

accordance with, EASA AD 2021–0236, dated October 29, 2021 (EASA AD 2021–0236).

(h) Exceptions to EASA AD 2021–0236

(1) Where EASA AD 2021–0236 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2021–0236 specifies to do a detailed visual inspection, replace the text “the instructions of the AOT” with “paragraphs 4.2.2.2 and 4.2.2.5 of the AOT.”

(3) Where paragraph (2) of EASA AD 2021–0236 specifies to do an magnetic particle inspection (MPI) and a Barkhausen noise inspection (BNI), replace the text “the instructions of the AOT” with “paragraphs 4.2.2.3 and 4.2.2.6 of the AOT.”

(4) Where paragraph (3) of EASA AD 2021–0236 specifies that “if discrepancies are detected on an affected part” for this AD discrepancies include cracking and heat damage.

(5) Where the service information referenced in EASA AD 2021–0236 specifies to quarantine parts, this AD does not require that action.

(6) The “Remarks” section of EASA AD 2021–0236 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0236 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

For more information about this AD, contact Manuel Hernandez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone

562–627–5256; email Manuel.F.Hernandez@faa.gov.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2021–0236, dated October 29, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0236, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov, or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued on October 3, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT–OST–2022–0109]

RIN 2105–AF10

Enhancing Transparency of Airline Ancillary Service Fees

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department proposes to require U.S. air carriers, foreign air carriers, and ticket agents to clearly disclose passenger-specific or itinerary-specific baggage fees, change fees, and cancellation fees to consumers whenever fare and schedule information is provided to consumers for flights to, within, and from the United States. The Department also proposes to require these entities to clearly disclose passenger-specific or itinerary-specific

fees for adjacent seating whenever fare and schedule information is provided to consumers traveling with young children on flights to, within, and from the United States, and make these fees transactable. The Department further proposes to require that carriers provide useable, current, and accurate information regarding baggage fees, change fees, cancellation fees, and adjacent seating fees if any to ticket agents that sell or display the carrier's fare and schedule information. This rulemaking implements the Executive order on Promoting Competition in the American Economy, which directs the Department to take various actions to promote the interests of American workers, businesses, and consumers, including considering initiating a rulemaking to ensure that consumers have ancillary fee information at the time of ticket purchase.

DATES: Comments should be filed by December 19, 2022. Late-filed comments will be considered to the extent practicable. Petitions for a hearing pursuant to 14 CFR 399.75(b)(1) must also be filed by December 19, 2022.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2022–0109 by any of the following methods:

- *Federal eRulemaking Portal:* go to <https://www.regulations.gov> and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Commenters using this method of delivery should contact Docket Services at 202–366–9826 or 202–366–9317 before delivery to ensure staff is available to receive the delivery.

- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2022–0109 or the Regulation Identifier Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents and comments received, go to <https://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Ryan Patanaphan, Senior Trial Attorney or Blane A. Workie, Assistant General Counsel, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202-366-9342, 202-366-7152 (fax), ryan.patanaphan@dot.gov or blane.workie@dot.gov (email).

SUPPLEMENTARY INFORMATION:

A. Background

In 2014, the Department issued a notice of proposed rulemaking (NPRM) titled "Transparency of Airline Ancillary Service Fees and Other Consumer Protection Issues." 79 FR 29970 (May 23, 2014). In the 2014 NPRM, the Department proposed to enhance consumer protections through various means, including the disclosure of certain airline ancillary service fees. In 2017, noting the significant comments received regarding the proposal on ancillary service fees in the 2014 NPRM, the Department issued a supplemental notice of proposed rulemaking (SNPRM) titled "Transparency of Airline Ancillary Service Fees." 82 FR 7536 (Jan. 19, 2017).

In the 2017 SNPRM, the Department proposed to require fees for a first and second checked bag and a carry-on bag be disclosed at all points of sale wherever fare and schedule information is provided to consumers. The Department further proposed that carriers¹ distribute useable, current, and accurate fee information to ticket agents that receive and distribute the carrier's fare and schedule information, including Global Distribution Systems (GDS). The Department also proposed that the information provided by carriers be detailed enough to allow ticket agents to disclose fees as itinerary-specific or customer-specific (*i.e.*, fees that are differentiated based on factors specific to the passenger or proposed itinerary) charges. However, the SNPRM did not propose to require that consumers be able to purchase

these ancillary services through ticket agents (*i.e.*, did not propose transactability).

The Department withdrew the SNPRM on December 14, 2017. In the notice of withdrawal of proposed rulemaking, 82 FR 58778 (Dec. 14, 2017), the Department stated that its existing requirements provide consumers information regarding fees for ancillary services and noted that the withdrawal was consistent with Executive Order (E.O.) 13771, "Reducing Regulation and Controlling Regulatory Costs," which has since been revoked.²

On July 9, 2021, the President issued E.O. 14036, "Promoting Competition in the American Economy," which launched a whole-of-government approach to strengthen competition. E.O. 14036 includes 72 initiatives by more than a dozen Federal agencies to promptly tackle some of the most pressing competition problems across our economy. It directed the Department to take various actions to foster competition and promote the interests of American workers, businesses, and consumers. Specifically, section 5, paragraph(m)(i)(F) of E.O. 14036 states that "[t]he Secretary of Transportation shall: . . . not later than 90 days after the date of this order, consider initiating a rulemaking to ensure that consumers have ancillary fee information, including "baggage fees," "change fees," and "cancellation fees," at the time of ticket purchase." This rulemaking implements section 5, paragraph(m)(i)(F) of E.O. 14036.³

B. Need for a Rulemaking

The Department regularly receives input from stakeholder groups, including airlines and consumer advocacy groups, regarding air transportation-related concerns. Consumer advocates have consistently stated to the Department that there is a market failure in air transportation pricing because consumers are unable to

determine the true cost of air travel prior to ticket purchase. They have also raised concerns about the lack of competition in the industry. The Department's full fare rule in 14 CFR 399.84 is designed to ensure the price stated is the entire price required to be paid by the consumer for air transportation. In the context of the full fare rule, air transportation is the transport of the passenger on an aircraft from one location to another location and includes all charges the passenger must pay for this service. The existing regulation does not require that the full fare quoted include the many kinds of ancillary fees consumers may pay for optional services. Consumer advocates have asserted that a lack of passenger specific information regarding fees for ancillary services at the time of ticket purchase is causing a market failure by limiting the ability of consumers to understand the true cost of the travel that they are looking to purchase and to compare pricing between carriers and travel options. Many services or products traditionally included in the price of an airline ticket such as checked baggage and meals are now sold separately. Ancillary service means any optional service related to air travel provided by a carrier, for a fee, beyond passenger air transportation. Such service includes, but is not limited to, checked or carry-on baggage, ticket change and cancellation, advance seat selection, access to in-flight entertainment program, and in-flight beverages, snacks, or meals.

Certain members of Congress and State governments representing constituents have expressed support for full, more specific, disclosure of ancillary service fees. Certain members of Congress have also sponsored legislation on this topic.⁴ Further, the

⁴ See, *e.g.*, Letter from Representative Nita M. Lowey to Secretary Elaine Chao (Dec. 8, 2017) and Letter from Pennsylvania Attorney General Josh Shapiro and attorneys general from 15 other states and the District of Columbia to Secretary Elaine L. Chao (Dec. 20, 2017). See also section 203 of S. 3222, Airline Passengers' Bill of Rights (introduced by Senators Blumenthal, Markey, Whitehouse, Wyden, and Casey on November 17, 2021) at <https://www.congress.gov/bill/117th-congress/senate-bill/3222/text?r=7&s=1>, proposing to mandate that DOT require airlines, online travel agencies (OTAs), metasearch engines and other ticket agents that provide flight search tools disclose all applicable taxes and ancillary fees at any point in which the fare is shown and in telephone communication with a prospective consumer in the U.S. at any point in which the cost of the air transportation is disclosed. See also The Unfriendly Skies: Consumer Confusion Over Airline Fees, Staff Report of Minority Staff of Senate Commerce Committee (August 6, 2015) at <https://www.blumenthal.senate.gov/imo/media/doc/8%206%2015%20FINAL%20Airline%20Report.pdf>, finding that ancillary fees, such as

¹ The Department uses the term "carrier" or "airline" to refer to air carriers and foreign air carriers, as such terms are defined in 49 U.S.C. 40102(a)(2) and (a)(21).

² President Biden issued E.O. 13992, "Revocation of Certain Executive Orders Concerning Federal Regulation," on January 20, 2021, which revoked E.O. 13771 and certain other Executive orders.

³ This rulemaking also addresses section 5, paragraph (m)(i)(B) of E.O. 14036. That section directed the Department to promote enhanced transparency and consumer safeguards, as appropriate and consistent with applicable law, including through potential rulemaking, enforcement actions, or guidance documents, with the aims of enhancing consumer access to airline flight information so that consumers can more easily find a broader set of available flights, including by new or lesser known airlines; and ensuring that consumers are not exposed or subject to advertising, marketing, pricing, and charging of ancillary fees that may constitute an unfair or deceptive practice or an unfair method of competition.

Joint Explanatory Statement of the 2018 Consolidated Appropriations Act requested that the Department work in collaboration with industry, consumers and other stakeholders to establish guidelines on transparency of airline ancillary fees.⁵ Subsequently, the Department tasked the Aviation Consumer Protection Advisory Committee (ACPAC) with examining this issue.⁶ The ACPAC heard from several consumer advocacy groups, including Travelers United, the National Consumers League, and the Global Business Travel Association regarding this issue. Consumer organizations that presented to the ACPAC stressed the importance of ensuring consumers can accurately and easily compare travel costs, inclusive of ancillary fees, and they recommended that ancillary fee information should be clearly displayed early in consumer purchase decisions.⁷ The 2020 ACPAC recommended that the Department should remain vigilant to ensure compliance with the transparency requirements that currently exist.⁸ Prior DOT advisory committees have also addressed the issue of ancillary service fee transparency. In 2010, the Future of Aviation Advisory Committee advised generally that DOT “should ensure transparency in air carrier pricing, including ancillary fees.”⁹ In 2012, the Advisory Committee on Aviation Consumer Protection adopted this recommendation and added that all participants in the airfare and fee distribution system should be guided by principles of transparency, providing choices and offers that meet consumer needs, and knowing the full price before purchase.¹⁰ Then in 2015, the Advisory Committee on Aviation Consumer

change and cancellation penalties, are increasingly less transparent regarding the true cost of air travel and recommending more transparency from the airline industry.

⁵ <https://www.congress.gov/congressional-record/2018/03/22/house-section/article/H2697-1> at page H2872.

⁶ See <https://www.regulations.gov/document/DOT-OST-2018-0190-0001>.

⁷ See Summary of April 4, 2019 ACPAC Meeting 10–16, available at <https://www.regulations.gov/document/DOT-OST-2018-0190-0019>; see also Summary of September 24, 2020 ACPAC Meeting 19–20, available at <https://www.regulations.gov/document/DOT-OST-2018-0190-0025>.

⁸ Report of the Aviation Consumer Protection Advisory Committee 5 (Dec. 31, 2020), available at <https://www.transportation.gov/individuals/aviation-consumer-protection/acpac-report-secretary-transportation-december-31-2020>.

⁹ The Future of Aviation Advisory Committee, Final Report 36 (Apr. 11, 2011), available at <https://www.transportation.gov/highlights/future-aviation-advisory-committee/faac-final-report>.

¹⁰ Report of the Advisory Committee on Aviation Consumer Protection 7–8 (Oct. 22, 2012), available at <https://www.transportation.gov/airconsumer/ACACP/1st-ACACP-Report-22OCT2012>.

Protection recommended that DOT require change/cancellation fees be clear and displayed before ticket purchase.¹¹ Consumer advocates had asserted that such fees had become significant and difficult to ascertain.¹²

Most recently, in June 2022, the ACPAC again addressed the issue of transparency of airline ancillary service fees.¹³ During the meeting, DOT solicited comment on the key topics of this NPRM (namely, which ancillary service fees are critical for consumers, airlines sharing data regarding critical ancillary service fees with ticket agents, and how to best display this information to consumers). DOT also solicited comment on whether fees for certain ancillary services should be disclosed at the first point in a search process where a fare is listed.

Consumer advocates expressed the view that because most passengers travel once per year or less, they may not be aware of certain ancillary service fees, such as those related to seat selection.¹⁴ Advocates also argued that the practice of “drip pricing,” in which sellers advertise a portion of the full price and then reveal additional charges over time tends to lock consumers into engaging with a given seller, and reduces competition, because the customer has invested time and energy into the purchasing process and thus is less likely to abandon the purchase entirely and re-institute a fuller search for options.¹⁵

¹¹ Record of Meeting, Ninth Meeting of the Advisory Committee on Aviation Consumer Protection 3 (Sept. 1, 2015), available at <https://www.transportation.gov/airconsumer/ACACP/9th-meeting-Sept-1/record>.

¹² See Record of Meeting, Eighth Meeting of the Advisory Committee on Aviation Consumer Protection 3–5 (June 23, 2015), available at <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/285976/acpac-record-8th-meeting-23june2015.pdf>; see also Record of Meeting, Ninth Meeting of the Advisory Committee on Aviation Consumer Protection (Sept. 1, 2015).

¹³ See <https://www.transportation.gov/airconsumer/ACACP/June2022Meeting>. A webcast of the meeting is available to view on the ACPAC website. Speakers’ materials have been posted to the ACPAC docket at www.regulations.gov; docket DOT-OST-2018-0190. On the second day of the meeting, the ACPAC addressed the separate but related issue of availability of airline flight information.

¹⁴ Presentation of FlyersRights, available at <https://www.regulations.gov/document/DOT-OST-2018-0190-0046>.

¹⁵ Id.; see also Presentation of American Antitrust Institute, available at <https://www.transportation.gov/airconsumer/ACACP/June2022Meeting/webcast> (Day 1 morning session), and Federal Trade Commission, ECONOMIC ANALYSIS OF HOTEL RESORT FEES, (Jan. 2017), available at https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf.

This NPRM builds on the Department’s final rule in 2011 regarding the disclosure of ancillary service fees by carriers and ticket agents. 76 FR 23110 (April 25, 2011). The 2011 final rule requires carriers to list on their website all ancillary service fees on a page that is directly linked from their main websites. The Department allows carriers to display the fees for ancillary services in a range, except for baggage information. For baggage, the Department requires that carriers provide specific baggage fee information to enable the consumer to determine the cost of the baggage. In addition, carriers and ticket agents are required to disclose, upon displaying the result of an itinerary search, that baggage fees may apply and refer the consumer to the location on the airlines’ or ticket agents’ website where the consumer can review baggage fee information to determine the fees that would apply to him or her. While the Department considers the disclosure requirements in its 2011 final rule to be a step in the right direction, based on feedback from consumer advocacy groups and others since publication of the 2011 final rule, DOT has determined that these requirements were insufficient and did not fully provide transparency of ancillary services and products.

Since the issuance of the 2011 final rule, consumer advocacy organizations have regularly reported to the Department that consumers often find the process of determining the baggage fees that apply to them to be a complicated and time-consuming process. In 2019, during a meeting of the Aviation Consumer Protection Advisory Committee, two consumer organizations underscored the difficulties faced by consumers in determining the total cost of air travel.¹⁶ Consumer advocates maintain that consumers are confused by the complex charts that carriers and ticket agents provide to consumers to determine their baggage fees. In September 2017, the Government Accountability Office (GAO) noted that consumer group representatives stated that it has become “increasingly difficult for consumers to compare airfare ticket prices, fees, and associated rules, and understand what is included in their purchases.”¹⁷ In December 2017, after the Department withdrew its January 2017 SNPRM on transparency of airline ancillary fees, a coalition of 16

¹⁶ See Summary of April 4, 2019 ACPAC Meeting 11–13, available at <https://www.regulations.gov/document/DOT-OST-2018-0190-0019>.

¹⁷ GAO 17–756, Commercial Aviation: Information on Airline Fees for Optional Services (September 2017), p. 33 at <https://www.gao.gov/assets/gao-17-756.pdf>.

States' attorney generals urged the Department to reverse its decision, stating that they "regularly hear reports from consumers in [their] states who are confused and frustrated by these fees, which significantly alter the total cost of travel."¹⁸ The Department also receives consumer complaints that reflect the confusion consumers experience regarding fees for baggage. Further, consumer advocates contend that the ancillary services and fees that airlines post on their websites are not useful to consumers to determine the cost of travel because airlines generally provide a range of fees for ancillary services aside from baggage. Airlines acknowledge that the fees for ancillary services often vary based on various factors such as the type of aircraft used, the flight on which a passenger is booked, or the time at which a passenger pays for the service or product. The requirements to provide specific baggage fee information and a range of fees for other ancillary services have not been as helpful to consumers in determining the true cost of travel as the Department had anticipated when issuing its final rule in 2011.

The Department receives hundreds of consumer complaints each year regarding change fees, cancellation fees,¹⁹ and seating fees.²⁰ The complaints regarding seating fees have included complaints from consumers who state that they were not provided seats next to their young child on a flight. Congress instructed the Department to review airline seating policies and consider establishing a policy directing airlines to have policies to enable children who are 13 years of age or younger to sit with a family member over the age of 13 at no additional cost.²¹ In July 2022, the Department issued a "Notice Encouraging U.S. Airlines to Have Policies That Enable Children to Be Seated Adjacent to an Accompanying

Adult to the Maximum Extent Practicable and at No Additional Cost."²² In the notice, the Department provides that airlines should do everything that they can to ensure the ability of parents to sit next to their young children, including allowing every young child to sit next to a parent without charging fees for adjacent seating. It is also worth noting that consumer comments in the 2014 NPRM strongly supported Department action on disclosure of ancillary service fees.²³

Based on a review of consumer complaints, comments received in the 2014 NPRM, feedback received from consumer advocacy organizations, and the work of various advisory committees, the Department believes that many consumers continue to be unsatisfied with the level of disclosures they receive regarding ancillary service fees. The Department believes, based on a review of consumer complaints and discussions at past advisory committee meetings, that the current disclosure requirements are not sufficient. It is difficult for consumers to determine the best and most cost-effective flights when fee information for essential services such as ticket changes or cancellations, family seating, or baggage is not readily available. There is a need for a rulemaking on transparency of airline ancillary fees to address difficulties that consumers have in finding ancillary service fee information, which limits consumers' ability to determine the true cost of travel and to adequately compare airline pricing. In issuing this rulemaking, the Department intends to protect consumers from hidden and deceptive fees and enable them to determine the true cost of travel in an effective and efficient manner when they price shop for air transportation.

C. Statutory Authority

The Department is issuing this rulemaking pursuant to its statutory authority in 49 U.S.C. 41712 to prohibit unfair and deceptive practices in air transportation and the sale of air transportation. A practice is "unfair" to consumers if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is

not outweighed by benefits to consumers or competition.²⁴ A practice is "deceptive" to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter. A matter is material if it is likely to have affected the consumer's conduct or decision with respect to a product or service.²⁵ Proof of intent is not necessary to establish unfairness or deception.²⁶ The elements of unfair and deceptive is further elaborated by the Department in its guidance document.²⁷

Pursuant to its authority under section 41712, the Department proposes to require that airlines and ticket agents disclose bag fees for a first and second checked bag and a carry-on bag, family seating fees for a young child traveling with an adult, as well as change and cancellation fees and policies whenever fare and schedule information is provided to a consumer in response to a passenger-specific or anonymous itinerary search on a website marketed to U.S. consumers where air transportation is advertised or sold. This includes, but is not limited to, the first place a fare is stated in search results. The Department's tentative basis for concluding that the practices this NPRM would prohibit are unfair and deceptive is articulated in the paragraphs that follow.

Bag Fees

The Department tentatively considers not displaying bag fees, which have historically been included in the airfare (*i.e.*, fee for first and second checked bag and carry-on bag) but are now often broken out from the airfare, in a passenger-specific manner whenever fare and schedule information is provided to be an unfair practice because it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.

The substantial injury this practice is likely to cause is the additional time spent searching to find the total cost of travel and any additional funds spent on air transportation that might have been avoided if the consumer had been able to determine the true cost of travel up front and readily select the best price. This harm is not reasonably avoidable even with the disclosures mandated in the 2011 final rule that improved consumer access to first and second checked bag and carry-on bag fee

¹⁸ Letter from Pennsylvania Attorney General Josh Shapiro and attorneys general from 15 other states and the District of Columbia to Secretary Elaine L. Chao (Dec. 20, 2017).

¹⁹ The Department's Office of Aviation Consumer Protection (OACP) received over 550 complaints regarding change and cancellation fees in 2021. The Department has not determined what share of these complaints are from individuals who were unaware of the fees or unable to find information on the fees and what share was from individuals who generally did not like having to pay a fee.

²⁰ OACP received over 140 complaints regarding seat fees in 2021. The Department has not determined what share of these complaints are from individuals who were unaware of the fees or unable to find information on the fees and what share was from individuals who generally did not like having to pay a fee.

²¹ See 49 U.S.C. 42301 note prec. (Section 2309 of the FAA Extension, Safety, and Security Act of 2016, Public Law 114-190 (July 15, 2016)).

²² See <https://www.transportation.gov/individuals/aviation-consumer-protection/family-seating/June-2022-notice>.

²³ See comments submitted in the 79 FR 29970 (May 23, 2014). The docket for the 2014 NPRM, which can be accessed at <https://www.regulations.gov/search?filter=DOT-OST-2014-0056>. See also 82 FR 7536, 7537 (Jan. 19, 2017) describing comments received in 2014 NPRM as "Over 450 consumers clearly supported additional requirements relating to disclosure of ancillary service fees while fewer than ten commented in opposition to additional disclosure requirements."

²⁴ 14 CFR 399.79(b)(1).

²⁵ 14 CFR 399.79(b)(2).

²⁶ 14 CFR 399.79(c).

²⁷ 87 FR 52677 (August 28, 2022).

information by requiring those fees to be displayed on airlines' and ticket agents' websites. Airlines and ticket agents continue to disclose bag fees in a static format in complex charts that are confusing to consumers and that are not readily available at the moment consumers need the information to comparison shop. Further, in connection with complex itineraries, interline tickets, and even some code-share flights, consumers are still reporting confusion regarding the total cost of baggage fees. The harm that consumers experience is not outweighed by benefits to consumers or competition because consumer confusion about applicable bag fees harms, rather than benefits, competition. The Department believes that the disclosure of passenger-specific fees whenever fare and schedule information is provided would promote informed buyers, enhance competition, and lower prices.

The practice of not displaying passenger-specific fees for first and second checked bags and carry-on bags when fare and schedule information is provided is also deceptive in that it misleads consumers into believing the total purchase price from one carrier or ticket agent is cheaper than that of another when that may not be the case. This belief is reasonable as carriers and agents often display only the air fare and not these bag fees during an itinerary search. As carriers have different policies regarding the fees and limitations imposed to transport baggage, and because variation within each carrier depends on the fare category purchased or the status of the passenger, the current requirement that carriers and ticket agents provide a generic notice that "fees for baggage may apply" during the booking process is not providing consumers sufficient notice of the total cost of the air transportation. In addition, although carriers and ticket agents are required to inform consumers during the booking process about where consumers can see baggage fees, consumers are often diverted to complex charts that are confusing, prolong the consumer's process of evaluating itineraries and fares for purchase, and may ultimately not be instructive for many consumers in determining the bag fee that would apply to them. The cost of the first and second checked bag and carry-on bag is often material to consumers, as knowing such costs in conjunction with the ticket price is likely to affect the consumer's purchase decisions. According to the GAO, since airlines first imposed checked baggage fees, the number of

checked bags per passenger has declined. GAO also explains that checked baggage fees have led to greater amounts of carry-on baggage.²⁸

Change and Cancellation Fees and Policies

The Department tentatively considers the practice of not clearly disclosing passenger-specific change and cancellation fees and policies during the ticket purchase process to be an unfair practice because it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.

The Department currently requires the disclosure of these fees on or with the ticket.²⁹ However, this requirement means that consumers often receive information about these fees after the purchase of the ticket is already made (*i.e.*, upon receipt of the ticket confirmation), which is not sufficient disclosure. The practice of not disclosing these fees early in the process and prior to ticket purchases causes substantial injury to consumers in that passengers may purchase tickets without adequate notice that they could incur significant fees to change or cancel their tickets, that they are not entitled to a refund in the original form of payment if they do cancel, or that there are other restrictions on their ability to change or cancel their tickets. These harms are not reasonably avoidable if the carrier or ticket agent does not provide disclosures on their cancellation or change policies during booking. Carriers may have separate web pages that contain such policy and fee information, but this information may be in a range, so consumers may not know the specific change or cancellation fee that would apply to them. Moreover, even if not in a range, change and cancellation policies and fees may not be simple to understand, as fare categories, passenger status, ticket type (*e.g.*, award ticket purchases), and other factors may impact the applicable change and cancellation fees and policies. Further, because the cancellation and change fee information is not provided during the booking process, consumers would need to interrupt their booking process to search for the information and extend the time needed to complete a booking. The harm that consumers experience is

not outweighed by benefits to consumers or competition because, like baggage fees, consumer surprise or confusion about applicable change and cancellation fees after airfare purchase harms, rather than benefits, competition. The Department believes that the disclosure of passenger-specific or non-passenger-specific change and cancellation fees whenever fare and schedule information is provided would promote informed buyers, enhance competition, and lower prices.

The Department also tentatively considers the practice of not displaying change and cancellation fees when fare and schedule information is provided to be deceptive. Without proper notice, consumers acting reasonably would be misled with respect to the change and cancellation policies that apply to their ticket and may believe that change or cancellations are possible at no fee or at a reduced fee. The Department has received complaints from consumers expressing surprise at the high level of the fees that have been imposed, in some cases, cancellation or change fees are higher than the fare paid by the consumer. Comments in a prior DOT rulemaking on ancillary fees also support the importance of disclosure of change and cancellation fees to consumers.³⁰ The change and cancellation fees are therefore material because they could affect the consumer's decision on whether to purchase an airline ticket and if so, which airline to select. As such, the Department is of the tentative view that not displaying change and cancellation fees when fare and schedule information is provided is deceptive.

Family Seating Policies and Fees

For similar reasons, the Department tentatively considers the lack of fee disclosure for adjacent seating when fare and schedule information is provided and restrictions on purchasing those seats at all point of sale to be an unfair practice for those traveling with a young child. This lack of disclosure and transactability of family seating information causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.

The practice causes substantial harm to consumers in that passengers may face situations in which they are unexpectedly separated from their children on flights or must pay

²⁸ GAO 10-785, Commercial Aviation: Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government-Imposed Taxes and Fees (July 14, 2010) at <https://www.gao.gov/assets/gao-10-785.pdf>.

²⁹ See 14 CFR 253.7.

³⁰ See comments submitted in the docket for the 2014 NPRM, which can be accessed at <https://www.regulations.gov/search?filter=DOT-OST-2014-0056>.

unexpected fees to remain with their children. Also, despite information about carrier family seating policies being available on airlines' websites, the harm is not reasonably avoidable because a reasonable consumer would not believe that it is necessary to pay fees to be seated next to his or her young child and would not know to search for this information on an airline's website before purchasing the ticket. Even if the family seating fee is disclosed when fare and schedule information is provided that alone would not be sufficient. Transactability is necessary because consumers are not able to save the seat or lock in the price for adjacent seating at the time of ticket purchase.

The number of family seating complaints that the Department receives against airlines is low³¹ but these consumers note being confused about the seating policies and fees that apply to them and the harm that they face is significant. A substantial harm may be demonstrated by a large amount of harm to a small number of people.³² The likelihood of consumers being unexpectedly separated from their children on flight may increase when consumers purchase their tickets from a ticket agent without realizing that the fare category (e.g., basic economy) or the method of booking (e.g., the ticket agent arranged for separate bookings for each family member) selected did not adequately enable them to ensure adjacent seats. The need to consult a separate web page during the booking process also presents the potential for increased confusion and a prolonging of the ticket purchase process. The

³¹ In calendar year 2017, .38% of complaints (44 complaints) filed with the Department by consumers against U.S. airlines concerned family seating. In calendar year 2018, .51% of air travel service complaints (46 complaints) against U.S. airlines concerned family seating. In calendar year 2019, 2.4% of air travel service complaints (230 family seating complaints) against U.S. airlines concerned family seating. This increase corresponded with the efforts of a consumer advocacy group to encourage air travelers to file complaints with the Department if they were dissatisfied with an experience related to family seating. Fewer than .5% of the air travel service complaints against U.S. airlines filed with the Department in calendar years 2020 and 2021 concerned family seating—.46% of complaints (165 family seating complaints) in calendar year 2020 and .46% of complaints (94 family seating complaints) in calendar year 2021.

³² The Federal Trade Commission (FTC) previously noted that "it is well established that substantial injury may be demonstrated by a showing of a small amount of harm to a large number of people, as well as a large amount of harm to a small number of people." See Opinion of the Commission, *In the Matter of LabMD, Inc.* (July 19, 2016) at 9 available at <https://www.ftc.gov/system/files/documents/cases/160729labmd-opinion.pdf> ("LabMD"). The Department's statutory authority to prohibit unfair practices was modeled on section 5 of the FTC Act.

Department looks at this element from the perspective of an ordinary consumer acting reasonably under the totality of the circumstances. Further, DOT concludes that the harm is not outweighed by benefits to consumers or competition. The Department believes that the disclosure of the family seating fees when fare and schedule information is provided and the ability to purchase those seats at all points of sale would promote informed buyers, enhance competition, and lower prices.

The Department also tentatively considers failing to disclose potential family seating fees when fare and schedule information is provided to be a deceptive practice.³³ The lack of such fee information is likely to mislead consumers into believing that families will be able to be seated next to their children free of charge. It would also be a deceptive practice to disclose the family seating fees but then not allow consumers to purchase those adjacent seats at all points of sale. The inability to purchase those seats immediately could mislead consumers as prices for seats are often dynamic and change based on availability and time of purchase. As evidenced by the consumer complaints the Department has received on this issue, the Department concludes that consumers have a reasonable belief that young children will be allocated a seat near a parent or guardian traveling with the child, and that the cost of ensuring adjacent seats with a child is material to consumers.

49 U.S.C. 40101(a)(4)

In carrying out aviation economic programs, including issuing this rulemaking under 49 U.S.C. 41712, the Department considers the factors identified in 49 U.S.C. 40101 as being in the public interest and consistent with public convenience and necessity. Under 49 U.S.C. 40101(a)(4), the Department is required to consider the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices as being in the public interest. The Department is also required by section 40101(a)(12) to consider as being in the public interest encouraging, developing, and maintaining an air transportation system relying on actual and potential competition to provide

³³ "Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading." See FTC 1983 Policy Statement on Deception, available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

efficiency, innovation, and low prices. This rulemaking proposes to improve the transparency of airline pricing through the increased disclosure of bag fees, change and cancellation fees, and family seating policies during the ticket purchase process. As carriers vary on their policies for such fees and such information is often not provided during the purchase process, consumers of air transportation may have difficulty comparing the actual and potential costs of accessing the air transportation between different carriers. By improving this transparency, this rulemaking would allow for better comparisons of airline ticket pricing, of which these fees are often a critical component, thereby encouraging price competition.

D. Unfair or Deceptive Practice Request for a Hearing

For the reasons discussed in the Statutory Authority section, the Department has tentatively concluded that the practice of not displaying applicable fees for first and second checked bags and carry-on bags during the ticket purchase process is both unfair and deceptive. For the reasons discussed in the Statutory Authority section, the Department has also tentatively concluded that the lack of disclosure regarding ticket change and cancellation fees and policies and family seating information during the ticket purchase process presents an unfair and deceptive practice.

Pursuant to the Department's regulation at 14 CFR 399.75(b)(1), any interested party may file a petition to hold a hearing on the proposed rule prior to the close of the comment period. As stated in the DATES section, petitions must therefore be received by December 19, 2022.

The Department's regulations 14 CFR 399.75(b)(2) provide that the Department will grant a petition if the petitioner makes a clear and convincing showing that granting the petition is in the public interest. Factors considered in determining whether a petition is in the public interest include: (1) Whether the proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act; (2) whether the ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; (3) whether the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; (4) whether the requested hearing would advance the

consideration of the proposed rule and the General Counsel’s ability to make the rulemaking determinations required by § 399.75; and (5) whether the hearing would unreasonably delay completion of the rulemaking. DOT must also

provide an explanation of the basis for the decision on a petition. (14 CFR 399.75(b)(3))

Summary of the Proposed Regulatory Provisions
 The Department is proposing to increase the protections provided to consumers as provided in the summary table below.

Subject	Proposal
Covered entities	The NPRM applies to: (1) U.S. air carriers; (2) foreign air carriers; (3) ticket agents that sell airline tickets, whether traditional brick-and-mortar travel agencies, corporate travel agents, or online travel agencies; and (4) metasearch sites that do not sell airline tickets but display airline flight search options directly to consumers.
Airline Ancillary Service Fees Critical to Consumer Decision.	The ancillary services that the Department has identified as being critical to consumers when they choose among air transportation options are as follows: first and second checked bag, one carry-on bag, changing or canceling a reservation, and adjacent seating when traveling with a young child.
Disclosure of Baggage Fees	The Department is proposing to require carriers and ticket agents to disclose fees for a first and second checked bag and a carry-on bag during the booking process when fare and schedule information is provided (typically first page of search results).
Disclosure of Change and Cancellation Fees and Policies.	The Department is proposing to require carriers and ticket agents to disclose change and cancellation fees and policies to consumers during the booking process when fare and schedule information is provided (typically first page of search results).
Disclosure of Family Seating Fees and Policies	The Department is proposing to require carriers and ticket agents to disclose the seat fees applicable for passengers 13 or under to be seated next to an accompanying adult in the same class of service during the booking process when fare and schedule information is provided (typically first page of search results).
Timing of Online Disclosures	The Department proposes to require that first and second checked bag fee, the carry-on bag fee, the change and cancellation fee and the family seating fee be disclosed at the first point in a search process where a fare is listed in connection with a specific flight itinerary.
Passenger-specific information	The Department is proposing that the fee information disclosed to a consumer for critical ancillary services be expressed as passenger-specific information if a consumer conducts a passenger-specific itinerary search. <ul style="list-style-type: none"> • A passenger-specific itinerary search refers to a search that takes into account a characteristic of the passenger that may impact ancillary service fees to be charged (e.g., military status, frequent flyer status, method of payment, etc.) • An anonymous itinerary search refers to a search that does not take into account passenger characteristics that may have an impact on ancillary service fees to be charged.
Web site and Mobile Displays	The Department is proposing to require that the fees for ancillary services that are critical to a consumer’s purchasing decision be disclosed to consumers using airlines’ or ticket agent’s websites and mobile web sites.
In-Person or Telephone Disclosures of Airline Ancillary Service Fees.	The Department is proposing to require that specific fee information for a first and second check bag, one carry-on item, the canceling or changing of a reservation, and a passenger 13 or under to obtain a seat next to an accompanying adult be provided for each itinerary for which a fare is quoted to a consumer during an in-person or telephone inquiry.
Sharing of Airline Ancillary Service Fee Information with Ticket Agents.	Airlines would be required to distribute fee information for critical ancillary services to ticket agents that sell or display the airlines’ fare and schedule information. The proposal specifies that the information provided to agents be usable, accurate and accessible in real-time.
Prohibition on Fee if Required Disclosure is Not Provided.	Collecting a fee from consumers for critical ancillary services without disclosure of this fee during the search process would be deemed an unfair and deceptive practice.
Transactability	The Department is proposing that carriers and ticket agents enable family seating fees to be transactable at all points of sale.
Compliance/Implementation Period	Six-month implementation period to display a first and second checked bag fee, a carry-on bag fee, change and cancellation fee, and family seating fee (if any), to consumers whenever fare and schedule information is provided.

Notice of Proposed Rulemaking

Covered Entities

In this NPRM, the Department proposes to require entities that advertise or sell air transportation to consumers in the United States to disclose, prior to ticket purchase, the fees for ancillary services that are critical to a consumer’s purchasing decision. This means that the proposed requirement would apply to U.S. air carriers; foreign air carriers; ticket agents that sell airline tickets, whether

traditional brick-and-mortar travel agencies, corporate travel agents, or online travel agencies (OTA); and metasearch sites that display airline flight search options directly to consumers. However, Global Distribution Systems (GDSs) would not be covered by this proposal as GDSs arrange for air transportation but do not sell or display a carrier’s fare to consumers. The Department solicits comment on whether the covered entities should be broader or more limited in scope. For example, regarding

ticket agents who sell air transportation, should the proposed requirement to display information about certain critical ancillary services exclude corporate travel agents because the display content is typically negotiated by the business involved?

The airlines and ticket agents that are covered by this rulemaking do not need to be physically present in the United States. Given the expansion of e-commerce, in many cases, airlines and ticket agents can advertise and sell airline tickets to U.S. consumers

without being physically located in the U.S. This NPRM would apply not only to airlines or ticket agents that are physically located in the U.S., but also to those that have a website marketed to consumers in the United States and display schedule, fare, and availability information for flights within, to, or from the United States. To determine whether a website is marketed to U.S. consumers, a variety of factors would be considered—for example, whether the website is in English, whether the seller of air transportation displays prices in U.S. dollars or has an option on its website that differentiates sites or pages designed for the United States. The Department requests comment on other factors that may be indicative of the airline or ticket agent doing business in the United States.

Because ticket agents cannot provide ancillary service fee information to consumers unless the information is first provided by carriers to ticket agents, the NPRM proposes to require air carriers and foreign air carriers to provide the fee information for critical ancillary services to all ticket agents that sell or display the carrier's fare and schedule information. While fare, schedule, and availability information are currently provided by the airlines to the GDSs, and by GDSs to the agents that display and sell to consumers, information about the cost of ancillary services is not typically shared. This NPRM would not require airlines to use GDSs to provide ancillary fee information to ticket agents that display or sell airline tickets to consumers although they would be free to do so if they wish. The Department's focus is on ensuring that information about critical airline ancillary services reach consumers using the travel agent channel, regardless of process used, because a significant portion of airline tickets are purchased indirectly through ticket agents. The Department seeks comment on whether the Department should require that carriers provide fee information about critical ancillary services to GDSs. Why or why not?

Airline Ancillary Service Fees Critical to Consumer Decision

This rulemaking is intended to ensure that fee information about ancillary services that are critical to a consumer's decision making is disclosed at all points of sale prior to ticket purchase. The Department considers the cost of certain ancillary services to be important to consumers when they choose among air transportation options. Ancillary service means any service related to air travel provided by a carrier, for a fee, beyond passenger air

transportation (*i.e.*, the transport of the passenger on an aircraft from one location to another excluding optional services such as baggage, internet, and advance seat assignment). Ancillary service fees can include charges for things that have traditionally been included in the price of a ticket such as first and second checked bags or meals. It can also include services that airlines have typically charged separate from the airline ticket for many years, such as changing or canceling a reservation.

The ancillary services that the Department has identified as being critical to consumers when they choose among air transportation options are as follows: first and second checked bag, one carry-on item, changing or canceling a reservation, and adjacent seating when traveling with a young child. The fees that consumer commenters to the Department's 2014 NPRM most commonly identified as being of critical importance were baggage, seat assignments and change or cancellation fees. These are also the top three most common ancillary service complaints received by the Department. With regard to seat assignments, although there are fewer complaints about seat assignments for passengers traveling with small children, the complaints illustrate the critical importance parents and guardians place on ensuring that their children are seated next to them. We request comment on whether the Department's list of critical ancillary services should be expanded or reduced. Are there particular ancillary service fees (or set of fees) that have a material impact on the total price paid by the consumer or are of particular importance to consumers? What are the benefits and potential challenges to expanding or reducing the Department's list of critical ancillary services? Comments that are most useful provide information regarding the reasons why additional disclosures should or should not be required. The Department also seeks comment on how to address future adoption by airlines of additional ancillary service fees and how to ensure their disclosure to the extent that they are of critical importance to consumers.

Types of Proposed Disclosures

1. First and Second Checked Bag and Carry-On Bag

The Department is proposing to require that carriers and ticket agents disclose fees for a first and second checked bag and a carry-on bag on the first page displayed when a consumer conducts a search for air transportation. This would replace the existing

requirement to provide a generic notice during the booking process about baggage fees and a link to where the baggage fees can be found on the carrier's website. The fees would need to be adjusted to accurately reflect the itinerary of the passenger, the fare category selected, and the fees applicable to the passenger if the consumer has conducted a passenger-specific itinerary search. In instances where the carrier or ticket agent website displays multiple fare categories (*e.g.*, basic economy, restricted economy, flexible economy, and business class) for the same itinerary, the NPRM would require the carrier and ticket agent to also display the bag fees applicable to each fare category. Display of the baggage fee by links or rollovers is not permitted but we request comment on whether it should be permitted. The proposed rule would also clarify that airlines and ticket agents may choose to offer ancillary service packages or bundles that include bag fees, alongside the standalone bag fees that would be required to be displayed under this rulemaking.³⁴

The proposal to disclose baggage fees does not apply to air-tour packages advertised or sold online by ticket agents if the air transportation component is not finalized and the carrier providing air transportation is not known at the time of booking. However, ticket agents in such situations would need to disclose that additional airline fees for baggage may apply and that those fees may be reduced or waived based on the passenger's frequent flyer status, method of payment or other consumer characteristic. When the identity of the carrier providing the air transportation becomes known, the ticket agent would need to provide the specific baggage fee information for the carrier to not only prospective customers, but also those who purchased the air-tour package before the identity of the carrier became known. We request comment on whether this exception for certain air-tour packages adequately addresses concerns of air-tour package sellers. We also request comment on whether such an exception adequately protects consumers.

³⁴ While the Department recognizes that here is the potential for confusion when both a standalone fee and a bundled fare are displayed if the airline or ticket agent does not do an adequate job of designing its website interface, but we would expect that these entities would be incentivized to clearly label what is included in any packaged bundles, and the separate bag fee information would allow consumers to know whether the package bundle is priced appropriately to suit their needs (or whether the consumer is better off purchasing the bag alone).

2. Change and Cancellation Policies and Fees

This rulemaking proposes making change and cancellation fees and policies more apparent to consumers when they book tickets. Under the proposal, carriers and ticket agents would have to display the fee to change a reservation and the fee to cancel a reservation on the first page that appears when a consumer conducts a search for air transportation and a fare is quoted. The fee information would need to be specific to each fare category displayed and adjusted based on passenger-specific information provided by the consumer. For example, if the fare category displayed requires a \$50 fee to change the ticket, then the website should display the change fee for the itinerary and fare category as "\$50." If the consumer's status entitles the consumer to no change fees, then the website should display "\$0" as the applicable change fee for the itinerary, provided that the consumer has entered passenger-specific information that meets the criteria for no change fees. Display of the cancellation and change fee by links or rollovers is not permitted but we request comment on whether it should be permitted.

In addition to the change and cancellation fees, the Department is proposing to require that carriers and ticket agents provide information about certain aspects of their change and cancellation policies to consumers on the first page that appears when a consumer conducts a search. This information, which may be provided using links or pop-ups adjacent to the pertinent fee, would consist of: (1) a brief summary of the cancellation policy applicable to the consumer's chosen itinerary and fare category, taking into account the consumer's passenger-specific information provided, and (2) a brief summary of the ticket change policies applicable to the consumer's chosen itinerary and fare category, adjusted for the passenger-specific information provided. These brief summaries should provide consumers clear, adequate notice of the rules attached to the chosen itinerary and fare category, including whether ticket changes or cancellations are allowed (as well as when and in what circumstances they are allowed), the form that refunds or airline credits may be provided (*e.g.*, travel voucher or a credit to the original form of payment), any prohibitions or conditions that may limit the ability to change or cancel a ticket, and other information. The Department seeks comment on this proposal. Should the Department require change fees be

disclosed as proposed? If so, how should the Department address the potential need for a consumer to also pay a fare difference between the old and new tickets brought about by dynamic pricing models³⁵ many carriers employ? Does the material change in fare that occurs with many ticket changes being a potentially larger component of the overall price relative to the change fee itself represent a more confusing situation for consumers? Should the Department only require change fees be disclosed, or should it also require cancellation fees to be disclosed as proposed? Should the Department allow the proposed disclosures to be provided later in the ticket purchase process than proposed in this NPRM? Are there preferred methods for presenting the change and cancellation policy information?

This rulemaking also proposes to require that carriers and ticket agents with websites marketed to U.S. consumers where they sell air transportation display on the last page of the booking process (before the consumer clicks a button that executes the purchase or reservation) a brief statement on whether the carrier or ticket agent permits the consumer's booking to be cancelled without penalty within 24 hours, or whether the carrier or ticket agent permits the consumer to hold the reservation without payment for 24 hours. Under 14 CFR 259.5(b)(4), carriers must currently either permit consumers to cancel their tickets within 24 hours of purchase without penalty, or, alternatively, allow consumers to hold their reservations at the quoted fare for 24 hours without payment, provided that the purchase or reservation is made at least one week before the flight's departure. The policy that the carrier chooses must be disclosed in its customer service plan pursuant to 14 CFR 259.5. The Department is now proposing that the carrier's chosen policy also be disclosed on the last page of the booking process. Although ticket agents are not required to develop customer service plans under 14 CFR 259.5, this rulemaking would also require ticket agents to disclose the ticket agent's policy for allowing consumers to cancel their reservations without penalty soon after purchase or for allowing consumers to hold their reservation without purchase for a specified period. If carriers or ticket agents offer both alternatives, which

³⁵ A dynamic pricing model implements price differentiation for the airline seat and generally increases the price of the service as fewer seats are available and decreases the price of the service when more seats are available.

they are not required to do so, then this information should be disclosed to consumers. The Department seeks comment on this additional disclosure.

3. Seat Assignment Policies and Fees for Families Traveling With Young Children

The Department is of the tentative view that disclosure of an advance seat assignment fee at the beginning of a booking process is generally not needed because airlines are required to provide a seat with the cost of the air transportation. However, advance seat assignments are of critical importance to families traveling with young children. While these families may not need a guarantee of a particular seat in advance, they are looking for a guarantee that at least one accompanying adult would be seated next to a young child.

Section 2309 of the FAA Extension, Safety, and Security Act of 2016 required the Department to review U.S. airline family seating policies and, if appropriate, establish a policy directing all air carriers providing scheduled passenger interstate or intrastate air transportation to establish policies that enable a child, who is age 13 or under on the date an applicable flight is scheduled to occur, to be seated in a seat adjacent to the seat of an accompanying family member over the age of 13, to the maximum extent practicable and at no additional cost." Section 2309 provides for an exception when assignment to an adjacent seat would require an upgrade to another cabin class or a seat with extra legroom or seat pitch for which additional payment is normally required. In response to section 2309, the Department's Office of Aviation Consumer Protection issued a notice urging airlines to do everything that they can to ensure the ability of a parent to sit next to his or her young child, including allowing every young child to sit next to a parent, without charging fees for adjacent seating.³⁶

To the extent airlines do charge fees for a young child to sit next to a parent, the Department is proposing to require carriers and ticket agents to disclose these fees to consumers alongside the quoted fare for each itinerary. More specifically, the NPRM proposes that carriers and ticket agents disclose alongside the fare the seat fee, if any, that could be imposed for a child age 13 or under to be seated adjacent (*i.e.*, directly next to, and uninhibited by an

³⁶ See <https://www.transportation.gov/individuals/aviation-consumer-protection/family-seating/June-2022-notice>.

aisle or other obstruction) to an accompanying adult in the same class of service, so that consumers are informed on the potential ticket costs. If the carrier does not impose a fee for children 13 or under to be seated next to an accompanying adult, no seat fee disclosure would be required for the carrier's flights. If the carrier does impose fees for children to be assigned seats next to an accompanying adult, then the carrier or ticket agent's website should disclose the fee to select a seat that is part of a pair of available adjacent seats. Display of the fee by links or rollovers is not permitted but we request comment on whether it should be permitted.

The proposal to disclose the fee for adjacent seating for those traveling with a young child whenever fare and schedule information is provided is intended to be performance-based. The Department is not prescribing a particular way for the regulated entities to comply but notes that there are several acceptable means of compliance. For example, to ensure that a consumer receives family seating information as part of the itinerary search results and accompanying fare quotations, a carrier or ticket agent could decide to enable consumers to disclose that a passenger 13 or under will be traveling prior to initiating an itinerary search. A carrier or ticket agent could alternatively decide to display family seating fees for all itinerary searches, regardless of whether a consumer disclosed that a passenger was 13 or under. As another alternative, carriers that do not impose a fee for children 13 or under to be seated next to an accompanying adult would not be obligated to provide any family seating disclosures during the itinerary search and selection process.

As the Department is aware that seat fees can fluctuate frequently, the Department is proposing that family seating fees that are quoted during the itinerary selection process be transactable at the point of ticket purchase, including on ticket agent websites. (See section on "Sharing of Airline Ancillary Service Fee Information with Ticket Agents", below.)

The Department seeks comment on its proposed disclosures to assist families traveling with young children. Should the Department permit these disclosures to be provided later during the booking process, such as after the stage when a consumer inputs passenger name and age information? Should the Department be more prescriptive about family seat fee disclosure requirements (e.g., requiring that websites be modified to enable consumers to indicate whether a

passenger will be 13 or under prior to initiating the search)? Are there technical or other practical considerations for requiring that family seating fees be disclosed and transactable? Should disclosure be limited to fees or would additional information regarding airline family seating policies be useful to consumers during the ticket purchase process? What disclosure should be required, if any, when no adjacent seats are available at the time of the consumer's ticket purchase? The Department welcomes responses to these questions.

Online Disclosures of Airline Ancillary Service Fees

1. Timing of Online Disclosures

During the 2022 ACPAC meeting, DOT solicited information on the appropriate timing of disclosure for ancillary service fees (e.g., at the time of an initial display of schedule information, or at other times during the booking process, or at the end of the process before a final purchase). The ACPAC member representing consumers observed that in order to minimize problems with drip pricing, consumers should have information on critical ancillary service fees early in the process; however, he also noted that providing early information on all ancillary fees could lead to consumers being overwhelmed.³⁷ Specifically, he opined that baggage fees, change/cancellation fees, and seat reservation fees were the biggest "pain points" for consumers that should be disclosed early. Similarly, a consumer advocacy organization suggested that fees for carry-on and checked bags, as well as change/cancellation fees and on-time/cancellation statistics, should be displayed on the first page where a price is quoted.³⁸

This rulemaking proposes that if a U.S. or foreign air carrier or ticket agent has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier and ticket agent would disclose the first and second checked bag fee, the carry-on bag fee, the change and cancellation fee, and the seat fee for a child 13 or under to be seated next to an accompanying adult, at the first point in a search process where a fare is listed in connection with a specific flight itinerary. It is important that a consumer be provided fee information for critical ancillary services at the same time as the fare information is being provided to

enable the consumer to make an informed purchasing decision. We believe that requiring disclosure during the search process benefits consumers because information disclosed at the last minute may result in some consumers deciding to revisit all the travel arrangements already made and possibly begin the reservation process again to look for flights again.

Regarding disclosure of the fee for a child 13 or under to be seated adjacent to an accompanying adult, the Department is proposing to require carriers and ticket agents enable consumers to purchase the seat fee that is disclosed during the itinerary search at the same time as the ticket purchase. Prices for advance seat assignments are often dynamic and change based on availability and time of purchase. While carriers are prohibited from increasing the change and cancellation fee, the first and second checked bag fee, and the carry-on bag fee after the ticket has been purchased,³⁹ this is not the case for a seat assignment fee. Carriers are allowed to increase the price of an advance seat assignment until the seat assignment itself is purchased. The Department seeks comment on the timing of the proposed online fee disclosures in this rulemaking.

2. Passenger-Specific Information

The Department is proposing that the fee information disclosed to a consumer for critical ancillary services be expressed as passenger-specific charges if the consumer elects to provide passenger-specific information to the carrier or ticket agent, such as frequent flyer type, payment method, or military status. For example, a passenger who is active in the military may be entitled to an additional piece of checked luggage free of charge, or a passenger who has qualified at the highest tier of a carrier's frequent flyer program may be entitled to a maximum checked luggage weight

³⁹ See 14 CFR 253.7, which prohibits carriers from imposing monetary penalties on passengers unless the passenger receives conspicuous written notice on or with the ticket. See also *Guidance on Price Increases of Ancillary Services and Products not Purchased with the Ticket* (December 28, 2011). In that guidance, the Department announced that with respect to fees for ancillary services that were not purchased with the air transportation, it would only enforce the prohibition on post-purchase price increases for carry-on bags and first and second checked bags. The application of the prohibition of the post-purchase price increase was also at issue in a lawsuit filed by two airlines against the Department. The court considered the rule as applied under the December 28, 2011, guidance and upheld the Department's rule prohibiting post-purchase price increases as it is currently being applied. *Spirit Airlines, Inc., v. U.S. Dept. of Transportation* (D.C. Cir. July 24, 2012), slip op. at 20–21. Petition for Writ of Certiorari denied on April 1, 2013.

³⁷ Comment of John Breyault (Day 1 a.m. session).

³⁸ Presentation of FlyersRights, available at <https://www.regulations.gov/document/DOT-OST-2018-0190-0046>.

limit of 70 pounds per piece. The carrier or ticket agent would know that a consumer is conducting a passenger-specific itinerary search if the consumer has entered this passenger-specific information either prior to initiating the itinerary search, or if the consumer has logged into his or her account on the carrier or ticket agent's website, provided that the consumer's user profile contains the passenger-specific information.

If the consumer conducting a search elects not to provide passenger-specific information to the carrier or ticket agent (*i.e.*, the consumer conducts an "anonymous itinerary search"), then the Department is proposing to require carriers and ticket agents to disclose the fees for these ancillary services as itinerary-specific charges. Itinerary-specific refers to variations in fees that depend on, for example, geography, travel dates, cabin (*e.g.*, first class, economy), and ticketed fare class (*e.g.*, full fare ticket—Y class). It is essentially an anonymous search. The Department seeks comment on the benefits, risks, and practicability of the proposed distinction between anonymous itinerary searches and passenger-specific searches, as described above.

3. Opt-Out Option

This NPRM does not propose to permit airlines and ticket agents to enable consumers to opt out of receiving fee information for critical ancillary services during the search process. The Department seeks comment on whether it should allow carriers and ticket agents to provide consumers an opt-out option from receiving ancillary service fee information that would otherwise be required. Opt-out options could potentially include the choice to opt out of seeing all baggage fee information that would otherwise be required to be displayed (first and second checked bag and carry-on bag), to opt out of seeing fee information related to changing or canceling a reservation, to opt out of seeing seat fee information for a child traveling with an adult, or to opt out of seeing some of those fees. We anticipate that fee information for critical ancillary services will improve the decisions made by consumers but seek comment on whether the volume of information proposed to be displayed would assist or overwhelm consumers and whether or not an opt-out provision would be beneficial to consumers. Is an opt-out provision needed to ensure that consumers can avoid receiving ancillary service fee information that is of no interest to them? We are also interested in learning what impact, if any, lack of an opt-out provision has on the speed of

search results or particular display options an airline or ticket agent may provide. For commenters advocating an opt-out option, we also request information about how to define requirements for opt-out options that would adequately protect consumers and ensure any opt-out option is not confusing or abused, for example, preventing opt-outs accomplished through a "click wrap" or "browser wrap" tactic that does not represent a meaningful, intentional choice. The Department may consider adopting an opt-out provision in the final rule upon review of comments received and on further consideration by the Department.

4. Website and Mobile Displays

The Department is proposing to require that the fees for ancillary services that are critical to a consumer's purchasing decision be disclosed to consumers using airlines' or ticket agent's websites and mobile websites. Consumers in increasing numbers are using mobile devices to book travel. The Department believes that it is important that the same disclosures that would be provided on airlines' and ticket agents' desktop websites be provided on mobile websites. The Department seeks comment on whether it should also consider specific fee disclosure requirements for airlines' or ticket agents' mobile applications (apps). The Department seeks comment on whether the proposed disclosure requirements should also extend to airline and ticket agent mobile apps, and whether there are any practical distinctions between information accessed on mobile websites and mobile apps. It would be helpful to the Department for commenters to provide data on the percentage of tickets booked on mobile applications, mobile websites, and desktop websites, or other usage statistics that are relevant.

The Department is proposing to allow carriers and ticket agents limited flexibility in how information on ancillary services is displayed on desktop and mobile websites. Although this proposal would require carriers and ticket agents to display information for certain baggage fees, change fees, cancellation fees, and family seating fees at the first point in a search process where a fare is listed in connection with a specific flight itinerary, it permits the use of links or rollovers for other pieces of information. The Department seeks comment on whether links and rollovers would provide the necessary flexibility to allow for design displays that would enhance the user experience and encourage innovation as technology

changes. Are additional flexibilities needed to ensure the display of ancillary service fee information does not result in screen clutter? Do rollovers work on mobile devices that have no cursor to hover over a link? Considering the screen size of mobile devices, would the proposed display requirement work on mobile platforms? Will there be a danger of too much unnecessary information creating confusion if fees that are not under consideration are displayed and are there ways the "too much information" can be mitigated? The Department also requests that commenters provide information as to whether hyperlink or other disclosures not adjacent to the fare on mobile sites would or would not be effective. Should the disclosure requirements be limited to websites accessed through desktop applications and not apply to those accessed through mobile applications?

In-Person or Telephone Disclosures of Airline Ancillary Service Fees

In addition to the online disclosures proposed by this rulemaking, the Department is proposing similar disclosures for tickets purchased using offline means (*i.e.*, tickets purchased by telephone or at the ticket counter). Under the proposal, ticket agents and carriers would have to disclose to consumers purchasing tickets in-person or on the phone the specific baggage fees, change fees, cancellation fees, and family seating fees that apply to an itinerary for which a fare is quoted to the consumer, adjusted based on the passenger's frequent flyer status, method of payment, or other consumer characteristic. During a given encounter (phone call, visit), the Department is proposing that a ticket agent or carrier not wait until after the consumer has decided to make the reservation or purchase the ticket to disclose the baggage fees, change fees, cancellation fees or family seating fees that may apply. Instead, the disclosure would be required to be made at the time that the schedule information is being provided to the consumer during the "information" and "decision-making" portion of the conversation. In essence, a carrier or ticket agent would not be in compliance if it were to provide a quote for a ticket price over the phone or in-person without also providing the baggage, change, cancellation, and family seating fees that apply.

The Department seeks comment on its proposals that carriers and ticket agents inform consumers of the bag fees, change and cancellation fees, and family seating fees that apply when consumers attempt to purchase airline tickets offline, in person, or on the phone. The

Department is also interested in obtaining input on alternative options for providing such fee information on the phone or in person (e.g., explaining that fees may apply and referring the consumer to the carrier or ticket agent's website, provided that the website is accessible to consumers with disabilities).

Sharing of Airline Ancillary Service Fee Information With Ticket Agents

1. Ticket Agents That Sell or Display Airline Fare and Schedule Information

Under this proposal, airlines would be required to distribute fee information for critical ancillary services to ticket agents that sell or display the airlines' fare and schedule information. Carriers would not be required to distribute ancillary service fee information to any ticket agent to whom the carrier does not choose to distribute its fare, schedule, and availability information. In other words, if a carrier does not share fare information with a ticket agent, then this proposal would not require that carrier to share ancillary service fee information with that ticket agent.

Also, under this proposal, the method and channels that carriers use to distribute fee information to ticket agents would be left to the discretion of the carrier.⁴⁰ The Department is not proposing to require carriers to distribute ancillary service fee information to GDSs because GDSs arrange for air transportation and do not sell or display a carrier's tickets directly to consumers. By not requiring that ancillary service fee information be provided to GDSs, the Department is attempting to minimize government interference with business relationships. However, carriers are free to distribute this information to GDSs if they choose to do so. GDSs may provide the lowest cost and most efficient way of distributing this information to ticket agents that sell or display the carrier's ancillary services. Most ticket agents

⁴⁰ Industry stakeholders have expressed their views on information distribution in meetings with the Department. In a meeting with OACP on December 15, 2021, American Airlines offered its view that, while it supports expanded disclosure of ancillary service fees, it cautioned the Department against requiring that the distribution of such information be made through specific channels, such as global distribution systems. In a meeting with OACP on February 23, 2022, the Travel Technology Association (TravelTech) noted that ancillary fee information can only be provided by ticket agents to the extent they receive it from carriers. Travel Tech indicated that its members may engage in bilateral agreements with airlines to present certain ancillary rule information to consumers and in some cases may enable consumers to buy a pre-paid seat through their websites.

currently receive airline fare information through GDSs and rely on GDSs as an efficient source of data. Using GDSs may facilitate display of critical airline ancillary services. Airlines and ticket agents would have to work in good faith to come to agreement on the method used to transmit the ancillary service fee information.

The Department solicits comment on its preliminary decision not to require airlines to share ancillary service fee data with GDSs. Should the Department require carriers to distribute the ancillary service fee information to all ticket agents, including GDSs, to which the carrier provides fare, schedule, and availability information? How would OTAs and metasearch sites receive ancillary service fee information from multiple airlines and disclose that information to consumers if airlines do not provide that information to GDSs? The Department is striving to find the most beneficial disclosure rule for consumers while avoiding any adverse impact on innovations in the air transportation marketplace, contract negotiations between carriers and their distribution partners, and a carrier's ability to set its own fees and fares in response to its own commercial strategy and market forces.

2. Usable, Accurate and Current (Dynamic) Ancillary Service Fee Information

The Department is proposing that U.S. and foreign air carriers provide ticket agents ancillary service fee information that is usable, accurate, and accessible in real-time. It would not be sufficient for carriers to provide static pricing to ticket agents. Under this NPRM, carriers would be expected to facilitate the ability of ticket agents to access certain baggage fee, change fee, and cancellation fee information in a non-static, dynamic fashion. The Department does not prescribe the method that carriers would use to distribute the information as it wants to minimize government interference and encourage innovation. A carrier may choose to distribute ancillary fee information through GDSs if it provides the lowest and most efficient way to comply, given that many airlines and ticket agents use GDSs today. In the United States, three GDSs (Sabre, Travelport and Amadeus) distribute the airline product for the ticket agent channel, and most airlines use the GDSs to distribute their products to ticket agents, including corporate travel agents that sell the higher revenue tickets. In the alternative, airlines may choose to distribute the ancillary fee information through direct connections between

airline reservations systems and ticket agent systems. Another option may be to distribute ancillary fee information using the International Air Transport Association's (IATA) New Distribution Capability (NDC), which is essentially an XML-based technical standard for use in airline distribution. The Department would expect airlines to work in good faith with ticket agents to come to agreement on the method used to transmit the ancillary service fee information.

Under this proposal, carriers would not be required to provide information to ticket agents about individual customers but rather the itinerary-specific and passenger-specific information that would impact the fee for a critical ancillary service. The Department expects that carriers and ticket agents would modify how searches for flights are done to allow consumers to identify any passenger-specific factors that may impact the fees that consumers might pay for critical ancillary services. This would enable consumers to better understand the total cost of the air transportation to them.

Prohibition on Fee if Required Disclosure Is Not Provided

Under this proposal, the practice of collecting a fee from consumers for critical ancillary services without disclosure of this fee during the search process would be deemed an unfair and deceptive practice in violation of 49 U.S.C. 41712. Any fee that has been unlawfully imposed and collected would need to be refunded to consumers by the seller of the air transportation.

Transactability

The 2017 SNPRM did not propose that ancillary service fees be transactable. At the 2022 ACPAC meeting, representatives of the travel technology industry recommended that the Department require ancillary fee information to be provided to ticket agents in a transactable format so that consumers would not have to engage in a separate transaction to complete the full purchase of air travel.⁴¹ Airlines stressed that they value transparency of fare and ancillary fee information across all channels, and argued that fee information is often made available to GDSs and third-party sellers, but that

⁴¹ See presentations of ASTA, Travel Tech, and Amadeus, and Skyscanner, available at <https://www.transportation.gov/airconsumer/ACPAC/June2022Meeting/webcast> (Day 1 afternoon session).

information may not be adequately transmitted to consumers.⁴²

The Department is not proposing to require that certain ancillary services (*i.e.*, first and second checked bag, one carry-on item, and changing or canceling a reservation) be transactable at all points of sale. Requiring transactability at all points of sale would mean requiring airlines to permit online travel agencies to sell these ancillary services. The Department is of the tentative view that this is unnecessary, given the regulatory limitations placed on increasing these fees following a ticket purchase, as discussed above.

The Department has not identified evidence of consumer harm resulting from a lack of transactability of baggage, change, or cancellation fees. A consumer would pay a change or cancellation fee only if the consumer makes a change or cancels a reservation. There is nothing to transact at the time of ticket purchase. Also, the change and cancellation fee that a consumer would pay cannot increase after ticket purchase. As for baggage, a consumer is not harmed from not being able to pay a fee to transport a first checked bag, a second checked bag or a carry-on item at the time of ticket purchase because sellers of air transportation cannot increase the fees for these items beyond what existed at the time that the consumer purchased the airline ticket. The Department's existing rule regarding baggage fee price increases and related enforcement policy ensures that the price to transport a first checked bag, a second checked bag, or a carry-on item does not increase following the ticket purchase and before the consumer has the opportunity to purchase baggage transportation services.

Regarding seat assignment fees for a child 13 or under to be seated next to an accompanying adult, the Department is proposing a requirement that ticket agents disclose fees for specific seat assignments. Such a proposal, without transactability, would cause consumers to be presented with seat assignment options that they cannot purchase immediately during the booking process, but which could change by the time a consumer attempts to purchase the seat. There is a risk that consumers would be confused by being presented a seat assignment that they cannot obtain at the advertised price. As such, the Department is proposing to require that carriers and ticket agents make seat fees for a child 13 or under to be seated

next to an accompanying adult to be transactable at the time the ticket purchase is made. DOT has encouraged airlines not to impose such a charge, but to the extent they do impose such charges, the proposed rule would require disclosure and transactability. This rulemaking may further incentivize airlines not to charge fees for a young child to sit next to an accompanying adult. The Department welcomes comment on whether airlines' response to this rulemaking would include reducing or eliminating such charges. Also, the Department solicits comment on requiring airlines to disclose that they charge fees for adjacent seating without disclosing the amount and requiring that it be transactable as proposed.

Impact on Existing Requirements

This proposed rule, if adopted, would require carriers and ticket agents to provide passenger-specific baggage fee information (if passenger-specific information is provided by the consumer) for one carry-on item and a first and second checked bag at the first point in a search process where a fare is listed in connection with a specific flight itinerary. The regulation in 14 CFR 399.85(b) requires carriers and ticket agents to state that baggage fees may apply on the first screen where a fare quotation is available and refer consumers to a page on their websites where this information may be obtained. We are tentatively of the view that there would no longer be a need for such a requirement except for certain ticket agent displays related to air tour packages that are unable to provide customer-specific baggage fee information.

In addition to amending 14 CFR 399.85(b), we are considering eliminating the requirement in 14 CFR 399.85(c) regarding disclosure of bag fee information on e-ticket confirmations as it may be of limited use. Current requirements in 14 CFR 399.85(c) provide that carriers and ticket agents must include specific fee information for first and second checked bags and a carry-on item on all e-ticket confirmations for air transportation, and the fee information must take into account factors such as frequent flyer status that affect those charges. Under the proposed rule, consumers would have already received this information during the search process. We request comment on whether there is any benefit in retaining the requirements in 14 CFR 399.85(c) if the proposed requirement to display passenger-specific baggage fee information is adopted.

Also, under the existing regulation in 14 CFR 399.85(a), carriers must promptly and prominently disclose any increase in bag fees and changes in bag allowances on the homepages of their websites for at least three months after the change becomes effective. This NPRM does not propose substantive changes to this requirement and proposes only language changes to clarify the scope of websites the regulation is intended to impact. These proposed changes to 14 CFR 399.85(a) are intended to make the regulation more consistent with other regulations related to carrier and ticket agent websites. We request comment on whether the notice provision in 14 CFR 399.85(a) of the existing regulation would still be useful to consumers if this NPRM is adopted as final.

The Department is also proposing to amend 14 CFR 399.88, which states that any seller of scheduled air transportation within, to, or from the United States is prohibited from increasing the price after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee if the potential for an increase was disclosed as required prior to purchase. Under 14 CFR 399.88, the prohibition on increasing the price includes increases in fees for ancillary services such as those for checked baggage, carry-on baggage, advance or upgraded seating assignments, pillows and blankets, and meals, regardless of whether these items are purchased along with the air transportation. However, in December 2011, the Department announced that with respect to fees for ancillary services that were not purchased with the air transportation, it would only enforce the prohibition on post-purchase price increases for carry-on bags and first and second checked bags.⁴³ The application of the prohibition of the post-purchase price increase was also at issue in a lawsuit filed by two airlines against the Department. The court considered the rule as applied under the December 28, 2011, guidance and upheld the Department's rule prohibiting post-purchase price increases as it is currently being applied.⁴⁴

The Department is proposing to amend § 399.88 to be consistent with how it is currently being applied. This rulemaking does not propose changes to

⁴³ See also *Guidance on Price Increases of Ancillary Services and Products not Purchased with the Ticket* (December 28, 2011).

⁴⁴ *Spirit Airlines, Inc., v. U.S. Dept. of Transportation* (D.C. Cir. July 24, 2012), slip op. at 20–21. Petition for Writ of Certiorari denied on April 1, 2013.

⁴² See, *e.g.*, presentations of IATA, American and Delta, available at <https://www.regulations.gov/document/DOT-OST-2018-0190>.

the existing prohibition in § 399.88 against increasing the price of air transportation after its purchase, nor does it propose additional ancillary services beyond baggage that has traditionally been included in the price of a ticket to be frozen at the time of ticket purchase. In other words, the proposed amendment to § 399.88 would continue to require sellers of scheduled air transportation to apply the bag fee policies and fees that existed at the time the ticket is purchased for the first and second checked bag and carry-on item. For example, if the standard first checked bag fee at the time of ticket purchase is \$30 when purchased in advance, \$50 when purchased at the airport, and free for an elite frequent flyer, then the passenger would not pay a bag fee if he or she maintains the elite frequent flyer status on the date of travel. However, if the passenger does not maintain the same status and pays for the bag at the airport, the passenger would pay \$50 for the first checked bag. The Department seeks comment on its amendment of § 399.88. Should the Department require that the price for ancillary services not purchased with the ticket be frozen beyond first and second checked bag and a carry-on item? For example, should it extend to fees for all baggage (including fees for oversized or overweight bags) or all ancillary services that have been identified as being critical to a consumer's purchasing decision?

Further, the Department is proposing non-substantive changes to the current requirement in 14 CFR 399.84(a) that when a carrier or ticket agent quotes a price in advertising or a solicitation, the price should be the total fare, inclusive of taxes and fees. The proposed changes consist of minor changes to § 399.84(a) to promote readability, as well as additional language to accommodate the ancillary fee disclosures proposed in this NPRM. More specifically, we are proposing that if a consumer wishes to view ancillary service fees such as bag fees incorporated into the total quoted price during an itinerary search, carriers and ticket agents would be permitted to display the total price of the transportation, inclusive of mandatory taxes and fees and the consumer's selected ancillary service fees, more prominently than a price that includes only all mandatory charges. The Department is seeking comment on this clarification to 14 CFR 399.84(a). Again, these language adjustments are not intended to make substantive changes to the full fare rule.

As stated in 14 CFR 399.84(a), carriers and ticket agents may state separately charges included within the single total

price on their websites, but such charges may not be false or misleading, may not be displayed more prominently than the total price, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge. Consistent with this requirement, advertisements that state discounts in the form of percentage-off sales must refer to a discount off the total price to be paid by the consumer for the ticket, unless the airline or ticket agent explicitly states that the discount is based on only a portion of the fare. For example, an advertisement that indicates air transportation is on sale for a percentage off but does not apply the discount to the total price would be misleading if it did not specify that it is a percentage off only the "base" fare or other fare component. When the terms "flight," "ticket," or "fare" are used in an advertisement stating a percentage off, a reasonable consumer would understand that the percentage off applies to the total price of the transportation. The Department is of the view that it would be an unfair and deceptive practice for an airline or ticket agent to advertise discounts off a "flight," "ticket," or "fare," without disclosing in the first instance that the discount is only applied to a component of the total price (e.g., the "base" fare). The practice is unfair in that consumers are likely to encounter higher charges than expected, which can multiply if a consumer relies on the promotional discount for multiple passengers on an itinerary. The harm is not easily avoided due to a lack of clarity in the advertising language that carriers use. The Department has also not identified any benefits to consumers or to competition from this practice. The practice is also deceptive in that the carriers' advertising is likely to mislead consumers into believing that the discount will be applied to the entire ticket price (*i.e.*, the full fare), rather than only a portion of the price to be paid. The belief that a discount applies to the total price when the advertisement provides a discount off of the "flight," "ticket," "fare," or other terms of this nature, is reasonable. The total required charge that a consumer will be made to pay for air transportation is also material. The Department is also concerned that there is lack of clarity about the meaning of the term "base" fare. In some cases, even offering a discount off the "base fare" may be misleading if, without more clarity, the discount only applies to a portion of the carrier-imposed

charges, and not the total amount of carrier-imposed charges (*i.e.*, the fare for the transportation plus carrier-imposed charges such as fuel surcharges and other mandatory carrier fees). The Department solicits comment on defining base fare to mean all of the carrier-imposed charges included within the total price. The Department is soliciting comment on whether the full fare regulation should be amended to provide greater clarity on this type of advertising.

Compliance Period

The Department is tentatively of the view that a six-month implementation period from the issuance date of a final rule would be appropriate for carriers and ticket agents to display a first and second checked bag fee, a carry-on bag fee, change and cancellation fee, and family seating fees to consumers whenever fare and schedule information is provided online. It also provides sufficient time to train agents to provide fee information for critical ancillary services to consumers when providing fare and schedule information in person or over the phone. It also takes into account the time needed for carriers to share ancillary service fee information with ticket agents.

In proposing this implementation period, the Department also considered the time that would be needed for airlines and ticket agents to organize ancillary fee data and reprogram and test their websites. Separately, the Department considers the time needed to determine how ancillary service fee information will be distributed from carriers to ticket agents. At the June 2022 ACPAC meeting, one airline representative indicated that broadly speaking, sharing ancillary fee data with ticket agents is not technologically difficult and could be accomplished within a short time frame.⁴⁵ If this proposal were to become a final rule, we would anticipate carriers will work in good faith with ticket agents to ensure that the distribution method and details are worked out well in advance of the display deadline. We request comment on whether the Department should impose a date certain by which carriers must share ancillary service fee information with ticket agents.

We also seek comment on whether proposed implementation periods are too lengthy or too short. If the proposed implementation periods are either too lengthy or too short, how long of an

⁴⁵ Remark of American Airlines, available at June 28 and 29, 2022 Meeting of the Aviation Consumer Protection Advisory Committee (ACPAC) | U.S. Department of Transportation (Day 1 afternoon session).

implementation period would be appropriate and why?

Regulatory Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The Office of Management and Budget has determined that this proposed rule is a significant regulatory action under Executive Order 12866 and requires an assessment of potential benefits and costs. Accordingly, the Department has prepared a regulatory impact analysis for the proposed rule, summarized in this section and available in the docket.

The proposed rule changes how U.S. air carriers, foreign air carriers, and ticket agents disclose information about certain ancillary fees for flights and changes how certain customers can purchase assigned seats. Ancillary fees are fees for optional services provided by a carrier beyond passenger air transportation. The proposed rule would require carriers and ticket agents to show baggage fees, ticket change fees, and ticket cancellation fees when they first show fares and schedules to consumers searching for flights. The proposed rule would also require the seating fees for children 13 or under to

be shown by airlines and ticket agents that display or sell tickets whenever fare and schedule information is provided. In addition, the Department is proposing that consumers be able to transact (i.e., purchase) these fees from airlines and ticket agents that sell tickets. Finally, the proposed rule would require carriers and ticket agents to provide the same ancillary fee information to consumers buying tickets in person or on the phone.

The regulatory impact analysis uses a basic economic model of asymmetric information as a framework for evaluating the proposed rule. Due to a lack of data and other significant uncertainties, it is not possible to evaluate the effects of the proposed rule quantitatively.

The rulemaking would yield societal benefits if it leads to reduced deadweight loss from inaccurate price calculations or reduced search costs. Inaccurate price calculations lead to overconsumption and can distort consumer perceptions in ways that confer a competitive advantage to producers who produce a lower-quality product. While we lack information to estimate benefits, we calculated a hypothetical example range using methods from earlier rulemakings. At

the same time, the rulemaking could conceivably lead to crowding out of relevant information for some consumers. The potential effect represents an offset to benefits, and it is possible that it equals or outweighs the benefits. Thus, it is not possible to quantify at this time whether the proposed rule yields benefits that exceed costs.

The primary costs of the proposed rule are the costs that carriers and ticket agents would incur to share ancillary fee data, modify websites, and allow transactability for assigned seats for children 13 or under. These costs include startup implementation costs as well as ongoing costs. Third parties involved in data exchange, such as global distribution systems (GDSs) and direct-channel companies, would incur costs as well despite not being directly regulated by the rule. Because these entities are already starting to upgrade systems for market reasons, the cost properly associated with the proposed rule is the cost of requiring them to upgrade earlier than they would without the rule.

Table 1 summarizes the results of the analysis and the potential economic effects of the proposed rule.

TABLE 1—SUMMARY OF ANNUAL ECONOMIC EFFECTS

Item	Annual amount
Benefits:	
Gross benefits:	
Reduction in deadweight loss due to increased accuracy in consumers' price calculations ..	See illustrative example in regulatory impact analysis (RIA).
Reduction in search costs for consumers seeking information on ancillary fees.	See illustrative example in RIA.
Reduction in surprise costs and anxiety for passengers traveling with children	Not estimated.
Market feedback effects (enhanced price and quality combinations)	Not estimated.
Offsets to gross benefits:	
Increase in search costs for consumers seeking information on items displaced by new disclosures.	Not estimated.
Total benefits	Indeterminate.
Costs:	
Implementation and contract negotiation costs for carriers, ticket agents, GDS companies, and direct-connect companies to display ancillary fees and allow transactability for assigned seats for children 13 or under.	See illustrative example in RIA.
Ongoing costs for carriers to provide data	See illustrative example in RIA.
Ongoing costs for carriers and ticket agents to exchange and maintain ancillary fee information for offline and in-person purchases.	Not estimated.
Total costs	Not estimated.
Transfers:	
Gains in consumer surplus (from airlines back to consumers)	Indeterminate.
Net benefits	Indeterminate.

Table 2 summarizes the key uncertainties for quantifying or monetizing the economic effects of the proposed rule. The same uncertainties that prevent the estimation of primary impacts preclude the assessment of

potential secondary effects, including effects on airfares, ancillary fees, ancillary services, or GDS contracts with carriers and ticket agents. The Department seeks comment on these issues, as well as on potential

implementation costs of the proposed rule and the potential changes on consumer search costs and decision-making.

TABLE 2—SUMMARY OF KEY UNCERTAINTIES FOR QUANTIFYING ECONOMIC EFFECTS

Item	Annual amount
Benefits:	
Gross benefits:	
Reduction in deadweight loss due to increased accuracy in consumers' price calculations ..	<ul style="list-style-type: none"> • Amount of price mistake. • Number of passengers who do not incorporate full information into price calculation. • Number of passengers who would choose not to use ancillary services with full price information versus those who would forgo air travel altogether.
Reduction in search costs for consumers seeking information on ancillary fees	<ul style="list-style-type: none"> • Amount of time saved. • Number of consumers who would save time shopping for airline fares.
Reduction in surprise costs and anxiety for passengers traveling with children	<ul style="list-style-type: none"> • Number of consumers unaware of ancillary fees.
Offsets to gross benefits:	
Increase in search costs for consumers seeking information on items displaced by new disclosures.	<ul style="list-style-type: none"> • Increase in search time. • Number of consumers who experience increased search time.
Costs:	
Implementation and ongoing costs for carriers, ticket agents, GDS companies, and direct-connect companies to display ancillary fees and allow transactability for assigned seats for children 13 or under.	<ul style="list-style-type: none"> • Needed changes to websites. • Needed changes to programming.
Ongoing costs for carriers and ticket agents to exchange and maintain ancillary fee information for offline and in-person purchases.	<ul style="list-style-type: none"> • Amount of training required to enable ticket agents to use ancillary fee information.
Transfers:	
Gains in consumer surplus (from airlines back to consumers)	<ul style="list-style-type: none"> • Extent to which existing industry pricing practices increase producer surplus (profits).

Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This NPRM does not propose any requirement that (1) has substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, (2) imposes substantial direct compliance costs on State and local governments, or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

Regulatory Flexibility Act

When a Federal agency is required to publish a notice of proposed rulemaking (5 U.S.C. 553), the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the agency to conduct an initial regulatory flexibility analysis (IRFA). An IRFA describes the impact of the rule on small entities (5 U.S.C. 603). An IRFA is not required if the agency head certifies that a rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605).

The Department has prepared an IRFA for this proposed rule, summarized in this section and available at regulations.gov under Docket No. DOT–OST–2022–0109.

The proposed rule would have some impact on U.S. air carriers, foreign air carriers and ticket agents that qualify as small entities. It would also have some impact on Global Distribution Systems (GDSs), but none of the three major GDS companies in the market (Amadeus, Sabre, and Travelport) qualify as small businesses.

A carrier is a small entity if it provides air transportation exclusively with small aircraft, defined as any aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less, as described in 14 CFR 399.73. In 2020, 28 carriers meeting these criteria reported

passenger traffic data to the Bureau of Transportation Statistics.⁴⁶

A ticket agent is a small entity if it has total annual revenues below \$22 million.⁴⁷ This amount excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions, but includes commissions received. In 2017, the latest year with available data, 7,827 travel agency establishments had annual revenues of less than \$25 million.⁴⁸ This number overestimates the number of small entities because some establishments may have annual revenues greater than \$22 million.

The proposed rule could have impacts on small entities because carriers and ticket agents would incur costs to modify websites and upgrade systems to exchange ancillary fee data. Because the Department could not estimate these costs reliably, it could not determine whether the proposed rule would impose a significant impact on a substantial number of small entities. The Department seeks comment on the potential implementation costs of the proposed rule for small entities.

⁴⁶ Bureau of Transportation Statistics. No date. “T1: U.S. Air Carrier Traffic and Capacity Summary by Service Class.” <https://transtats.bts.gov/>.

⁴⁷ See <https://www.sba.gov/document/support-table-size-standards>, NAICS Code 561510.

⁴⁸ U.S. Census Bureau. 2022. “Economic Census.” <https://www.census.gov/programs-surveys/economic-census.html>.

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. The Department invites interested parties to comment on the information collection requirements contained in this document. As prescribed by the PRA, the requirement will not go into effect until OMB has approved the requirement.

This NPRM proposes three new information collections: (1) U.S. air carriers, foreign air carriers, and ticket agents must disclose, during the booking process, applicable fee information for the first and second checked baggage and for carry-on baggage, applicable fee and policy information for changing and cancelling reservations, and, for bookings that involve a passenger 13 or under, the seat fee, if any, for the child passenger to be seated next to an accompanying adult; (2) air carriers, foreign air carriers, and ticket agents must disclose their policy on 24-hour ticket hold or cancellation; and (3) air carriers and foreign air carriers must ensure that partner carriers and ticket agents receive information regarding certain baggage fees, change and cancellation fees and policies, and family seating fee so that the partner carriers and ticket agents can accurately provide such information to consumers and so that the family seating fee can be transactable at the point of ticket purchase.

For each of the information collections, the title, a description of the respondents, and an estimate of the burdens are set forth below:

1. *Requirement that U.S. air carriers, foreign air carriers, and ticket agents disclose, during the booking process, the applicable fee information for the first and second checked baggage, one carry-on bag, the applicable fee and policy information for changing and canceling reservation, and the seat fee, if any, for a passenger 13 or under to be seated next to an accompanying adult.*

Title: Disclosure of Ancillary Fees and Policies During the Air Transportation Booking Process:

Respondents: U.S. carriers, foreign air carriers, and ticket agents that sell or display carrier fare and schedule information to consumers in the United States.

Number of Respondents: We estimate that as many as 206 U.S. air carriers and foreign air carriers and as many as 600 ticket agents may be impacted by this requirement. Our estimate is based on

the following information and assumptions: Ticket agents includes online travel agencies (OTAs), brick-and-mortar travel agencies, corporate travel agencies, and tour operators that market airline tickets. There may be approximately 9,500 travel agencies and over 2,500 tour operators in the United States, although not all of those entities market air transportation online to consumers in the United States. In addition, most ticket agents rely on global distribution systems (GDSs) to create online fare and schedule displays. GDSs and entities that create or develop and maintain their own online fare and schedule displays, such as many of the impacted carriers and the largest travel agents, will incur some planning, development, and programming costs to reprogram their systems to provide online displays of fare and schedule information that includes baggage fee information on their websites. For these reasons, we assume that about five percent of United States ticket agents, including GDSs and large travel agencies, or as many as 600 ticket agents, would be impacted by this requirement. Many smaller carriers also rely on GDSs to create online fare and schedule displays so our estimate of 206 impacted carriers may be overstated.

Estimated Annual Burden on Respondents: Approximately 80 hours per respondent. Our estimate is based on the following information and assumptions: the primary costs to respondents for the disclosure requirement would arise from programming, data management, website modification, and other related costs to carriers and ticket agents to display the required ancillary fee information. Revising website displays in this manner would likely be similar to the revisions that carriers and ticket agents needed to make to their websites to comply with the requirement to include all taxes and fees in fare displays (“full fare rule”), as prescribed by the Enhanced Airline Passenger Protections II rulemaking.⁴⁹ In that rulemaking, the Department estimated that compliance with the full fare rule would require approximately 80 hours per respondent.⁵⁰

The burdens in this rulemaking are expected to be incurred one time by regulated entities. Once the modifications required by this information collection have been incorporated into the websites of regulated entities, we do not expect that

this information collection will impose additional ongoing costs, such as website maintenance, for regulated entities who have been operating websites prior to the promulgation of this rulemaking. As currently proposed, this rulemaking would not require the creation of new websites by regulated entities that did not already maintain websites for the purpose of selling air transportation. For those entities selling air transportation through other means, such as by phone, the rule would require that such entities inform consumers about certain ancillary service fees at the time a fare is quoted. Due to the relatively marginal increase in time needed to orally convey the information required by this information collection, the burden of this information collection with respect to offline purchases of air transportation is expected to be minimal.

Estimated Total Annual Burden: Approximately 64,480 hours for all respondents (based on an assumption of 16,480 hours for carriers and 48,000 hours for ticket agents). Based on an estimated mean hourly wage of \$45.90 for web and digital interface designers,⁵¹ this results in a total annual cost of \$2,959,632 (\$756,432 for carriers and \$2,203,200 for ticket agents).

Frequency: Once information is incorporated into website displays, this rulemaking would not require further modifications to websites. Ongoing website costs (such as for maintenance) are expected to be unchanged by this rulemaking.

2. *Requirement that U.S. air carriers, foreign air carriers, and ticket agents disclose on their websites 24-hour hold or cancellation policies.*

Title: Disclosure of 24-hour hold or cancellation policy on carrier and ticket agent websites during the booking process.

Respondents: U.S. carriers, foreign air carriers, and ticket agents that sell or display carrier fare and schedule information to consumers in the United States.

Number of Respondents: We estimate that the same regulated entities impacted by Information Collection 1 would be impacted by this requirement. Our estimates include 206 U.S. air carriers and foreign air carriers and as many as 600 ticket agents.

Estimated Annual Burden on Respondents: Approximately 80 hours per respondent. The primary costs to respondents would arise from the design, programming, and modification of websites to display 24-hour hold and

⁴⁹ 76 FR 23110 (Apr. 25, 2011).

⁵⁰ See Regulatory Impact Analysis on page 59, available at <https://www.regulations.gov/document?D=DOT-OST-2010-0140-2046>.

⁵¹ <https://www.bls.gov/oes/current/oes151255.htm>.

cancellation policy information, which is primarily static, prior to the ticket purchase. This rulemaking would not require the creation of new websites by regulated entities that did not already maintain websites for the purpose of selling air transportation.

Estimated Total Annual Burden: This information collection would result in an estimated annual burden of 48,360 hours (based on an assumption of 12,360 hours for carriers and 36,000 hours for ticket agents).

3. *Requirement that U.S. air carriers and foreign air carriers ensure that partner carriers and ticket agents receive information regarding certain baggage fees, change and cancellation fees and policies, and family seating fee so the partner carriers and ticket agents can accurately provide such information to consumers.*

Title: Disclosure of baggage and other fee information to partner carriers and ticket agents.

Respondents: U.S. air carriers and foreign air carriers that provide fare, schedule, and availability information to ticket agents to sell or display flights within, to, or from the United States.

Number of Respondents: We estimate that approximately 206 carriers will be impacted by this requirement. This includes foreign carriers that may not serve the United States on their own equipment but may sell connecting itineraries between the United States and a foreign point, when at least one of the foreign-to-foreign segments is operated by the foreign carrier.

Estimated Annual Burden on Respondents: Approximately 16 hours per respondent. The proposed information collection would require carriers to either distribute baggage fee and family seating information or make the specific policies, including the calculation of baggage and seat fees applicable for passenger-specific itineraries, available to third parties. Carriers selling tickets in the United States already display baggage and ancillary fee information on their websites, as required by existing regulation (14 CFR 399.85(d)). This information includes the use of baggage fee calculators and other tables accessible to consumers. The rulemaking would require that this information be made available in such a way that partner carriers and ticket agents have access to this information in a non-static, dynamic format such that the partner carriers and ticket agents can disclose baggage fee and family seating information to consumers during each itinerary search and to allow for the purchase of a seat fee for a child passenger at the same time as the ticket

purchase. Because partner carriers already have mechanisms to share this information with third parties, the additional modifications that would be required by this information collection are not expected to be significant. Moreover, carriers already share this information with each other (*i.e.*, partner carriers) to facilitate codeshare and interline ticketing. This potential burden of sixteen hours per respondent, as referenced here, may overestimate the actual burden for most carriers.

Estimated Total Annual Burden: This information collection would result in an estimated annual burden of 3,296 hours. Based on an estimated mean hourly wage of \$46.46 for computer programmers,⁵² this results in a total cost of approximately \$153,132.

The Department invites interested persons to submit comments on any aspect of each of these information collections, including the following: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information. Comments submitted in response to this NPRM will be summarized or included, or both, in the request for OMB approval of these information collections.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. As described elsewhere in the preamble, this proposed rule would have no such effect on State, local, and tribal governments or on the private sector. Therefore, the Department has determined that no assessment is required pursuant to UMRA.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420,

⁵² <https://www.bls.gov/oes/current/oes151251.htm>.

Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 4(c)(6)(i) of DOT Order 5610.1C provides that "actions relating to consumer protection, including regulations" are categorically excluded. The purpose of this rulemaking is to enhance protections for air travelers and to improve the air travel experience. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Signed this 25th day of September 2022, in Washington, DC.

Peter Paul Montgomery Buttigieg,
Secretary of Transportation.

List of Subjects in 14 CFR Part 399

Air carriers, Consumer protection, Enforcement.

For the reasons stated in the preamble, DOT proposes to amend 14 CFR chapter II, subchapter F, as follows:

PART 399—STATEMENTS OF GENERAL POLICY

■ 1. The authority citation for part 399 continues to read as follows:

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

■ 2. Revise § 399.80(s) to read as follows:

§ 399.80 Unfair and deceptive practices of ticket agents.

* * * * *

(s) Failing to disclose and offer web based discount fares to prospective passengers who contact the agent through other channels (*e.g.*, by telephone or in the agent's place of business) and indicate that they are unable to use the agent's website due to a disability and failing to disclose ancillary service fee information (as required by § 399.85) to prospective passengers who contact the agent through other channels (*e.g.*, by telephone or in the agent's place of business). The disclosure of ancillary service fee information (as required by § 399.85) must be made at the time that the schedule information is being provided to the consumer.

■ 3. Revise § 399.84(a) to read as follows:

§ 399.84 Price advertising and opt-out provisions.

(a) The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations) or tour component (*e.g.*, a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component.

(1) Charges included within the single total price listed (*e.g.*, government taxes) may be stated separately or through links or “pop ups” on websites that display the total price, but such charges may not be false or misleading, may not be displayed prominently, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

(2) An airline or ticket agent may display a price that includes all mandatory charges and one or more ancillary service fees more prominently than a price that only includes all mandatory charges.

* * * * *

■ 4. Revise § 399.85 to read as follows:

§ 399.85 Notice of ancillary service fees.

(a) *Definitions.* For purposes of this section, the following definitions apply:

Ancillary service fee means the fee charged for any optional service the U.S. or foreign air carrier provides beyond passenger air transportation. Such fees may include, but are not limited to, charges for checked or carry-on baggage, canceling or changing a reservation, advance seat selection, in-flight beverages, snacks and meals, lounge access, bedding or other amenities, or seat upgrades.

Ancillary service package means a package or bundle of one or more ancillary services offered for sale by a carrier or ticket agent. Such packages are typically offered after the consumer has selected an itinerary and fare category during the booking process. Carriers and ticket agents are not required to offer ancillary service packages.

Anonymous itinerary search means a search conducted on the website of a U.S. carrier, a foreign air carrier, or ticket agent, that does not take into

account information specific to a characteristic of the passenger that impacts the ancillary service fees to be charged or other parameters relevant to these fees (*e.g.*, size and weight limitations on baggage).

Consumer or *user* means the person who uses the website of a U.S. carrier, a foreign carrier, or ticket agent, to search for and/or purchase air transportation. “Consumer” or “user” may also refer to a person who seeks to obtain information about air transportation, whether through a website or other means.

Passenger-specific itinerary search means a search conducted on the website of a U.S. carrier, foreign air carrier, or ticket agent that takes into account information specific to a characteristic of the passenger that may impact the ancillary service fees to be charged or other parameters relevant to these fees (*e.g.*, size and weight limitations on baggage). Such information could include the passenger’s status in the airline’s frequent flyer program, the passenger’s military status, or the passenger’s status as a holder of a particular credit card.

An itinerary search is “passenger-specific” when a user has provided passenger-specific information prior to conducting the search, including when conducting previous searches if the information is cached, or if the user conducts a search while logged into the search website and the operating entity of that website has passenger-specific information as part of the user’s profile.

(b) *Online fee disclosures of baggage.* Each U.S. air carrier, foreign air carrier, and ticket agent that has a website marketed to U.S. consumers where it advertises or sells air transportation must accurately display (or cause to be displayed) the fee that applies, if any, to an itinerary for a first checked bag, a second checked bag, and a carry-on bag. The fees must be included on the first page displayed when a consumer conducts a search for air transportation when fare and schedule information is shown. Display of the baggage fee by links or rollovers is not permitted.

Ancillary service fees other than those referenced in this paragraph (b) may also be displayed on the same page, at the carrier or ticket agent’s discretion. All fees displayed must be the total to be paid by the consumer for the ancillary service.

(1) Consumers must be offered both the option to conduct a passenger-specific itinerary search and the option to conduct an anonymous itinerary search. For passenger-specific itinerary searches, the fees required to be displayed under this paragraph (b) must

be adjusted to reflect accurately the itinerary of the passenger, the fare category displayed or selected, and the status of the passenger. For anonymous itinerary searches, the fees required to be displayed under this paragraph (b) must be adjusted to reflect accurately the itinerary of the passenger and the fare category displayed or selected, without taking into account passenger-specific information.

(2) If the carrier or ticket agent displays multiple fare categories for the same flight in response to an itinerary search (*e.g.*, the search results page displays basic economy, restricted economy, flexible economy, and business class fares simultaneously for the same flight), the carrier or ticket agent must display the bag fees applicable to each fare category associated with that fee. In circumstances where a particular fare category prohibits the checking of a bag or the carriage of a carry-on bag, the carrier or ticket agent must indicate that the item is prohibited under the fare category and display the penalty, if applicable, for carrying on or checking the item.

(3) If the carrier does not display any fee for a first or second checked or carry-on bag at the time the consumer searches for and purchases air transportation, the carrier may not impose a fee on the consumer for a checked or carry-on bag following the ticket purchase. If a ticket agent does not display any fee for a checked or carry-on bag at the time the consumer searches for and purchases air transportation, the ticket agent must promptly refund the consumer for any bag fee the carrier imposes on the consumer for the itinerary.

(4) In displaying the applicable bag fee required by this paragraph (b), each U.S. carrier, foreign air carrier, or ticket agent, must display the weight and dimension limitations that the carrier imposes for each checked bag and carry-on bag. Such limitation information may be displayed using links or pop-ups adjacent to the display of the bag fee. For passenger-specific itinerary searches, the weight and dimension limitations must be adjusted to the level applicable to the passenger based on the passenger-specific information provided.

(5) If a carrier or ticket agent offers for sale an ancillary service package that includes baggage, it may display the package and the package price in addition to the standalone bag fees, if any, already required under paragraph (b)(1) of this section.

(6) For air-tour packages sold online by ticket agents where the carrier

providing air transportation is not known at the time of booking, ticket agents are not required to provide specific baggage fee information as required by this paragraph (b). In such cases, the ticket agent must clearly and prominently disclose on the first screen in which the ticket agent offers a package fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and that those fees may be reduced or waived based on the passenger's frequent flyer status, method of payment, or other consumer characteristic. Once the carrier providing air transportation for an air-tour package is known, the ticket agent must provide baggage fee information as prescribed by this paragraph (b) both to prospective consumers and to consumers who purchased the air-tour package before the identity of the carrier providing the air transportation became known.

(c) *Online disclosure of cancellation and change fees.* Each U.S. carrier, foreign air carrier, and ticket agent that has a website marketed to U.S. consumers where it advertises or sells air transportation must accurately display, on the first page when a consumer conducts a search for air transportation and fare and schedule information is shown, the applicable fee for the consumer to change the reservation and cancel the reservation. Display of the cancellation and change fee by links or rollovers is not permitted. The fee displayed must be specific to each fare category displayed and adjusted based on passenger-specific information provided by the consumer. The carrier or ticket agent must also display the following information, which may be with the use of links or pop-ups adjacent to the pertinent fee:

(1) A summary of the applicable cancellation policy for the itinerary displayed, adjusted based on the consumer's passenger-specific and itinerary-specific information provided, if applicable; and

(2) A summary of the applicable ticket change policy for the itinerary displayed, adjusted based on the consumer's passenger-specific and itinerary-specific information provided, if applicable.

(d) *Online disclosure of 24-hour change and cancellation policy.* Each U.S. carrier, foreign air carrier, and ticket agent that has a website marketed to U.S. consumers where it sells air transportation must display a statement, before the consumer can execute his or her purchase or reservation of air transportation, indicating whether the

consumer's booking can be cancelled without penalty within 24 hours of booking, or whether the consumer has the option to hold the reservation for 24 hours at the quoted price without executing the purchase, consistent with the carrier or ticket agent's policy and, for carriers, consistent with 14 CFR 259.5(b)(4).

(e) *Online disclosure and transactability of family seating fee.* Each U.S. carrier, foreign air carrier, and ticket agent that has a website marketed to U.S. consumers where it advertises or sells air transportation must disclose to each consumer seeking to purchase air transportation in which at least one passenger is 13 years of age or under, wherever fare and schedule information is provided, the fee, if any, for the passenger age 13 years or under to be seated adjacent to the seat of an accompanying adult in the same class of service. This fee must be displayed alongside the quoted fare associated with each itinerary search result. Display of the family seating fee by links or rollovers is not permitted. Each U.S. carrier, foreign air carrier, and ticket agent that has a website marketed to U.S. consumers where it sells air transportation must also enable the consumer to select and purchase the seat at the time the seat fee is disclosed if the consumer chooses to do so.

(f) *Disclosures for tickets not purchased online.* For tickets purchased by consumers in the United States in person or by phone, each U.S. carrier, foreign carrier, and ticket agent must disclose to consumers the baggage fees, change fees, cancellation fees, and family seating fees (*i.e.*, the fee for a passenger 13 or under to obtain a seat next to an accompanying adult, if the carrier imposes such a fee and the consumer's intended booking includes a passenger age 13 or under) that apply at the time a fare is quoted for an itinerary. The fees disclosed must be adjusted based on passenger-specific information provided by the consumer.

(g) *Changes in baggage fees.* If a U.S. or foreign air carrier has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier must promptly and prominently disclose any increase in its fee for carry-on or first and second checked bags and any change in the first and second checked bags or carry-on allowance for a passenger on the homepage of that website (*e.g.*, provide a link that says "changed bag rules" or similarly descriptive language and takes the consumer from the homepage directly to a pop-up or a place on another web page that details the change in baggage allowance or fees and the effective dates

of such changes). Such notice must remain on the homepage for at least three months after the change becomes effective.

(h) *Disclosures of baggage fees on e-ticket confirmations.* A U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent that advertises or sells air transportation in the United States, must include information regarding the passenger's free baggage allowance and/or the applicable fee for a carry-on bag and the first and second checked bag on all e-ticket confirmations for air transportation within, to or from the United States. The requirement in this paragraph (h) applies to all tickets sold on a website marketed to U.S. consumers where the carrier or agent advertises or sells such air transportation, including the summary page at the completion of an online purchase and a post-purchase email confirmation.

(1) Carriers must provide this information in the e-ticket confirmation. Ticket agents may provide this information in text form in the e-ticket confirmations or through a hyperlink to the specific location on airline websites or their own website where this information is displayed.

(2) The fee information provided for a carry-on bag and the first and second checked bag must be expressed as specific charges taking into account any passenger-specific factors that affect those charges.

(i) *Website disclosure of all ancillary service fees.* If a U.S. or foreign air carrier has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier must prominently disclose on its website information on ancillary service fees available to a passenger purchasing air transportation. Such disclosure must be clear, with a conspicuous link from the carrier's homepage directly to a page or a place on a page where all such ancillary services and related fees are disclosed. In general, fees for particular services may be expressed as a range; however, baggage fees must be expressed as specific charges taking into account any factors (*e.g.*, frequent flyer status, early purchase) that affect those charges.

(j) *Fee information distribution to ticket agents.* (1) For air transportation within, to, or from the United States, each U.S. and foreign air carrier that provides fare, schedule, and availability information to ticket agents to sell or display the carrier's flights directly to consumers, must provide such ticket agents useable, current, and accurate information of the fee rules for a first checked bag, a second checked bag, one

carry-on bag, canceling a reservation, and changing a reservation. The information provided by the carrier must be sufficient to enable the ticket agent to comply with the baggage disclosure requirements in paragraph (b) of this section and the change and cancellation disclosure requirements in paragraph (c) of this section. Carriers have no obligation to ensure that these fees are transactable by ticket agents; and

(2) For air transportation within, to, or from the United States, each U.S. and foreign air carrier that provides fare, schedule, and availability information to ticket agents to sell or display the carrier's flights directly to consumers must provide such ticket agents useable, current, and accurate information of the fee rules for aircraft seats if the carrier charges a fee for a child, who is age 13 or under on the date an applicable flight is scheduled to occur, to be seated in a seat adjacent to the seat of an accompanying adult. The aircraft seat fee information must be detailed enough to enable the ticket agent to disclose the applicable fees for adjacent seats for each flight in the itinerary of a child, who is age 13 or under on the date an applicable flight is scheduled to occur, as set forth in paragraph (e) of this section. Carriers must ensure that seat fees are transactable by ticket agents.

(k) *Unfair and Deceptive Practice.* The Department considers the failure to provide and adhere to the disclosures required by this section to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712. The Department also considers the practice of collecting a fee from consumers for critical ancillary services (*i.e.*, first and second checked bags, one carry-on item, canceling or changing a reservation, adjacent seats when traveling with a child who is 13 years of age or under) without disclosure of this fee when fare and schedule information is provided to be an unfair and deceptive practice in violation of 49 U.S.C. 41712. Any fee that has been collected from consumers for critical ancillary services must be refunded to consumers by the seller of the air transportation if disclosures required by this section were not provided.

■ 5. Revise § 399.88(a) to read as follows:

§ 399.88 Prohibition on post-purchase price increase.

(a) It is an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 for any seller of scheduled air transportation within, to or from the United States, or of a tour (*i.e.*, a combination of air transportation and

ground or cruise accommodations), or tour component (*e.g.*, a hotel stay) that includes scheduled air transportation within, to or from the United States, to increase the ticket price of that air transportation, tour or tour component or to apply revised price rules for a first checked bag, a second checked bag, and one carry-on bag to a consumer, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer.

* * * * *

[FR Doc. 2022-22214 Filed 10-19-22; 8:45 am]

BILLING CODE 4910-9X-P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Trade Regulation Rule on Commercial Surveillance and Data Security

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is extending the deadline for filing comments on its advance notice of proposed rulemaking (“ANPR”) regarding whether the Commission should prescribe new trade regulation rules or other regulatory alternatives concerning commercial surveillance and data security practices that are prevalent and unfair or deceptive.

DATES: The deadline for comments on the advance notice of proposed rulemaking published August 22, 2022 (87 FR 51273) is extended. Comments must be received on or before November 21, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write “Commercial Surveillance ANPR, R111004” on your comment, and file your comment online at <https://www.regulations.gov>. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James Trilling, 202-326-3497; Peder Magee, 202-326-3538; Olivier Sylvain, 202-326-3046; or commercialsurveillancerm@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. Comment Period Extension

On August 22, 2022 (87 FR 51273), the Commission published in the **Federal Register** an advance notice of proposed rulemaking concerning Trade Regulation Rule on Commercial Surveillance and Data Security (“ANPR”), with an October 21, 2022 deadline for filing comments. The Commission published the ANPR to seek public comments on the prevalence of commercial surveillance and data security practices that are unfair or deceptive acts or practices under the Federal Trade Commission Act and whether the Commission should prescribe new trade regulation rules or other regulatory alternatives to address them. Interested parties have subsequently requested an extension of the public comment period to give them additional time to respond to the ANPR’s requests for comment.¹

The Commission agrees that allowing additional time for filing comments in response to the ANPR would help facilitate the creation of a more complete record. The Commission has therefore decided to extend the comment period for 31 days, to November 21, 2022. A 31-day extension will provide commenters adequate time to address the issues raised in the ANPR.

II. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 21, 2022. Write “Commercial Surveillance ANPR, R111004” on the comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website. The Commission strongly encourages you to submit your comment online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “Commercial Surveillance ANPR, R111004” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary,

¹ See Cmt. of NTCA—The Rural Broadband Association, Docket ID FTC-2022-0053 (Oct. 6, 2022), <https://www.regulations.gov/comment/FTC-2022-0053-0142>; Cmt. of Am. Escrow Ass’n et al., Docket ID FTC-2022-0053 (Sept. 26, 2022), <https://www.regulations.gov/comment/FTC-2022-0053-0105>.