PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

9. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

10. In § 50.2, the definition of *Total Effective Dose Equivalent* is revised to read as follows:

§ 50.2 Definitions.

* * * * *

Total Effective Dose Equivalent (TEDE) means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

* * * * *

Dated at Rockville, Maryland, this 13th day of September, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary for the Commission.

[FR Doc. E6–15502 Filed 9–21–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. OST–2005–23194]

RIN 2105–AD56

Price Advertising

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This document withdraws the Notice of Proposed Rulemaking (NPRM) that sought comments on whether and, if so, how the Department should amend 14 CFR 399.84, its air-transportation price-advertising rule. As a matter of enforcement policy, the Department has long allowed limited exceptions to the strict terms of the rule. The NPRM called for comments on several options: Maintain the current practice with or without codifying all of its elements in the rule, enforce the rule as written, revise the rule to eliminate most or all requirements for airfare advertisements but to specify that consumers must be told the total price before any purchase is made, or eliminate the rule altogether. The Department has decided based on the comments that the public interest will best be served by maintaining the status quo.

ADDRESSES: You can get a copy of this document from the DOT public docket through the Internet at *http://dms.dot.gov*, docket number OST–20005–23194 (click ''search,'' type just the last five digits, and click ''search'' again). If you do not have access to the Internet, you can get a copy of this document by United States mail from the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Specify Docket OST–2005–23194 and request a copy of the ''Withdrawal of Proposed Rulemaking.'' You can review the public docket in person in the Docket office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office is on the plaza level of the Department of Transportation. Finally, you can also get a copy of this document from the **Federal Register** Web site at *http://www.gpo.gov*.

FOR FURTHER INFORMATION CONTACT: Betsy L. Wolf, Senior Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (C–70), U.S. Department of Transportation, 400 Seventh St. SW., Room 4116, Washington, DC 20590, tel: (202) 366–9342, fax: (202) 366–7152, e-mail: *Betsy.Wolf@DOT.GOV*.

SUPPLEMENTARY INFORMATION:

Background

The Current Rule and Enforcement Policy

The Department's price-advertising rule for air transportation, 14 CFR 399.84 (adopted December 20, 1984), states that any advertisement of passenger air transportation which states a price that is not the entire price the consumer must pay is an unfair and deceptive practice in violation of 49 U.S.C. 41712. Section 41712 empowers the Department to ban unfair and deceptive practices and unfair methods of competition in air transportation and its sale. Congress modeled section 41712 on section 5 of the Federal Trade Commission (''FTC'') Act, 15 U.S.C. 45. The FTC Act, however, by its own terms, cannot be enforced against air carriers. Moreover, as the States are preempted from regulating price advertising by air carriers, 49 U.S.C. 41713, *see Morales* v. *Trans World Airline*, 504 U.S. 374, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992), only this Department can adopt consumer-protection regulations in this area.

As a matter of enforcement discretion, the Office of Aviation Enforcement and Proceedings (''Enforcement Office''), has long allowed the following exceptions to the requirement that any advertised fare represent the consumer's total cost:

- Government-imposed taxes and fees that the carrier collects on a per-passenger basis may be excluded from the advertised fare, provided that they are not *ad valorem*, and provided that the advertisement shows the existence and amount of these charges clearly so that consumers can easily determine the total fare.
- If multiple destinations are advertised and not all entail the same government-imposed charges, the advertisement may state a maximum fee, a fee for each destination, or a range of fees. The word ''approximately'' or a range of amounts may be used to account for minor fluctuations in currency exchange.
- Advertising ''two-for-one'' fares where the fare that must be bought is higher than the carrier's other fares in the same market is deceptive unless this fact is prominently and clearly disclosed.
- Advertisements of each-way fares that are available only when bought for round-trip travel must disclose the

round-trip purchase requirement clearly and conspicuously.

• In Internet fare advertisements (including banner, pop-up, and e-mail advertisements in addition to Web sites), the per-person government charges that may be listed separately may be disclosed by a prominent hyperlink, proximate to the listed fare, that takes the viewer to a display showing the nature and amount of these charges.

• In advertisements of ''free'' air transportation in conjunction with the purchase of one or more other tickets, the restrictions, fees, and other conditions that apply to the ''free'' transportation must be disclosed prominently and close to the offer, at a minimum through an asterisk or other symbol directing the reader's attention to the information elsewhere in the advertisement. This requirement applies to advertisements in all media: The internet, billboards, print media, television, and radio. The information must appear in easily-readable print (except, of course, in the case of radio announcements).

• Advertisements of fares that are higher if purchased by telephone or in person than over the Internet must prominently disclose that these fares are only available over the Internet. The advertisements must also disclose that tickets cost more than the advertised price if purchased by telephone or in person, and they may disclose the price increment. If the advertisements state a price differential, they may not characterize this amount as a ''service fee.''

• In any billboard advertisement that breaks out taxes and fees, a sum of these must be legible to drivers passing the billboard at the posted speed limit.

• In television advertisements, the sum of any taxes and fees that are broken out must be disclosed, either on screen or audially.

• Radio advertisements must include the sum of any taxes and fees that are broken out.

The Enforcement Office has consistently declined to broaden these exceptions to allow carriers to break out any of their own cost elements, such as fuel surcharges, insurance surcharges, or service fees, from the fare.

The Notice of Proposed Rulemaking

On December 14, 2005, following an informal request by the Air Transport Association that separate listing of fuel surcharges be permitted because of its air-carrier members' unprecedentedly high fuel costs, the Department issued a Notice of Proposed Rulemaking for the purpose of reexamining its longtime policy on price advertising (No. OST–2005–23194, RIN 2105–AD56, Price Advertising, 70 FR 73960 (December 14, 2005) (''NPRM'')).

The NPRM called for comments on four options:

Option I A: Amend § 399.84 to codify the Enforcement Office's long-standing policy.

Option I B: Leave § 399.84 as written but continue the enforcement policy.

Option II: Change the long-standing enforcement policy to discontinue exceptions to the strict terms of § 399.84.

Option III A: Amend § 399.84 to require simply that the total price of air transportation be disclosed before the consumer makes the purchase; pursue enforcement action under section 41712 when separate listing of cost elements is unfair or deceptive.

Option III B: Amend § 399.84 to require both that the total price of air transportation be disclosed before the consumer makes the purchase and that price advertisements set forth all elements of the fare so that consumers can add them together to determine the total price; pursue enforcement action under section 41712 when separate listing of cost elements is unfair or deceptive.

Option IV: Rescind § 399.84; pursue enforcement action under section 41712 when separate listing of cost elements is unfair or deceptive.

Comments

Tally of Comments by Group of Commenters

The Department received well over 700 responsive comments on the NPRM, nearly all from individuals who are not travel professionals. The exceptions include 22 air carriers and tour operators, three travel agent associations, the National Association of Attorneys General, an individual who is a travel professional, and the Council of Better Business Bureaus.

Of the approximately 700 individuals who commented on the NPRM, nearly 500 favor Option II. Over 120 favor Option I, with only three specifying a preference for Option I A, and nearly 100 others deem either Option I or Option II to be acceptable, although most prefer the latter. Options III A and III B drew support from two and three individuals, respectively. No individual supports Option IV.

Of the 22 air carriers and tour operators that filed comments, 11 support Option I, with four (Air Pacific, Ltd., Apple Vacations, USA 3000, and Qantas Airways Ltd.) favoring Option I A, five (Alaska Airlines, Inc., Southwest Airlines Co., Singapore Airlines Ltd., Air New Zealand Ltd., and Midwest Airlines, Inc.) favoring Option I B, and two (Jet Blue Airways Corporation and Olympic Airways S.A.) expressing no preference. None of these commenters supports Option II. Option III drew support from four, split evenly between Option III A (Northwest Airlines, Inc., and Continental Airlines, Inc.) and Option III B (Cathay Pacific Airways Ltd. and Air Tahiti Nui). Option IV, too, drew support from four (Delta Air Lines, Inc., American Airlines, Inc., United Air Lines, Inc., and Deutsche Lufthansa AG). The other three (British Airways PLC, Aer Lingus Limited, and US Airways Group, Inc., which represents US Airways, Inc., America West Airlines, Inc., PSA Airlines, Inc., and Piedmont Airlines, Inc.) suggest hybrid approaches.

As for the remaining commenters, two (the American Society of Travel Agents, Inc., and the Interactive Travel Services Association, which represents several major Internet travel agencies) support Option I A, one (the Council of Better Business Bureaus) supports Option I B, and three (the United States Travel Agent Registry, Edward Hasbrouck, and the National Association of Attorneys General) support Option II.

Summary of Comments by Group of Commenters

The individuals who favor Option I make the following arguments: There is value in knowing how much of what one pays for air transportation is going to the carrier and how much to government entities; airfares are confusing enough as is, and weakening or removing the rule might well harm consumers by permitting the advertisement of fares that are divorced from reality; carriers should not have to include government-imposed fees in their advertised fares since they have no control over them; conversely, because cost elements such as fuel surcharges are susceptible to the carriers' control, when these amounts must be included in advertised airfares, the carriers have a greater incentive to negotiate for lower costs in order to stay competitive; if consumers do not learn the full price of a ticket until the end of the purchase process, they will be unwilling or even unable to spend the time required to compare fares and will thus end up paying too much for air travel.

The individuals who favor Option II make the following arguments: Under the current regime, fare advertisements are confusing and deceptive to the point of amounting to ''bait and switch'' tactics; enforcing the rule as written would maximize the transparency of

prices, the ease of comparing fares, and the efficiency of the market; weakening or removing the rule could encourage carriers to pad fares with additional surcharges and fees, thereby increasing confusion and deception and frustrating competition; consumers expect cost elements such as fuel to be included in the price of a ticket; the Department could not protect consumers' interests via case-by-case enforcement under section 41712 (i.e., without § 399.84) absent, in the words of one commenter, ''an exponential increase in funds, and in staff hiring authority, for the Enforcement Office.''

Of the five individuals who favor Option III, the two who favor Option III A did not say why. One of the three who favor Option III B reasons that this approach strikes the best balance between the need for regulations to protect consumers (who can and should be expected to read advertisements carefully) and the need to avoid infringing on sellers' right to use marketing innovations.

The air carriers and tour operators that favor Option I make the following arguments: Requiring advertised fares to include all costs over which carriers have control but allowing government-imposed charges to be listed separately promotes direct competition on fares; this approach is consistent with the laws of other countries, which makes compliance easier for carriers; this approach has worked well for both consumers and sellers; Option II would create marketing difficulties; Option III B would frustrate true fare competition and make it harder for consumers to calculate the total fare, as would Options III A and IV to an even greater extent; this problem is exacerbated by the inability of the States or the FTC to regulate advertising by air carriers and the Department's lack of resources to monitor carriers' advertisements closely and mount individual challenges whenever carrier-imposed surcharges might appear to run afoul of section 41712. Some of these commenters seek permission to lump government-imposed charges together as one sum. Those that support Option I A argue that having a rule that is not enforced as written is not consistent with principles of good government. Those that support Option I B argue that the policy is already well known to industry practitioners, that keeping it uncodified will allow the Department to address evolving practices as quickly as possible, and that codifying it could retard legitimate marketing developments that exploit evolving technologies.

The carriers that favor Option III A make the following arguments: Once the consumer knows the total price of an itinerary, he or she has all the information necessary for deciding whether to buy or not and for comparing that price with others, and beyond this sellers should be free to configure their advertisements as they see fit; the prospect of enforcement action under section 41712 will deter bait-and-switch tactics; § 399.84 burdens sellers of air transportation unduly, as sellers in other industries with high taxes and government-imposed fees (*e.g.*, hotels and rental-car agencies) are not required to disclose these amounts to the consumer before the sale is made.

The carriers that favor Option III B argue that it strikes the appropriate balance between carriers' wanting maximum flexibility to respond to market forces and consumers' wanting to obtain adequate fare information efficiently.

The carriers that favor Option IV make the following arguments: As a matter of principle, a price-advertising regulation is inappropriate for a deregulated air-transportation industry; § 399.84 and the enforcement policy bar some types of price advertising that are not deceptive and should thus be permitted; the status quo bars carriers from innovation in their fare offerings; the regulation as enforced imposes costs and practical difficulties that outweigh any benefits that detailed tax disclosure might provide; ''bait and switch'' and other modes of deceptive advertising are not likely to follow a removal of the rule because such tactics are contrary to the carriers' best interests, and in any event the Department can contain abusive practices through enforcement action; enforcement action will not become more cumbersome, as the Department must already prove violations on a case-by-case basis; Options III A and IV are functionally identical, as it would be illegal to consummate a sale without first disclosing the full price; the Department essentially rejected Option II over 20 years ago, and nothing in the NPRM suggests that its rationale for doing so has become any less valid; consumers know that advertised prices do not include taxes.

Of the carriers that suggest hybrid approaches, British Airways supports a hybrid of Options I and III, arguing as follows in support of its position: The rise of the Internet has increased consumer sophistication to the point of rendering § 399.84 and the enforcement policy obsolete; some regulation nevertheless remains appropriate due to consumers' long-time expectations, since the existence of a rule curbs even marginal abuses and since uniform standards are superior to the multiplicity of rules that state and local intervention might foster; the Department should therefore require that consumers be informed of all elements of the total price early in the booking process but not specifically on the first screen that states a fare component, and it should drop both the requirements for hyperlinks in banner and popup advertisements and the detailed requirements for television and radio advertisements, as these are not effective.

Aer Lingus argues for an end to treating fare displays on carriers' Web sites as fare advertising, leaving only paid fare advertising in conventional advertising media subject to the rule as currently enforced. At most, it contends, carriers' Web sites should be subject to the equivalent of Option III A.

US Airways Group favors what it calls a modified version of Option III B but is actually closer to Option I A: Continuing the ban on separate listing of carrier-imposed surcharges, permitting carriers to advertise all government-imposed taxes, fees, and surcharges as a single amount or a single range of amounts, and ending the requirement of detailed disclosures in media that by nature are fleeting (such as radio, billboards, jumbo-trons, and movie screens), as in practice these disclosures are unintelligible.

The remaining commenters include three travel agent associations, one travel professional, the National Association of Attorneys General, and the Council of Better Business Bureaus. The two travel agent associations that support Option I A make the following arguments: The status quo works; developments in electronic communication have not eliminated the dangers of misleading and deceptive advertisements; weakening or eliminating the rule would invite abuse and chaos or, at the other extreme, inconsistent regulation by the FTC and one or more States; codifying the enforcement policy will ensure that sellers and consumers alike know what to expect; future changes to the policy should be made via notice-and-comment rulemaking procedures, and enforcement action should only be taken based on changes adopted in this manner; Option II would impose substantial burdens on sellers; Options III A and IV would invite deceptive advertisements, and even Option III B would make it harder for consumers to compare fares.

The third travel agent association, the travel professional, and the National Association of Attorneys General make

the following arguments in support of Option II: Under the status quo, consumers are all too frequently misled as to the total cost of air transportation; most Internet sites do not disclose the total price until the end of the process, making fare comparison difficult for both consumers and travel agents; travel agents bear the costly burden of explaining to frustrated consumers why the actual fare is higher than the fare advertised, which would not be the case if § 399.84 were enforced as written; Options III and IV would exacerbate this burden; even sophisticated travelers complain that fare advertisements mislead them; the harm to consumers from the Department's enforcement policy is increasing as government-imposed charges increase; in principle, the availability of information on the Internet should not lessen the level of protection that consumers receive; Option II would not harm competition among air carriers, as the same government-imposed charges apply to all of them; consumers do not benefit from the omission of government-imposed charges from advertised fares, and in any event, sellers would be free under Option II to disclose them in addition to the total price; Options III and IV should not be adopted because consumers expect advertised fares to include all of the carrier's cost elements; case-by-case enforcement under section 41712 alone would be significantly more costly and time-consuming than enforcement action for violation of § 399.84. Additionally, the National Association of Attorneys General says that were its members not preempted from enforcing their States' consumer-protection laws against air carriers, they would be enforcing a standard equivalent to Option II, as they have done in other industries.

The Council of Better Business Bureaus is the umbrella organization for 130 local Better Business Bureaus in North America and also numbers some 250 U.S.-based corporations among its members. The Council states that its members attempt to ''foster an ethical marketplace that is fair to both consumers and businesses.'' It favors Option I B and makes the following arguments in support of its position: The enforcement policy has worked well for 20 years, protecting consumers from deceptive advertising and promoting price competition; Options III A and IV, which, since the full price must always be disclosed before a purchase is transacted, are functionally equivalent, would invite ''come-on'' ads that grossly understate fares and deceive consumers and garner the advertisers an unfair advantage over their competitors; the Federal Trade Commission considers a representation, omission, or practice concerning a price claim to be deceptive if it is misleading to reasonable consumers under the circumstances, but the Commission is barred from regulating advertising by air carriers, as are the States; the competitive marketplace determines fares, not how they are advertised, and competition requires the free flow of information honestly disclosed by competitors; allowing carriers to advertise fares that exclude some of their own costs would make it harder for carriers with lower costs to compete and for reasonable consumers to compare fare offerings; nothing has changed since the adoption of § 399.84 to make omission of airline-imposed charges and concealment of government-imposed charges less deceptive; Option III B would allow the advertisement of unrealistically low fares that deceive consumers; as a practical matter, weakening or eliminating § 399.84 would leave consumers worse off than if the rule had never been adopted, because the change would be seen as an invitation to do what has long been barred; in the case of Internet advertising, since the consumer must frequently go through multiple pages or screens and sometimes even provide personal information before getting to the page where the purchase is made, a consumer checking prices for purposes of comparison might well stop short of finding the final price; maintaining the status quo would best serve the interests of consumers without unduly burdening advertisers or hampering the Department's enforcement efforts; codifying the exceptions to § 399.84 could significantly hamper enforcement by limiting what might be considered deceptive or unfair; Option II would burden advertisers and could increase both the complexity of advertisements and consumer confusion.

Withdrawal

Having duly considered all comments, we have concluded that the public interest will best be served by our maintaining the status quo—*i.e.*, keeping § 399.84 as it is and allowing the Enforcement Office to exercise its prosecutorial discretion to permit exceptions to the rule as circumstances may warrant (Option I B). We are therefore withdrawing the Notice of Proposed Rulemaking.

We find the reasons for maintaining the status quo to be most compelling. As enforced, § 399.84 protects consumers, facilitates price comparison, fosters fare competition, and affords sellers an appropriate degree of freedom to innovate. We have reviewed the Federal Trade Commission's written policies on pricing activities, including its guidelines for activities on the Internet, and have concluded that our enforcement policy produces approximately the same balance between consumers' and sellers' needs as that which would result if air carriers were subject to the Commission's jurisdiction. It would therefore be poor public policy to weaken or abolish our rule only to have to work our way back to the present equilibrium, case by slow and costly case, via enforcement under section 41712. Moreover, given the Enforcement Office's limited resources, to rely solely on section 41712 for effective fare-advertising enforcement would be unrealistic.

The supporters of Options III A and IV (which, we agree, are functionally equivalent) have not shown compelling reasons for eliminating a rule that has worked well for over 20 years. The argument that sellers in other industries with high taxes and government-imposed fees, such as hotels and rental-car agencies, are not required by Federal regulation to disclose these amounts to the consumer before a sale is made ignores the fact that both the Federal Trade Commission and the States may regulate advertising in these other industries. In fact, as the Council of Better Business Bureaus points out, the Commission has set standards for price advertising similar in kind to our rule and enforcement policy but by means other than adopting regulations. The Commission's Web site offers extensive advertising guidance to businesses; *see http://www.ftc.gov/bcp/guides/guides.htm.* The Council also points out that advertisers in industries other than air transportation face a host of state statutes and regulations. It reports that in 1989, the National Association of Attorneys General adopted enforcement guidelines regarding the application of these laws to car-rental companies, including the following:

> Any surcharge or fee that consumers must generally pay at any location in order to obtain or operate a rental vehicle must be included in the total advertised price of the rental.

The Council suggests that this guideline may account for the trend we have observed among rental-car Web sites, noted in the NPRM, ''to give total prices for rental cars when giving quotes,'' 70 FR at 73964.

Those carriers that assert that under the status quo they are barred from innovating in their fare offerings and

advertising neglected to provide any example of putative innovations. The argument that the regulation as enforced imposes costs and practical difficulties that outweigh the benefits of detailed tax disclosure ignores the fact that the policy does not require that government-imposed fees be listed separately from the fare but merely permits this. The argument that enforcement action under section 41712 alone would not be any more cumbersome than it is now, since the Department must already prove violations on a case-by-case basis, ignores the considerable difference between having to prove only that conduct is prohibited by § 399.84, as interpreted, and having to prove that conduct has violated section 41712, which requires a showing of actual or likely consumer harm. With § 399.84 in place, any act that it prohibits is a per se violation of section 41712. The argument that consumers know that advertised prices do not include taxes ignores the vast difference between the sales tax applicable to most goods and services and the much higher taxes and fees—both absolutely and as a percentage of the base price—applicable to airfares. Aer Lingus does not explain why it believes that listings on carriers' Web sites should not be considered advertisements, nor does it specify how it believes Internet travel agencies' fare displays should be treated.

The supporters of Option III B have also not persuaded us to dilute § 399.84. We agree with the Council of Better Business Bureaus that sellers could advertise deceptively under this option, for example, by falsely implying that a carrier's own surcharges were government-imposed or by failing to meet the Federal Trade Commission's standards for prominence, readability, and clarity. As in the case of Options III A and IV, moreover, enforcement would be far more burdensome than under the status quo.

Similarly, the overwhelming support among individuals for enforcing § 399.84 as written notwithstanding, the comments fail to establish a rationale for undoing over 20 years of permitting exceptions to the rule's strict terms as a matter of enforcement policy. Strict enforcement of § 399.84 would still create marketing difficulties for sellers without necessarily making prices more transparent to consumers. Option II's strong support from consumers does, however, serve to fortify the case against eliminating or diluting the rule and enforcement policy.

We are maintaining the status quo and withdrawing the NPRM rather than codifying the current exceptions to § 399.84 allowed by the Enforcement Office. We do not think that codification is necessary to make the enforcement policy transparent and available. As we observed in the NPRM, sellers and lawyers practicing in this industry are already familiar with the policy and both consumers and newcomers to the industry can find the details of the policy on the Department's Web site at *http://airconsumer.ost.dot.gov/rules/guidance.htm.* 70 FR at 73963. As we also observed in the NPRM, given that enforcement is by nature discretionary, by not codifying the exceptions to § 399.84, we are retaining the flexibility within the Enforcement Office to continue refining its enforcement policy without the delays and costs that rulemaking would entail, *id.*

Two clarifications are in order. First, several commenters argue for leeway to lump all of the government fees and charges that may be broken out from the fare together as one sum rather than being required to list them individually. In practice, except for *ad valorem* taxes and the September 11th Security Fee, which under the Department of Homeland Security's regulations must be disclosed separately, the Enforcement Office already allows this. Second, several commenters argue that the requirements for disclosure of government-imposed charges in billboard, television, and radio advertisements should be dropped because as a practical matter these disclosures are invariably unintelligible. The fact remains, however, that failure to disclose these charges effectively renders an advertisement deceptive. Sellers always have the option of including these charges in the fares advertised (using a range of prices or using the word ''from'' with the minimum price if need be).

Accordingly, for the reasons set forth above, we are withdrawing the NPRM.

Issued this day of September 18, 2006, at Washington, DC, under authority delegated by 49 CFR 1.56a.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 06–8041 Filed 9–21–06; 8:45 am]

BILLING CODE 4910–9X–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0210; FRL–8220–6]

Approval and Promulgation of State Implementation Plans; Utah; Revised Definitions of Volatile Organic Compounds and Clearing Index; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on November 11 and November 23, 2005. The revisions are to the Utah Administrative Code (UAC) rule R307–101–2 and (1) incorporate by reference the Federal definition of ''Volatile Organic Compounds'' (VOC), and (2) update the definition of ''Clearing Index''. The intended effect of this action is to make federally enforceable those provisions that EPA is approving. This action is being taken under section 110 of the Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before October 23, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0210, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.