FEDERAL REGISTER

Vol. 79 Friday,
No. 100 May 23, 2014

Part III

Department of Transportation

14 CFR Parts 234, 244, *et al.*
Transparency of Airline Ancillary Fees and Other Consumer Protection Issues; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234, 244, 250, 255, 256, 257, 259, and 399

[Docket No. DOT–OST–2014–0056]

RIN 2105–AE11

Transparency of Airline Ancillary Fees and Other Consumer Protection Issues

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is seeking comment on a number of proposals to enhance protections for air travelers and to improve the air travel environment, including a proposal to clarify and codify the Department's interpretation of the statutory definition of ''ticket agent.'' By codifying the Department's interpretation, the Department intends to ensure that all entities that manipulate fare, schedule, and availability information in response to consumer inquiries and receive a form of compensation are adhering to all of the Department's consumer protection requirements that are applicable to ticket agents such as the full-fare advertising rule and the code-share disclosure rule.

This NPRM also proposes to require airlines and ticket agents to disclose at all points of sale the fees for certain basic ancillary services associated with the air transportation consumers are buying or considering buying. Currently, some consumers may be unable to understand the true cost of travel while searching for airfares, due to insufficient information concerning fees for ancillary services. The Department is addressing this problem by proposing that carriers share real-time, accurate fee information for certain optional services with ticket agents.

Other proposals in this NPRM to enhance airline passenger protections include: Expanding the pool of ''reporting'' carriers; requiring enhanced reporting by mainline carriers for their domestic code-share partner operations; requiring large travel agents to adopt minimum customer service standards; codifying the statutory requirement that carriers and ticket agents disclose any airline code-share arrangements on their Web sites; and prohibiting unfair and deceptive practices such as undisclosed biasing in schedule and fare displays and post-purchase price increases. The Department is also considering whether to require ticket agents to disclose the carriers whose tickets they sell in order to avoid having consumers mistakenly believe they are searching all possible flight options for a particular city-pair market when in fact there may be other options available. Additionally, this NPRM would correct drafting errors and make minor changes to the Department's second Enhancing Airline Passenger Protections rule to conform to guidance issued by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) regarding its interpretation of the rule.

DATES: Comments must be received by August 21, 2014. Comments received after this date will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2014–0056 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://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., Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* The Docket Management Facility is located on the West Building, Ground Floor, of the U.S. Department of Transportation,1200 New Jersey Ave. SE., Room W12–140, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: You must include the agency name and the Docket Number DOT–OST–2014–0056 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to 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, a business, a labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

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

FOR FURTHER INFORMATION CONTACT: Kimberly Graber or Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), *kimberly.graber@dot.gov* or *blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

Executive Summary

1. Purpose of the Regulatory Action

The U.S. Department of Transportation (DOT) is issuing this notice of proposed rulemaking (NPRM) to improve the air travel environment of consumers based on its statutory authority to prohibit unfair or deceptive practices in air transportation, 49 U.S.C. 41712. The Department is taking action to strengthen the rights of air travelers when purchasing airline tickets from ticket agents, ensure that passengers have adequate information about regional carriers' operations to make informed decisions when selecting flights, increase notice to consumers of some of the fees carriers charge for optional or ancillary services, and prohibit unfair and deceptive practices such as post-purchase price increases and undisclosed biasing in fare and schedule displays.

2. Summary of Regulatory Provisions

	Subject	Proposed rule
1	Codification of the Department's Interpretation of ''Ticket Agent''.	Codifies the Department's broad interpretation of the statutory definition of the term ''ticket agent'' to include Global Distribution Systems (GDS), websites with flight metasearch engines, and similar intermediaries in the sale of air transportation, if the intermediary is compensated in connection with the sale of air transportation.
2	Disclosure of Certain Ancillary Fee Information to Consumers (''GDS Issue'').	Two alternative proposals regarding disclosure of fee information for basic ancillary services. • Proposal #1: Requires carriers to disclose fee information for basic ancillary services to all ticket agents to which a carrier provides its fare information, including GDSs.

	Subject	Proposed rule
		• Proposal #2: Requires carriers to disclose fee information for basic ancillary services to all ticket agents to which a carrier provides its fare information and which sell air transportation directly to consumers; this would exclude ticket agents that arrange but don't sell air transportation, such as GDSs. Both proposals would: • Define basic ancillary services as first checked bag, second checked bag, one carry-on item, and advance seat selection, to the extent these options are offered by the carrier. • Not require a carrier to allow ticket agents to sell these services; or if a carrier permits ticket agents to sell those services, it would not require carriers to charge the same fee for the service as the agents. If a carrier is not selling the service through a ticket agent, the carrier and ticket agent are responsible for disclosing to consumers when and how fees should be paid, and for baggage fees, must honor the fee quoted at the time of purchase. • Require all ticket agents and airlines that provide fare information to consumers to also provide fee information for basic ancillary services to consumers. This information should be made available to the consumer at the point in which fares are being compared. • Prohibit ticket agents with existing contractual agreements with a carrier for the distribution of the carrier's fare and schedule information from charging additional or separate fees for distribution of information about basic ancillary services—i.e., a ticket agent cannot unilaterally change contract terms to require additional payments to upload and disseminate the required ancillary service fee information. Existing contracts should be honored until the contract expires unless mutually renegotiated by the parties.
3	Expansion of Reporting Carriers for Service Quality Data.	Expands the pool of reporting carriers from any carrier that accounts for at least 1% of domestic scheduled passenger revenue to any carrier that accounts for at least 0.5% of domestic scheduled passenger revenue. (This definition would cover carriers such as Spirit Airlines, Allegiant Airlines, and Republic Airlines.)
4	Data Reporting for Domestic Code-Share Partner Operations.	Requires reporting carriers to include data for their domestic scheduled flights operated by their code-share partners: • On-time Performance • Mishandled Baggage • Oversales
5	Customer Service Commitments (Large Ticket Agents).	Requires large ticket agents (those with annual revenue of $100 million or more) to adopt certain customer service commitments, including a commitment to: • Provide prompt refunds where ticket refunds are due, including fees for optional services that consumers purchased from them but were not able to use due to flight cancellation or oversale situation; • Provide an option to hold a reservation at the quoted fare without payment, or to cancel without penalty, for 24 hours; • Disclose cancellation policies, seating configurations, and lavatory availability on flights; • Notify customers in a timely manner of itinerary changes; and • Respond promptly to customer complaints.
6	Transparency in Display of Code-Share Operations as Required by 49 U.S.C. 41712(c).	Amends the Department's code-share disclosure regulation to codify the statutory requirement that carriers and ticket agents must disclose any code-share arrangements on their Web sites. Requires disclosure on the first display presented in response to a search of a requested itinerary for each itinerary involving a code-share operation. Disclosure must be in a format that is easily visible to a viewer.
7	Disclosure of the Carriers Marketed (Applies to Large Travel Agents Only).	Seeks comments regarding whether: • To require large ticket agents to maintain and display lists of carriers whose tickets they market and sell; and if required, how to disclose the carriers that are marketed and sold by the ticket agent.
8	Prohibition of Display Bias	Prohibits undisclosed biasing by carriers and ticket agents in any Internet displays of the fare and schedule information of multiple carriers.
9	Prohibition on Post-Purchase Price Increases For Ancillary Services.	Revises the existing prohibition on post-purchase increases with respect to the price of ancillary services that are not purchased with the air transportation so carriers and other sellers of air transportation are only prohibited from increasing the price for the carriage of baggage. The price for other ancillary services not purchased at the time of ticket purchase may be increased until the consumer purchases the service itself.

3. Summary of Preliminary Regulatory Analysis

SUMMARY OF MONETIZED COSTS AND MONETIZED BENEFITS OVER 10 YEARS, DISCOUNTED AT 7 PERCENT

[Millions $]

Provisions	Costs	Benefits
1: Definition of ticket agent	N/A	N/A
2: Disclosure of certain ancillary fees information to consumers	$ 46.15	$ 25.1
3 & 4: Reduce reporting threshold to 0.50% and submit additional set of reports that includes code-share partners	29.75	N/A
5: Minimum customer service standards for ticket agents	2.97	N/A
6: Display bias prohibition	N/A	N/A
7: Disclosure of code-share segments in schedules, advertisements and communications with consumers	N/A	N/A
8: Disclosure of carriers marketed	N/A	N/A
9: Prohibition of post-purchase price increase for ancillary services	N/A	N/A
Total (Proposed Provisions)	80.51	25.1

The quantifiable costs of this rulemaking exceed the quantifiable benefits. However, when unquantified costs and benefits are taken into account, we anticipate that the benefits of this rulemaking would justify the costs. It was not possible to measure the benefits of the proposals in this rulemaking, except for the benefits for provision 2. For example, there are a number of unquantified benefits for the proposals such as improved on time performance for newly reporting carriers and code-share flights of reporting carriers, improved customer goodwill towards ticket agents, and greater competition and lower overall prices for ancillary services and products. There are also some unquantified costs such as increased management costs to improve carrier performance, increased staff time to address consumer complaints, and decreased carrier flexibility to customize services, though we believe these costs would be minimal. If the value of the unquantified benefits, per passenger, is any amount greater than one cent and the unquantified costs are minimal as anticipated, then the entire rule is expected to be net beneficial.

Background

This NPRM addresses several recommendations to the Department regarding aviation consumer protection as well as two issues identified in the second Enhancing Airline Passenger Protections final rule. In that final rule, the Department instituted many passenger protections including expanding the rules regarding lengthy tarmac delays to non-U.S. carriers, requiring U.S. and non-U.S. carriers to adopt and adhere to minimum customer service standards, increasing the amounts of involuntarily denied boarding compensation, enhancing Web site disclosures for baggage fees and other ancillary service fees, and prohibiting post-purchase price increases. *See* 76 FR 23110 (April 25, 2011). However, the Department declined to impose a requirement on airlines to provide their fee information for ancillary services to Global Distribution Systems (GDSs), stating that the Department needed to learn more about the complexities of the issue. This NPRM addresses the issue of disclosure of ancillary services fee information. Additionally, subsequent to the publication of the 2011 final rule, in response to questions received regarding the post-purchase price increase rule, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) issued *Guidance on Price Increases of Ancillary Services and Products not Purchased with the Ticket* on December 28, 2011 available at *http://www.dot.gov/airconsumer.* In that guidance, the Enforcement Office noted the Department's decision to revisit in this NPRM the rule as it relates to post-purchase price increases for certain ancillary services not purchased with the ticket.

This NPRM also addresses certain recommendations made by two Federal advisory committees—the Future of Aviation Advisory Committee (FAAC) and the Advisory Committee on Aviation Consumer Protection. The FAAC was established on April 16, 2010, with the mandate to provide information, advice, and recommendations to the Secretary of Transportation on ensuring the competitiveness of the U.S. aviation industry and its capability to address the evolving transportation needs, challenges, and opportunities of the global economy. On December 15, 2010, the FAAC delivered a report to the Secretary with 23 recommendations. FAAC Recommendation 11 addressed disclosure of ancillary service fees, code-share operations, and air travel statistics. This NPRM incorporates many aspects of FAAC Recommendation 11. For more information regarding the FAAC, please visit *http://www.dot.gov/faac.*

More recently, on May 24, 2012, the Advisory Committee on Aviation Consumer Protection was established to advise the Secretary in carrying out activities related to airline customer service improvements. On October 22, 2012, this Committee submitted its first set of recommendations to the Secretary on a wide range of aviation consumer issues, including adopting FAAC Recommendation 11, which urged greater transparency in the disclosure of ancillary fees and code-share operations. This NPRM addresses the recommendations by the Committee to ensure transparency in air carrier pricing, to require on-time performance data be reported to the Department for all flights and airlines, and to mandate disclosures by online travel agencies and other agents as to which carriers' services they sell. Records relating to the advisory committee, including a transcript and minutes of its meetings and its full recommendation report, are contained in the Department's docket, which is available at *http://www.regulations.gov* under docket number DOT–OST–2012–0087.

Notice of Proposed Rulemaking

1. Clarifying the Definition of ''Ticket Agent''

This NPRM proposes a regulatory definition for the statutory term ''ticket agent'' to clarify for the industry what type of entity the Department considers to be a ticket agent and to ensure that its consumer protection regulations apply to all entities that hold out airfare, schedule, and availability information to consumers. Consumers and stakeholders in the air transportation industry have identified relatively new entities, such as meta-search engines, as primary information sources and entry points for the purchase of air transportation. However, such entities do not consistently provide the

information that the Department views as vital to consumer protection such as code-share disclosure. For example, consumers may begin their search for air transportation options by selecting their flights on one Web site and then completing their purchase on another Web site and, in the process, not be provided disclosures regarding code-share operations, baggage fee information, and other consumer protection information that the Department requires air carriers, foreign air carriers, and ticket agents provide to consumers early in the process.

The Department is considering codifying in its regulations its interpretation of the statutory definition of ''ticket agent'' to make clear that all entities involved in the sale or distribution of air transportation, including those intermediaries that do not themselves sell air transportation but arrange for air transportation and receive compensation in connection with the sale of air transportation, are ticket agents subject to the Department's regulations regarding the display of airfare information. The definition would include all commercial entities that are involved in arranging for the sale of air transportation through the Internet (among other channels), regardless of whether an entity received a share of revenue from a third party for transactions that originated on the entity's Web site, or the entity charged a commission for each transaction that originated on its Web site, or the entity was simply compensated on a cost-per-click for advertisements, or was compensated on some other basis.

The means by which airline itineraries are commonly displayed and sold has changed dramatically and continues to evolve. New entities that were not previously involved in the distribution of air transportation are now an important source of information for consumers as well as a means of distribution for carriers. Online entities, such as Web sites that provide a variety of travel information, advertising, and links as well as meta-search engines that provide flight search tools including fare and schedule information, are now frequently used by consumers to research airfares and schedules and to connect to the airline or travel agent Web site that ultimately books and/or fulfills the consumer's ticket purchase. Meanwhile, some airlines provide direct electronic access to their own internal systems providing fare, schedule, and availability information to certain Internet entities with the condition that when displaying that carrier's flight itineraries in flight search results, the entity must provide a link only to the airline's Web site and not to travel agent Web sites that have similar information. Staff members from the Department have been informed that, in some cases, entities such as meta-search engines and other Web sites that operate flight search tools receive a commission or some other compensation for transactions that originate on their Web sites, for example, from a flight search tool that allowed the consumer to select a particular itinerary. However, in other cases, entities that are involved in arranging for air transportation by allowing a consumer to select an itinerary using a flight search tool are compensated for advertising and not for the individual transaction. But regardless of the manner of compensation, consumers are increasingly relying on those Internet entities in making their air transportation purchasing decisions. In some cases, these Internet entities display schedules, fares and availability but direct consumers to other Web sites to purchase and are not the final point of sale for an airline ticket. They may be earning revenue through advertising sales and providing flight search capabilities based on data gathered from other sources. These entities would be included under our proposed definition of ticket agent along with traditional ticket agents. The Department seeks comment on the differences between traditional ticket agents and entities that provide flight search tools but direct consumers to another site to finalize their purchase. Are there considerations regarding entities that are not the final point of sale for air transportation that should be considered in connection with the regulations proposed in this rulemaking? DOT also seeks comment on the impact on these entities of complying with the Department's existing regulations applicable to ticket agents. For example, what are the impacts on ticket agents that are not the final point of sale for air transportation of the regulations in 14 CFR 399.80 (e.g., prohibition against misrepresentation of quality or kind of service, type or size of aircraft, time of departure or arrival, and so forth; prohibition against misrepresentation of fares and charges)? Are those impacts different from the impacts on traditional ticket agents or other agents that have a different business model?

As noted above, consumers may begin their search by selecting their flights on one Web site and then completing their purchase on another Web site and, in the process, bypass the pages containing disclosures regarding code-share operations, baggage fee information, and other consumer protection information that the Department requires air carriers, foreign air carriers, and ticket agents to provide to consumers before an air transportation purchase is finalized. Accordingly, the Department is considering a definition of ''ticket agent'' that would clarify that global distribution systems, meta-search Internet sites that offer a flight search tool and are compensated for advertisements that are displayed on the same Web site (even if the advertising content is not directly related to air travel), and other such compensated intermediaries, regardless of the manner in which they are compensated for their role in arranging air transportation, are ticket agents for the purposes of the Department's air transportation consumer protection regulations. Such a broad definition would ensure that all commercial entities that receive compensation in connection with air transportation advertising/marketing and that are involved in arranging for air transportation would be required to provide consumers with certain essential information early in the process (e.g., information regarding code-share operations, disclosure about baggage fees). A broad definition of ''ticket agent'' would better ensure passengers are protected regardless of the path they choose to arrange for air transportation. Additionally, this rulemaking proposes to prohibit ticket agents from incorporating undisclosed bias into their displays, and solicits comment on whether ticket agents should be required to disclose information about incentive payments and/or identify the carriers the ticket agent markets or does not market.

We are not aware of whether there is a widespread problem of consumers being confused by Web sites that do not sell tickets but do provide fare, schedule, and availability information that consumers are relying on in planning their travel. However, we believe that there is a risk of harm because some Web sites do not provide all of the disclosures required by the Department. We seek comment from any consumers who have faced these types of problems.

Past litigation has made clear that GDSs are ticket agents. *Sabre* v. *Department of Transportation,* 429 F.3d 1113 (D.C. Cir. 2005). However, meta-search engines that offer a flight search tool have entered into the marketing and distribution of fare and schedule information. In addition, new entities have emerged that receive direct or indirect compensation from the advertising and/or sale of air transportation, while offering flight

search tools and fare displays. The Department sees a benefit in clarifying that those entities are ticket agents, regardless of whether or not they are the final point of sale for air transportation, and are required to comply with air transportation consumer protection regulations that apply to ticket agents. Additionally, at this point, the Department cannot predict the new types of entities that will engage in the marketing and distribution of fare and schedule information or how the marketing and distribution of fare and schedule information will change with new developments in technology. However, it appears that some of these entities may have taken, or will take in the future, a quasi-GDS role. Accordingly, the Department believes its regulations should be clear and should apply equally to entities that are new to the air transportation marketplace as well as existing entities already involved in the marketing and distribution of air transportation. To be clear, only entities operating Web sites that provide flight search tools that manipulate, manage, and display fare, schedule, and availability information and are tools that the Web site operator creates or manipulates and has ultimate control over would be covered. For example, entities such as Kayak and Google that offer flight search tools with fare, schedule, and availability information would be covered. An entity that operated a Web site that simply displayed airfare advertisements without actual flight search capability under its control would not be covered.

The Department seeks comment on whether the definition of ''ticket agent'' should be codified in the regulation so as to clarify the Department's view that it is a broad term and includes entities such as meta-search engines that provide a flight search tool and other Web sites that act as intermediaries between consumers and the ultimate entity that sells the air transportation, whether an airline or another ticket agent. The Department also seeks comment on whether the proposed definition of a ticket agent, which includes an entity that arranges for or sells air transportation for compensation (regardless of the form of compensation), is sufficiently broad and meets the Department's goal of encompassing the variety of entities that use the Internet to arrange for the sale of air transportation. For example, under the proposed definition, an entity that provides a flight search tool that allows consumers to select an itinerary that can be purchased on another site and displays air transportation advertisements for which the entity is compensated on a ''cost-per-click'' basis would fall under the definition of a ticket agent. The Department also seeks comment on whether the definition of a ticket agent should include all entities that operate flight search tools that display itineraries and allow consumers to begin the booking process but are not compensated for the specific transaction. We also request comments on the costs and benefits to consumers, airlines, meta-search engines, and other entities involved in arranging for and selling air transportation, of codifying the definition of ''ticket agent'' to include air transportation intermediaries such as meta-search engines that offer a flight search tool.

As a related matter, the Department is considering whether carriers should be prohibited from restricting the information provided by ticket agents when those ticket agents do not sell air transportation directly to consumers but rather provide consumers with different airlines' flight information for comparison shopping. For example, the Department has been informed that some carriers may not allow certain entities with Web sites that operate flight search tools to display the carrier's fare, schedule and availability information. Should carriers be prohibited from imposing restrictions on ticket agents that prevent ticket agents from including a carrier's schedules, fares, rules, or availability information in an integrated display?

Also, we understand that a number of carriers restrict the links ticket agents may place next to a particular flight itinerary on a display, and in many cases only permit a link to the carrier's own Web site. Why might carriers place such restrictions on travel agents? Should the Department require carriers to allow ticket agents to provide links to the Web sites of the entities listed in an integrated display, including non-carrier Web sites?

2. Display of Ancillary Service Fees Through All Sales Channels

Need for Rulemaking

Many services or products previously included in the price of an airline ticket such as checked baggage, advance seat assignments and priority boarding are now sold separately. Traditional and online travel agents generally access their airline ticket inventory through large Global Distribution Systems (GDSs) and often do not have access to the fees associated with ancillary services/products and thus cannot disclose this information to consumers without looking directly at carriers' Web sites. In discussions with the Department, consumers and corporate travel companies have identified the lack of complete transparency of fees for unbundled services and products as a problem. Specifically, when consumers are making decisions on whether to purchase air transportation and if so, from which entity, they continue to have difficulty determining the total cost of travel because the fees for the basic ancillary services are not available through all sales channels. This lack of transparency also creates challenges in the corporate and managed travel community. Currently, approximately 50% of air transportation is booked through a channel that involves a ticket agent rather than the airline's own reservation agents or its Web site, whether it is through a traditional brick-and-mortar travel agency, a corporate travel agent, or an online travel agency.[1] Consumers and corporate travel companies often search various Web sites to try to determine the fees for ancillary services. They have raised concerns with the Department regarding how the lack of clear disclosure of ancillary fees makes it difficult to determine the true cost of travel and compare different airline flight and fare options.

In the NPRM that led to the second Enhancing Airline Passenger Protections rule, the Department reiterated its goal of increasing notice to consumers of the fees carriers charge for optional or ancillary services, including checked baggage fees and carry-on baggage fees, by proposing a series of disclosure requirements related to ancillary service fees. When drafting the disclosure regime in the second Enhancing Airline Passenger Protections rule, the Department recognized that a problem in the marketplace existed because ticket agents did not have access to real-time and accurate fee data for ancillary services. Therefore, in the NPRM, the Department asked whether it should require that carriers provide fee information for ancillary services and products to the GDSs in which each carrier participates, in an up-to-date and useful fashion. Although the

[1] According to estimates by PhoCusWright (2011), 31 percent of passengers purchased tickets through Travel Management Companies (TMCs) (e.g., American Express, Carlson Wagonlit), and 16 percent via an online travel agency (OTA). Since both TMCs and OTAs use GDSs to book air tickets, the share of passengers who will benefit from improved salience on ancillary service fees would be the total of both ticket distribution channels (47 percent), unless TMCs or OTAs connect directly to airlines. Other higher proxy estimates were also found. InterVISTAS estimated that 50 percent of US national round trip passengers book their ticket via a GDS.

Department did not propose rule text, it invited comment on the ''GDS proposal.'' The comment period closed on September 24, 2010.

The Department received numerous comments regarding the GDS proposal from interested industry parties and consumer advocacy groups both before and after the closing of the comment period. The comments demonstrated to the Department that before it issued a final rule it needed more information on the contractual and historical relationships between the GDSs and the carriers, as well as an in-depth cost-benefit analysis of such a requirement. Therefore, in the Final Rule for Enhancing Airline Passenger Protections published in the **Federal Register** on April 25, 2011, 76 FR 23110, the Department did not include a requirement that carriers provide all ancillary service fee information to GDSs. Instead, it stated that it would continue to consider the issue, gather more information, and defer final action on this topic.

In the 2011 final rule, the Department did impose various disclosure requirements on both carriers and travel agents via the new 14 CFR 399.85. However, in recognition of the fact that the Department had not required the dissemination of ancillary service fee information through GDSs and, therefore, agents would not necessarily have access to the most up-to-date and accurate ancillary service fee information, the Department promulgated different baggage disclosure requirements for ticket agents from those required of carriers. For example, the rule allows ticket agents with Web sites marketed to consumers in the United States to disclose baggage fees through hyperlinks displayed with itinerary search results and included in e-ticket confirmations which link to static lists. Also, 14 CFR 399.85(a) requires carriers but not ticket agents to disclose on their homepage for three months any change to their baggage fees. Additionally, under 14 CFR 399.85(d), carriers must provide a listing of all optional service fees on one Web page. There must be a link to that listing on the homepage. Agents are not required to have this listing, as they do not necessarily have access to all carriers' current optional service fee information on a real-time basis.

While the Department considers the disclosure requirements in its 2011 final rule to be a step in the right direction, these requirements do not fully address the problem of lack of transparency of ancillary services and products. Consumers who book transportation through a ticket agent still do not receive accurate and real-time information about fees for ancillary services and products and are unable to determine the total cost of travel. Consumers also can't use the list of optional services and fees that airlines post on their Web site to determine the cost of travel since airlines generally provide a range of fees for ancillary services aside from baggage and acknowledge that the fees vary based on a number of 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. Further, the list of optional services and fees that the airlines post on their Web sites are static lists. In many cases, it is not possible for consumers to know the specific fees that would apply to them based on these lists as there are numerous possible fare and fee combinations and routings for any given trip. With respect to baggage, the existing disclosure requirements mandate specific information, but passengers must still review lengthy and complex charts to determine the exact fee that they would be charged for their baggage.

The Department remains of the view that as carriers continue to unbundle services that used to be included in the price of air transportation, passengers need to be protected from hidden and deceptive fees and allowed to price shop for air transportation in an effective manner. However, we lack sufficient data to be able to quantify the extent of this problem for consumers. We request comment from consumers about whether it is difficult to find baggage and seat assignment fee information and how much of an impact this has on their ability to comparison shop among carriers. The Department also requests comment from consumers on whether and how much the fee disclosures required of carriers and travel agents in Passenger Protections II have improved their ability to find information on fees.

Consumers and consumer groups have reiterated to the Department through comments in the second Enhancing Airline Passenger Protections rulemaking and comments to the docket for the Advisory Committee on Aviation Consumer Protection the difficulty in determining the specific fees that apply to ancillary services. Additionally, members of Congress, representing their constituents, have expressed support for full disclosure of ancillary fees during the rulemaking period for the second Enhancing Airline Passenger Protections rule. The Department also receives consumer complaints that reflect the confusion consumers experience regarding fees for ancillary services, particularly in connection with baggage and seat assignments. For example, consumers complain that when shopping for air transportation they do not know how much it will cost them to book seats together for family members or to transport all of their baggage. Similarly, representatives of business travelers complain that it is difficult to advise clients on the best and most cost-effective flights because the fee information for seat assignments or baggage is not readily available. Additionally, the issue has been raised at meetings of the Advisory Committee on Aviation Consumer Protection by various industry stakeholders and consumer advocates. The Department believes that regulation is needed to address the lack of transparency regarding the true cost of air transportation and is proposing to require that fees for certain ancillary services be disclosed to consumers through all sale channels. The Department seeks input on this proposal as well as any innovative solutions that we may not have considered to address the problem of lack of transparency.

Current Airline Distribution System

In the final rule that was issued on April 25, 2011, the Department announced its intention to address in a future rulemaking the transparency of ancillary fees at all points of sale. Since that time, the Department has met with numerous stakeholders with an interest in the distribution of ancillary service fee information and conducted an inquiry regarding current distribution models as well as the contractual and historical relationships between the GDSs and the carriers. Representatives of carriers, GDSs, consumer advocacy organizations, and trade associations, as well as other interested entities, including third-party technology developers, have met with Department staff to explain their views. They have also provided information to the Department's economists. The description of the current airline distribution system provided below is largely based on the information that the Department received from these stakeholders.

Today, airlines sell airfares in two ways: Directly through their Web sites, call centers, or employees at airports or indirectly through ticket agents. Approximately 50% percent of airline tickets are purchased indirectly through ticket agents, whether it is through a traditional brick-and-mortar travel agency, a corporate travel agent, or an online travel agency. Ticket agents that display or sell air transportation

typically get the fare, schedule and availability information about the air transportation through a GDS. In the United States, three GDSs (Sabre, Travelport and Amadeus) control the distribution of the airline product for the ticket agent channel. In recent years, Sabre had more than 50 percent of the market, Travelport had approximately 40 percent and Amadeus had less than 10 percent of the market in the U.S. though Amadeus has a much larger percentage of the market worldwide.

Most U.S. airlines use GDSs to distribute their products. Some low cost carriers [2] such as Southwest participate on a selective basis in GDSs while other low cost carriers do not use GDSs, presumably because there are costs attached to each transaction. GDSs charge airlines a booking fee based on the total number of flight segments in the consumer's itinerary. Airlines presently pay booking fees that can range from a few dollars to much more for each flight segment. For example, if a booking fee is $5 per segment and a passenger purchases an itinerary that consists of four flight segments, the airline will be charged approximately $20 in booking fees. A transaction through an airline's own system costs the carrier less. However, GDSs have emphasized that there have been substantial discounts of domestic booking fees for the major airlines since 2005.

Nevertheless, airlines have expressed frustration about paying what they view as more in fees to GDS than the value they feel they receive now that technology provides new ways of selling fares and ancillary services. Still these airlines are not able to forgo using GDSs to aggregate flight schedule and fare information because airlines earn a large percentage of their revenue from business travelers, and the majority of the world's managed business travel is booked through travel management companies which use GDSs. Unlike Southwest, the legacy carriers do not have the option to participate on a selective basis in GDSs (i.e., only for business travel). Overall, airline revenue from the GDS channel is higher than direct channels mainly due to the greater proportion of high-yield business bookings.[3]

Airlines' efforts to reduce their reliance on GDSs and transition to direct connections with travel agents have also been difficult. By direct connect, we are referring to agreements between an airline and a travel agent in which the airline provides fare, schedule and availability information to the travel agent directly, bypassing GDSs. Various airlines have reported to the Department that they as well as new-entrant travel technology firms, such as Farelogix, have had difficulty in facilitating direct connections to ticket agents because of highly restrictive agreements between GDSs and ticket agents. Similar assertions were made by other third party technology providers. GDSs have contracts with both airlines and travel agents for use of their services. These contracts tend to be long-term agreements that are renewed every 3 to 5 years. Historically, contracts between carriers and the GDSs generally provided that carriers compensate the GDSs per flight segment booked. These contracts also generally require that carriers offer the same fares through GDSs that are offered through other channels, even if it is cheaper for the carrier to distribute the fares in a different manner, such as direct connect. Contracts between travel agencies and GDSs generally provide for incentive payments to travel agencies for booking travel through GDSs. GDSs also provide travel agencies with the technology used for mid- and back-office solutions such as quality control and office accounting. GDSs do not view the contracts as a barrier to entry for travel technology firms. They assert that the direct connect services will succeed or fail based on whether they meet the needs of travel agencies and the consumers they serve.

It is also worth noting that IATA has filed an application with the Department for approval of its Resolution 787, the agreement that establishes the framework for its New Distribution Capability (NDC). NDC would be based on a common XML based technical standard for direct connect services. Airlines contend that this new standard would allow airlines to custom-tailor product offers that would include different combinations of ancillary services in addition to air transportation and would include a total price. The new standard, if approved by the Department, will be available for use by any party. While the Department acknowledges that carriers are working towards technological solutions to distribute information, such solutions are prospective. Additionally, even if a standard is agreed upon, its use is optional and the information transmitted using the standard would be determined by each carrier. Accordingly, the development of a standard would not solve the immediate problem that some current consumers are not receiving the information that they need to determine the total cost of travel including the cost of certain ancillary services.

While fare, schedule, and availability information is 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. One reason, as it has been explained to Department staff by airline representatives, is that GDSs do not have the modern technology airlines need to merchandise and sell their products the way they choose. The GDSs disagree with the airlines' assessment and contend that they are capable of handling the most complex airline transactions and have worked with airlines, airline associations, and airline-owned intermediaries like ATPCO, ARC and IATA to establish technical standards for the distribution of their products, including ancillary offerings. While expressing a general willingness to distribute ancillary products to travel agents subject to assurances that the technology is in place to conduct transactions in an efficient and cost-effective manner, airlines expressed the need for the flexibility to do so on terms that meet their business needs. Airlines prefer to negotiate with the GDSs for the business terms acceptable to them. They argue that market forces and not government mandates are the best way to ensure that information about ancillary services and fees reaches consumers using the travel agent channel.

Various airlines and airline associations have also asserted to the Department that if it were to require carriers to provide ancillary service fee information to all ticket agents that the carrier permits to distribute its fare and schedule information, including GDSs, the Department would reinforce the existing distribution patterns and stifle innovation in the air transportation distribution marketplace. These carriers argue that since existing business arrangements provide significant benefits to most ticket agents, including GDSs, those entities would strive to retain existing distribution technology and transaction patterns. The carriers have also expressed concern that if they are required to provide information to GDSs, the GDSs will use existing contractual agreements and market power to pressure carriers to provide the

[2] Low-cost carriers operate under a generally recognized low-cost business model, which may include a single passenger class of service, limited in-flight services, and use of smaller and less expensive airports.

[3] GDSs process 64 percent of the total U.S. airline gross sales by revenue. PhoCusWright, *The Role and Value of the Global Distribution Systems in Travel Distribution,* 2009.

information in the existing format for fare filing. If that occurs, some stakeholders allege that carriers would no longer have sufficient financial incentive to invest in new distribution technologies which might ultimately provide more useful and responsive information to consumers by allowing carriers to differentiate their services from competitors. GDSs have disputed the carriers' assertions and contend that Department action is needed because airlines and ticket agents have been unable come to agreements that would allow fee information about ancillary services to be disclosed to consumers at all points of sale.

We agree with the GDSs that there is a need for rulemaking because we believe that consumers continue to have difficulty finding ancillary fee information. 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. Also, despite the disputes regarding contract terms and distribution methods, both carriers and GDSs have assured the Department that they share our goal of transparency of ancillary service fee information.

Request for Public Input on Airline Fees

Given our continuing concern that consumers may not be getting sufficient information about carriers' fees, we solicit comment from consumers on the following questions:

- Do you have a problem finding fee information? And if so, how significant is that problem? If you have a problem finding fees, how does it affect your ability to comparison shop?
- What types of fees would you most like to have more information about during the shopping process, prior to purchase?
- When would you like to see that information displayed in your search process—as soon as you see a list of fares or later in the process? How would you like to see the information regarding ancillary fees displayed—as a link, as a specific dollar amount shown with the airfare quote, as a table or menu on the homepage or flight search results list? Should the Department require a standardized format for disclosure?
- Do you feel that our proposed disclosure requirements would improve your search experience? Have we selected the most ancillary fees that are most important to your decision making process? Will disclosure of all these fees at the point of search cause further confusion on ticket agent Web sites (as defined in this proposal), or diminish your user experience (because of screen clutter, diminished usability features, etc.)?
- Is either of our co-proposals outlined below likely to make fees easy to find?

Proposed Solutions and Alternatives Considered

Based on the information gathered, the Department is co-proposing two regulatory texts and seeking input regarding those two proposals. One proposal is to require each carrier to distribute certain ancillary service fee information to all ticket agents (including GDSs) that the carrier permits to distribute its fare, schedule, and availability information. Carriers would not be required to distribute ancillary fee information to any GDS or other ticket agent that the carrier did not permit to distribute its fare, schedule, and availability information. Additionally, under this proposal, the Department would not require carriers to allow ticket agents to sell/transact its ancillary services to consumers but rather would require carriers to provide ''usable, current and accurate'' information on fees for certain ancillary services to all ticket agents so this information can be disclosed to consumers at all points of sale. Each airline would continue to determine where and how its ancillary services may be purchased. For instance, if a carrier chooses to allow a ticket agent to sell its ancillary services directly to consumers, we expect that the carrier and ticket agent would determine through negotiation whether the ticket agent would offer the ancillary services at the same prices that the carrier offers those services. In other words, the proposal would require airlines to provide certain ancillary fee information to ticket agents, including GDSs, in order to enable disclosure to consumers of fees associated with certain ancillary services at all points of sale but would not require that these ancillary services be transactable. Carriers and ticket agents would negotiate regarding the ability of ticket agents to sell a carrier's ancillary services and the price at which those services would be sold.

The second proposal is similar to the first in all ways except one. Unlike the first proposal, the second would omit the requirement that the information on ancillary fees be distributed to GDSs or other intermediaries since GDSs and similar intermediaries would not be subject to any direct consumer notification requirements. Instead, the second alternative would require carriers to distribute certain ancillary service fee information to all ticket agents that the carrier permits to distribute its fare, schedule, and availability information *if* the ticket agent sells the carrier's tickets directly to consumers. Although this proposal would not require carriers to provide ancillary fee information to entities that act as intermediaries and do not deal directly with the public such as GDSs, GDSs are the source through which most travel agents obtain their fare information, so as a practical matter, they may be the most efficient vehicle currently available for carriers to use for dissemination of information on ancillary fees. Additionally, the second proposal would not require carriers to provide ancillary fee information to entities such as meta-search tools like Kayak and Google.

The Department has proposed these two options as it remains of the view that as carriers continue to unbundle services that used to be included in the price of air transportation, passengers need to be protected from hidden and deceptive fees and allowed to price shop for air transportation in an effective manner. The Department believes that failing to disclose basic ancillary service fees in an accurate and up-to-date manner before a consumer purchases air transportation would be an unfair and deceptive trade practice in violation of 49 U.S.C. 41712.

Under both proposals, the Department recognizes that not all ancillary service fee information needs to be available through all channels. However, there are certain basic services that are intrinsic to air transportation that carriers used to include in the cost of air transportation but that they now often break out from the airfare, and the cost of those services is a factor that weighs heavily into the decision-making process for many consumers. We consider these basic ancillary services to consist of the first and second checked bag, one carry-on item and advance seat selection. This rulemaking would require U.S. and foreign air carriers to distribute to ticket agents the fees for these basic ancillary services. However, carriers would not be required to provide ticket agents information about individual customers, such as their frequent flyer status or type of credit card though these factors may impact the fee for an ancillary service. Carriers would, of course, be required to provide ticket agents the fee rules for particular passenger types (e.g., military, frequent flyers, or credit card holders). Under the proposal, the failure of airlines to share this fee information

in an up-to-date and accurate fashion would be considered an unfair and deceptive trade practice in violation of 49 U.S.C. 41712.

As the requirement for carriers to distribute this information to agents would not be helpful to consumers without a disclosure requirement, the Department is also proposing to require all carriers and agents to disclose the fees for these basic ancillary services before the passenger purchases the air transportation. Airlines and agents that have Web sites marketed towards U.S. consumers must disclose, or at a minimum display by a link or rollover, the fees for these basic ancillary services on the first page on which a fare is displayed in response to a specific flight itinerary search request in a schedule/fare database. To comply with this proposed requirement, airlines and agents would have to modify their Web sites to display these basic ancillary service fees adjacent to the fare information on the first page on which a fare for the requested itinerary is displayed. We solicit comment on whether the Department should require the ancillary service fee information to be disclosed only upon the consumer's request, or require that the information be provided in the first screen that displays the results of a search performed by a consumer. The Department also seeks comments on whether it should limit the applicability of the disclosure requirement only to agent and carrier Web site displays marketed to members of the general public, or whether the disclosure requirement should include agent and carrier Web site displays that are not publicly available (e.g., displays used by corporate travel agents).

Under both co-proposals, the fee information disclosed to consumers for a carry-on bag, the first and second checked bag, and advance seat assignment would need to be expressed as specific charges. Airlines would be required to disclose customer-specific fees for these services to the extent the customer provides identifying information, and if the customer does not provide that information, must disclose itinerary-specific fees. Ticket agents would be required to disclose itinerary-specific fees for these services. Ticket agents may also arrange/negotiate with the airlines to obtain data that would enable them to give customer-specific fees for basic ancillary services. ''Customer-specific'' refers to variations in fees that depend on, for example, the passenger type (e.g., military), frequent flyer status, method of payment, geography, travel dates, cabin (e.g., first class, economy), ticketed fare (e.g., full fare ticket—Y class), and, in the case of advance seat assignment, the particular seat on the aircraft if different seats on that flight entail different charges. In other words, the response to a specific flight itinerary search request by a consumer on a carrier's Web site would need to display next to the fare the actual fee to that consumer for his or her carry-on bag, first and second checked bags, and advance seat assignment. Nothing in this proposal would require carriers to compel consumers to provide the passenger-specific details before searching for airfare. Providing such details before conducting a search should be an option and not a requirement for consumers. We note that many carriers already offer seat maps during the online booking process on their Web site that permit consumers to obtain a seat assignment at that time and that disclose the charge for each seat. This process would comply with the proposed rule as long as there is a statement adjacent to the fare on the first screen where an itinerary-specific fare is displayed that informs the consumer that there are fees for advance seat assignments and direct links to the seat map.

The fee information that ticket agents would be required to display to consumers differs from what would be required of airlines in that ticket agents would not be required to include variations in fees that depend on the attributes of the passengers such as the passenger type (e.g., military), frequent flyer status, or method of payment. Ticket agents would be required to take into account variations in fees that are related to the itinerary such as travel dates, geography, ticketed fare and cabin. In addition to providing itinerary-specific fees for a first checked bag, a second checked bag, a carry-on bag and an advance seat assignment, ticket agents would also be required to clearly and prominently disclose that these fees may be reduced or waived based on the passenger's frequent flyer status, method of payment or other characteristic. Ticket agents who have not negotiated an agreement with the airlines to sell advance seat assignments would also be required to disclose that seat availability and fees may change at any time until purchase of the seat assignment. In addition, it is worth noting that carriers and agents would be permitted to offer an ''opt out'' option for consumers who prefer to search for fare information only, without any ancillary fee information, and when this option is selected carriers and agents would not be required to present the fee information.

We ask for comment on whether the Department should only require carriers and agents to provide information on standard baggage fees without taking into account variations based on frequent flyer discounts, loyalty card discounts, geography, ticketed fare, etc. If all of the varieties of baggage fees are displayed, how should the varying fees be arranged? Regarding advance seat assignments, the charges for which also may vary considerably based on, among other things, the location of the seat and how far in advance the seat assignment is purchased, should carriers and agents be required to display all possible advance seat assignment fees, or a range, or the fee for each seat assignment available at the time of the search for a particular city-pair? What is the technological feasibility and cost of providing this information to consumers in a usable fashion, particularly for ticket agents?

As discussed earlier, neither of the Department's two alternative proposals would require that carriers enable agents to sell the carrier's ancillary services; in industry idiom, we are not proposing to require that the fees be ''transactable.'' The Department is addressing the harm caused to consumers of not knowing the true cost of travel before purchasing air transportation. Under the proposed disclosure regime, every point of sale for a particular carrier's fares would also provide access to the carrier's fee information for first and second checked bag, one carry-on bag, and an advance seat assignment. This requirement would place a legal obligation on carriers to disseminate this information to all of their agents; however, the Department is not stating the method the carriers must use to distribute the information, as long as it is in a form that would allow the fee information to be displayed on the first itinerary-specific results page in a schedule/fare database. Carriers would be free to develop cost-effective methods for distributing this information to their agents. Carriers could use existing channels, such as filing the fee information through the ATPCO, or they could develop their own systems to disseminate the information, in conjunction with the agents who would receive the information.

Although neither of the Department's alternative proposals dictate the method that carriers must use to distribute the information, carriers should be mindful that whatever distribution method they might choose must be usable, accurate, and current so the information is accessible in real-time. Similarly, ticket agents must work in good faith with

carriers to come to agreement on the method used to transmit the ancillary service fee information. For example, ticket agents should not use contractual restrictions to prohibit travel agents, carriers, or applications software providers from integrating the ancillary fee information with information obtained from the GDSs. Since the Department's proposal would require ticket agents to provide the ancillary fee information to consumers, in cases where carriers and ticket agents are able to agree on a transmission mode for ancillary fee information other than through a GDS, we would expect GDSs to work in good faith with carriers and other ticket agents to permit the integration of information obtained from other sources with information obtained through the GDS and allow the distribution of fee information directly to the agents. Additionally, under the proposed disclosure requirement, to the extent that carriers have existing contractual relationships with ticket agents acting as intermediaries, such as GDSs, to distribute fare information, those ticket agents would be prohibited from imposing charges for the distribution of ancillary service fee information that are separate from or in addition to the existing charges for the distribution of fare information as it would be unlawful to provide fare information that does not include the fees for the basic ancillary services. The Department invites comments regarding the two proposals: (1) Requiring a carrier to disseminate certain ancillary service fee information to the agents that distribute the carrier's fare, schedule, and availability information and requiring both carriers and agents to disclose accurate and up-to-date fee information to consumers, or (2) requiring a carrier to disseminate certain ancillary service fee information to the agents that distribute the carrier's fare, schedule, and availability information and are a point of sale for the carrier's tickets to consumers, and requiring both carriers and agents to disclose accurate and up-to-date fee information to consumers. What are the costs and benefits of requiring carriers to provide ancillary fee information to all ticket agents, including entities that have not previously considered themselves to be regulated but would fall under the proposed definition of ''ticket agent,'' described above, and what are the costs and benefits of requiring carriers to provide ancillary fee information only to ticket agents that act as sales outlets? If DOT requires disclosure of certain ancillary service fees, but does not require the ability to purchase these services at the time of booking, what would be the preferred way for carriers to collect payment for such services? On the Internet through the airline Web sites prior to check-in, at the airport at the time of check-in, etc.*?*

Proponents of the first alternative have argued that, because most carriers already rely on GDSs to transmit information to ticket agents that act as a point of sale, the Department could ensure that the information was disseminated in a quick and efficient manner by requiring carriers to provide the information to GDSs. They also assert that such a proposal would resolve the ''market failure'' that has prevented carriers and ticket agents from coming to agreements that would allow the information to be provided to consumers. Advocates of the second alternative state that permitting carriers to decide which intermediaries, if any, to use to provide ancillary fee information to ticket agents acting as sales outlets still provides for consumer disclosure but minimizes government interference with business arrangements. Additionally, they contend that the second proposal provides opportunities for the development of new and innovative technologies and methods of distribution of air transportation while allowing carriers the freedom to use traditional methods if it makes commercial sense for them to do so.

In addition to the two alternative proposals under consideration, we also solicit comment on whether any of the alternatives rejected earlier in the rulemaking process better address the problem of lack of transparency of fees associated with ancillary services. For example, should the Department set design standards (e.g., filing of fees for ancillary services through ATPCO, EDIFACT, XML or some other technology) rather than using performance standards for transmission of ancillary fee data from airlines to ticket agents or from airlines and ticket agents to consumers? Under both alternative proposals, the Department does not prescribe particular standards in order to avoid stifling innovation and imposing more of a burden on industry participants than is necessary to solve the transparency problem. However, we are interested in comments on whether setting a specific technological/information standard could potentially enhance innovation and improve transparency, and if so, how. Would selecting a specific standard allow for new market entrants in the transmission or display of air travel information, by making fare and fee information more open and accessible?

The Department also solicits comment on the issue of whether the basic ancillary services that are disclosed to consumers should also be transactable. Although the Department has tentatively determined that it would be sufficient to require carriers and agents to disclose certain basic ancillary fee information to consumers, it has not closed the door on the possibility of also requiring that those ancillary services be available for purchase through all channels that carriers decide should sell their fares. In other words, should we require these ancillary services to also be ''transactable''?

Representatives of certain consumer advocacy groups and trade associations have argued to the Department that if consumers are not entitled to purchase the ancillary services at the time of booking air transportation, the carrier may increase the price of those ancillary services before the consumer has a chance to purchase the ancillary service on the carrier's Web site or through its reservation center. In the case of advance seat assignments, the problem is particularly acute because in addition to price increases, the consumer risks the possibility that the advance seat assignment that he or she wished to purchase will no longer be available.

Carriers are prohibited from increasing the price of baggage fees after a consumer purchases air transportation under the current 14 CFR 399.88, but under the *Guidance on Price Increases of Ancillary Services and Products not Purchased with the Ticket* issued by the Enforcement Office on December 28, 2011, and under the proposed change to section 399.88 discussed below, carriers would not be prohibited from increasing the price of an advance seat assignment until the seat assignment itself is purchased. Prices for advance seat assignment are often dynamic and change based on route, aircraft size, availability, and time of purchase. Proponents of transactability argue that without the ability to purchase the seats at the time of ticket purchase, consumers will be further harmed because desired seats may not be available when the passenger decides to purchase them or is allowed by the carrier to purchase them or they may cost more. The Department seeks comment on requiring disclosure plus transactability of advance seat assignment fees at all points of sale. We also seek information on the costs and benefits of requiring transactability and how requiring transactability would affect existing contracts between the GDSs and the airlines. We also invite interested persons to provide their views on whether disclosure plus

transactability should be required not only for advance seat assignments but also for fees associated with first and second checked bags and carry-on bags. As noted above, of the ancillary services traditionally included in the price of a ticket, the Department views the first and second checked bag, one carry-on bag, and an advance seat assignment as the services that are intrinsic to air transportation and of primary importance to many consumers when making air transportation purchasing decisions. The Department invites comments on whether the list should be expanded to include services such as in-flight wireless Internet access, seating section upgrades, food and beverages, or priority boarding. If the list should be expanded, how should carriers and agents display the information related to these additional services?

The Department also solicits comment on leaving the disclosure requirements established in 14 CFR 399.85 unchanged instead of adopting new proposed requirements for customer-specific information about one carry-on bag, the first and second checked bag, and an advance seat assignment. Under the existing regulation, consumers may visit individual carrier Web sites to ascertain all of the fees associated with ancillary services. This information is in a centralized location accessible from a link on each carrier's homepage. Leaving the existing requirements in place would not require carriers to enable agents to provide up-to-date and real-time pricing for ancillary services, but it would still require that passengers be made aware that ''baggage fees may apply'' on the first page on which a fare quote is given for a flight search. The Department asks consumers to comment on the existing requirements, particularly whether the disclosure requirements under section 399.85 have aided in their ability to price shop and their ability to understand the true cost of travel before purchasing. The Department also asks carriers and ticket agents to comment regarding whether they believe the current disclosure requirements are sufficient and effective and why or why not. The Department also asks agents to comment on how the current disclosure requirements are affecting their businesses and whether consumers are aided under the disclosure requirements. If the Department decides to maintain the current disclosure requirements, should the Department require carriers to list the fees for advance seat assignments in a more specific manner, rather than a range, on the page listing ancillary fees and on e-ticket confirmations? Comments on the cost and benefits of the proposal and all of the alternatives are invited. Further, we encourage interested parties to provide comment regarding any innovative alternatives/solutions that Department may not have considered but that would address the lack of disclosure of ancillary service fees in all sales channels.

3. Expanding the Definition of ''Reporting Carrier'' Under 14 CFR Part 234

In 14 CFR Part 234, the Department sets forth requirements for ''reporting carriers'' to file certain performance data with the Department and provide flight on-time performance information to the public. ''Reporting carrier'' is defined in 14 CFR 234.2 as an air carrier certificated under 49 U.S.C. 41102 that accounts for at least one percent of domestic scheduled-passenger revenues. In addition to reporting carriers, any carrier that does not reach the reporting carrier threshold may voluntarily file Part 234 reports, provided that the Department's Bureau of Transportation Statistics (BTS) is advised beforehand and such data will be submitted voluntarily for 12 consecutive months.

Pursuant to Part 234, reporting carriers are required to submit to BTS' Office of Airline Information their domestic scheduled passenger on-time performance data and mishandled baggage information, and provide on-time performance codes to computer reservation systems (CRS). These carriers also must disclose to consumers the on-time performance code, on a flight-by-flight basis, for all domestic scheduled flights that they market to the public, including the flights operated by code-share partners. The on-time performance codes must be disclosed to consumers during in-person or telephone communication (including but not limited to reservations or ticketing transactions) upon reasonable inquiry. For flight schedule Web site displays, the on-time performance information must be provided either on the initial listing of the flights or via a prominent hyperlink. Furthermore, to implement a statutory requirement of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Pub. L. 106–81), the Department amended Part 234 in 2005 to require all U.S. air carriers (not only ''reporting carriers'') to file a report with the Department's Aviation Consumer Protection Division on any incident involving the loss, injury, or death of an animal during air transportation.[4] Additionally, under 14 CFR Part 250, reporting carriers are also required to submit to the Department information on passengers denied boarding on their domestic and outbound international scheduled flights.

Since their implementation, Parts 234 and 250 have been effective tools for the Department to collect on-time performance, mishandled baggage, and oversales data and use these data to monitor the quality of service provided by each reporting carrier to the flying public and to provide such information to consumers. On October 22, 2013, BTS issued a Technical Reporting Directive (Technical Directive #23) to update the list of reporting air carriers that are required to file ''Airline Service Quality Performance Reports'' under 14 CFR Part 234 for calendar year 2014. Technical Directive #23 identified the following 14 air carriers that reached the reporting threshold of one percent of domestic scheduled-passenger revenue in the 12-month period ending June 30, 2013: AirTran Airways, Alaska Airlines, American Airlines, American Eagle Airlines, Delta Air Lines, ExpressJet Airlines, Frontier Airlines, Hawaiian Airlines, JetBlue Airways, SkyWest Airlines, Southwest Airlines, United Airlines, US Airways, and Virgin America.

The one percent domestic scheduled-passenger revenue threshold for reporting carriers was set in a final rule that initiated the reporting requirements contained in Part 234. 52 FR 34056 (September 9, 1987). In that final rule, the Department considered some comments asserting that flight delays affect passengers without regard to the size of the carrier or the length of the flight. The Department concluded, however, that compliance with the rule was likely to be much more costly for small carriers than for large carriers, particularly due to the fact that, at the time when the rule was finalized, large carriers were more likely than small carriers to maintain their flight performance data in a computerized form. Therefore, the Department made the determination that as an initial matter, it would limit the application of

[4] On June 29, 2012, the Department issued a Notice of Proposed Rulemaking (RIN 2105–AE07, Docket No. DOT–OST–2010–0211), seeking comments on whether the Department should expand the reporting carrier pool for reporting animal death, loss and injury incidents to cover all U.S. carriers operating domestic and international scheduled passenger air transportation using at least one aircraft with a design capacity of more than 60 seats. See 77 FR 38747 (June 29, 2012). Because our determination on the scope of reporting carrier with respect to animal death, loss or injury incidents will be addressed separately in the final rule of that rulemaking, interested parties should provide comments regarding animal reporting to the Department through the docket designated for RIN 2105–AE07.

this rule to large air carriers. Nonetheless, the Department noted that it would continue to review the carriers covered and would extend the reporting requirements to smaller carriers if it became necessary.

Twenty-five years have passed since the issuance of that final rule. Technology innovations that have fundamentally reshaped our world in many ways have also profoundly changed almost every aspect of the commercial aviation industry's operations. In 1987, for a small carrier to file data with the Department, it had to commit to either a significant capital investment in a comprehensive computer data tracking system or to a significant human resource investment so it could compile and file reports manually. Conversely, in this day and age, virtually all air carriers are using computerized recordkeeping methods to store and distribute data to file reports with the Department or are conducting internal performance evaluations, or both, which makes reporting data a much easier and less costly task.

Moreover, we believe that requiring smaller carriers to report service quality data to the Department will greatly benefit the public in several ways. First, adding these smaller carriers' performance data to the data currently collected by BTS will enable the Department to obtain and provide to the flying public a more complete picture of the performance of scheduled passenger service in general. These data will, in turn, provide consumers with more meaningful information on which to base their purchasing decisions. For example, based on BTS-provided domestic scheduled passenger revenue and enplanement data for 2010, the carriers that reach the one percent threshold represent approximately 90 percent of total domestic scheduled passenger revenue, and 80 percent of total domestic scheduled passenger enplanements. If we were to lower the threshold to 0.5 percent of domestic scheduled passenger revenue, the reporting carrier pool would capture approximately 98 percent of domestic scheduled passenger revenue and 94 percent of the domestic scheduled passenger enplanements.

Further, the public benefits of including smaller carriers in the reporting pool were also recognized and supported by a September 2011 Report to Congressional Requesters prepared by the Government Accountability Office (GAO). In the report titled *Airline Passenger Protections, More Data and Analysis Needed to Understand Effects of Flight Delays,* GAO recommended that in order to enhance aviation consumers' decision-making, the Department should collect and publicize more comprehensive on-time performance data to include information on most flights, to airports of all sizes. GAO specifically recommended that one way this goal could be accomplished was by requiring airlines with a smaller percentage of total domestic scheduled passenger service revenue, such as airlines that operate flights for other airlines, to report flight performance information. Furthermore, expanding the reporting carrier pool would enhance the Department's ability to analyze the cause of flight disruptions such as delays and cancellations, particularly with respect to airports in smaller communities and smaller airlines. For example, according to GAO's analysis of the performance record of two legacy airlines [5] and their regional partners, the regional partners generally have worse on-time performance records. GAO further notes that while flight cancellations to smaller communities may inconvenience a relatively small number of passengers, they may result in long trip delays if those smaller communities have infrequent service. What's more, requiring smaller carriers to file on-time performance, mishandled baggage, and oversales data with the Department will increase the level of public scrutiny of these carriers' performance, which in turn will function as an incentive for these carriers to continuously improve the quality of their service. The enhanced service quality will increase these carriers' competitiveness and benefit the regional markets that they primarily serve.

For these reasons, we are proposing in this NPRM to amend the definition of ''reporting carrier'' under Part 234 to include carriers that account for at least 0.5 percent of annual domestic scheduled-passenger revenue. Additionally, since for years BTS has been using June 30, instead of March 31, as the cutoff date to compile a carrier's annual domestic scheduled-passenger revenue percentage, we propose to codify this change in the definition of ''reporting carrier.'' We seek public comments on whether 0.5 percent is a reasonable threshold to achieve our goal of maximizing the scope of data collection from the industry while balancing that benefit against the burden of increasing reporting requirements on carriers, particularly small businesses. If 0.5 is not the most reasonable threshold, we seek comment on an even larger expansion, e.g., to 0.25 percent of domestic scheduled passenger revenue, or a smaller expansion to 0.75 percent of domestic scheduled passenger revenue. Additionally, we seek comment on whether we should require that all carriers that provide domestic scheduled passenger service report to the Department. We especially welcome comments that provide specific cost estimates or analysis by small carriers that would potentially be impacted by this proposal. We also request comments regarding whether a carrier's share of domestic scheduled passenger revenue remains an appropriate benchmark. Should we use a carrier's share of domestic scheduled passenger enplanements instead? If so, what percentage is a reasonable threshold for triggering the reporting obligation?

Finally, in relation to the burden associated with implementing a reporting mechanism within a carrier's operation system, what is the approximate time period that a newly reporting carrier will likely need to prepare for the new reporting duties? Although not proposed in the rule text, we are contemplating that should this proposal be finalized, we would permit carriers that otherwise would not have been reporting carriers but become a reporting carrier under a new threshold to file their first Part 234 report by February 15 for the first January that is at least six months after the effective date of this rule. We believe this would provide carriers adequate time to implement necessary procedures for filing the reports and amending their Web sites to comply with the flight on-time performance disclosure requirements contained in section 234.11, to the extent that the Web sites directly market flights to consumers. Having the initial reports start in January would provide the added benefit of preserving the consistency of the Department's data for a full calendar year during the transition. We seek comments on whether this rationale for determining the compliance date for the reporting requirement would be helpful to newly reporting carriers.

In addition to expanding the pool of reporting carriers, we are also contemplating expanding the scope of ''reportable flights'' in relation to airports. The current rule only requires reports for flights operated to and from U.S. airports that count for at least 1% of domestic enplanements (large hub airports). However, since the inception of the rule, the reporting carriers have chosen to file reports for scheduled passenger flights to all U.S. airports

[5] A ''legacy'' airline is a carrier that was operating when the industry was deregulated. They are typically large airlines with a hub-and-spoke route system.

where they operate. In this NPRM, we seek comments on whether we should eliminate the concept of reportable flights and simply mandate reports for all scheduled flights operated by reporting carriers to and from all U.S. airports. Without this amendment, the expansion of ''reporting carrier'' to include smaller carriers could be rendered less meaningful because a large percentage of flights operated by these smaller carriers are not to or from large hub airports. In addition to comments on whether and how such expansion of scope of reportable flights may benefit different stakeholders, we also welcome information on cost comparisons for carriers to report only flights to and from (1) large hub airports, (2) large, medium, small, and non-hub U.S. airports, and (3) all airports.

4. Carriers To Report Data for Certain Flights Operated by Their Code-Share Partners

The Department of Transportation provides information each month on the quality of services provided by the airlines through its Air Travel Consumer Report (ATCR). This Report is divided into six sections: Flight delays, mishandled baggage, oversales, consumer complaints, customer service reports to the Transportation Security Administration, and airline reports of the loss, injury, or death of animals during air transportation. The sections that deal with flight delays, mishandled baggage, and oversales are based on data collected by BTS pursuant to 14 CFR Part 234 and Part 250. The section that deals with animal incidents during air transport is based on reports required by section 234.13 and collected by the Aviation Consumer Protection Division.

With respect to flight delay information, in addition to the monthly overview of each reporting carrier, the ATCR also ranks each reporting carrier's performance at all large hub U.S. airports from which it operates. These performance tables, particularly the rankings, are widely accepted as important indicators of the carriers' quality of service, and are frequently referred to in news reports, industry analyses, and consumer commentaries and forums. Moreover, it is not uncommon that these rankings are used as the key references in institutional studies, the results of which are often cited in news reports with attention-grabbing headlines such as ''The Best and Worst Airlines of the U.S.'' Although headlines like this tend to over-simplify the complexity of airline operations, being named as one of ''the best'' or ''the worst'' airlines in the country in a national news outlet does have a significant impact on a carrier's image and brand identity and either affords the carrier a great marketing tool or causes some consumers to avoid selecting that carrier's flights when making purchase decisions which acts as an incentive for the carrier to improve its performance.

Because of the influence of the ATCR on consumer perception of carriers as well as its effect on the perception of carriers within the industry, it is vitally important that the information provided by these reports remains accurate. Since the Department began to issue the ATCR, the Aviation Consumer Protection Division and BTS have been working closely to ensure that the published reports accurately reflect the data received by the Department. However, this continuing effort does not address the growing problem of an inadequate scope of data collection, the most significant area being that a marketing carrier's data do not include its flights operated by code-share partners.

The data that carriers file under Part 234 and Part 250 are the primary source from which each monthly ATCR is developed. A ''reportable flight'' under Part 234 refers to any domestic scheduled nonstop flight reported to the Department by a reporting carrier pursuant to 14 CFR Part 241, Uniform System of Accounts and Reports for Large Certificated Air Carriers. Part 241 in turn defines a ''reporting carrier'' for the purpose of Form T–100 (U.S. air carrier traffic and capacity data by nonstop segment and on-flight market) as ''the carrier in operational control of the flight, *i.e.,* the carrier that uses its flight crew under its own FAA operating authority.'' Therefore, the on-time performance and mishandled baggage data collected under Part 234 from each reporting carrier are limited to the data for a reporting carrier's domestic scheduled passenger nonstop flight segments operated by that reporting carrier. Part 250 also limits the oversales reporting requirement to reporting carriers, although it is not limited to domestic flights (see 14 CFR 250.10).

If the reporting carrier engages in code-sharing arrangements in which the reporting carrier is the marketing carrier but not the operating carrier, the performance data for those flights are not included in the reporting carrier's Part 234 and Part 250 reports. If the operating carrier of a code-share flight is a reporting carrier itself, the performance data for its code-share flights that are also marketed by another carrier will be reported to the Department, but data for those flights will not be attributed to the marketing carrier. What's more, some operating carriers of code-share flights marketed by larger carriers do not meet the current reporting threshold of Part 234, and a certain number of operating carriers of code-share flights marketed by larger carriers would not meet the proposed lower reporting threshold of 0.5 percent of annual domestic scheduled passenger revenue. Therefore, the on-time performance, mishandled baggage, and oversales data for those flights are not currently reported to the Department at all and, even under a revised reporting threshold, not all of those operating carriers of code-share flights marketed by larger carriers would necessarily be required to report performance data.

The Department considers the current scope of reportable flights under Part 234 inadequate to truly capture many carriers' quality of service, so as to be accurately reflected in the ATCR. The limited scope of the current reporting requirements may result in consumer confusion or misperception. We note that the majority of legacy/mainline U.S. carriers continue to seek brand consolidation, while still maintaining the ''hub and spoke'' operation structure. For economic reasons, those legacy carriers' regional short-haul flights are operated, in many markets, by code-share partners on a fee-for-flight basis and these operating carriers do not engage in the sale of tickets at all. According to the data contained in the FAA's Aerospace Forecast for fiscal years 2012–2032, mainline carriers provided 16 percent less domestic passenger capacity in 2011 than they did in 2001. Over the same ten-year period, however, regional carriers' capacity overall has increased to 153 percent of the 2001 level. Further, a recent Official Airline Guide (OAG) survey provides a snapshot of the current operations of mainline carriers and their regional partners and indicates the comparative scope of code-share operations. It shows that in 2011, each of the top five legacy carriers had more than 45% of its domestic scheduled flights operated by code-share regional partners, with the carrier on the top of the survey list having almost 70% of its domestic scheduled flights operated by code-share regional partners. The service quality data for these code-shared flights are not reported by the legacy carriers and are not attributed to these carriers' records and rankings in the ATCR. However, those flights are marketed by the legacy carriers with their own airline designator codes and usually their own brands, sometimes bearing trademarks such as

''Connection'' or ''Express'' in addition to the mainline carriers' trade names. In many instances, the mainline carriers also handle virtually all aspects of ground operations including scheduling and customer service related issues, such as dealing with oversales situations, providing denied boarding compensation, and resolving baggage claims. Consumers may consider these code-share flights operated by code-share regional partners to be air transportation service provided by the mainline carrier just as much as the flights actually operated by the mainline carriers.

The Department is also concerned that the inadequacy of the scope of service quality reports may hinder competition. The Department is mindful that on-time performance data in the ATCR may have a limited influence on a consumer's purchase decision regarding a particular flight, because the consumer is more likely to refer to that specific flight's on-time performance record, which under 14 CFR 234.11 must be provided on a marketing carrier's Web site, regardless of whether it is operated by a code-share partner. Nonetheless, a carrier's ATCR ranking speaks of the carrier's performance quality from a macro perspective, and is often used by carriers as a powerful marketing tool in developing brand loyalty, recruiting talented employees, and negotiating with suppliers and airports, as well as promoting its service in a newly developed or targeted geographic market. Most importantly, the ATCR numbers and rankings are benchmarks carriers use to assess their performance among competitors and to seek effective ways to improve. As stated above, recent numbers show that virtually all legacy carriers have at least 45% of their domestic scheduled passenger flight segments operated by code-share partners, which means data for those flights are not reported by the marketing carriers under Part 234 and Part 250 or attributed to the carrier in the ATCR. By contrast, most relatively new carriers that are ranked in the ATCR operate a ''point-to-point'' network and follow a different business model, the so-called ''low cost'' model. Under this business model, carriers engage in very few, if any, code-share arrangements. As a result, the ATCR is comparing the service quality of all flights marketed by a low-cost carrier with the service quality of 55% or less of the flights marketed under legacy carriers' brands and codes. We will not seek to determine how including code-share flight records in the ATCR would affect legacy carriers' rankings, but we are of the tentative opinion that requiring all reporting carriers to report data for all flights marketed under that carrier's name and code would put carriers on an equal footing in this important competitive arena.

Additional support for our proposal comes from the aforementioned final report by FAAC, which noted that the Competitiveness and Viability Subcommittee recommended that the Department should continue to require marketing carriers to provide clear and transparent notification of operations conducted by an air carrier other than the marketing carrier. Further, some subcommittee members also believed that more detailed disclosure regarding regional carriers' operations should be included in the ATCR, and that the report should include metrics organized not only by operating air carrier, but by the marketing air carrier.

For the reasons stated above, we are proposing to expand the scope of ''reportable flight'' under Part 234, and consequently under Part 250. Pursuant to this proposal, a reporting carrier would continue to file Form 234 and Form 251 (the oversales report required by Part 250) with respect to nonstop scheduled flights operated by the reporting carrier. In addition, each reporting carrier would file a separate Form 234 and a separate Form 251 to include both flights that are operated by the reporting carrier itself and all nonstop scheduled flights that are operated by a code-share partner and sold under the reporting carrier's code. Reportable flights under Part 234 (on-time performance and baggage data) are limited to domestic nonstop flight segments. The Form 251 oversales report has always included data for outbound international flights from the United States, and that will continue to be the case for the proposed new report that would include service operated by code-share partners. However, this new report, like the original report, would be limited to service operated by ''a certificated carrier or commuter air carrier''—both of which are U.S. air carriers—and consequently the new report would not collect data on code-share flights operated for a reporting carrier by a foreign-carrier code-share partner. Our primary regulatory interest at this time is collecting and publishing data on code-share service operated by the regional-carrier partners of the larger U.S. airlines. We are not proposing at this time to collect oversales data for flights from the United States (the oversales rule doesn't apply to inbound international flights to the United States) that are operated by large foreign carriers that do not already report these data.

For this purpose it is irrelevant whether the actual operating carrier in the code-share arrangement is a reporting carrier itself and is required to file data for that flight under the reporting requirements applicable to the operating carrier. Under our proposed rule, the marketing carrier reporting data on flights operated by another carrier would not need to distinguish flights operated by different code-share partners. We are proposing to require the marketing carrier to provide aggregated consumer statistics for all flights operated under its code (i.e., flights it operates and flights operated by its code-share partners). This would be an additional reporting requirement (second set of reports) and is not intended to replace the existing requirement for a reporting carrier to provide separate data for flights it operates. We seek comment on whether the second sets of reports should only contain the performance records of all flights operated for the reporting carrier by its code-share partners but not the flights operated by the reporting carrier. Alternatively, rather than having all code-share partners' records in aggregation, we ask if we should require the marketing carrier to provide separate data on flights operated by each of its code-share partner's operations. What are the benefits of separating each code-share partner's records and what are the costs, if any, added to the reporting carriers? Finally, since many regional carriers operate flights under the code of more than one large carrier, we seek comment on whether ''double-counting,'' i.e., situations where a given flight carries the code of more than one large carrier, is an issue and if so, how to avoid it. Do regional carriers that have code-share agreements with more than one large carrier ever operate a given flight for more than one marketing carrier, or on the other hand, do these flights always operate in discrete city-pair markets? How should we deal with the situation of large U.S. carriers that code-share with each other?

Our proposal to expand the scope of reportable flights will necessitate amendments to the rule text of 14 CFR 234.6, Baggage Handling Statistics. On July 15, 2011, the Department issued an NPRM, Reporting Ancillary Airline Passenger Revenues (RIN 2105–AE31, Docket No. DOT–RITA–2011–0001) that proposes, among other things, to amend section 234.6 by changing the way it computes mishandled baggage rates, from mishandled baggage reports per unit of domestic enplanements to mishandled baggage per unit of checked

bags. The proposed amendments to section 234.6 also include a new and separate requirement for collecting statistics for mishandled wheelchairs and scooters used by passengers with disabilities. In this NPRM, our proposed amendments to section 234.6 are tentatively based on the proposed rule text in the ancillary revenues reporting NPRM. Our adoption of the rule text as proposed in RIN 2105–AE31 in this rulemaking is not indicative of whether we are going to adopt the text as proposed in the final rule for the ancillary revenue reporting proposal. Further, although that NPRM's comment period has ended, any comments regarding the proposed computation method for mishandled baggage and the proposed inclusion of mishandled wheelchairs and scooters in the reporting should be submitted to the ancillary revenue reporting rulemaking docket and will be considered to the extent practicable.

We note that if the operating carrier is already a reporting carrier, the data for the code-share flights that will be added to the marketing carrier's report will have to be prepared and submitted to the Department by the operating carrier to meet the existing reporting requirement. In these instances, we expect that the cost to the marketing carrier to obtain this data would be negligible. With respect to flights operated by a code-share partner that is not a reporting carrier, we believe the cost of obtaining data would be higher but not significant, as most carriers, large or small, already have internal systems in place that track the major elements of flight performance quality. There are also costs related to compiling data for the code-share flights and setting up the reporting infrastructure to file the compiled report with the Department. We seek comments from carriers and the public regarding the costs associated with adding data on flights operated by code-share partners to reports filed with the Department. We further note that 14 CFR 234.8 requires reporting carriers to calculate and assign an on-time performance code for each ''reportable flight.'' Currently section 234.8 only covers domestic scheduled flights operated by a reporting carrier, so our proposal to expand the scope of ''reportable flight'' under Part 234 will require that reporting carriers also calculate and assign an on-time performance code for each domestic scheduled flight operated by a code-share partner. However, since April 29, 2010, all current reporting carriers have been required by section 234.11 to disclose on their Web sites that provide schedule information detailed on-time performance records, on a monthly basis, for each domestic scheduled flight, including each domestic code-share flight. In this regard, we expect that these current reporting carriers are already adequately prepared to comply with requirement of section 234.8 with respect to code-share flights. Finally, we ask what the reasonable implementation period should be if this proposal becomes a final rule.

5. Minimum Customer Service Standards for Ticket Agents

In the Department's first Enhancing Airline Passenger Protections final rule, 74 FR 68983, the Department required U.S. carriers in 14 CFR 259.5 to adopt a customer service plan. In the second Enhancing Airline Passenger Protections final rule, 76 FR 23110, the Department extended this requirement to foreign carriers and required both U.S. and foreign carriers to adopt minimum standards for their customer service plans. Among other standards, the Department requires carriers to provide prompt ticket refunds where ticket refunds are due, in accordance with existing Department rules; hold a reservation at the quoted fare or permit the reservation to be cancelled without penalty for at least 24 hours after a customer books the ticket; disclose cancellation policies, seating configuration, and lavatory availability to consumers; notify travelers of changes in travel itineraries; and respond to consumer-related complaints in a timely manner. Section 259.5 only applies to U.S. and foreign carriers that provide scheduled passenger service using at least one aircraft with an original designed passenger capacity of 30 or more seats. In a *Frequently Asked Questions* guidance document issued by the Department's Enforcement Office, in response to questions regarding whether section 259.5 applies to ticket agents, the Enforcement Office clarified that these customer service provisions are not applicable to agents. Therefore, agents are not currently required to hold a reservation for 24 hours or respond to consumer complaints or notify passengers of changes to travel itineraries.

The Department is proposing to amend 14 CFR 399.80, which addresses unfair and deceptive practices by ticket agents, because the Department believes that all airline passengers should benefit from certain customer service plan protections. Not all of the customer service standards set forth in 14 CFR 259.5 should apply to agents, but the Department sees no reason not to extend the standards related to ticket purchases and information dissemination to ticket agents that sell air transportation. As such, the Department is proposing to require these ticket agents to adopt minimum customer service standards in select areas. The customer service standards would not apply to ticket agents that don't sell air transportation but rather arrange for air transportation and receive compensation in connection with air transportation sold by others. Additionally, as proposed, the standards would only apply to those ticket agents with annual revenue of $100 million or more that market to the general public in the United States. A majority of U.S. travelers who bought their airline tickets through an avenue other than a carrier used large ticket agents.

As carriers are already required to allow reservations to be held at the quoted fare without payment or cancelled without penalty for at least 24 hours after a reservation is made if the reservation is made one week or more prior to a flight's departure, the Department is proposing to extend this requirement to ticket agents that sell air transportation. The Department feels that such agents should be able to allow reservations to be held at the quoted fare, as carriers are already required to provide this option. Moreover, through this proposal, the benefits of reserving without payment or canceling without penalty will reach consumers who use an agent to book air transportation. Similar to carriers, this proposal would only require ticket agents that sell air transportation to hold the fare at the quoted price. The proposal would not require agents to hold for 24 hours the price for other related items such as fees associated with ancillary services or tour components (e.g., hotel stay) although agents are, of course, free to do so if they wish. We solicit comment on whether the Department should require specific disclosure by agents and airlines about what is and is not being held for 24 hours.

The Department also seeks comments on requiring both agents and carriers to inform consumers, when engaging in oral communications with them about changes to a reservation, of the consumer's right to cancel without penalty if applicable. The Department has received complaints alleging that airlines are not disclosing to consumers when they are eligible to change their reservation without penalty and charging consumers change fees when consumers are unaware that they can cancel without penalty and rebook. Should carriers and agents be required to disclose the 24-hold policy to a consumer who is making a change within 24 hours of booking? Should the

Department require that the policy be prominently disclosed during the booking process? Currently, many carriers only disclose the policy in their ''Customer Service Commitment'' but not during the booking process. Would it be beneficial for consumers to have this information during booking?

Additionally the Department is proposing to require agents to provide prompt refunds where ticket refunds are due. This requirement would mirror 14 CFR 259.5(b)(5), which requires carriers to submit a refund for a credit card purchase within 7 days of the complete refund request, and in the case of cash or check purchases, within 20 days of receiving a complete refund request. Oftentimes, if a consumer has to cancel a trip, and a refund is due, they find themselves going between the airline and the agent for the refund in cases where the passenger purchased the airline ticket through an agent. This requirement would prevent this type of hassle and back-and-forth for consumers and clarify the agent's responsibility in assisting consumers when ticket refunds are due.

The Department is also proposing that agents disclose cancellation policies, seating configuration, and lavatory availability upon request to a passenger before a consumer books a selected flight. Many consumers who choose to book through a ticket agent are unaware of restrictions or fees associated with canceling the ticket. Additionally, consumers are not always aware that they are booking a flight on a smaller aircraft or an aircraft that may not have a bulkhead seat or lavatory available. As carriers are required to provide this information to consumers on their Web sites and upon request from their telephone reservation staff, the Department feels agents should also provide the information. Under this proposal, agents would have to make this information available on their Web sites that are marketed to U.S. consumers, and upon request for reservations made over the telephone. The Department invites interested parties to comment on this proposal, specifically whether agents already have this information to share with consumers. If agents do not have information about carriers' cancellation policies, aircraft seating configurations and lavatory availability, should the Department impose a requirement for carriers to provide their agents this information or should agents be required to provide links so that consumers can obtain that information? The Department also invites comments regarding the methods for disclosing cancellation policies, seating configurations, and lavatory availability information to consumers. Should the Department require that this information be placed at a particular location on a carrier's Web site, e.g., next to every flight in a search-result list for a particular itinerary?

The Department is also proposing that agents adopt a customer service standard to notify consumers of changes in travel itineraries in a timely manner. A carrier is not required to notify a consumer about a change in his or her travel itinerary if the carrier does not have contact information for that individual, and an agent is not required to provide a client's contact information to an airline. Therefore, consumers who use agents that do not provide contact information to carriers may not receive direct or timely notice of changes to their itinerary. This requirement is intended to ensure that consumers are timely notified of such changes.

Finally, the Department is proposing that agents be required to substantively respond to consumer complaints. Agents would be required to acknowledge receipt of a consumer-related complaint within 30 days of receipt of the complaint. Where the complaint (in whole or in part) is about the agent's service, the agent must substantively respond to the complaint within 60 days. If all or part of the complaint is about services furnished (or to be furnished) by an airline or other travel supplier, the agent must forward the complaint to that supplier for response. If no part of the complaint is about the agent's service and the agent sends the complaint to the appropriate supplier(s), the agent's substantive reply can consist of the agent informing the passenger that his or her complaint has been forwarded to the appropriate party and providing contact information to the passenger for that entity. This proposal closes the gap that exists in 14 CFR 259.5(b)(11) and 259.7, which require carriers to respond to consumer complaints but do not provide for complaints related to a ticket agent's services.

Although the subjects that we are proposing that ticket agents that sell air transportation address in their customer service plans are identical to those that carriers are already required to include in their customer service plans with respect to ticket purchases and information dissemination, we request comment on whether any of these subjects would be inappropriate if applied to ticket agents. Why or why not? Some of these items may be under direct control of the air carrier, and not the ticket agent. In commenting on these customer service commitments, large ticket agents should address the extent to which they are responsible for each of these items. Moreover, we seek comment on whether the Department should require that ticket agents address any other subjects in their customer service plans. For example, should ticket agents be required to prominently disclose to individuals who will be issued more than one ticket for their trip that their bags may not be checked through, as airlines typically check a passenger's baggage between the origin and destination points that are issued on a single ticket? Should ticket agents also be required to disclose to such individuals that they may have to pay multiple and different bag fees if ticketed separately as the Department's requirement for one set of baggage allowances and fees throughout a passenger's itinerary only applies when there is a single ticket? If so, when should this disclosure occur—before or after a ticket is purchased? We also seek comment on the appropriate form for such a disclosure (e.g., orally, on the ticket agent's Web site, on e-ticket confirmation). The Department is proposing to apply these customer service standards only to large ticket agents (those with annual revenue of $100 million or more) that market to the general public in the United States. The Department invites comment on whether the applicability should be expanded to cover other ticket agents, e.g., smaller ticket agents, or ticket agents who do not sell to members of the general public.

The Department recognizes that requiring these minimum customer service standards for agents would place a cost burden on these agencies. However, the Department believes that the benefits to consumers of receiving timely information, permitting reservations to be held for 24 hours without risk, and having their complaints addressed outweigh the costs. These proposals put all airline passengers on an equal footing when it comes to customer service standards, regardless of how they purchased their tickets.

The Department invites comments on the costs and benefits of these proposed customer service standards. For consumers who use agents, have you had problems in the past determining the cancellation policies associated with your ticket or being informed of changes in travel itineraries? For carriers, do you see any cost in sharing the information with the agents that the agents would be required to provide to consumers? For agents, what are the costs and benefits that you see in the proposal? Are you already receiving the information that

you would have to disclose to consumers from carriers? Should agents also be required to review their adherence to the customer service plans each year and retain the records of the audits for two years following the date of any audit, just as carriers are required to do today? Should agents be required to post their customer service plans on their Web sites if the Web sites are marketed towards U.S. consumers? Are there unforeseen consequences of the proposal, and, if so, what are they?

6. Codifying 49 U.S.C. 41712(c) Regarding Web site Disclosure of Code-Share Service and Other Amendments to 14 CFR Part 257

Code-sharing is an arrangement whereby a flight is operated by a carrier other than the airline whose designator code is used in schedules and on tickets. The Department's current regulation on the disclosure of code-sharing and long term wet lease arrangements, 14 CFR 257.5, was initially issued in 1999. Based on the statutory prohibition against unfair and deceptive practices in the sale of air transportation, 49 U.S.C. 41712, the purpose of § 257.5 is to ensure that consumers are aware of the identity of the airline actually operating their flight in code-sharing and long-term wet lease arrangements in domestic and international air transportation. *See* 64 FR 12838 (March 15, 1999). The Department has long recognized the economic benefits of airline code-sharing and long term wet lease arrangements but has been aware that such arrangements may cause consumer confusion regarding the identity of the operating carrier of a flight. For simplicity, we refer to both code-sharing arrangements and long term wet lease arrangements (covered in Part 258) as ''code-share'' arrangements, as the disclosure requirements for both types of operations are essentially identical. Code-share disclosure is important because the identity of the operating carrier is a factor that affects many consumers' purchasing decisions. In that regard, we believe that strengthening the code-share disclosure requirements by codifying requirements in Part 257 is an effective way to prevent potential consumer confusion.

Pursuant to § 257.5, carriers and ticket agents are required to inform consumers, when engaging in oral communications with the public, of code-share service ''before booking transportation'' and to ''identify the transporting carrier by its corporate name and any other name under which that service is held out to the public'' (section 257.5(b)). Written notice of code-sharing arrangements is also required when a ticket purchase is made, regardless of whether an itinerary is issued (section 257.5(c)). In ''printed'' advertisements, including those appearing on a Web site, the code-sharing relationship must be ''prominently'' disclosed and an abbreviated notice must be included in any radio or television advertisement (section 257.5(d)). With respect to all schedule information that is publicly available in writing, including on Web site displays, section 257.5(a) requires that any code-share service be indicated with ''an asterisk or other easily identifiable mark and that the corporate name of the transporting carrier and any other name under which that service is held out to the public'' also be disclosed. As a matter of enforcement policy, since the issuance of section 257.5, we have permitted entities providing schedules on Web sites to provide disclosure of an operating carrier's corporate name and other pertinent names through rollover or hyperlinked displays.

In February 2009, a flight operated by a regional air carrier under a mainline air carrier's code crashed during landing. In the aftermath of that fatal incident, family members of some victims questioned the adequacy of disclosure regarding the code-sharing nature of that operation. In response to these concerns and in recognition of the necessity of further strengthening the disclosure requirements of code-sharing arrangements, Congress amended 49 U.S.C. 41712 in August 2010 to add a subsection (c) that requires that in any oral, written, or electronic communications with the public, U.S. and foreign air carriers and ticket agents disclose the name of the carrier providing the air transportation for each flight segment prior to the ticket purchase. In addition, subsection (c) provides that if an offer to sell tickets is provided on a Web site, such information must be disclosed ''on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.'' *Airline Safety and Federal Aviation Administration Extension Act of 2010,* Public Law 111–216, Title II, section 210, 124 Stat. 2362 (August 1, 2010). In light of Congress' specific requirement regarding Web site ticket offer disclosure, on January 14, 2011, the Department's Enforcement Office issued *Guidance on Disclosure of Code-Share Service Under Recent Amendments to 49 U.S.C. 41712,* in which the Enforcement Office revised its enforcement policy and explained that under the statute any disclosure of code-share service in the context of Web site displays by carriers and ticket agents must be on the same screen as the itinerary and immediately adjacent to that itinerary and to each alternative itinerary, if any. The guidance provided notice that carriers or ticket agents whose Web sites failed to provide full disclosure of code-share service arrangements or that provided disclosure only through rollovers or hyperlinks would potentially be subject to enforcement action.

In this NPRM, we are proposing to amend 14 CFR 257.5 to codify the requirements of 49 U.S.C. 41712(c) and the Department's current enforcement policy with respect to Web site disclosure of code-share and long term wet lease arrangements. In addition, we are proposing to update certain other disclosure requirements of 14 CFR 257.5 in order to reflect the technology changes in the airline industry's reservation and ticketing systems that have resulted in the predominance of electronic ticketing and the significant use of online transactions. As noted in the background section of this NPRM, these proposals are also intended to implement the Future of Aviation Advisory Committee and the Advisory Committee on Aviation Consumer Protection recommendation that the Secretary should ensure transparency regarding flight operators, such as disclosure of the identity of the operator on regional-carrier code-share flights. See *FAAC Final Report,* April 11, 2011. It is important to emphasize that we believe the changes proposed in this NPRM to the text of section 257.5 are primarily non-substantive and would not affect what carriers and ticket agents are already obligated to do under the combination of the current section 257.5, the amended 49 U.S.C. 41712, and the Department's guidance document.

(a) Disclosure in Flight Itinerary and Schedule Displays

14 CFR 257.5 contains subsections (a) through (d), which deal with disclosure in schedule displays, oral notice to prospective consumers, written notice to ticket purchasers, and disclosure in advertisements, respectively. Most code-share disclosure requirements under 14 CFR 257.5 cover both carriers and ticket agents, but section 257.5(a), notice in schedules, only covers U.S. air carriers and foreign air carriers. On the other hand, 49 U.S.C. 41712(c) (enacted in 2010), as well as the January 10, 2011, notice issued by the Department's Enforcement Office, are explicit that the same heightened requirements regarding

code-share disclosure, including Web site schedule display disclosure, apply to both carriers and ticket agents. As a result of this inconsistency, under the current rule, ticket agents that fail to adequately disclose code-share arrangements in schedule displays would violate section 41712 but not section 257.5(a).

The inclusion of ticket agents in section 41712(c) reflects the fact that, through the growth and development of the Internet and related technologies, more and more ticket agents, especially online travel agencies (OTAs), are able to provide flight schedules and itinerary search functions to the public. The Department applauds new technologies that increase the number of venues from which consumers can search and compare airfares and schedules and perform one-stop shopping for airfares along with other components of travel packages. However, it is our firm belief that information is useful and beneficial to the public only if it is accurate and complete. As a result, we are proposing to codify the code-share disclosure requirement in section 41712(c) concerning schedule displays and make it applicable to both carriers and ticket agents doing business in the United States with respect to flights in, to, or from the United States. Although the rule text and the preamble of the final rule issued in 1999 did not specify what constitutes ''doing business in the United States,'' we are tentatively of the opinion that any ticket agent that markets and is compensated for the sale of tickets to consumers in the United States, either from a brick-and-mortar office located in the United States or via an Internet Web site that is marketed towards consumers in the United States, would be considered as ''doing business in the United States.'' This interpretation would cover any travel agent or ticket agent that does not have a physical presence in the United States but has a Web site that is marketed to consumers in the United States for purchasing tickets for flights within, to, or from the United States. We also note that with the usage of mobile devices gaining popularity among consumers, our code-share disclosure requirement with respect to flight schedule and itinerary displays covers not only conventional Internet Web sites under the control of carriers and ticket agents, but also those Web sites and applications specifically designed for mobile devices, such as mobile phones and tablets.

Furthermore, the text of section 257.5(a) states that any code-sharing arrangements must be disclosed in flight schedules provided to the public in the United States, which we interpret to include electronic schedules on Web sites marketed to the public in the United States, by an asterisk or other easily identifiable mark. As discussed above, the new amendment to section 41712 and the guidance provided by the Enforcement Office make it clear that for schedules posted on a Web site in response to an itinerary search, disclosure though a rollover, pop-up window or hyperlink is no longer sufficient. Moreover, as stated in the rationale behind our recently amended price advertising rule, 14 CFR 399.84, which ended the practice of permitting sellers of air transportation to disclose airfare taxes and mandatory fees through rollovers and pop-up windows, we believe that the extra step a consumer must take by clicking on a hyperlink or using a rollover to find out about code-share arrangements is cumbersome and may cause some consumers to miss this important disclosure.

Our proposal codifies the requirement of section 41712(c)(2) that the code-share disclosure must appear on the first display of the Web site following an itinerary search. Further, section 41712(c)(2) requires that the disclosure on a Web site must be ''in a format that is easily visible to a viewer.'' In that regard, we are proposing that the disclosure must appear in text format immediately adjacent to each code-share flight displayed in response to an itinerary request by a consumer. We ask whether the proposed requirement is sufficient to meet the statutory requirement that the disclosure must be in a format that is easily visible by a viewer. We further seek comments on whether we should specify minimum standards on the text size of the disclosure in relation to the text size of the schedule itself. As an alternative to the proposed standard, we ask whether a code-share disclosure appearing immediately adjacent to the entire itinerary as opposed to appearing immediately adjacent to each code-share flight would be a sufficient way to meet the ''easily visible'' standard.

With regard to flight schedules provided to the public (whether the schedules are in paper or electronic format), we propose that the code-share disclosure be provided by an asterisk or other identifiable mark that clearly indicates the existence of a code-sharing arrangement and directs the readers' attention to another prominent location on the same page where the identity of the operating carrier is fully disclosed. We seek public comments on whether we should impose the same standard for flight schedules as for flight itineraries provided on the Internet in response to an itinerary search, i.e., requiring that the disclosure be provided immediately adjacent to each applicable flight.

(b) Disclosure to Prospective Consumers in Oral Communications

Section 257.5(b) requires that carriers and ticket agents must identify the actual operator of a code-share flight the first time that a code-share flight is cited to a consumer in person, over the telephone, or through other means of oral communication. With respect to covered entities, this section currently applies to, and, under this proposal, will continue to apply to, both U.S. and foreign air carriers, as well as ticket agents doing business in the United States. We are not proposing any changes to this provision, but we propose to interpret the phrase ''ticket agent doing business in the United States'' in the same manner as described in the discussion of that phrase in section 259.5(a) above. Consequently, a ticket agent that sells air transportation via a Web site marketed toward U.S. consumers (or that distributes other marketing material in the United States) is covered by section 259.5(b) even if the agent does not have a physical location in the United States, and such an agent must provide the disclosure required by section 259.5(b) during a telephone call placed from the United States even if the call is to the agent's foreign location.

(c) Disclosure of Code-Share at Time of Purchase

With respect to written notice of code-share arrangements provided to ticket purchasers, we propose to retain the basic requirements listed in 14 CFR 257.5(c)(1) but delete the language in 14 CFR 257.5(c)(3). The basic requirements in section 257.5(c)(1) are as follows: if a code-share flight segment has its own designated flight number, the code-share disclosure must be immediately adjacent to that flight number; if a single-flight number service involves one or more code-share segments, each code-share segment must be identified immediately adjacent to that flight number in the format ''Service between XYZ City and ABC City will be operated by Jane Doe Airlines d/b/a ORS Express.'' Section 257(c)(3) states that the written code-share notice required by section 257.5(c) must accompany the ticket if the transportation is purchased far enough in advance of travel to allow for advance delivery of the ticket. If time does not allow for advance delivery of the ticket, ''or in the case of ticketless travel,'' the required written notice is to be provided no later than the time that

the consumer checks in at the airport for the first flight in his or her itinerary.

The first part of section 257.5(c)(3) appears to refer to paper tickets, as it speaks of the time required for delivery of the ticket, and it draws a contrast with ''ticketless travel'' in the next sentence. (Ticketless travel is a term that used to be used for what is now referred to as electronic ticketing or e-tickets.) We believe that the required written notice should in all cases be provided ''at the time of purchase'' as indicated at the beginning of section 257.5(c), regardless of whether a paper ticket is subsequently issued or the consumer will receive an e-ticket. Section 257.5(c)(2) states that if a consumer does not receive an itinerary, the selling carrier or ticket agent must provide a separate written notice that identifies the operating carrier. Thus, the existing rule anticipates situations in which the required written code-share notice is not automatically generated by industry purchase/ticketing systems and states that in such cases the selling carrier or ticket agent must manually generate and furnish a written disclosure of the identity of the carrier(s). We do not believe that a written code-share notice that is provided at the airport is sufficient though currently permitted under section 257.5(c)(3) for passengers who purchase their air transportation in advance but do not receive a paper ticket until a date close to the scheduled departure date and for e-ticketed passengers including those who have purchased their transportation weeks or months in advance. Accordingly, we propose to make it clear that written code-share disclosure must be provided at the time of purchase.

(d) Disclosure in City-pair Specific Advertisements

Subsection (d) deals with disclosure requirements in city-pair specific advertisements. We are proposing to use the phrase ''written advertisement'' to replace the phrase ''printed advertisement,'' which in the current rule text refers to both advertisements printed in paper and advertisements published on the Internet. We believe the word ''written'' is more accurate in describing both formats of advertisements.

In addition, we are proposing to add a descriptive phrase to specify the scope of the disclosure requirements on Internet advertisements in an effort to eliminate any possible ambiguity. Specifically, the current rule states that our requirements cover advertisements ''published in or mailed to or from the United States'' including those published on the Internet. As the Internet is a global information network, this language may leave it unclear what would constitute an Internet advertisement that is ''published'' in the United States. For example, a Web site that is hosted on a server located in the United States could arguably fall within the scope of our rule. Conversely, a Web site hosted on a server located outside of the United States could still be marketing airfares to consumers in the United States. For this reason, and to achieve consistency with the Department's other airline consumer protection rules, we are proposing to specify that our code-share disclosure requirements regarding advertisements published on the Internet would apply to advertisements for service in, to or from the United States that are marketed to consumers in the United States. This standard is consistent with the recently amended full-fare advertising rule, 14 CFR 399.84, which only covers Internet advertisements published on Web sites marketed to United States consumers. As explained in a *Frequently Asked Questions* document issued by the Department's Enforcement Office following the publication of that rule, we will look at a variety of factors to determine whether a Web site is marketed to United States consumers, such as whether the Web site is in English, whether the seller of air transportation displays prices in U.S. dollars, or whether sales can be made to persons with addresses or telephone numbers in the United States.

We note that this proposed standard will cover all advertisements appearing on a carrier's or a ticket agent's own Web site, as well as advertisements that are presented to U.S. consumers through other paid advertising venues on the Internet (such as a news media Web site or a travel blog Web site) and social media Web sites (such as Facebook or Twitter). We seek comments with regard to whether imposing the same standard to advertisements on all of these Web sites is reasonable and technically practical. We specifically ask what type of code-share disclosure is considered adequate from a consumer's point of view, in light of the brevity of the Facebook and Twitter posting formats. Finally, we are proposing some editorial changes to 14 CFR 257.5. First, we propose to replace the term ''transporting carrier'', which is used throughout section 257.5, with the term ''operating carrier'' to refer to the carrier in a code-share or wet lease arrangement that has the operational control of a flight but does not market the flight in its own name. In doing so, we are trying to achieve consistency with other recently amended consumer protection rules, see, e.g., 14 CFR 259.4(c) (code-share partners' responsibilities in tarmac delay contingency plans) and 14 CFR 399.85(e) (notice of baggage fees for code-share flights). Another stylistic change proposed in this NPRM concerns the example disclosure statement that a seller of air transportation must include in a radio or television broadcasting advertisement. The current sample statement includes the phrase ''[s]ome services are provided by other airlines.'' Because the words '' services'' and ''provided'' cover a wide range of activities, including ground operations, customer service, etc., they do not accurately convey the information we intended to relate, which was regarding the actual operation of a flight. Accordingly, we propose to change the sentence to read ''[s]ome flights are operated by other airlines.''

7. Disclosure That Not All Carriers are Marketed and Identification of Carriers Marketed on Ticket Agent Web sites

The Department is considering requiring large travel agents to disclose in online displays the fact that not all carriers that serve a particular market are marketed by the travel agent if that is the case. Consumers deserve complete information regarding whether a particular ticket agent provides flight and fare information for all carriers or just a subset of carriers. Many online travel agents provide flight and fare information for a significant number of carriers serving a particular city-pair market but not all carriers that serve that market. In some markets, they may not provide information regarding any carrier serving the market. Online travel agents do not necessarily identify the carriers whose schedule and fare information is or is not provided in search results. As a result, consumers may believe they are searching all possible flight options for a particular city-pair market when in fact there may be other options available. The Advisory Committee for Aviation Consumer Protection recommended that DOT require ticket agents, including online ticket agents, to disclose the fact that they do not offer for sale all airlines' tickets, if that is the case, and that additional airlines may serve the route being searched, so that consumers know they may need to search elsewhere if they want to find all available air travel options. Accordingly, the Department is considering requiring large ticket agents, such as online travel agents, that operate Web sites that display schedules or fares and/or sell tickets for air transportation of more than one carrier to disclose whether they display the airfares of all

carriers serving any market that can be searched on the travel agent's Web site. One alternative would be to merely require travel agents to prominently note on their Web sites that not all U.S. air carriers and non-U.S. air carriers serving the U.S. are displayed on the Web site or marketed by the travel agent. Another option would be to prominently display a statement in connection with a search of a particular city pair that not all air carriers serving those cities are displayed on the Web site or marketed by the travel agent. Alternatively, online travel agents could be required to specifically identify all of the air carriers that are marketed by the travel agent.

The Department is not providing rule text for this proposal. Instead, it seeks comment on how such a requirement should be implemented. For example, should the disclosure be made with a general statement on the travel agent's home page with a link to more detailed information? Or should the disclosure be made through a statement on the search results page that displays itineraries in response to a consumer search? If the general disclosure statement is linked to a page with more detailed information, what additional information should be provided? Additionally, the Department seeks comment on whether such a rule should be limited to ticket agents of a certain size or should include all ticket agents, and if the rule should be limited to ticket agents of a certain size, what parameters should the Department use to define the ticket agents included in the requirement. The Department also seeks comment on the costs and benefits of requiring Web sites to state whether a particular carrier's schedule information is provided on that Web site and of identifying those air carriers that must be included in such disclosure. For example, what are the costs and benefits of a disclosure that says, ''These schedules do not include all carriers in these markets'' versus a disclosure that would *list* the carriers that are included?

8. Prohibition on Undisclosed Airfare Display Bias by Ticket Agents and Carriers

In connection with electronic displays of multiple carriers' airfares and schedules, the Department is proposing to prohibit any undisclosed bias in any presentation of carrier schedules, fares, rules or availability. A Department prohibition on airfare display bias is not unprecedented. In the past, Department regulations contained a limited prohibition on bias of computer terminal displays provided to travel agents by computer reservation systems (CRSs), the precursors to GDSs. At that time, there was a concern that the owners of the CRSs (initially airlines and, subsequently, other entities) would potentially engage in display bias or other unfair, deceptive, predatory, or anticompetitive practices absent Department regulation of their operations (14 CFR Part 255). This rule prohibited CRSs used by travel agents from using factors relating to carrier identity in determining how airfares were displayed. Among other things, the CRSs were required to use the same editing and ranking criteria for ''both on-line and interline connections and not give on-line connections a system-imposed preference over interline connections.'' 14 CFR 255.4(a)(1). However, Part 255 sunset on July 31, 2004 (see 14 CFR 255.8).

Recently, the Enforcement Office has been informed of allegations that certain ticket agents, including GDSs, have biased their displays to disadvantage certain airlines in the course of hard-fought contract negotiations. Those ticket agents have allegedly biased the listing of available itineraries displayed in response to searches by consumers or travel agents on their Web sites. The display bias allegedly resulted in consumers and travel agents being presented with favored carriers' fare and schedule information first. Complainants also assert that although some ticket agents may have received limited disclosure regarding certain instances of display bias, the general public received no notice or disclosure. Moreover, we are concerned that GDSs and other ticket agents could sell bias to certain airline competitors or bias displays toward carriers that pay higher segment fee compensation to GDSs and such bias could be difficult to detect. The prohibition would also apply to flight search tools operated by meta-search engines and similar entities engaged in the distribution of certain air transportation information. As discussed earlier, the Department would view such entities as being ticket agents.

The Department is considering a regulation that would require any carrier or ticket agent that provides electronic display of airfare information to provide unbiased displays or disclose the biases in the display. The regulation would apply to all electronic displays of multiple carriers' fare and schedule information, whether the display is available on an unrestricted basis, e.g., to the general public, or is only available to travel agents who sell to the public. The requirement to provide unbiased displays or disclose biases in the display would also apply to electronic displays used for corporate travel unless a corporation agrees by contract to biases in the display used by its employees for business travel. If not, the regulation would require carriers and ticket agents that provide airfare information electronically to display the lowest generally available airfares and most direct routings that meet the parameters of the search in response to an inquiry for an airfare quotation for a specific itinerary. It would also prohibit biasing displays such that less direct routings that are equivalently priced, or more expensive fares with an equally direct routing, and that meet the parameters of a search, are displayed more prominently or earlier in the search results list than a more direct routing or a lower fare simply to benefit a particular favored carrier or penalize a disfavored carrier. In the alternative, carriers and ticket agents could provide biased displays so long as they have prominent and specific disclosure of the bias. The requirements would apply to displays in response to airfare inquiries by a consumer for a particular itinerary and displays in response to airfare inquiries made by a travel agent or other intermediary in the sale of air transportation for a particular itinerary.

Under this proposal, undisclosed display bias would not be permitted on displays publicly available directly to consumers or displays directed toward travel agents, such as those working for corporations or other travel management companies. To the extent the consumer or travel agent placed restrictions on the search, for example, by limiting to one or more specific carriers or classes of service, the display would not be considered to contain undisclosed display bias as long as the display disclosed the lowest available fares and most direct itineraries that met the search parameters. In addition to prohibiting display bias, the Department is considering requiring any ticket agent that decided to bias its displays and disclose the existence of bias to also disclose any incentive payments it is receiving. We seek comment on what kind of disclosure of the existence of incentive payments would be most helpful for consumers. When providing notice, should the ticket agent list the companies, air carriers, and foreign air carriers offering the incentives? If so, should the list rank companies in order of the company providing the incentives of the greatest monetary value? Or should it group them based on whether the incentive is provided in the form of payments, rebates, discounts, commissions, volume-based compensation, or another method? Should the requirement apply to

incentives earned by the travel agent in the previous calendar year or some other time period? Should it be limited to incentives with a certain monetary value?

The Department seeks comment on whether the prohibition on display bias should be limited to airfare and routings. We also seek comment on the costs and benefits of a prohibition on display bias.

9. Prohibition on Post-Purchase Price Increases for Baggage Fees

In the second Enhancing Airline Passenger Protections rule, the Department prohibited an air carrier or agent from increasing the price of air transportation after the passenger purchases a ticket. Under 14 CFR 399.88, carriers and other sellers of air transportation are now prohibited from increasing the price of air transportation to a particular passenger after the purchase of a ticket, including but not limited to the price of a seat, the price for the carriage of passenger baggage, and the price for any applicable fuel surcharge. The rule includes a limited exception for an increase in a government-imposed tax or charge. In response to questions received after publication of the final rule, the Department's Enforcement Office clarified that there could not be an increase to a particular passenger in the charge for any ancillary service after a ticket is purchased, including services not purchased with the ticket. The reasoning behind this was twofold. First, by using the phrase ''including but not limited to'' when describing the types of items that sellers of air transportation are prohibiting from price increases after ticket purchase, the Department made it clear that these items are simply examples and not an exhaustive list. Second, under the disclosure requirements of 14 CFR 399.85(c), sellers of air transportation are required to inform passengers about baggage charges on their e-ticket confirmations as a means of preventing consumers from being surprised about hidden fees. If these fees could change after the passenger purchases the ticket, the information provided in the e-ticket would be useless.

However, after the rule became final, certain carriers raised concerns that had not been raised previously: That a prohibition on an increase in the price of any ancillary service after a ticket purchase could prove cumbersome for carriers in practice. For example, one passenger might be entitled to pay a lesser amount for a drink or a snack than the passenger sitting next to him or her. They contended that the cost of developing systems to keep track of the price of every ancillary service at the time of passenger purchase and charging those prices on an individualized basis would be prohibitive.

In light of the problems in application of the rule as it relates to ancillary services that are not purchased with the ticket, the Enforcement Office issued *Guidance on Price Increases of Ancillary Services and Products not Purchased with the Ticket* on December 28, 2011. In that guidance, the Department's Enforcement Office noted that the Department had decided to revisit the issue through a further rulemaking to examine the application of the rule to fees for ancillary services not purchased with the ticket. The Department also 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.

The Department is now proposing to modify 14 CFR 399.88 to prohibit a price increase after the purchase of air transportation for any mandatory charge the consumer must pay (such as the air fare or an applicable fuel surcharge), and the price for the carriage of any passenger baggage. Sellers of air transportation would also continue to be prohibited from increasing the price of any ancillary service after it is purchased. The logistical and financial burdens placed on carriers related to ancillary services other than baggage that are not purchased with the ticket are too great. Ensuring that in-flight crew have the information and tools to impose varying service fees depending on when a passenger purchased a ticket would likely lead to unreasonable costs for carriers, significant confusion, and ultimately consumer harm by incentivizing carriers to set prices for ancillary services artificially high. However, the Department believes that transporting baggage is intrinsic to air transportation and baggage fees are a major factor for consumers when deciding which air transportation to purchase, and should be subject to the rule prohibiting post-purchase price increases. Therefore, under the proposed rule, the price for the transportation of passenger baggage that applies when a passenger buys a ticket is the price that they will pay, even if they do not pay for the transportation of baggage at the time they purchase the ticket. This interpretation is consistent with guidance given by the Department in 2008 which states that ''[i]n no case should more restrictive baggage policies or additional charges be applied retroactively to a consumer who purchased his or her ticket at a time when the charges did not apply, or when a lower charge applied.'' *Notice of the Assistant General Counsel for Aviation Enforcement and Proceedings, ''Guidance on Disclosure of Policies and Charges Associated with Checked Baggage,''* May 13, 2008.

In addition, under the revised 14 CFR 399.88, after a ticket is purchased, carriers and other sellers of air transportation would continue to be prohibited from raising the price of the air transportation or of ancillary services that are purchased with the ticket. For example, if a passenger buys a ticket that costs $200 (total fare, inclusive of taxes and fees) and pays an additional $25.00 for a priority boarding pass, and the carrier subsequently increases the price of a priority boarding pass effective on a date before this passenger travels, the carrier cannot retroactively increase the price for the consumer who already purchased their priority boarding pass. The new 14 CFR 399.88 would still allow for the limited exception of an increase in the price of a ticket if there is an increase in a government-imposed tax or fee; that tax/fee could still be retroactively applied to the passenger's travel if the required notice is provided to consumers prior to the ticket purchase. However, any other increase in price of any already purchased ancillary service would constitute an unfair and deceptive practice.

The Department is also considering the alternative of keeping the original interpretation of the rule. Under this interpretation, the price of ancillary services and products for a given consumer is capped at the time that he or she purchases the air transportation whether or not these items are purchased along with the air transportation, as the existence of a fee for other services or products related to the air transportation, as well as the amount of any such fee, can influence a customer's purchasing decision. The Department invites comments on the costs and benefits of retaining the rule as originally interpreted and on the new

proposal to prohibit only an increase in the price of the carriage of baggage if not purchased with the fare.

Finally, the Department is also contemplating revising the post-purchase price provision to better address the issue of ''mistaken fares.'' As explained above, section 399.88 essentially bans sellers of air transportation from increasing the price of an airline ticket to a consumer who has purchased and paid for the ticket in full. As a result, the Department's Enforcement Office explained in a guidance document that, under section 399.88, ''if a consumer purchases a fare and that consumer receives confirmation (such as a confirmation email and/or the purchase appears on their credit card statement or online account summary) of their purchase, then the seller of air transportation cannot increase the price of that air transportation to that consumer, even when the fare is a 'mistake.' '' Since then, the Enforcement Office has investigated a number of incidents where passengers complained that airlines or ticket agents would not honor tickets that had been paid for in full because the sellers of the air transportation erroneously let them book flights for less than the actual value. The Enforcement Office has become concerned that increasingly mistaken fares are getting posted on frequent-flyer community blogs and travel-deal sites, and individuals are purchasing these tickets in bad faith and not on the mistaken belief that a good deal is now available. We solicit comment on how best to address the problem of individual bad actors while still ensuring that airlines and other sellers of air transportation are required to honor mistaken fares that were reasonably relied upon by consumers.

Additionally, industry and consumers have raised questions regarding when transportation is considered to touch upon the United States and thus covered by the prohibition on post-purchase price increases. Currently, section 399.88 states that it is an unfair and deceptive practice for any seller of scheduled air transportation within, to, or from the United States or of a tour or tour component that includes scheduled air transportation within, to, or from the United States, to increase the price of that air transportation to a consumer after the air transportation has been purchased by the consumer, except in the case of a government-imposed tax or fee and only if the passenger is advised of a possible increase before purchasing a ticket. We are considering defining the phrase ''air transportation within, to, or from the United States'' for the purposes of this section to mean any transportation that begins or ends in the United States or involves a connection or stopover in the United States that is 24 hours or longer. We ask for comments on whether this new definition would provide greater clarity to members of the public and the regulated entities on when sellers of air transportation would be required to honor mistaken fares.

10. Amendments/Corrections to Second Enhancing Airline Passenger Protections Rule and Certain Other Provisions

In response to questions and concerns from airlines and other regulated entities, the proposed amendments to the rules described below are intended to correct drafting errors, provide clarifications and reflect minor changes to the second Enhancing Airline Passenger Protections rule to increase consistency and conform to guidance issued by the Department's Enforcement Office regarding its interpretation of the rule. On its own initiative, the Department is also making administrative changes to another rule.

a. Baggage Disclosure Requirements Under Sections 399.85(a) and (b)

In sections 399.85(a) and 399.85(b) the final rule inadvertently refers to Web sites that are ''accessible'' from the United States. In this NPRM, we are proposing to codify the guidance given in Frequently Asked Question #25, page 25, and amend sections 399.85(a) and 399.85(b) to reflect the intended applicability of those sections to Web sites ''marketed to'' U.S. consumers. This change also makes sections 399.85(a) and 399.85(b) consistent with the other provisions in 14 CFR 399.85 that apply to Web sites that market air transportation to U.S. consumers. The Department invites comment on this proposal.

In further regard to section 399.85(b), after issuing the rule and assisting carriers and online travel agents with their efforts to come into compliance, it became clear that the Enforcement Office needed to clarify two aspects of this disclosure rule. The first issue is when a carrier or agent needs to notify a passenger that ''baggage fees may apply.'' The rule text states that an agent or carrier must ''clearly and prominently disclose on the first screen in which the agent or carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can see these baggage fees.'' Although section 399.85(b) may be amended in accordance with the proposal regarding the ''[d]isplay of ancillary service fees through all sales channels,'' if the Department decides not to adopt that proposal it would amend section 399.85(b) to conform to the guidance previously issued. In that case, section 399.85(b) would state that the first screen on which the carrier offers a fare quotation after a passenger initiates a search for flight itineraries must include notification that baggage fees may apply. For example, if a passenger performs a search for flights from San Francisco to Dallas on a carrier or agent's Web site, the first page displayed in response to that search that includes a fare quote must also note that baggage fees may apply. The second issue is that the Department wishes to clarify that in showing ''where consumers can see these baggage fees,'' the search results screen of the Web site of the agent or carrier must include a hyperlink that takes the consumer to the up-to-date and accurate baggage fee listings. An agent may link to a chart of information that it generates itself, to a third party site containing the information, or to the carrier's page, as it is allowed to do under the current rule.

b. Standard Applicable to Reportable Tarmac Delays Under Part 244

In 14 CFR Part 244, the Department requires U.S. and foreign air carriers to file Form 244 ''Tarmac Delay Report'' with the Department with respect to any covered flight that experienced a lengthy departure or arrival delay on the tarmac at a large, medium, small, or non-hub U.S. airport. A ''lengthy'' tarmac delay for purposes of this report is defined in Part 244 as any tarmac delay that lasts ''three hours or more.'' This standard is inconsistent with the standard applicable to the tarmac delay contingency plan requirements under 14 CFR Part 259 and the existing reporting requirements of BTS, both of which refer to any tarmac delay of ''more than three hours.'' In a Frequently Asked Questions document issued by the Department following the issuance of the final rule for Part 244, we acknowledged this discrepancy and stated that we intend to correct it in a future rulemaking. In this NPRM, we are proposing to amend the rule text of Part 244 and to adopt the ''more than three hours'' standard so this Part would be consistent with other Parts of our rules. Under this proposal, any tarmac delay that lasts exactly three hours would not be covered under the requirements of Part 244.

c. Civil Penalty for Tarmac Delay Violations

In the first and second Enhancing Airline Passenger Protections final rule, the Department stated that failure to comply with the assurances required by the tarmac delay rule will be considered an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 that is subject to enforcement action by the Department. Under 49 U.S.C. 46301, the Department has authority to impose a civil penalty of ''of not more than $27,500'' for each violation of the specifically listed aviation-related laws and regulations, which would include DOT's tarmac delay rule. Nevertheless, in recent years, there have been questions raised as to whether the Department has the authority under the civil penalty statute (49 U.S.C. 46301) to assess a civil penalty on a per passenger basis for tarmac delay violations. As such, we are amending the tarmac delay rule to clarify that the Department may impose penalties for tarmac delay violations on a per passenger basis.

It has long been the Department's policy that each consumer affected by an unlawful carrier practice is a separate violation. For example, if a flight is canceled and ten people on that flight cannot be rerouted and thus are entitled to a refund of their unused transportation, and the carrier fails to comply with the Department's refund rules, each person whose refund was not provided in compliance with our rules would constitute a separate violation. Similarly, if five people were involuntarily denied boarding from an oversold flight and none were paid denied boarding compensation as required by our oversales rule that would be five violations. Our authority to calculate a civil penalty on a per passenger basis for tarmac delay violations is just as clear. Each passenger on a flight that experiences a tarmac delay that exceeds three hours for domestic flights or four hours for international flights experiences the inconvenience that this rule was designed to prevent and gives rise to a separate violation. Likewise, each passenger who is not offered food and water at the two-hour mark during a tarmac delay gives rise to a separate violation. Indeed, a number of carriers have recognized this fact and complained in public filings and press reports of the prospect of incurring $27,500 per passenger in fines for tarmac delay violations.

The purpose of the tarmac delay rule is clearly to mitigate hardships for individual airline passengers during lengthy tarmac delays. To that end, the rule requires carriers to develop contingency plans for lengthy tarmac delays, and to provide an assurance that the carrier will not allow an aircraft to remain on the tarmac for more than three hours for domestic flights and for more than four hours for international flights without each passenger being given an opportunity to deplane. The preambles to both the first and second Enhancing Airline Passenger Protections final rules refer to protecting individual passengers. Carriers are also required to tell passengers what they can expect by posting their contingency plans on their Web site. To the extent that carriers do not live up to the assurances that they provided to any passenger, it is an unfair and deceptive practice with respect to each affected passenger and therefore a separate violation of 49 U.S.C. 41712 with respect to each such passenger.

d. Required Oral Disclosure of Material Restrictions on Travel Vouchers Offered to Potential Volunteers in Oversale Situations Under Part 250

Another inconsistency in the second Enhancing Airline Passenger Protections final rule concerns the requirement in 14 CFR Part 250 to provide oral disclosure of any material restrictions on travel vouchers offered to any passenger a carrier solicits to voluntarily give up his or her confirmed reservation on an oversold flight. The preamble to the final rule discussed extensively the reason for requiring such oral disclosure to both voluntarily and involuntarily bumped passengers who are orally offered a voucher, but inadvertently, the new Part 250 rule text only requires oral disclosures to passengers who are involuntarily denied boarding. The rule text, as it currently stands, allows carriers to provide such disclosure solely by written notice to passengers who are orally solicited to be volunteers in exchange for travel vouchers. However, for the reasons discussed in the preamble to the second Enhancing Airline Passenger Protections rule, we are unconvinced that such written notice alone is adequate at times when the solicitation itself is oral and passengers are constrained by time pressure to make a quick decision as to whether to volunteer. Many times, the written notice is incorporated in the printed contents of the travel voucher, and the passenger frequently would not have time to review the notice before he or she commits to the acceptance of the voucher. We continue to believe that a brief oral summary of the material restrictions applicable to the travel vouchers that are orally offered to potential volunteers (as well as continuation of the requirement to orally disclose this information to involuntarily bumped passengers who are offered the option of a travel voucher) will provide further protections to these passengers so they can make an informed decision. As such, we are proposing to amend section 250.2b(c) to reflect this notion. Under this proposal, when carriers orally solicit volunteers and offer travel vouchers as incentives, they would also be required to orally describe any material restrictions applicable to the travel vouchers.

e. Limitation of Flight Status Notification Requirement of 14 CFR 259.8

Section 259.8 requires that covered carriers must notify passengers and other interested persons of flight status changes within 30 minutes after the carrier becomes aware of such changes. Flight status changes in this section include a flight cancellation, a delay of more than 30 minutes, or a diversion. Although the preamble and rule text did not specify how far in advance of the date of the scheduled operation carriers must comply with the notification requirements, the *Frequently Asked Questions* guidance document issued by the Enforcement Office in relation to the second Enhancing Airline Passenger Protections rule stated that, as an enforcement policy, the rule applies to any flight status changes that occur within seven calendar days of the scheduled date of the operation. *See* Frequently Asked Questions, Section VIII, #2. We further explained that the purpose of this rule is to avoid or reduce unnecessary waits at, or pointless trips to, an airport, which are most likely to occur on the date of the scheduled travel. Therefore, the closer to the date of the scheduled operation, the more important it is for carriers to provide notice of a flight status change promptly. In this NPRM, we propose to codify this ''seven-calendar-day'' timeframe as we believe that requiring carriers to provide notifications of schedule changes within 30 minutes after they become aware of such changes is not necessary if the changes occur more than seven days before the date of the operation. To require notifications within 30 minutes for changes occurring more than seven days in advance of the date of operation would likely greatly increase carriers' burden yet result in little additional benefit to the public. We do emphasize, however, that notifications of changes that occur earlier than the seven-day threshold are still required to be delivered to the

passengers in a timely manner; see 14 CFR 259.5(b)(10).

We are also proposing some editorial changes to section 259.8 to clarify that flight status change notifications required in this section should be provided not only to passengers, but also to any member of the public who may be affected by the changes, including persons meeting passengers at airports or escorting them to or from airports. This is a point we made clear in the preamble of the final rule document but not in the rule text. In this regard, we are proposing to change the word ''passengers'' to ''consumers'' in the title of section 259.8, to change the first instance of the word ''passengers'' in subsection 259.8(a)(1) to the phrase ''passengers and other interested persons,'' and to change the second instance of that word to ''subscribers.''

f. Removing the Rebating Provision in Section 399.80(h)

Section 399.80(h) states that it is an unfair or deceptive practice or unfair method of competition for a ticket agent to advertise or sell air transportation at less than the rates specified in the tariff of the air carrier, or offer rebates or concessions, or permit persons to obtain air transportation at less than the lawful fares and rates. This provision is a vestige of the period before deregulation of the airline industry. Domestic air fares were deregulated effective 1983, and in most cases international air fares to and from the United States are no longer contained in tariffs that specify ''lawful'' fares. In those markets where international fares are still subject to regulation, carriers that do not comply with their tariff are potentially subject to enforcement action under 49 U.S.C. 41510 concerning adherence to tariffs or 49 U.S.C. 41712 concerning unfair or deceptive practices and unfair methods of competition (the statutory basis for section 399.80(h)). The Department's Enforcement Office has said that it will pursue enforcement action against a carrier that does not comply with its tariff when there is clear evidence of a pattern of direct consumer fraud or deception, invidious discrimination, or violations of the antitrust laws. It has been the longstanding policy of that office to decline to prosecute instances of noncompliance with tariff obligations that result in benefits to consumers absent clear evidence of such behavior. (*See* the Frequently Asked Questions for ''Rule #2'' of the Enhancing Airline Passenger Protections regulation, *www.dot.gov/individuals/air-consumer/aviation-rules,* section X, question 38a, footnote 1.) There have been no enforcement actions solely for tariff compliance for over 20 years, and should such action become appropriate in the future it can proceed under the authority of sections 41510 or 41712. 14 CFR 399.80(h) is not necessary, and consequently we are proposing to remove this provision.

Regulatory Analyses and Notices

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

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Executive Order. The Regulatory Evaluation finds that the costs for the proposed rule exceed the monetized benefits as the benefits from all provisions, with the exception of provision 2, could not be measured and valued with confidence. The benefits which could be estimated for provision 2 do not include the value of all likely benefits, as values for some of those could not be adequately estimated. The total present value of monetized passenger benefits from the proposed requirements over a 10-year period at a 7% discount rate is $25.1 million and the total present value of monetized costs incurred by carriers and other sellers of air transportation over a 10-year period at a 7% discount rate is $80.5 million. The net present cost of the rule for 10 years at a 7% discount rate is $53.8 million. However, if the value of the unquantified benefits, per passenger, is any amount greater than one cent, and unquantified costs are minimal, then the entire rule is net beneficial. In other words, if passengers are willing to pay, on average, one penny per trip for all eight provisions of the proposal, then the value of the proposal outweighs its costs.

Below, we have included a table outlining the projected costs and benefits of this rulemaking.

TABLE—SUMMARY OF COSTS AND BENEFITS OVER 10 YEARS, DISCOUNTED AT 7 PERCENT

[Millions $]

Provisions	10 Year analysis period		
	7% Discount rate		
	Costs	Benefits	Net benefits
1 Definition of Ticket Agent			
Monetized Costs and Benefits	N/A	N/A	N/A
2 Carriers provide ancillary fee information to ticket agencies for display			
Monetized Costs and Benefits	$46.2	$25.1	($21.1)
Unquantified/non-monetized benefits or costs *Greater Competition and Lower Overall Prices for Ancillary service fees* *Greater Efficiency by Consumers in Flight Purchases* Unquantified/non-monetized Costs: *May Inhibit New Entrants* *May Decrease Carrier Flexibility to Customize Services*	*Value of Unquantified Benefits per PAX Needed for Benefits to Equal or Exceed Costs.* Less than $0.00 *(21.06 M net cost/1,666 M travelers purchasing via internet—10 yrs).*		
3 & 4 Expand reporting threshold to 0.50% and reporting as mainline carriers and code-share partners combined			
Monetized Costs and Benefits	$29.8	N/A	($29.8)

TABLE—SUMMARY OF COSTS AND BENEFITS OVER 10 YEARS, DISCOUNTED AT 7 PERCENT—Continued

[Millions $]

Provisions	10 Year analysis period		
	7% Discount rate		
	Costs	Benefits	Net benefits
Unquantified/non-monetized benefits: *Improved On-Time Performance for Newly Reporting Carriers and Code-Share Flights for All Reporting Carriers* *Improved Handling of Baggage for Newly Reporting Carriers and Code-Share Flights for All Reporting Carriers* *Decrease in Oversales* *Improved Customer Good Will Towards Carriers* *Insurance Value* *Improved Public Oversight of the Industry* Unquantified/non-monetized Costs: *Increased Training Costs for Gathering Data to Report (some carriers only)* *Increased Management Costs To Improve Carrier Performance*	*Value of Unquantified Benefits per PAX Needed for Benefits to Equal or Exceed Costs.* $0.7 *($29.75 M net cost/43.9 M PAX on newly reporting carriers 10 yrs) to Less than $0.00 ($29.75M net cost/7,335 M all domestic PAX 10 yrs).*		
5 Minimum customer service standards for ticket agents			
Monetized Costs and Benefits	$3.0	N/A	($3.0)
Unquantified/non-monetized benefits: *Improved Customer Good Will Towards Ticket Agents* *Reduced Legal and Administrative Costs to Manage Complaints* *Faster Resolution of Complaints/Refunds* *Potential Increase in Competitiveness of Travel Agents vs. Carriers with Customer Protections Similar to Carriers* *Unquantified/non-monetized Costs:* *Increased Training Costs* *Increased Management Costs* *Increased Staff Time*	*Value of Unquantified Benefits per PAX Needed for Benefits to Equal or Exceed Costs. Less than $0.00 (2.95 M net cost/3,405 M domestic PAX purchasing via travel agents 10 yrs).*		
6 Disclosure of code-share segments in schedules, advertisements and communications with consumers			
Monetized Costs and Benefits	N/A	N/A	N/A
7 Disclosure of carriers marketed by ticket agents (no proposed rule text—seeking comments)			
8 Prohibition on undisclosed biasing			
Monetized Costs and Benefits	N/A	N/A	N/A
Unquantified/non-monetized benefits: *Decrease in Incentive Payments to Ticket Agents from Carriers Potentially Leading to Lower Costs to Consumers* *Potential Decrease in Consumers Not Noticing Flights which Better Meet Their Criteria* Unquantified/non-monetized Costs: *Programming Costs to Change Ranking Software/Systems or to Post Notice* *Legal Costs to Adjust Existing Contracts Currently Requiring Preferential Display*			
9 Prohibition of post-purchase price increase for ancillary service fees			
Monetized Costs and Benefits	N/A	N/A	N/A
Unquantified/non-monetized benefits: *Improved Customer Good Will Towards Ticket Agents* *Reduced Legal and Administrative Costs to Manage Complaints*			
TOTAL (All Proposed Provisions)*	$80.5	$25.1	($53.8)
Value of Unquantified Benefits Per Passenger Needed for	.....	*$0.01*	.....

* **Note:** Details may not sum to totals in table due to rounding.

We invite comment on the quantification of costs and benefits for each provision, as well as the methodology used to develop our cost and benefit estimates. We also seek comment on how unquantified costs and benefits could be measured. More detail on the estimates within this table can be found in the preliminary Regulatory Impact Analysis associated with this proposed rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. The regulatory initiatives discussed in this NPRM would have some impact on some small entities. A direct air carrier or foreign air carrier is a small business

if it provides air transportation only with small aircraft (i.e., aircraft with up to 60 seats/18,000 pound payload capacity). See 14 CFR 399.73. A travel agency is considered to be small if it makes $3.5 million or less in annual revenues. While most of the proposals in this rulemaking impact carriers, certain elements also impact ticket/travel agents.

The Initial Regulatory Flexibility Analysis found that there are some costs, though not substantial, to certain small entities from provision 3 which would expand the definition of a reporting carrier to one that accounts for at least 0.5% of domestic scheduled passenger revenues; provision 4, which would expand the reporting requirements for reporting carriers to include an additional, combined set of reports for both the carrier's own flights and its code-share partner flights; and provision 2, which would require that U.S. and foreign air carriers and ticket agents disclose certain ancillary service fees to a consumer who requests such information.

Our analysis estimates that a total of 87 small U.S. and foreign air carriers may be impacted by this rulemaking. We believe that the economic impact on these entities would not be significant. The estimated cost to small carriers from all the provisions would be $5.1 million for the first year and $24.7 million for a 10-year period discounted at 7 percent. On the basis of this examination, I certify that this rulemaking would not have a significant economic impact on a substantial number of small entities. A copy of the Initial Regulatory Flexibility Analysis has been placed in docket.

C. Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This notice does not propose any provision 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.

D. Executive Order 13084

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''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.

E. Paperwork Reduction Act

This NPRM proposes two new collections of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 49 U.S.C. 3501 *et seq.*). Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing notice of the proposed collection of information and a 60-day comment period, and must otherwise consult with members of the public and affected agencies concerning the proposed collection.

The first collection of information proposed here is a requirement that more carriers report on-time performance, mishandled baggage, and oversales data to the Department (i.e., expansion of reporting carriers from any U.S. airline that accounts for at least one percent of annual domestic scheduled passenger revenue to any U.S. airline that accounts for at least 0.5 percent of annual domestic scheduled-passenger revenues). The second information collection is a requirement that mainline carriers provide enhanced reporting for their domestic code-share partner operations including requiring reporting carriers to separately report on-time performance, mishandled baggage, and oversales data for all domestic scheduled passenger flights marketed by the reporting carriers.

For each of these information collections, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

1. Requirement for More Carriers To Report On-Time Performance, Mishandled Baggage, and Oversales Data to the Department

Respondents: U.S. carriers that operate passenger service and account for at least 0.5 percent of domestic passenger service, but less than 1 percent of domestic passenger service (eight new reporting carriers, among which five carriers do not market directly to consumers and three carriers market directly to consumers).

Estimated Annual Burden on Respondents: The first-year cost for eight new reporting carriers would total 26,877 hours, or 3,360 hours on average (for eight carriers). For each of the five new reporting carriers that do not market directly to consumers, the costs would include the following: (1) One-time cost to set up systems to collect and report the data for each newly reporting carrier of 1,118 hours (set-up costs of $100,762 divided by hourly cost of $90.10, both figures derived from respondent interviews); and (2) an annual cost for each newly reporting carrier to report data regarding on-time performance, baggage, and oversales of 496 hours (480 hours to collect data for form 234 and 16 hours to collect data for form 251). For each of the three new reporting carrier that market directly to consumers, the costs would include the following: (1) One-time cost to set up systems to collect and report the data for each newly reporting carrier of 1,118 hours (set-up costs of $100,762 divided by hourly cost of $90.10, both figures derived from respondent interviews); (2) an annual cost for each newly reporting carriers to report data regarding on-time performance, baggage, and oversales of 496 hours (480 hours to collect data for form 234 and 16 hours to collect data for form 251); and (3) one-time cost for setting up systems to post flight on-time performance information on the carrier's Web site of 4,655 hours (set-up costs of $419,394 divided by hourly cost of $90.10).

Estimated Total Annual Burden: First year costs total 26,877 which would include the system set-up costs for new reporting carriers of 8,944 hours (8 carriers times 1,118 hours each), annual labor cost for new reporting carriers to report data of 3,968 hours (8 carriers times 496 hours each), 13,965 hours (for three carriers to set up systems to post on-time performance data on their Web sites). Burdens for subsequent years would be 4,528 hours on average annually for reporting carriers to collect and report their own data regarding on-time performance, baggage, and oversales.

Frequency: Monthly for on-time performance and baggage reports and posting on-time performance on marketing carriers' Web sites; quarterly for filing oversales report; estimates of burden are annual.

2. Requirement for Reporting Carriers That Market Code-Share Flights To Report Their Code-Share Flights in Addition to Their Own Flights To Provide Enhanced Reporting for Domestic Code-Share Partner Operations

Respondents: U.S. carriers that operate passenger service and account for at least 0.5 percent of domestic passenger service and market code-share partners (9 existing reporting carriers that market code-share flights).

Estimated Annual Burden on Respondents: The annual cost for each code-share partner to process and report data regarding on-time performance, mishandled baggage, and oversales to each separate marketing, reporting carrier with which it code-shares would be 496 hours (480 hours to collect data for form 234 and 16 hours to collect data for form 251), whether or not the marketing carrier compensates its code-share partner for the costs or the code-share partner takes the burden itself.

Estimated Total Annual Burden: The total first-year burden would be 30,752 hours (62 code-share partners' times 496 hours each). Each year after the first year, the total average burden would be 34,731 hours (higher than the first year to reflect the rate of growth of flights and passengers over the 10 year period of analysis). These estimates likely overestimate the actual costs to some carriers that code-share with multiple partners. Carriers that code-share any flights with more than one code-share partners should experience some efficiencies in the collection, management, and reporting of data regarding those flights for use by multiple code-share partners.

Frequency: Monthly reports for on-time performance and mishandled baggage; quarterly reports for oversales; estimates of burden are annual.

The Department invites interested persons to submit comments on any aspect of each of these two 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 notice will be summarized or included, or both, in the request for OMB approval of these information collections.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this NPRM.

Issued this 21st day of May, 2014, in Washington, DC.

Anthony R. Foxx,

Secretary of Transportation.

List of Subjects

14 CFR Part 234

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 244

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 255

Air carriers, Antitrust.

14 CFR Part 256

Air carriers, Antitrust.

14 CFR Part 257

Air carriers, Air rates and fares, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 259

Air carriers, Air rates and fares, Consumer protection.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

PART 234—[AMENDED]

■ 1. The authority citation for part 234 revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 401 and 417.

■ 2. In § 234.2, the definition of ''reporting carrier'' is revised to read as follows:

§ 234.2 Definitions.

* * * * *

Reporting carrier means an air carrier certificated under 49 U.S.C. 41102 that accounted for at least 0.5 percent of domestic scheduled-passenger revenues in the most recently reported 12-month period as defined by the Department's Office of Airline Information, and as reported to the Department pursuant to Part 241 of this title. Reporting carriers will be identified periodically in accounting and reporting directives issued by the Office of Airline Information.

* * * * *

■ 3. Section 234.3 is revised to read as follows:

§ 234.3 Applicability.

This part applies to certain domestic scheduled passenger flights that are held out to the public by certificated air carriers that account for at least 0.5 percent of domestic scheduled passenger revenues. Certain provisions also apply to voluntary reporting of on-time performance by carriers.

■ 4. Section 234.4 is amended by revising paragraph (a) introductory text and adding paragraph (k) to read as follows:

§ 234.4 Reporting of on-time performance.

(a) Each reporting carrier shall file BTS Form 234 ''On-Time Flight Performance Report'' with the Office of Airline Information of the Department's Bureau of Transportation Statistics on a monthly basis, setting forth the information for each of its reportable flights operated by the reporting carrier and held out to the public on the reporting carrier's Web site and the Web sites of major online travel agencies, or in other generally recognized sources of schedule information. (See also paragraph (k) of this section.)

* * * * *

(k) Each reporting carrier shall file a separate BTS Form 234 ''On-Time Flight Performance Report'' with the Office of Airline Information on a monthly basis, setting forth the information for each of its reportable flights held out with the reporting carrier's code on the reporting carrier's Web site, on the Web sites of major online travel agencies, or in other generally recognized sources of schedule information, including reportable flights operated by any code-share partner that is a certificated air carrier or commuter air carrier. The report shall be made in a form and manner consistent with the requirements set forth in paragraphs (a) through (j) of this section.

■ 5. Section 234.6 is revised to read as follows:

§ 234.6 Baggage-handling statistics.

(a) Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of checked bags, including gate checked baggage, the total number of wheelchairs and scooters transported in the aircraft cargo compartment, the total number of mishandled checked bags, including gate checked baggage, and the number of mishandled wheelchairs and

scooters that were carried in the cargo compartment. Each reporting carrier shall submit a separate monthly report on the mishandled baggage, wheelchairs and scooters as described above for all domestic scheduled passenger flight segments that are held out with the reporting carrier's code on the reporting carrier's Web site, on the Web sites of major online travel agencies, or in other generally recognized sources of schedule information, including flights operated by code-share partners that are certificated air carriers or commuter air carriers. For flights operated by a code-share partner that also carry passengers ticketed under another carrier's code, the reporting carrier shall only report baggage information applicable to passengers ticketed under its own code.

(b) This information shall be submitted to the Department within 15 days after the end of the month to which the information applies and must be submitted with the transmittal letter accompanying the data for on-time performance in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Information.

PART 244—[AMENDED]

■ 6. The authority citation for part 244 continues to read as follows:

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, and 41712.

■ 7. Section 244.2 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 244.2 Applicability.

(a) * * * Covered carriers must report all passenger operations that experience a tarmac time of more than 3 hours at a U.S. airport.

* * * * *

■ 8. Section 244.3 is amended by revising paragraph (a) to read as follows:

§ 244.3 Reporting of tarmac delay data.

(a) Each covered carrier shall file BTS Form 244 ''Tarmac Delay Report'' with the Office of Airline Information of the Department's Bureau of Transportation Statistics setting forth the information for each of its covered flights that experienced a tarmac delay of more than 3 hours, including diverted flights and cancelled flights on which the passengers were boarded and then deplaned before the cancellation. The reports are due within 15 days after the end of any month during which the carrier experienced any reportable tarmac delay of more than 3 hours at a U.S. airport.

* * * * *

PART 250—[AMENDED]

■ 9. The authority citation for part 250 is revised to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413 and 417.

■ 10. Section 250.2b is amended by revising paragraph (c) to read as follows:

§ 250.2b Carriers to request volunteers for denied boarding.

* * * * *

(c) If a carrier offers free or reduced rate air transportation as compensation to volunteers, the carrier must disclose all material restrictions, including but not limited to administrative fees, advance purchase or capacity restrictions, and blackout dates applicable to the offer before the passenger decides whether to give up his or her confirmed reserved space on the flight in exchange for the free or reduced rate transportation. If the free or reduced rate air transportation is offered orally to potential volunteers, the carrier shall also orally provide a brief description of the material restrictions on that transportation at the same time that the offer is made.

■ 11. Section 250.5 is amended by adding a sentence at the end of paragraph (c)(3) to read as follows:

§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.

* * * * *

(c) * * * (See also section 250.9(c)).

* * * * *

■ 12. Section 250.10 is revised to read as follows:

§ 250.10 Report of passengers denied confirmed space.

(a) Each reporting carrier as defined in § 234.2 of this chapter and any carrier that voluntarily submits data pursuant to § 234.7 of this chapter shall file, on a quarterly basis, the information specified in BTS Form 251. The reporting basis shall be flight segments originating in the United States operated by the reporting carrier. The reports must be submitted within 30 days after the end of the quarter covered by the report. The calendar quarters end March 31, June 30, September 30 and December 31. ''Total Boardings'' on Line 7 of Form 251 shall include only passengers on flights for which confirmed reservations are offered. Data shall not be included for inbound international flights.

(b) Each reporting carrier and voluntary reporting carrier shall file a separate BTS Form 251 for all flight segments originating in the United States operated under the reporting carrier's code, including flight segments operated by a code-share partner that is a certificated air carrier or commuter air carrier using aircraft that have a designed passenger capacity of 30 or more seats. For code-share flight segments that also carry passengers ticketed under another carrier's code, the reporting carrier shall only report information applicable to passengers ticketed under its own code.

PART 255—[REMOVED AND RESERVED]

■ 13. Under the authority of 49 U.S.C. chapters 401 and 417, part 255 is removed and reserved.

■ 14. Part 256 is added to read as follows:

PART 256—ELECTRONIC AIRLINE INFORMATION SYSTEMS

Sec.

Authority: 49 U.S.C. chapters 401 and 417.

§ 256.1 Purpose.

(a) The purpose of this part is to set forth requirements for the operation of electronic airline information systems that provide air carrier or foreign air carrier schedule, fare, rule, or availability information, including, but not limited to, global distribution systems (GDSs) and Internet flight search engines, for use by consumers, carriers, ticket agents, and other business entities as well as for related air transportation distribution practices so as to prevent unfair and deceptive practices in the distribution and sale of air transportation.

(b) Nothing in this part exempts any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

§ 256.2 Applicability.

(a) This part applies to any air carrier, foreign air carrier, or ticket agent that:

(1) Creates or develops the content of an electronic airline information system that combines the schedules, fares, rules, or availability information of more than one air carrier or foreign air carrier for the distribution or sale in the United States of interstate and foreign air transportation; or

(2) Operates an electronic airline information system, e.g., GDS or Internet flight search tool.

(b) This part applies only if the electronic airline information system is displayed on a Web site marketed to consumers in the United States or on a proprietary display available to travel agents, business entities, or a limited segment of consumers of air transportation in the United States.

§ 256.3 Definitions.

For purposes of this part,

(a) *Lowest fare generally available* means the lowest price offered for air transportation between designated points including all mandatory taxes and fees but not ancillary fees for optional services. The term does not cover fares restricted to a limited category of travelers, (e.g., negotiated corporate or government fares or discount fares available only to travel agents).

(b) *Availability* means information provided in displays with respect to the seats a carrier holds out as available for sale on a particular flight.

(c) *Display* means the presentation of air carrier or foreign air carrier schedules, fares, rules or availability to a consumer or agent or other individual involved in arranging air travel for a consumer by means of a computer or mobile computing device.

(d) *Integrated display* means any display that includes the schedules, fares, rules, or availability of more than one carrier.

(e) *Listed carrier* means an air carrier or foreign air carrier whose schedules, fares, or availability is included in an electronic airline information system.

(f) *Electronic airline information system or EAIS* means a system that combines air carrier or foreign air carrier schedule, fare, rule, or availability information for transmission or display to air carriers or foreign air carriers, ticket agents, other business entities, or consumers. It includes direct connections between a ticket agent and the internal reservations systems of an individual carrier if the direct connection provides schedules, fares, rules, or availability of more than one air carrier or foreign air carrier (unless all of the listed carriers are under the same ownership or the individual carrier's direct connection only provides information on flights operated under its own code).

§ 256.4 Accurate EAIS display of information and prohibition of undisclosed display bias.

Each air carrier, foreign air carrier, and ticket agent that operates an EAIS that provides at least one integrated display must comply with the requirements of this section.

(a) Each EAIS shall display accurately all schedule, fare, rules, and availability information provided by or on behalf of listed carriers or obtained from third parties by the EAIS operator.

(b) Each EAIS that uses any factors directly or indirectly relating to carrier identity in ordering the information contained in an integrated display must clearly disclose that the identity of the carrier is a factor in the order in which information is displayed.

(c) Undisclosed display bias in an integrated display is prohibited.

(1) Each EAIS's integrated display must use the same editing and ranking criteria for each listed carrier's flights and must not give any listed carrier's flights a system-imposed preference over any other listed carrier's flights unless the preference is prominently disclosed.

(2) EAISs may organize information on the basis of any service criteria that do not reflect carrier identity provided that the criteria are consistently applied to all carriers and to all markets. Unless any display bias is specifically and prominently disclosed, when providing information in response to a search by a user of the EAIS, the EAIS must order the information provided so that the lowest fare generally available that best satisfies the parameters of the request (e.g., date and time of travel, number of passengers, class of service, stopovers, limitations on carriers to be used or routing [e.g., nonstop only], etc.) is displayed conspicuously and no less prominently than any other fare displayed. To the extent the user (e.g., consumer or travel agent) is entitled to access to any fares restricted to a limited category of travelers, the lowest of those fares must also be displayed conspicuously and no less prominently than any other fare displayed.

§ 256.5 Prohibition against inducing undisclosed bias.

(a) No air carrier, foreign carrier, or ticket agent may induce or attempt to induce the developer or operator of an EAIS to create a display that would not comply with the requirements of § 256.4 of this part or provide inaccurate schedule, fare, rules, or availability information that would result in a display that would not comply with the requirements of § 256.4.

(b) Nothing in this section requires an air carrier, foreign air carrier, or ticket agent to allow a system to access its internal computer reservation system or to permit ''screen scraping'' or ''content scraping'' of its Web site; nor does it require an air carrier or foreign air carrier to permit the sale of the carrier's services through any ticket agent or other carrier's system. ''Screen scraping'' refers to a process whereby a company uses computer software techniques to extract information from other companies' Web sites. In the travel industry, screen scraping companies generally extract schedule and fare information from the Web sites of airlines or online travel agencies (OTAs) in order to display the lowest rates on their own Web site and eliminate the need for consumers to compare offerings from site to site.

PART 257—[AMENDED]

■ 15. The authority citation for part 257 continues to read as follows:

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

§ 257.3 [Amended]

■ 16. In § 257.3, paragraph (g) is amended by removing the term ''transporting carrier'' and adding ''operating carrier'' in its place.

■ 17. Section 257.5 is revised to read as follows:

§ 257.5 Notice requirement.

(a) *Notice in flight itineraries and schedules.* Each air carrier, foreign air carrier, or ticket agent providing flight itineraries and/or schedules for scheduled passenger air transportation to the public in the United States shall ensure that each flight segment on which the designator code is not that of the operating carrier is clearly and prominently identified and contains the following disclosures.

(1) In flight schedule information provided to U.S. consumers on desktop browser-based or mobile browser-based Internet Web sites or applications in response to any requested itinerary search, for each flight in scheduled passenger air transportation that is operated by a carrier other than the one listed for that flight, the corporate name of the transporting carrier and any other name under which the service is held out to the public must appear prominently in text format on the first display following the input of a search query, immediately adjacent to each code-share flight in that search-results list. Roll-over, pop-up and linked disclosures do not comply with this paragraph.

(2) For static written schedules, each flight in scheduled passenger air transportation that is operated by a carrier other than the one listed for that flight shall be identified by an asterisk or other easily identifiable mark that leads to disclosure of the corporate

name of the operating carrier and any other name under which that service is held out to the public.

(b) *Notice in oral communications with prospective consumers.* In any direct oral communication in the United States with a prospective consumer, and in any telephone call placed from the United States by a prospective consumer, concerning a flight within, to, or from the United States that is part of a code-sharing arrangement or long-term wet lease, a ticket agent doing business in the United States or a carrier shall inform the consumer, the first time that such a flight is offered to the consumer, that the operating carrier is not the carrier whose name or designator code will appear on the ticket and shall identify the transporting carrier by its corporate name and any other name under which that service is held out to the public.

(c) *Notice in ticket confirmations.* At the time of purchase, each selling carrier or ticket agent shall provide written disclosure of the actual operator of the flight to each consumer of scheduled passenger air transportation sold in the United States that involves a code-sharing arrangement or long-term wet lease. For any flight segment on which the designator code is not that of the operating carrier the notice shall state ''Operated by'' followed by the corporate name of the transporting carrier and any other name in which that service is held out to the public. In the case of single-flight-number service involving a segment or segments on which the designator code is not that of the transporting carrier, the notice shall clearly identify the segment or segments and the operating carrier by its corporate name and any other name in which that service is held out to the public. The following form of statement will satisfy the requirement of this paragraph (c): *Important Notice: Service between XYZ City and ABC City will be operated by Jane Doe Airlines d/b/a QRS Express.* At the purchaser's request, the notice required by this part may be delivered in person, or by fax, electronic mail, or any other reliable method of transmitting written material.

(d) In any written advertisement distributed in or mailed to or from the United States (including those that appear on an Internet Web site that is marketed to consumers in the United States) for service in a city-pair market that is provided under a code-sharing arrangement or long-term wet lease, the advertisement shall prominently disclose that the advertised service may involve travel on another carrier and clearly indicate the nature of the service in reasonably sized type and shall identify all potential operating carriers involved in the markets being advertised by corporate name and by any other name under which that service is held out to the public. In any radio or television advertisement broadcast in the United States for service in a city-pair market that is provided under a code-sharing or long-term wet lease, the advertisement shall include at least a generic disclosure statement, such as ''Some flights are operated by other airlines.''

PART 259—[AMENDED]

■ 18. The authority citation for part 259 continues to read as follows:

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, and 41712.

■ 19. Section 259.4 is amended by revising paragraph (f) to read as follows:

§ 259.4 Contingency Plan for Lengthy Tarmac Delays.

* * * * *

(f) *Civil penalty.* A carrier's failure to comply with the assurances required by this section and contained in its Contingency Plan for Lengthy Tarmac Delays will be considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 with respect to each affected passenger and therefore a separate violation for each passenger for each unfulfilled assurance under 49 U.S.C. 46301.

■ 20. Section 259.8 is amended by revising the second sentence in paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 259.8 Notify consumers of known delays, cancellations, and diversions.

(a) * * * A change in the status of a flight means, at a minimum, a cancellation, diversion or delay of 30 minutes or more in the planned operation of a flight that occurs within seven calendar days of the scheduled date of the planned operation. * * *

(1) With respect to any U.S. air carrier or foreign air carrier that permits passengers and other interested persons to subscribe to flight status notification services, the carrier must deliver such notification to such subscribers, by whatever means the carrier offers that the subscriber chooses. * * *

PART 399—[AMENDED]

■ 21. The authority citation for part 399 is revised to read as follows:

Authority: 49 U.S.C. 40101 *et seq.*

■ 22. Section 399.80 is amended by:

■ a. Revising the introductory text;

■ b. Removing and reserving paragraph (h);

■ c. Revising paragraph (1);

■ d. Adding paragraphs (o), (p), (q), and (r); and

■ e. Revising paragraph (s).

The revisions and additions read as follows:

§ 399.80 Unfair and deceptive practices of ticket agents.

It is the policy of the Department to regard the practices enumerated in paragraphs (a) through (m) of this section by a ticket agent of any size and the practices enumerated in paragraphs (o) through (r) of this section by a ticket agent that sells air transportation and has annual revenue of $100 million or more as an unfair or deceptive practice or unfair method of competition:

* * * * *

(l) Failing or refusing to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the timely use of the money to arrange other transportation, or forcing them to suffer unnecessary inconvenience and delay or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale. For purposes of this subsection ''promptly'' means processing a credit card refund (e.g., forwarding a credit to the merchant bank) within seven business days and a cash, check or debit card refund within 20 days. These deadlines are calculated from the time that the ticket agent receives all information from the consumer that is necessary to process the refund. The ticket agent must request any missing information without delay. A ticket agent's need to collect information from its own records does not suspend these deadlines.

* * * * *

(o) Failure to hold a reservation at the quoted fare without payment or to permit it to be cancelled without penalty for at least 24 hours after the reservation is made if the reservation is made one week or more prior to a flight's departure. (The ticket agent may choose between these two methods; it need not offer both options to consumers.)

(p) Failure to disclose cancellation policies applicable to a consumer's selected flights, the aircraft's seating configuration, and lavatory availability on the aircraft on its Web site, and upon request, from the telephone reservations staff.

(q) Failure to notify consumers in a timely manner of carrier-initiated changes to the consumer's air travel itinerary about which the carrier notifies

the agent or about which the agent becomes aware through other means.

(r) Failure to respond to consumer problems by acknowledging receipt of a consumer complaint within thirty days of receiving the complaint and sending a substantive written response within sixty days of receiving the complaint. If all or part of the complaint is about services furnished (or to be furnished) by an airline or other travel supplier, the agent must send the complaint to that supplier for response. If no part of the complaint is about the agent's service and the agent sends the complaint to the appropriate suppliers, the agent's substantive reply can consist of advising the consumer where the agent has sent the complaint and why.

(s) As used in this subpart G and in 14 CFR parts 257 and 258, ''Air carrier'', ''foreign air carrier'', and ''ticket agent'' have the same definitions as set forth in 49 U.S.C. 40102. The term ''person . . . arranging for [,] air transportation'' as set forth in the definition of ''ticket agent'' in section 40102(40) includes any person that acts as an intermediary involved in the sale of air transportation directly or indirectly to consumers, including by operating an electronic airline information system, if the person holds itself out as a source of information about, or reservations for, the air transportation industry and receives compensation in any way related to the sale of air transportation (e.g., cost-per-click for air transportation advertisements, commission payment, revenue-sharing, or other compensation based on factors such as the number of flight segments booked, number of sales made, or number of consumers directed or referred to an air carrier, foreign air carrier, or ticket agent for the sale of air transportation). The term does not include persons who only publish advertisements of fares and are paid only per click for linking consumers to the Web sites of the carriers or agents that provided the advertisement.

■ 23. Section 399.85 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 399.85 Notice of baggage fees and other fees.

(a) If a U.S. or foreign air carrier has a Web site 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 Web site (e.g., provide a link that says ''changed bag rules'' or similarly descriptive language that 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).

(b) All U.S. and foreign air carriers and ticket agents must disclose the current ancillary services fees for a first and second checked bag, for a carry-on bag, and for an advance seat assignment to a consumer who requests such information. On Web sites marketed to the general public in the U.S., the fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment must be disclosed (and at a minimum displayed by a link or rollover) at the first point in a search process where a fare is listed in response to a specific flight itinerary request from a passenger, and on the summary page provided to the consumer at the completion of any purchase.

(c) On all e-ticket confirmations for air transportation within, to or from the United States, including the summary page at the completion of an online purchase and a post-purchase email confirmation, an air carrier, foreign air carrier, agent of either, or 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, including size and weight limitations. Carriers and agents must provide this information in text form in the e-ticket confirmation.

* * * * *

■ 24. Section 399.88 is amended by revising paragraph (a) to read as follows:

§ 399.88 Prohibition on post-purchase price increases.

(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 price of that air transportation, tour or tour component to a consumer, including but not limited to an increase in the price of the airfare, an increase in the price for the carriage of passenger baggage, or an increase in an applicable fuel surcharge, 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 for the air transportation has been paid by the consumer. An itinerary that does not begin or end in the United States or include a stopover of 24 hours or more in the United States is not considered air transportation for purposes of this section. This prohibition on a post-purchase price increase extends to all mandatory fees and charges a consumer must pay in order to obtain air transportation and to fees associated with transporting baggage. This prohibition does not extend to fees for optional services ancillary to air transportation that are not purchased with the ticket except for baggage. The price for other ancillary services not purchased at the time of ticket purchase may be increased until the consumer purchases the service itself.

* * * * *

■ 25. Section 399.90 is added to subpart G to read as follows:

Option A

§ 399.90 Transparency in airline pricing, including ancillary fees

(a) The purpose of this section is to ensure that air carriers, foreign air carriers and ticket agents doing business in the United States clearly disclose to consumers at all points of sale the fees for certain basic ancillary services associated with the air transportation consumers are buying or considering buying. Nothing in this section should be read to require that these ancillary services must be transactable (e.g., purchasable online).

(b) Each air carrier and foreign air carrier shall provide useable, current, and accurate information for certain ancillary service fees to all ticket agents that receive and distribute the U.S. or foreign carrier's fare, schedule, and availability information. For purposes of this section, the fees that must be provided are: fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment. Fees for an advance assignment to a seat adjacent to a window or aisle, bulkhead seat, exit row seat, or any other seat for which a consumer must pay an additional fee to receive an advance seat assignment are to be provided.

(c) Each ticket agent that provides a U.S. or foreign carrier's fare, schedule, and availability information to consumers in the United States must disclose the U.S. or foreign carrier's fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment. The fee information disclosed to consumers for these ancillary services must be expressed 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), ticketed fare (e.g., full fare ticket -Y class), and, in the case of advance seat assignment, the particular seat on the aircraft if different seats on that flight entail different charges. Ticket agents must also disclose that advance seat assignment and baggage fees may be reduced or waived based on the passenger's frequent flyer status, method of payment or other characteristic. When providing the fees associated with advance seat assignments, ticket agents must also disclose that seat availability and fees may change at any time until the seat assignment is purchased.

(d) Each U.S. or foreign air carrier that provides its fare, schedule and availability information directly to consumers in the United States must also disclose its fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment. The fee information disclosed to a consumer for these ancillary services must be expressed as customer-specific charges if the consumer elects to provide his or her personal information to the carrier, such as name and frequent flyer number. ''Customer-specific'' refers to variations in fees that depend on, for example, the passenger type (e.g., military), frequent flyer status, method of payment, geography, travel dates, cabin (e.g., first class, economy), ticketed fare (e.g., full fare ticket -Y class), and, in the case of advance seat assignment, the particular seat on the aircraft if different seats on that flight entail different charges. If a consumer does not provide his or her personal information and submits an anonymous shopping request, the fee information disclosed to that consumer for these ancillary services must be expressed as itinerary-specific charges.

(e) If a U.S. or foreign air carrier or ticket agent has a Web site marketed to U.S. consumers where it advertises or sells air transportation, the carrier and ticket agent must disclose the fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment as specified in paragraphs (c) and (d) of this section at the first point in a search process where a fare is listed in connection with a specific flight itinerary. Carriers and ticket agents may permit a consumer to opt out of seeing this basic ancillary fee information so that the consumer will see only fares. The opt-out option must not be pre-selected and must notify the consumer that fees may include charges for a first and second checked bag (including oversize and overweight charges), a carry-on bag, and an advance seat assignment.

(f) In any oral communication with a prospective consumer and in any telephone calls placed from the United States, the carrier or ticket agent must inform a consumer, upon request, of the fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment as specified in paragraphs (c) and (d) of this section.

(g) Ticket agents with an existing contractual agreement with an air carrier or foreign air carrier for the distribution of that carrier's fare and schedule information shall not charge separate or additional fees for the distribution of the ancillary service fee information described in paragraph (b) of this section. Nothing in this paragraph should be read as invalidating any provision in an existing contract among these parties with respect to compensation.

(h) Failure of an air carrier or foreign carrier to provide the ancillary fee information as described in paragraph (b) of this section to its ticket agents and failure of a U.S. carrier, foreign carrier, or ticket agent to provide the information to consumers as described in paragraph (c) and (d) of this section will be considered an unfair and deceptive practice in violation of 49 U.S.C. 41712.

Option B

§ 399.90 Transparency in airline pricing, including ancillary fees.

(a) The purpose of this section is to ensure that air carriers, foreign air carriers doing business in the United States, and ticket agents doing business in the United States and selling a carrier's tickets directly to consumers clearly disclose to consumers at all points of sale the fees for certain basic ancillary services associated with the air transportation consumers are buying or considering buying. Nothing in this section should be read to require that these ancillary services must be transactable (e.g., purchasable online).

(b) Each air carrier and foreign air carrier shall provide useable, current, and accurate information for certain ancillary service fees to all ticket agents that receive and distribute the U.S. or foreign carrier's fare, schedule, and availability information, and sell that carrier's tickets directly to consumers. For purposes of this section, the fees that must be provided are: fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment. Fees for an advance assignment to a seat adjacent to a window or aisle, bulkhead seat, exit row seat, or any other seat for which a consumer must pay an additional fee to receive an advance seat assignment are to be provided.

(c) Each ticket agent that provides a U.S. or foreign carrier's fare, schedule, and availability information to consumers in the United States and sells that carrier's tickets directly to consumers must provide the U.S. or foreign carrier's fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment. The fee information disclosed to consumers for these ancillary services must be expressed 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), ticketed fare (e.g., full fare ticket -Y class), and, in the case of advance seat assignment, the particular seat on the aircraft if different seats on that flight entail different charges. Ticket agents that sell the carrier's tickets directly to consumers must also disclose that advance seat assignment and baggage fees may be reduced or waived based on the passenger's frequent flyer status, method of payment or other characteristic. When providing the fees associated with advance seat assignments, such ticket agents must also disclose that seat availability and fees may change at any time until the seat assignment is purchased.

(d) Each U.S. or foreign air carrier that provides its fare, schedule and availability information directly to consumers in the United States must also provide its fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment. The fee information disclosed to a consumer for these ancillary services must be expressed as customer-specific charges if the consumer elects to provide his or her personal information to the carrier, such as name and frequent flyer number. ''Customer-specific'' refers to variations in fees that depend on, for example, the passenger type (e.g., military), frequent flyer status, method of payment, geography, travel dates, cabin (e.g., first class, economy), ticketed fare (e.g., full fare ticket -Y class), and, in the case of advance seat assignment, the particular seat on the aircraft if different seats on that flight entail different charges. If a consumer does not provide his or her personal information and submits an anonymous shopping request, the fee information disclosed to that consumer for these ancillary services must be expressed as itinerary-specific charges.

(e) If a U.S. or foreign air carrier, or ticket agent that sells such a carrier's

tickets directly to consumers, has a Web site marketed to U.S. consumers where it advertises or sells air transportation, the carrier and ticket agent must disclose the fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment as specified in paragraphs (c) and (d) of this section at the first point in a search process where a fare is listed in connection with a specific flight itinerary. Carriers and ticket agents may permit a consumer to opt out of seeing this basic ancillary fee information so that the consumer will see only fares. The opt-out option must not be pre-selected and must notify the consumer that fees may include charges for a first and second checked bag (including oversize and overweight charges), a carry-on bag, and an advance seat assignment.

(f) In any oral communication with a prospective consumer and in any telephone calls placed from the United States, the carrier and ticket agent that sells that carrier's tickets directly to consumers must inform a consumer, upon request, of the fees for a first checked bag, a second checked bag, one carry-on bag, and an advance seat assignment as specified in paragraphs (c) and (d) of this section.

(g) Ticket agents that sell a carrier's tickets directly to consumers and have an existing contractual agreement with an air carrier or foreign air carrier for the distribution of that carrier's fare and schedule information shall not charge separate or additional fees for the distribution of the ancillary service fee information described in paragraph (b) of this section. Nothing in this paragraph should be read as invalidating any provision in an existing contract among these parties with respect to compensation.

(h) Failure of an air carrier or foreign carrier to provide the ancillary fee information as described in paragraph (b) of this section to its ticket agents and failure of a U.S. carrier, foreign carrier, or ticket agent to provide the information to consumers as described in paragraph (c) and (d) of this section will be considered an unfair and deceptive practice in violation of 49 U.S.C. 41712.

[FR Doc. 2014–11993 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–9X–P