-by-case basis. Carriers should note, however, that since a primary purpose of section 145 is to assist consumers in obtaining acceptable alternate transportation and our interpretation of that provision requires transportation only on a stand-by, space-available basis, we expect carriers to take a liberal approach if this issue arises.

A carrier that serves only a portion of a passenger's itinerary and does not operate to the destination city for which the passenger is ticketed would not be obligated under section 145 to transport the passenger to another point from which the passenger might hope to obtain accommodations to his or her ultimate destination. For example, if the passenger of an insolvent or bankrupt carrier holds a ticket from Chicago to Phoenix, a carrier that does not offer service to Phoenix but does offer service to Denver is not obligated under section 145 to provide the passenger transportation to Denver in hopes that he or she can then find further transportation to Phoenix. This same result would hold if the passenger was originally ticketed from Chicago to Phoenix through Denver.

Question 13: What charge can a carrier assess for accommodating a passenger holding a ticket on a carrier that has ceased operations?

Answer 13: In our first three guidance documents, we stated that we did not believe that Congress intended to prohibit carriers from recovering from accommodated passengers the amounts associated with the actual cost of providing such transportation. We pointed out that examples of such costs include the cost of rewriting tickets, providing additional onboard meals, and the incremental fuel cost attributable to transporting an additional passenger. Based on that methodology, we found that a reasonable estimate of such costs at that time would not exceed $25 each way, regardless of the number of segments involved. Significantly, we noted that the costs of complying with section 145 may be affected by a variety of factors, including the number of passengers, the current fuel costs to carriers, and the markets and itineraries involved. We made no attempt at that time

specifically to consider such factors, but indicated our willingness to do so in the future. It has been more than two years since our last notice was issued. Several carriers have requested that we reexamine this cost issue, asserting that increased costs, including that of fuel, the proven need to increase staffing to handle last-minute influxes of stand-by passengers after another carrier ceases operations, and the need to cover certain air transportation taxes, justify the Department permitting an increase in the maximum amount a carrier can charge to recover its additional expenses for providing alternate transportation under section 145. They have asked that we increase the maximum permissible amounts to $50 each way for domestic travel and travel to or from foreign points in North and Central America and the Caribbean and $125 each way for other international travel.

We have reexamined this cost issue and conclude that an increase in permissible maximum rebooking charges, including any necessary taxes and fees, to an amount of $50 each way is reasonable. Although we invite carriers to provide further comments, we do not at this time have sufficient information to justify increasing the maximum permissible amount for long-haul international travel to the maximum of $125 as requested by certain carriers. However, as described below, some governments may impose substantial taxes and fees on passengers that are collected by carriers in the price of a ticket and turned over to the government only upon travel by the passenger. Where a carrier ceases operations without having paid such amounts on behalf of the passenger, the carrier providing alternate transportation may be required to pay the tax. Under such circumstances, the $50 maximum stated above may be increased by the amount a foreign government directly assesses a carrier providing alternate transportation under section 145.

The cost of rebooking a particular passenger can vary substantially depending upon the particular circumstances involved. For example, at airports with relatively low traffic volumes, where existing alternatives can readily accommodate a small number of new passengers, the cost of doing so would be modest. On the other hand, at high traffic volume airports, particularly during the first few days following cessation of service by a major service provider at that airport, other carriers would likely have to significantly and quickly increase personnel resources in order to efficiently accommodate a surge of new passengers, resulting in considerable additional costs. These costs may be due to the need to set up new systems to verify such customers' existing ticket information and handle their stand-by status, which may require the issuance of paper tickets, a privilege for which many carriers today charge their own passengers $20 or perhaps more. These increased costs may affect carriers regardless of their size and can be even more pronounced where the carrier obligated to provide alternate transportation does not itself have a large presence at an airport involved. Such a situation will require extraordinary steps by a carrier to meet its section 145 obligation in handling the influx of passengers seeking to travel on a stand-by basis, particularly since such passengers require personal attention and handling, unlike a carrier's regular customers, who are likely to be traveling on an e-ticket and checking in over the Internet or at an unstaffed kiosk. For example,

Delta Airlines was required to temporarily reassign ticket agents to its Las Vegas station from other stations after Vanguard, a much smaller carrier but one that had a relatively large presence at Las Vegas, ceased operations. Vanguard's passengers swamped the counters of Delta and other carriers seeking assistance pursuant to the requirements of section 145. Since the vast majority of passengers' itineraries will involve one or more high traffic volume airports and in light of the substantial expenses that may occur, we conclude that the increased maximum rebooking fees of $50 discussed above are reasonable.

With regard to long-haul international routes, in their request for an increase in the maximum charge that may be assessed for accommodating a passenger under section 145, several carriers pointed to the higher costs associated with such routes due to increased expenses for fuel, meals, security, and ground handling. While this may be the case, we do not at this time have sufficient information to believe that an increase in the maximum charge to $125 is justified. However, we understand that, in certain markets, carriers may collect as part of their ticket prices departure fees that must be paid to the foreign government upon departure of the passenger. Those fees may become the responsibility of the carrier providing alternate transportation under section 145 and in such cases it is reasonable for that fee to be charged the accommodated passenger in addition to the $50 charge. As we have in the past, we invite any airline or person who believes that our estimates of the amount necessary to cover the direct costs of accommodating ticketed passengers on a space available basis are inaccurate to provide written comments and evidence of costs in support of their position.

Finally, while we are permitting the higher ceiling on fees that have been proposed, we are not mandating that any fee be charged and certainly not mandating that the ceiling fee be charged.

Question 14: If a carrier declares bankruptcy and then, after section 145 expires under its sunset clause, suspends service on a particular route, does the law apply?

Answer 14: Not if the law remains sunsetted. If, however, the law was not in effect at the time of the cessation but is later renewed, one must look to the language renewing the provision to determine if Congress intended that it not apply to cessations that have already occurred. In the absence of language to the contrary in the renewal provision, the obligation to transport qualifying passengers resumes at the time that the law goes back into effect, subject to the 60-day provision in section 145(b), without regard to when the insolvent or bankrupt carrier ceased operations.

Question 15: Does the 60-day period in which a passenger must make alternative arrangements start on the date of the bankruptcy filing or does it run from the date of the "suspension, interruption, or discontinuance" of service on a particular route?

Answer 15: The 60-day period runs from the date of the "suspension, interruption, or discontinuance" of service on a particular route. For example, if Carrier A declares bankruptcy on August 1, but continues operating its SFO-LAX service until September 1, at which time it suspends its service due to the bankruptcy, passengers ticketed by Carrier A on this route would have until October 30 to make alternative arrangements.

Question 16: Since section 145 provides a passenger 60 days in which to make alternate arrangements, does this mean that a carrier is obligated to offer standby transportation (1) on any date on which space may be available and on which the passenger desires to travel, so long as the passenger seeks such arrangements within the 60 day period, or (2) on the first date, including the passenger's original date of travel, on which space is available, or (3) only on the date the passenger was originally ticketed?

Answer 16: Although Congress was not clear on this issue, in our initial notice dated August 2, 2002, we stated that section 145 required at a minimum that a carrier is required to transport a passenger on a space-available basis on the date of travel shown on the ticket. There is some support for this interpretation, since section 145(a) applies the law's protections to "ticketed" passengers (on a specified route) and the 60-day provision in section 145(b) states that a passenger must make alternate arrangements "for such transportation" within that time frame. A strict view of the alternate transportation required to be provided as a passenger is "ticketed" would limit the alternate transportation to the precise date for which the passenger was originally ticketed. This could, however, produce a harsh result not intended by Congress given the consumer-oriented nature of the provision, such as could occur when a passenger is scheduled to travel on the day a carrier ceases operations and would therefore have no time to make alternate arrangement for travel that day with another carrier, or when flights of the carrier that is required to provide alternate transportation are totally booked on a particular day. On the other hand, we do not believe the provision should be read so broadly as to permit the passenger to select any travel date in the future, regardless of his or her original ticketed travel date.

We believe, therefore, that Congressional intent to assist consumers to the extent practicable is satisfied where consumers are permitted to travel on the date ticketed, or as soon thereafter as space is available, and that consumers whose ticketed date of travel is within 72 hours of the date of a cessation of operations of the carrier on which they are ticketed should be given a reasonable period of time after the cessation, not to exceed one week, in which to make such alternate arrangements.

Question 17: Must the carrier subject to a section 145 obligation provide a passenger seeking accommodation under section 145 a confirmed reservation on a flight, or can the carrier place the passenger on a "standby" list?

Answer 17: The carrier may place the passenger on a standby list.

Question 18: Assuming that the transportation provided under section 145 is on a standby basis and that a carrier does not normally create reservation records for standby passengers, how can an air carrier determine if a passenger had in fact made alternative arrangements with it within the 60-day window? If an air carrier cannot make such a determination, can it refuse to transport such a passenger? For example, Carrier A goes bankrupt and ceases all service on July 1. Jane Doe, who was ticketed by Carrier A on a flight scheduled for November 1, makes alternative arrangements with Carrier B on July 2 for a flight on Carrier B scheduled for November 1. Jane Doe subsequently presents herself as a standby passenger to Carrier B on November 1, but Carrier B has no record that Doe made the requisite alternative arrangements within the 60-day window since it did not create a reservation record when Jane Doe contacted it on July 2.

Answer 18: While the burden is in the first instance on a passenger to prove that he or she was ticketed for travel on the carrier that has ceased operations and has complied with the 60-day provision, after the passenger has done so, the burden of proof shifts to the carrier that is requested to provide alternate transportation if the carrier asserts that it has no obligation to transport the passenger on a space-available basis. Thus, while we do not proposed to prescribe how carriers are to meet that burden of proof, a carrier may not refuse transportation under the 60-day provision if a properly ticketed passenger asserts that he or she complied with that requirement and was promised alternate transportation on a particular day, and the carrier has no evidence to the contrary merely because the carrier elected not to institute some method of monitoring requests for alternate transportation required under section 145.

Question 19: Under section 145, can an air carrier refuse to transport an otherwise qualified passenger ticketed by a bankrupt air carrier on the basis that the passenger was issued an “e-ticket” for the bankrupt carrier’s flight?

Answer 19: No. However, the carrier can request reasonable proof that the passenger purchased a ticket. As stated in our prior notices, reasonable proof of purchase could be receipts and printed itineraries.

Question 20: Generally, an airline’s contract of carriage states that, in the event of a change of schedule (such as a cessation of service in a market), the carrier’s obligation is to reroute the passenger at no additional cost (it could be on its own service or that of another carrier) or, if the rerouting is unacceptable to the passenger, provide a full refund. Many bankruptcies involve carriers that continue to operate under Chapter 11 of the Bankruptcy Code and are authorized by the bankruptcy court to continue to operate their systems on a “business-as-usual” basis. In many or all such Chapter 11 cases, the

bankrupt carrier petitions the court to permit refunds to pre-petition passengers to cover situations where, absent the bankruptcy, a refund would have been due. Do other air carriers have a section 145 obligation if:

- (a) a bankruptcy court permits the carrier to provide a refund but the consumer does not want the refund and also does not want to accept being rerouted on the bankrupt carrier?

- (b) whether or not the bankruptcy court permits a refund, the bankrupt carrier is able to reroute passengers affected by a cessation of service on certain other carriers at no additional charge to the passenger in the way that the airline likely would have done through its interline agreements in the absence of the bankruptcy?

Answer 20: Under either circumstance, if the bankrupt airline can reroute the passenger to his or her destination on another of its own flights or pursuant to an agreement with another carrier, the passenger must accept this alternate arrangement, or a full refund, if applicable. (See Question and Answer numbers 7 and 10 above.)

Question 21: Can a carrier that is obligated to provide alternate transportation on a space-available basis under section 145 to passengers of a carrier that has ceased operations offer those passengers confirmed space at any price in lieu of the space-available option? What if the passenger accepts the offer and learns while checking in for the flight that standby seats are available?

Answer 21: A carrier may seek to accommodate passengers in such a manner, provided it makes clear to the passenger that the offer of a confirmed seat for the price set by the carrier is an alternative to being provided a space-available seat under section 145 and acceptance is the passenger's option. Where such an election is made by a passenger after full and accurate disclosure of his or her options under section 145, including (if known) the availability of stand-by seats, the passenger cannot later demand a refund (under terms not otherwise applicable to his or her ticket) and seek to travel under section 145 if, for example, the passenger shows up for the reserved flight and discovers stand-by seats will be available.

Questions 22 through 28 Refer to Code Share Issues

Question 22: When considering the definition of a "route," does a carrier's obligation under section 145 to provide alternate transportation apply only to routes on which it operates its own aircraft or does it also apply to code share operations where another carrier operates the aircraft?

Answer 22: The legislation does not address this issue and accordingly we believe that the answer depends on whether it is "practicable" for the carrier to provide alternate transportation under the code share arrangement. As stated in section 145, Congress only required alternate transportation "to the extent practicable." There are several circumstances that might make it impractical for a carrier to provide transportation under section 145 on routes on which it offers only code share service. For example, a carrier's code share agreement may not give it access to the inventory of the carrier operating the aircraft nor the authority to provide stand-by service. By contrast, where the code share carrier does have access to the inventory of the operating carrier and the ability to put passengers on a standby list, it likely would be "practicable" to provide alternate transportation. (It appears to the Department that this would be the case in most, if not all, code share relationships between domestic regional affiliates and major carriers.)

There may be circumstances specific to code share arrangements, particularly in foreign markets, where an accommodating carrier's cost for providing transportation on its code share partner's aircraft may bear no relationship to the maximum direct costs specifically allocated to providing the transportation to that passenger. In such circumstances, the accommodating code sharing carrier may charge, in addition to the $50.00 fee, whatever additional amount is necessary to cover that specific direct transportation cost to the carrier to transport that passenger. Should the passenger dispute the charge, the carrier will have the burden of demonstrating that the additional amount charged is justified.

Question 23 (Both U.S. air carriers): Carrier A and Carrier B, both U.S. air carriers, have a code share agreement in which Carrier A operates the flight. Carrier A ceases operations by reason of bankruptcy or insolvency. What requirements exist, pursuant to section 145, with regard to passengers of Carrier A and Carrier B?

Answer 23: Other U.S. air carriers have an obligation under section 145 to provide transportation to passengers ticketed for transportation on Carrier A on its flight. Under section 145, no such obligation exists for passengers ticketed for transportation on Carrier B, because Carrier B was not the entity that ceased operations. Carrier B would, however, have obligations to the passengers holding tickets for transportation on it as set forth in its contract of carriage.

Question 24 (Both U.S. air carriers): Same as question 23, with Carrier A operating the flight, but Carrier B ceases operations due to bankruptcy.

Answer 24: Other U.S. air carriers, including Carrier A, have an obligation under section 145 to provide transportation to passengers ticketed for transportation on Carrier B. No such obligation attaches to passengers ticketed for transportation on Carrier A, because it has not ceased operations.

Question 25 (U.S. and Foreign air carriers): Carrier A, a U.S. air carrier, and Carrier B, a foreign air carrier, have a code share agreement in which U.S. Carrier A operates the flight. U.S. Carrier A ceases operations by reason of bankruptcy or insolvency. What requirements exist, pursuant to section 145, with regard to passengers of U.S. Carrier A and Foreign Carrier B?

Answer 25: Other U.S. air carriers have an obligation under section 145 to provide transportation to a passenger ticketed for transportation on a flight of U.S. Carrier A. No such obligation exists with respect to passengers ticketed for transportation on Foreign Carrier B, because section 145 applies only to passengers of a U.S. air carrier that actually ceases operations due to bankruptcy or insolvency and Carrier B is a foreign air carrier. Foreign carrier B has no obligation under section 145 to passengers ticketed for transportation on U.S. Carrier A.

Question 26 (U.S. and Foreign air carriers): Same as Question 25 except that Carrier B, the foreign air carrier, ceases operations due to bankruptcy on a codeshare route on which U.S. Carrier A operates the flight.

Answer 26: Other U.S. air carriers, including U.S. Carrier A, have no obligation under section 145 to provide alternate transportation to passengers ticketed by Carrier B, because it is a foreign carrier. Our interpretation here with respect to U.S. Carrier A is limited to its obligation pursuant to section 145, however, and does not consider any other obligation that it may have to carry the passengers of its code share partner, Foreign Carrier B.

Question 27 (U.S. and Foreign air carriers): Carrier A, a U.S. air carrier, and Carrier B, a foreign air carrier, have a code share agreement in which Foreign Carrier B operates the flight. U.S. Carrier A ceases operations by reason of bankruptcy or insolvency. What requirements exist, pursuant to section 145, with regard to passengers of U.S. Carrier A and Foreign Carrier B?

Answer 27: Other U.S. air carriers have an obligation under section 145 to provide transportation to passengers ticketed by U.S. Carrier A, because it ceased operations on a route due to bankruptcy. Foreign Carrier B has no obligation under section 145 to transport the passengers of U.S. Carrier A, because section 145 applies only to U.S. carriers. Our interpretation here is limited to Foreign Carrier B's obligation pursuant to section 145, however, and does not consider any other obligation that it may have to carry the passengers of its code share partner, U.S. Carrier A.

Question 28 (U.S. and Foreign air carriers): Same as Question 27, except that Foreign Carrier B ceases operations due to bankruptcy on a code share route on which it operates the flight, leaving passengers ticketed by U.S. Carrier A without lift.

Answer 28: Other U.S. air carriers have no obligation under section 145 to provide transportation to passengers ticketed by U.S. Carrier A, because it has not ceased operations on a route due to insolvency or bankruptcy and no obligation to transport passengers ticketed by Foreign Carrier B, since it is a foreign carrier. Carrier A would, however, have obligations to the passengers holding tickets for transportation on it as set forth in its contract of carriage.