DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT–OST–2017–0007]

RIN 2105–AE56

Transparency of Airline Ancillary Service Fees

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

ACTION: Supplemental Notice of Proposed Rulemaking (SNPRM).

SUMMARY: This SNPRM proposes to require air carriers, foreign air carriers, and ticket agents to clearly disclose to consumers at all points of sale customer-specific fee information, or itinerary-specific information if a customer elects not to provide customer-specific information, for a first checked bag, a second checked bag, and one carry-on bag wherever fare and schedule information is provided to consumers. This SNPRM further proposes to require each covered carrier to provide useable, current, and accurate (but not transactable) baggage fee information to all ticket agents that receive and distribute the carrier's fare and schedule information, including Global Distribution Systems and metasearch entities. On covered carrier and ticket agent Web sites, the SNPRM would require the baggage fee information to be disclosed at the first point in a search process where a fare is listed in connection with a specific flight itinerary, adjacent to the fare. The SNPRM would permit carriers and ticket agents to allow customers to opt-out of receiving the baggage fee information when using their Web sites.

DATES: Comments must be received by March 20, 2017. Comments received after this date will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2017–0007 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–2017–0007 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), *kimberly.graber@dot.gov* or *blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Notice of Proposed Rulemaking, titled Transparency of Airline Ancillary Service Fees and Other Consumer Protection Issues, Docket No. DOT–OST–2014–0056, 79 FR 29970, May 23, 2014 (Consumer Protection NPRM), contained a number of proposals to enhance consumer protections, including a proposal to require the disclosure of certain airline ancillary service fees. This proposed disclosure requirement was one of the more controversial provisions of the rulemaking and generated significant comments from consumers, airlines, ticket agents and other interested parties. In light of the comments on this issue, the Department is issuing this SNPRM, which focuses solely on the issue of transparency of certain ancillary service fees. The other issues in the 2014 NPRM are being addressed separately. See RIN 2105–AE11, Enhancing Airline Passenger Protections III; and RIN 2105–AE57, Enhancing Airline Passenger Protections IV.

In this SNPRM, the Department proposes to require disclosure at all points of sale of the customer-specific fees for first and second checked bag and carry-on bag but does not propose to require disclosure of the fee for advance seat assignment. In addition, the Department proposes to require carriers to provide certain baggage fee information to ticket agents so that both carriers and ticket agents would be able to provide customer-specific baggage fee information to consumers. We invite all interested parties to comment on the proposals set forth in this notice. Our final action will be based on comments and supporting evidence from the public filed in this docket, and on our own analysis and regulatory evaluation.

A. Need for Rulemaking and Legal Authority

The NPRM: In the NPRM, the Department described the problem identified by consumers and consumer advocacy groups of the lack of transparency of ancillary service fees in air transportation pricing. That is, not being able to determine the true cost of travel due to the lack of information regarding certain ancillary service fees. This lack of transparency of fees for unbundled services (*i.e.,* services that historically had been included in the air fare but for which many carriers now charge a separate fee is particularly notable when consumers are attempting to purchase air transportation through a ticket agent rather than directly from the carrier but it occurs at both ticket agent and airline outlets. Corporate travel agents have also complained about the lack of access to ancillary service fee information.

Online travel agencies (OTAs), metasearch sites, ''traditional'' travel agencies, and travel management companies generally obtain most of their information regarding air transportation options indirectly through Global Distribution Systems (GDSs). GDSs essentially facilitate the purchase of tickets between airlines and consumers through third parties but do not have complete information regarding ancillary service fees. As a result, when researching air transportation options and making decisions on whether to purchase air transportation, consumers continue to have difficulty determining the total cost of travel because the fees for basic ancillary services are not available through all sales channels. Consumers also experience difficulty on carrier Web sites because fees are provided on lengthy static lists, and many ancillary service fees are listed as a range, so consumers do not necessarily know the

specific fees that apply to their travel when purchasing air transportation. With respect to baggage, the existing disclosure requirements mandate specific information if a carrier or a ticket agent has a Web site accessible for ticket purchases by the general public in the United States, but passengers must frequently review lengthy and complex charts to determine the exact baggage fees that apply to their air transportation particularly for interline or international itineraries.

The Department's goal is to protect consumers from hidden and deceptive fees and enable them to determine the true cost of travel in an effective manner when they price shop for air transportation. The problem of hidden fees has been brought to our attention by consumer complaints, comments on the second Enhancing Airline Passenger Protections rulemaking, and comments to the docket for the Advisory Committee for Aviation Consumer Protection. We also note that members of Congress representing constituents have expressed support for full, more specific, disclosure of ancillary service fees.

In the 2014 NPRM, we provided an overview of the airline distribution system based on information gathered from representatives of carriers, GDSs, consumer advocacy organizations, and trade associations, as well as other interested entities, including third-party technology developers. We noted that approximately 50% of tickets are sold by airlines directly to consumers, and the remainder is sold through ticket agents. Further, in the United States, three GDSs (Sabre, Travelport and Amadeus) control the distribution of the airline product for the ticket agent channel and most airlines use the GDSs to distribute their products to ticket agents, including corporate travel agents that sell the higher revenue tickets. The NPRM noted that airlines state they have made some efforts to reduce their reliance on GDSs and transition to direct connections between airline reservation systems and ticket agent systems but contractual arrangements make that difficult. As stated in the NPRM, carriers and carrier associations have expressed concern that a Department requirement to distribute information through a GDS would reinforce the existing distribution patterns and stifle innovation. Some stakeholders have alleged that if existing distribution patterns are reinforced, carriers will no longer have sufficient incentive to invest in new distribution technologies, which might ultimately provide more information to the benefit of consumers. In connection with new distribution technologies, the 2014 NPRM also mentioned that the International Air Transport Association (IATA) applied to the Department of Transportation for approval of its agreement establishing the framework for the IATA New Distribution Capability (NDC). That application was pending at the time of NPRM publication but has since been approved. NDC is essentially an XML-based technical standard for use in airline distribution, including direct connect services, that has been developed by IATA in cooperation with air transportation stakeholders. The goal appears to be to change how airlines sell their products today by using the enhanced platform to quickly generate dynamic, personalized offers. For more information, see docket DOT–OST–2013–0048. The NDC standard is available to any party and has been implemented by some entities since the 2014 NPRM was published.

Our discussion in the 2014 NPRM explained that although airlines generally distribute fare, schedule, and availability information through GDSs, they generally do not distribute ancillary service fee information in the same manner. The NPRM also outlined some of the technological and competitive concerns raised by air transportation industry stakeholders. We also noted that in contrast to airlines, GDSs assert that any transition to direct connect services will succeed or fail based on whether the services meet the needs of travel agencies and the consumers they serve, regardless of existing contracts. As noted in the NPRM, GDSs disputed the position that there is no need for a Department requirement, stating that airlines and ticket agents have not been able to come to agreements that would allow airlines to provide ancillary service fee information to ticket agents so they could in turn provide such information to consumers.

The 2014 NPRM explained that our decision to initiate a rulemaking regarding distribution of ancillary service fee information rested on the conclusion that consumers are continuing to have difficulty finding ancillary service fee information, which limits consumers' ability to determine the true cost of travel. We also recognized in the NPRM that carriers and GDSs state they share our goal of transparency of ancillary service fee information. In the NPRM we made clear that the Department is working 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, or a carrier's ability to set prices for its services in response to its own commercial strategy and market forces. As the NPRM stated, consumers need to be protected from hidden and deceptive fees that prevent them from effectively price shopping—that is, determining while shopping and before purchasing, the total costs of air transportation. The NPRM explained that failing to disclose basic ancillary service fees in an accurate and up-to-date manner before a consumer purchases air transportation is an unfair and deceptive practice. We identified a number of questions regarding the need for rulemaking on which we requested comment, including questions regarding the difficulty consumers have finding fee information, what fee information consumers wanted to have prior to purchase, and whether either of the Department's proposals would make fees easier to find. We also explained the alternatives that we had considered.

Comments: Consumer comments in this rulemaking overwhelmingly supported Department action on disclosure of ancillary service fees. Over 600 consumers commented on transparency issues generally, which for many consumers encompasses disclosure of ancillary service fees as well as the full airfare, including taxes and fees. Over 450 consumers clearly supported additional requirements relating to disclosure of ancillary service fees while fewer than ten commented in opposition to additional disclosure requirements. Consumer advocacy groups Travelers United and National Consumers League also commented in support of the need for a rulemaking, stating that airlines publish what are in effect partial prices and that the full cost of travel is masked at the initial purchase and only revealed in a secondary buying process. Consumers Union and the U.S. Public Interest Research Group (U.S. PIRG) also supported Department action in this area, stating that the Department should require disclosure at every point of sale, early in the purchasing process. They went on to state that too many U.S. carriers have made ancillary service fee information difficult or impossible to obtain until close to or at the point of actual purchase or, in some channels, not available at all. FlyersRights also supported the rulemaking on disclosure of ancillary service fees, stating that unbundling is rapidly making price shopping difficult to impossible for consumers. It further stated that baggage fee information often is buried on a carrier's Web site and can be confusing

and complex. To illustrate its point, FlyersRights identified one legacy carrier that charges up to nine different fees for baggage depending on weight, size, and number of bags.

Open Allies, which described itself as a coalition of more than 400 independent distributors and sellers of air travel, corporate travel departments, travel trade associations and consumer organizations, commented in favor of Department action in this area. According to Open Allies, the rule is needed because ancillary service fees are not accessible and that identifying total travel cost is complex, confusing, and needlessly time consuming. According to Open Allies, the market is not reacting quickly or completely enough to address the issue. Open Allies pointed to a survey it conducted of over 1,000 adults in the United States, indicating that 55 percent of respondents said that they were surprised by additional fees after purchasing a ticket; 88 percent said that Department action is important; 81 percent believe that current airline practices are ''unfair and deceptive;'' and 47 percent said that it was hard to search and find the lowest price for travel.

Open Allies argued that the Department should not rely on competition because fees are still hidden, despite existing Department requirements, which results in consumers making sub-optimal purchasing decisions. Open Allies relied on consumer comments in the docket, saying that they show that consumers feel deceived and confused and do not understand the true, full cost of travel. According to Open Allies, consumers generally give two key reasons for supporting increased disclosure of ancillary service fees: (1) It would allow them to compare prices across various airlines; and (2) it would prevent airlines from surprising them with fees after they have purchased their airfare. Open Allies commented that there are many benefits to enhanced disclosure of price information such as ancillary service fees, including that it lowers prices, enhances competition, and promotes informed buyers. According to Open Allies, airlines lack a commercial incentive to provide ancillary service fee information to the ''neutral'' travel agency channel because airlines have an interest in not allowing ticket agents to show the full cost of travel at the shopping stage because if travel appears less expensive, consumers will be more likely to complete a purchase. Open Allies further pointed out that an airline is unlikely to voluntarily display ancillary service fees on a travel agent display because it would make the airline's fares appear more expensive when compared to the fares of other airlines that do not disclose ancillary service fee information.

In support of its position, Open Allies cited a 2010 GAO Report and a follow-on 2014 report, describing the problem of ancillary service fee disclosure as a continuing problem. Open Allies pointed out that while some individual airlines and individual GDSs have announced agreements regarding distribution of certain ancillary service fees, those agreements are generally limited to premium seating on some of the individual airline's flights and do not provide all ticket agents access to that information. Therefore, consumers are still unable to discover all basic ancillary service fees when searching for flights. According to Open Allies, the Department has substantial evidence to support its rulemaking as well as ample authority under § 41712 (unfair or deceptive practices). Open Allies compared the Department's authority to that of the FTC and stated that analogous FTC precedent on unfair or deceptive practices establishes that the Department has the legal authority to proceed with this rulemaking.

The three GDSs—Amadeus, Sabre, and Travelport—all supported the rulemaking, stating that consumers that use ticket agents to shop for air transportation do not have access to all ancillary service fee information. According to Sabre, for consumers to ''know the full price of travel before they are locked into a purchase'' the Department must act. The GDSs also stated that airlines will not share ancillary service fee information with ticket agents, except on a limited basis, unless the Department requires the information to be shared. Travelport stated that airlines are motivated to increase revenues by driving consumer costs up through ''obfuscation of the true cost of flying.'' Amadeus points to airline opposition to disclosure requirements, particularly opposition by U.S. airlines, as evidence that the market will not resolve the problem. Travel Technology Association (Travel Tech), a trade association for major OTAs, GDSs, and some entities operating metasearch engines focused on travel, also stated that a problem remains for consumers trying to uncover charges for additional services and stated that consumers must search to discover the true cost of their air travel.

Several travel agents and travel agent associations also stated there is a need for Department action in this area. The American Society of Travel Agents (ASTA) joined in the comments of Open Allies and stated that the Department's proposals do not go far enough to address widespread confusion among consumers. A number of travel agents submitted comments stating that their customers could not calculate the true cost of airfare with certainty and that the travel agents themselves could not provide a quote with certainty because of the complexity of and variation in ancillary service fees charged from airline to airline. Those travel agents supported mandating that airlines disclose the costs of bag fees and seat assignments. The United States Tour Operators Association (USTOA) opposed being subject to disclosure regulations but commented that consumers have expressed strong support for early disclosure of information on ancillary service fees. USTOA pointed to a survey that shows that 45 percent of respondents reported difficulty in budgeting for air travel due to the proliferation of fees and difficulty in determining the costs of flying. Survey respondents also indicated that total cost of travel is very important to purchasing decisions. Corporate travel agents also commented that they were concerned about disclosure. Global Business Travel Association stated that there is a need for disclosure requirements because despite investing resources, acquiring technologies, and changing travel policies, its members are still facing challenges finding basic ancillary fee information for baggage and seat assignments. Business Travel Coalition (BTC) commented in support of requiring disclosure of fees, stating that airlines are ''masking the all-in price of air travel.''

Computer and Communications Industry Association (CCIA), advocating for metasearch entities, commented in favor of Department action to make sure consumers have the information needed to determine the full cost of travel. TripAdvisor and Skyscanner, which both operate flight search tools, also commented in favor of Department action requiring airlines to disclose ancillary service fee information to ensure transparency for the benefit of consumers. Of airline commenters, only Southwest supported the Department requiring greater fee disclosure, noting that consumers will ''be better able to arrive at the true cost of air transportation.'' Finally, several commenters, including ASTA, BTC, FlyersRights, and Travel Tech also noted that airlines are not subject to State and local consumer protection laws due to Federal preemption, and

therefore, only the Department can take action to protect consumers in this area.

The Department also received many comments that opposed any further requirement pertaining to disclosure of ancillary service fees as specific charges. A4A (Airlines for America, the trade association of the larger U.S. airlines) argued that there is no need for any proposal regarding ancillary service fee information because the industry has already provided that information in response to existing Department regulatory requirements and market pressure and no consumer harm is occurring. A4A further argued that the Department does not have the authority to require airlines to disclose certain ancillary service fees in displays of fare search results because the failure to provide that information at the time fare information is presented to consumers does not amount to an unfair or deceptive practice. A4A also pointed out that on some occasions when discussing the ancillary service fee disclosure issue, the Department has described it in terms of the ability of consumers to engage in comparison shopping. A4A argued that the Department does not have regulatory authority to dictate the terms of carrier distribution or ancillary service fee disclosure to enhance comparison shopping.

In addition to stating there is no need for any ancillary service fee proposals, A4A opposed any ancillary service fee disclosure requirement on competitive grounds, alleging that the rulemaking would effectively require airline distribution through GDSs, which would put airlines at a competitive disadvantage. According to A4A, the Department recognized the powerful market position of GDSs in a 2004 rulemaking [1] and still determined not to regulate those entities. A4A stated that GDSs still have significant market power and to be competitive most airlines have to distribute fare information through all three GDSs; meanwhile, GDSs prevent their client ticket agents from directly connecting to an airline. A4A stated that in contrast to fares, carriers are not dependent on GDSs for distribution of ancillary service information and this places airlines in a better position to negotiate with GDSs, to the benefit of consumers. For example, according to A4A, GDSs agreed to develop new distribution technologies as part of negotiations over ancillary services. A4A stated that the proposed regulation would strengthen the negotiating position of GDSs at the expense of the airlines if adopted.

Meanwhile, according to airline associations, the market is working. A4A commented that existing Department regulations combined with market forces have led to ''enhanced fee disclosure practices,'' and that carriers want to sell ancillary services, especially to business travelers who constitute a large segment of their repeat customers and revenue producers. A4A went on to explain that carriers are already incentivized to distribute information about ancillary products and fees and to facilitate the sale of ancillary services through multiple channels, including travel agencies, if they can do so on commercially reasonable terms. According to A4A, carriers and GDSs have already developed the ability (using the ATPCO filing system) to disclose information such as first and second checked bag fees to travel agents. A4A further noted that some airlines have made it possible for some agents to purchase certain ancillary services for consumers and some GDSs have developed mechanisms for ticket agents to buy services directly from carrier Web sites. A4A also pointed to tools on carrier Web sites that allow consumers to obtain customer-specific information through an airline Web site after providing information from the purchased ticket, and third-party Web sites that provide ancillary service fee information as the ''beneficial result of the existing environment.'' A4A also criticized Open Allies' reliance on survey results, stating that the survey was flawed for a number of methodological reasons and ''it should not be relied upon to arrive at conclusions concerning perceptions and attitudes about ancillary services held by people who fly on commercial airlines in the United States.'' According to A4A, GDSs are trying to obtain the commercial benefit of access to ancillary service fee information through regulation instead of through negotiations, even though negotiated agreements are possible. A4A also stated that GDSs have made concessions on pricing and technology through commercial agreements. A4A concluded that regulation will result in higher GDS fees which will in turn be passed on to consumers through higher ticket prices, to the detriment of the public.

In supplemental comments, A4A stated that the three GDSs engaged in pilot projects to ''begin adapting to'' the NDC initiative and many airlines have invested in technology solutions. In addition, a variety of technology service companies are building solutions in the area. According to A4A, these marketplace developments prove that regulation is unneeded. A4A provided a number of examples of agreements between airlines and GDSs that it says show that carriers are sharing ancillary service fee information with GDSs. A4A went on to say that it is more and more common for carriers to sell bundled fares on their own sites, which A4A stated often results in discounts and is a consumer-friendly method of display. A4A further stated that mandating disclosures on the first page that displays fares interferes with airline efforts to differentiate their products and compete on service and price, as well as ''squandering'' the investment made by carriers on bundled pricing initiatives and technology to display those prices. A4A concluded in its supplemental comments that marketplace solutions that compel all parties to negotiate and use the most efficient data-sharing and latest technology will lead to time savings for consumers.

IATA commented that the market has fundamentally changed since the Department first considered requiring carriers to disclose ancillary service fees and consumers now have ''more than ample'' access to information about ancillary services and fees prior to making purchase decisions. According to IATA, there is no lack of information about ancillary service fees causing harm to consumers. Further the Department has not demonstrated there is any unfair or deceptive practice that will be prevented by further regulating the disclosure of ancillary service fees, therefore, they argued, the Department does not have the authority to regulate in this area.

IATA further argued that marketplace solutions are already making any rulemaking regarding ancillary service fees unnecessary as the rapid changes in distribution are working to the benefit of consumers and any Departmental intervention in this rapidly changing market will interfere and result in suboptimal solutions. IATA argued that airline Web sites already offer comprehensive and accurate information about ancillary services and fees. IATA acknowledged that airlines provide fee information as a range of fees in a static format but stated that this is not evidence of fraud or deception, merely ''evidence of the complexity of capturing the wide variety of factors that are considered when dynamically setting the price for a specific ancillary service for a specific customer.'' IATA went on to state that carriers are coming to agreements to provide ancillary service fee information to GDSs for distribution directly to agents rather

[1] Dep't of Transp., Computer Reservation System (CRS) Regulations, Final Rule, 69 FR 976, 996 (Jan. 7, 2004) (''CRS Rulemaking'')

than through outdated fare filing systems. IATA also stated that the adoption of the NDC standard will provide transparency and efficiency. According to IATA, the Department should not intervene in distribution and should rely on the market to resolve any disclosure issues. Air Transport Association of Canada also opposed the Department rulemaking regarding disclosure of ancillary service fees, stating that the market is addressing the issue and the Department does not have the legal authority to intervene in the deregulated airline industry and dictate how airlines distribute their products and services.

Several airlines also commented in opposition to the rulemaking. American Airlines joined in the comments of A4A and further stated that the Department's proposals do not address specific instances of demonstrated harm to consumers that cannot reasonably be avoided and the rulemaking is ''beyond the recognized limits of the Department's regulatory powers.'' American alleged that the Department based its reasoning on a need for comparison shopping, which American said is an unreasonable and inadequate basis for rulemaking. Frontier Airlines opposed any disclosure requirements, stating it ''believes that competitive market forces and the Department's existing regulations are more than adequate to inform and protect consumers.'' JetBlue also endorsed the comments of both A4A and IATA and stated that the Department should rely on market forces. According to JetBlue, the Department assumes a problem regarding consumers not knowing the true cost of travel and the NPRM does not provide a foundation for that assumption. United also endorsed the comments of A4A and stated that the market is already addressing many of the Department's concerns so the Department should refrain from issuing regulations regarding ancillary service fee disclosure. United further stated that the Department does not have evidence that supports the need for the proposed rulemaking. Spirit Airlines similarly opposed any rulemaking on disclosure of ancillary service fees, stating that it is not necessary and not in the public interest. According to Spirit, the Department should defer to the market place which is rapidly developing and ''progressively improving reasonable consumers' ability to determine the total cost of their travel before purchase.''

Several foreign air carriers endorsed IATA's comments and opposed any Department regulation of disclosure of ancillary service fees. Aerovías de México, S.A. de C.V., (Aeromexico) and Air Transat endorsed the comments submitted by IATA regarding disclosure of ancillary service fees, and stated that the market is already addressing the issues raised by the Department. Further, any intervention by the Department will likely have a negative impact on consumers. In comments filed on behalf of the Avianca carrier group, Avianca endorsed IATA's comments, stating that the marketplace already is addressing the Department's concerns regarding disclosure of ancillary service fees, and any regulatory intervention likely will have a negative impact on both consumers and carriers. Air New Zealand supported the comments of IATA and stated that the current disclosure requirements are adequate to protect the consumer. Compañía Panameña de Aviación, S.A. (Copa Airlines) opposed Department rules regarding ancillary service fee disclosure, stating such rules may have ''unintended adverse consequences that would significantly diminish any such benefits by making its implementation financially and technologically cumbersome for carriers.'' Qatar Airways (Qatar) also endorsed the comments of IATA and added that the market is working. Qatar went on to state that Department intervention will have a negative impact on consumers. Scandinavian Airlines System also endorsed IATA's comments and stated the rulemaking will have a negative impact on consumers. Virgin Atlantic Airways (Virgin Atlantic) commented that the market is evolving to meet customer preferences and the Department's current fee disclosure requirements are adequate. Further, requiring carriers to provide ancillary service fee information to ticket agents deprives carriers of their right to decide how to market their ancillary services and to distribute such information in a way that is most cost-effective for them.

The Arab Air Carriers Organization (AACO) commented that market developments since the Department began to address ancillary services in rulemakings have resulted in market action that is heading towards developing a data transmission standard that would make the flow of information between the airlines and agents more efficient. AACO went on to state that the Department should not specify how airlines display information. AACO also stated that a requirement to distribute through the GDSs would have a negative effect on future innovation in the distribution and display of ancillary services and fees as well as give GDSs the upper hand in contract negotiations with airlines.

AAA, a leisure travel agent trade organization, commented that it supports transparency but specific mandates in this area may be premature at this time. AAA stated it was concerned about stifling innovation and wanted airlines to work with GDSs on agreements to distribute full ancillary fee information. Momondo Group, an online travel media and technology company that operates a flight search tool, commented that it supports transparency as its primary objective. However, it stated that it would be extremely costly to provide accurate information and avoid consumer confusion. It recommended that the Department conduct a more detailed examination of the problem before implementing a regulation that will impact a variety of entities, including operators of metasearch engines.

DOT Response: The sheer number, length, and variety of comments on this issue, as well as the strongly held positions on all sides, illustrate the presence of a problem and the complexity of addressing it. Airlines and their associations stated that the Department has not demonstrated the harm to consumers that the Department's rulemaking is intended to address. For example, in support of its position that information is available and the market is providing solutions, A4A observed that some airline Web sites provide an option for consumers to identify themselves to determine fees for some ancillary services and potentially receive special offers *after* they have already purchased a ticket. Meanwhile, IATA noted that ''experienced travelers'' know that airlines charge bag fees and advance seat assignment fees and also know how to navigate multiple Web sites to obtain this information and that the Department should not impose costly regulations to benefit the relatively few travelers that care about this information but do not know how to locate it. In late-filed comments, Travel Tech noted that some airlines have begun to provide some information on ancillary services to ticket agents, but the progress has been far from universal.

For the average consumer looking for the total cost of travel, he or she must frequently review a complex chart to determine his or her baggage fees particularly for interline itineraries and guess what an assigned seat fee might cost. We disagree with airlines and airline associations that these facts do not reflect consumer harm as we believe the additional time spent searching to find the total cost of travel and the additional funds spent on air transportation that might have been

avoided if the consumer had been able to determine the true cost of travel up front are the harms suffered by consumers when basic ancillary service fees are not adequately disclosed.

The Department agrees with commenters that supported a need for rulemaking to allow consumers to have complete access to certain basic ancillary service fees in a manner that permits them to quickly and effectively determine their true cost of travel, although as explained further below, the Department has changed its view on what constitutes a basic ancillary service. Further, until all airlines and ticket agents are required to display certain basic ancillary service fees, and carriers are required to transmit fees for basic ancillary services to ticket agents, there is a strong incentive for carriers to obfuscate those fees. That is because if all competing carriers do not make similar disclosures, any airline that disclosed the cost of ancillary services, such as baggage fees, would appear to charge more for air transportation than the airlines that did not clearly provide fee information for those ancillary services. Therefore, even carriers that believe it is appropriate and consumer-friendly to provide the information in a clear fashion have a strong marketplace disincentive to disclose the cost of ancillary services. The Department notes that even the comments by airlines and airline associations that argued that the market is resolving the issue described the changes as ongoing and recognized that it will take time for airlines and ticket agents to come to agreement and implement new methods of disclosure. Although airline associations point to the number of agreements being reached between airlines and GDSs regarding GDS access to bundled fare packages that include an advance seat assignment, those agreements are bilateral agreements addressing limited services, primarily enhanced seating options, in limited markets and are not widely available to the general public.

Meanwhile, airlines are capable of disclosing some ancillary service fees in search results on their own Web site search result displays today, yet choose not to do so. The Department is not persuaded by airline arguments that the complexity of factors considered when setting fees is a sufficient justification for leaving it to the airlines to decide how much disclosure to provide regarding basic ancillary service fees. To the contrary, any argument that fees are difficult to explain or quantify militates for greater disclosure requirements of fees for basic ancillary services intrinsic to air transportation. The mere fact that airlines are unbundling fares and have implemented ancillary service fee policies that even the airlines acknowledge are complex justifies efforts by the Department to ensure that consumers are able to discern the true cost of travel that includes basic ancillary service fees. Moreover, the existence of complex fee calculations that take into account a variety of factors does not explain why airlines do not provide better disclosure of baggage fee information that they already provide as a specific amount on a static list. Although there are complexities involved in displaying baggage fees, the comments demonstrate there is no technical impediment to displaying baggage fees with search results on carrier Web sites, yet that information is still not displayed.

In support of its argument that the Department has not demonstrated a problem that it has authority to regulate, A4A provided two examples (from the NPRM and a docket record of an A4A meeting with Department staff) [2] in which the Department referred to consumers' ability to ''comparison shop'' as well as a reference in the NPRM to allowing consumers to ''price shop'' and a reference to complaints by business travel representatives regarding the difficulty of advising ''clients on the best and most cost effective flights.'' According to A4A, it is not within the Department's authority to require further disclosure of fees because we are taking the action to ensure consumers have the opportunity to comparison shop, which is not sufficient justification for the action. We acknowledge that the Department has at times used terms such as ''comparison shopping'' in connection with ancillary service fee disclosure. However, we disagree that the rationale of our proposed rule is to enhance consumers' ability to comparison shop. The Department's view is that consumers should be able to determine if the price provided is the total cost they will incur, whether purchasing through an airline or a ticket agent outlet, and our rulemaking is based on addressing that issue. The Department's position, as set forth in both the NPRM and the responses to A4A's questions, is that the proposals on ancillary service fees address the concerns regarding ensuring that consumers are aware of the total cost of travel.[3] The Department's concern addressed by this rulemaking is that if airlines and ticket agents do not provide reasonable disclosure of ancillary service fees intrinsic to air transportation at the point that consumers are researching the total cost of travel and making a purchasing decision then consumers are not able to make an informed decision based on the true cost of air transportation. Although the disclosures mandated in the previous rulemaking improved consumer access to airline ancillary service fee information by requiring those fees to be displayed somewhere, airlines continue to disclose fees in a static format in complex charts that can be confusing to consumers. Further, in connection with complex itineraries, interline tickets, and even some code-share flights, consumers are still reporting confusion regarding the total cost of baggage fees. There is a close connection between comparison shopping to determine the best value and knowing the total or true cost of travel because consumers must know the total cost of travel to shop effectively for the best price. However, the concern we are proposing to address is whether consumers are able to ascertain the total cost of air transportation without confusion before they make a purchase, whether the consumer engages in comparison shopping or not. In this SNPRM, we are seeking comments on a requirement that specific ancillary service fee information be provided to consumers at the same time fare information is provided to help them determine the true cost of travel prior to purchase.

B. The Definition of Basic Ancillary Service Fees

The NPRM: The NPRM set forth the Department's view that certain basic services are intrinsic to air transportation and that carriers used to include them in the cost of air transportation before the advent of unbundled fares. We further noted that the cost of those services is important to consumers when they choose among air transportation options. The NPRM identified basic ancillary services as the first and second checked bag, one carry-on item and advance seat selection. The NPRM requested comment on whether the Department's list of basic ancillary services should be expanded. We also asked whether current disclosure requirements are sufficient and whether there is any need to adopt additional fee disclosure requirements for basic ancillary services.

Comments: The comments reflected a diversity of views on this issue. Most consumer comments generally favored more transparency regarding fees and

[2] See DOT–OST–2014–0056–0624, Summary of Proceedings, DOT Meeting with Airlines for America (A4A) (posted September 15, 2014).

[3] NPRM at 29975 and DOT Meeting with A4A, page 4, question 9.

some identify categories of fee information about which they would like more information—and they would like it early in the process of selecting a fare. In addition to consumer comments stating they want more information about all the fees airlines charge, a few comments identified specific fees. The fees consumer commenters most commonly identified were baggage, seat assignments, and change or cancellation fees, and a few mentioned advance boarding fees. The comments of consumer advocacy organizations Consumers Union, U.S. PIRG, Travelers United, and NCL expressed support for greater disclosure of all ancillary service fees, going beyond the baggage and seat assignment fees specified in the NPRM. Travelers United and NCL contended that the Department should require airlines to release airfares and all ancillary fee data for any entity to use as it wishes. BTC stated that boarding fees and change or cancellation fees should be included, as well as bundles that include a basic ancillary service. Similarly, BCD Travel USA LLC (BCD), a corporate travel management company, also commented that advance boarding fees and bundles that include a basic ancillary service should be included. In addition to specified baggage and seat assignment fees, Travel Tech and Open Allies both commented that advance boarding, change, and cancellation fees are ''basic'' and further stated that any ancillary service ''package'' that includes a basic ancillary service should be disclosed. Open Allies stated that these services are all critical to booking decisions. Sabre agreed with the Open Allies comment on this issue. Amadeus also stated the Department should expand the definition to include boarding fees and change and cancellation fees as well as bundles that include basic ancillary services. TripAdvisor stated that limiting the list of fees that must be disclosed to ''basic'' fees is a mistake because carriers may unbundle some other ''essential'' service and absent another lengthy Department rulemaking, the information would not be disclosed to consumers. Southwest commented on baggage fees, stating that they are unique because transporting passenger baggage is intrinsic to air transportation.

On the other hand, several commenters opposed defining basic ancillary services as intrinsic to air transportation or including seat assignment fees as a basic ancillary service. USTOA commented that the Department should not include a requirement that seat assignment fees be disclosed in an itinerary specific manner because sellers of package tours may not have access to seat assignments at the time the package is sold or, since seats are inventory-controlled, the cost is likely to change before a consumer is able to purchase them on an airline Web site. Spirit asserted that any advance seat assignment fee disclosure should be eliminated because all airlines provide a seat with the cost of air transportation so disclosing an advance seat assignment fee at the beginning of a booking process may induce someone to purchase it when there is no need to do so. A4A, AACO, and United commented that advance seat assignments have not been traditionally provided to consumers as part of the price of air transportation. Comments by A4A and United noted that fare purchases guarantee a seat in a particular cabin, such as first class or economy, but not a particular seat number. In addition, historically seats often were not assigned until 30 days before a flight or at the gate on the day of flight. A4A and United further noted that Southwest does not provide seat assignments at all.

ATPCO and Farelogix did not comment on whether baggage or seat assignment fees are intrinsic to air transportation, but rather on the difficulty of disclosing the information. ATPCO stated that it can already support the proposed requirement to disclose first and second checked bag fees, which is also supported by A4A's comments indicating that airlines have provided itinerary-specific checked baggage fees to ATPCO for distribution to other industry participants. ATPCO also stated that the industry is working to address disclosure of carry-on baggage and seat assignment fees. However, given the complex pricing structure for seats, and the variation in carry-on baggage allowances depending on the aircraft, disclosure of this information is a complex undertaking that will take significant time to achieve. Farelogix stated that the industry is working towards distribution of seat assignment fees but that due to dynamic pricing of seats, and the need to determine availability at the time the price is displayed, it is not currently practicable to display dynamic seat assignment fees at the shopping stage. According to Farelogix, a requirement by the Department to provide seat assignment fees at the shopping stage would effectively force industry participants to provide static fees. Such a requirement would redirect industry efforts to implementing a static system rather than continuing to work toward modernizing distribution systems and ultimately would not be in the interests of consumers.

DOT Response: We take note of the comments focused on technical issues and stating that due to technological limitations, the Department should not require disclosure of such fees. However, we note that many of the comments pointed to the progress in technology and in commercial agreements. That progress is allowing GDSs to provide advance seat assignment information to ticket agents and allowing ticket agents that sell to consumers to provide that information to consumers and transact those fees. It appears from the comments that the ability to display dynamic seat assignment fees and sell such services is progressing rapidly and with sufficient implementation time, such fees could be disclosed. In addition, we are unpersuaded by the argument that seat assignment fees are dynamic and therefore should not be considered a basic ancillary service fee. The dynamic and changing nature of seat assignment fees tends to support a requirement that such fees be not only disclosed but transactable. However, we are convinced by carrier arguments that advance seat assignments were not universally provided to consumers as part of the price of air transportation even before the unbundling of fares. As noted by A4A and United, fare purchases always did and still do guarantee a seat in a particular cabin, such as first class or economy, but not a particular seat number. In addition, we acknowledge seats often were not assigned until a few weeks before the flight or even on the day of flight. Now, in an era of unbundled fares, some carriers offer few advance seat assignments for free but those carriers assign a seat without charge on or close to the day of travel. In addition, at least one U.S. carrier, Southwest, does not provide seat assignments at all. Meanwhile, we note that it would be a violation of the full fare rule and an unfair and deceptive practice if a carrier required a consumer to pay an additional fee beyond airfare to obtain any seat at all. Carriers must provide a seat in the class of service that was sold to the consumer regardless of whether a seat is assigned in advance or not. Accordingly, we have tentatively concluded that advance seat assignments should not be considered intrinsic to air transportation. In addition, although we appreciate that advance boarding options and related fees are important to many consumers that would like to purchase that service, it is not a service that historically has

been included in the cost of air transportation.

Turning to change and cancellation fees, we are aware that such fees are important information and in fact are significant restrictions that must be disclosed to consumers because it would be an unfair and deceptive practice not to disclose such fees. Further, carriers are required to provide direct notice with the ticket (14 CFR 253.7) of terms such as restrictions on refunds, and information regarding cancellation fees in their customer service commitments. We encourage carriers to make change and cancellation fee information as transparent and clear to consumers as possible. We also solicit comment on whether the Department should require airlines and ticket agents, prior to an online transaction being completed, to provide consumers a link to the airline Web sites where the change and cancellation information is available or if an agent prefers to its own site that displays airlines' change and cancellation information. However,, we are not convinced that change and cancellation fees are a cost that is intrinsic to air transportation and must be disclosed at the same point that itinerary information is disclosed. Like seat assignments, many consumers avail themselves of air transportation without making changes or canceling reservations.

Regarding bundled fares that include the fees that the Department initially considered basic ancillary service fees (*e.g.,* advance seat assignment or certain baggage fees), our position is that consumers need to be able to ascertain the true cost of travel including basic ancillary service fees so to the extent that a carrier wanted to provide a bundled fare in addition to an unbundled fare and basic ancillary service fees, a carrier would be free to do so. However, if the carrier is disclosing basic ancillary service fees at the same point fare information is disclosed, then under this proposal additional options such as bundled fares are not something a carrier would have to disclose to ensure the consumer was aware of the true cost of travel.

With regard to baggage fees, the comments did not offer any reason to change our view that a carry-on bag and first and second checked bag were traditionally included in the cost of transportation. We remain of the view that a carry-on bag and first and second checked bag are intrinsic to air transportation and it is reasonable to require carriers and ticket agents to disclose those baggage fees to consumers at the same point that fare and schedule information is disclosed. Therefore our revised proposal in this SNPRM includes a requirement that carriers disclose to ticket agents the fees for one carry-on item and a first and second checked bag. The proposal would also require ticket agents and carriers to provide those fees to consumers whenever fare and schedule information is provided as described in Section F below. We seek comment on the revised proposal.

Although we have tentatively concluded that only certain baggage fees should be included in our disclosure requirement, we note that some members of Congress have expressed the view that in addition to baggage fees, advance seat assignment fees, change and cancellation fees, priority boarding fees, and ticket fees should all be disclosed where fares are displayed. See, for example, HR 636 (as passed in the Senate in April 2016). In the event future similar legislation is enacted to require the Department to address whether advance seat assignment fees, change and cancellation fees, priority boarding fees, and ticket fees should all be disclosed where fares are displayed, we seek comment on such a disclosure requirement. What are possible benefits to consumers from a requirement to disclose baggage fees, advance seat assignment fees, change and cancellation fees, priority boarding fees, and ticket fees along with fares? What are the costs and potential challenges to implementing such a requirement? Comments that are most useful provide information regarding the reasons why additional disclosures should be required or should not be required. In addition, comments describing specific costs and benefits would be helpful.

C. Disclosure by Carriers to Ticket Agents of Fees for Basic Ancillary Services

The NPRM: The NPRM put forth two co-proposals. Under both proposals, each carrier would have been required to distribute its basic ancillary service fee information to certain ticket agents that the carrier permits to distribute its fare, schedule, and availability information. Under the first proposal, option A, carriers would have been required to distribute the information to all ticket agents, including GDSs, that the carrier provides fare, schedule, and availability information for distribution. Under the second proposal, option B, carriers would not have been required to distribute ancillary service fee information to GDSs or other intermediaries that do not sell the carrier's tickets directly to consumers. The option B proposal included an assumption that GDSs and similar intermediaries would not be subject to any direct consumer notification requirements. This means that, in addition to GDSs and similar business-to-business intermediaries, entities that operate flight search tools but do not transact sales to consumers would not have been subject to direct consumer notification requirements. Neither proposal required carriers to distribute ancillary service fee information to any GDS or other ticket agent to whom the carrier does not choose to distribute its fare, schedule, and availability information. In connection with transactability, neither of the proposals required transactability (the ability for ticket agents to sell/transact an airline ancillary service to consumers). The options proposed merely required carriers to provide ''usable, current and accurate'' information on fees for basic ancillary services to all ticket agents so this information may be disclosed to consumers wherever fare, schedule, and availability information is provided.

Under both of the proposals, U.S. and foreign air carriers would have been required to distribute to certain ticket agents the standard fees for basic ancillary services. However, carriers would not have been required to provide information to ticket agents about individual customers, such as their frequent flyer status, though these factors may impact the fee for an ancillary service. Under both proposals, specific charges, not a range of fees, would have to have been disclosed to consumers for basic ancillary service fees. Neither of the Department's alternative proposals dictated the method that carriers must use to distribute the information, rather, the NPRM cautioned that carriers would have to be mindful that whatever distribution method is used would have to provide usable, accurate, and current information so the information would be accessible in real-time. Further, ticket agents would have had to work in good faith with carriers to come to agreement on the method used to transmit the ancillary service fee information.

Comments: In response to the NPRM, many commenters suggested that the Department go further than either option A or option B in terms of disclosure by carriers to ticket agents. For example, Open Allies, Travelers United, NCL, CCIA, TripAdvisor, and Skyscanner recommended that the Department require airlines to share all flight content information with any interested entity. According to CCIA, that would provide consumers with accurate ancillary fee information in the most direct manner with the least

regulatory cost. TripAdvisor commented that the Department should require airlines to make all flight-specific information, including fares and fees, available to all information providers, because open exchange of information is the best way to protect consumers. Skyscanner also argued that transparency for consumers can only be achieved if the Department requires airlines to disclose fee information to all entities involved in the travel booking process, including metasearch sites. TripAdvisor further commented that if the Department chooses from the proposed options, it should adopt option A, requiring disclosure of basic ancillary service fees to all entities with which the carrier shares fare information, as that is the practical and efficient way for ticket agents to receive and display the fee information and comply with Department requirements. Meanwhile, to the extent the Department adopts one of the two proposed options, Travelers United and NCL supported option A. According to Travelers United and NCL, option B is not feasible because the existing air travel distribution system relies on GDSs, the current marketplace would be extremely limited by exclusion of GDSs, and there is no alternative distribution network currently in place.

Open Allies also supported option A. According to Open Allies, option B, which would not require distribution to GDSs, discriminates against ticket agents and is not a good solution. Open Allies stated that agents and airlines need GDS involvement for the potential benefits of the regulation to be put into place in a workable manner and that including GDSs is the lowest cost, most efficient way of achieving the Department's disclosure goal. The organization also argued that there is no valid reason to exclude intermediaries from disclosure requirements when to do so will make fee dissemination more challenging and costly.

Travel Tech also commented in support of option A, stating that it is the only option that will achieve the Department's goals. According to Travel Tech, 90 percent of ARC-approved ticket agents use GDSs and, although that may change over time, as a practical matter, many ticket agents currently rely on GDSs for data today. It is an efficient way for ticket agents to receive fee information, is currently in use for many charges that airlines already impose, and will facilitate display of the information. According to Travel Tech, option B raises a ''nightmare'' prospect for many travel agents, including OTAs, of not being able to rely on their established data source. Travel Tech noted the Department's desire to minimize government interference and encourage innovation but stated that not requiring disclosure to GDSs will be a disservice to consumers. Travel Tech stated that it is not a new concept and analogizes to existing Department requirements, such as the requirement that carriers provide GDSs code-share and change-of-gauge information when providing flight information to GDSs. Travel Tech went on to state that GDSs are technically capable of displaying ancillary services and fees as carriers want them displayed. Meanwhile, carriers can continue to develop alternative distribution arrangements for future use while allowing ticket agents to provide the disclosure to consumers as contemplated by the Department.

Sabre, in support of option A, stated that its services make sharing price information accurate and efficient as well as cost effective for ticket agents. Sabre further stated that if travel agents that rely on GDSs were forced to use an alternative, they would incur costs that would ultimately be passed on to consumers. Travelport commented in support of option A, noting the Department's statement that 50 percent of tickets are sold via a travel agent and virtually all of those agents rely on a GDS as an efficient data conduit. Amadeus offered similar reasons in support of option A, noting that ticket agents already rely on GDSs as an efficient source of data. Amadeus also pointed out that many travel agents are small businesses that rely on GDSs for airline data and if data were not provided through GDSs, they would not have a financially feasible way to obtain and distribute the information. Such agencies could not afford or manage the technical complexity of, for example, direct connects with multiple airlines, to obtain and disclose ancillary service fee information.

ASTA and several travel agents also commented that GDSs have the technology to allow travel agents to book ancillary services. ASTA also noted that travel agents rely on GDSs for a variety of business functions in addition to booking, and accordingly ASTA stated that option A, excluding GDSs, would harm travel agents. ASTA also stated that option B does not provide sufficient protection for consumers. Therefore, according to ASTA, the Department should not adopt either option A or B and instead should require transactability.

Corporate travel agents American Express Global Business Travel, Carlson Wagonlit Travel (CWT), and BCD supported option A. CWT commented that ticket agents cannot provide ancillary service fee information unless the information is first provided by carriers to ticket agents via GDSs; otherwise, ticket agents would be required to obtain the information from each carrier. BCD commented that ticket agents must have access to information about ancillary services through GDSs, the ''normal and customary distribution channels'' that are time-tested and functional. Without the requirement that GDSs have the information, BCD stated it will incur material costs in obtaining the ancillary service information from every airline and will not be able to ensure it has accurate and complete information. Travelers United and NCL supported option A as the best of the options proposed. BTC supported option A, commenting that there is no usable, workable mechanism for airlines to distribute ancillary service fee information to tens of thousands of individual travel agents, most of whom already rely on GDSs. Skyscanner noted that if the Department chooses option B over option A, consumers who conduct searches on metasearch Web sites that do not sell the ticket will not receive the same ancillary fee information that is disclosed on traditional travel agent or carrier Web sites.

A4A opposed the disclosure requirement on the grounds that it will place airlines at a disadvantage to GDSs in contract negotiations and also opposed it on technology grounds. A4A argued that GDSs have historically been in a stronger negotiating position than airlines and that GDSs were only willing to develop new technologies for accessing and distributing airline fare and flight information because the GDSs did not have contract provisions requiring airlines to provide ancillary services information. The ancillary services information, in addition to motivating GDS investments in technology, enabled airlines to negotiate lower GDSs booking fees. According to A4A, GDS concessions on pricing and technology resulted because airlines did not have the obligation to provide the ancillary service fee information to GDSs, and if the Department requires airlines to provide such information, it will restore GDSs to a stronger negotiating position over airlines. A4A stated this will be the case whether the Department adopts option A, expressly requiring airlines to provide the information to GDSs, or option B, requiring airlines to give the information to GDSs as a practical matter. A4A also objected to the proposal on the grounds that distribution channels would all have to offer the same functionality and not

every channel has the more developed functionality needed to distribute dynamic fees. The effect would be to impose a system of static fees, according to A4A. AACO also commented that a requirement to distribute ancillary service fee information through GDSs would essentially require carriers to distribute static fees to ticket agents instead of the dynamic fees currently available on carrier Web sites. This would force airlines to use static fees on their Web sites for the sake of consistency and would limit innovation and could lead to higher charges for consumers. IATA also opposed the disclosure requirement, arguing that the changing marketplace is making information more readily available to consumers because airlines are motivated to disclose the information and consumers are used to unbundled fares and know how to search and find such information. IATA stated that airline Web sites offer consumers and ticket agents comprehensive and accurate ancillary service fee information. However, according to IATA, a Department rule mandating disclosure will harm consumers, because it could shift current marketplace momentum from implementing new internet-based technologies that offer dynamic solutions back to inferior solutions offered on legacy infrastructure.

Most airline comments objected to any ancillary service fee disclosure requirement, with several indicating that any Department involvement would unduly influence contract negotiations and distribution innovations. In contrast to ticket agents and their representatives, some carriers stated that any requirement to distribute fees will effectively require them to distribute to GDSs, which would unfairly disadvantage them in negotiations with GDSs as well as lock them into a distribution model that relies on static fees, which will create obstacles to innovation. However, some commented that to the extent that the Department adopts one of the proposals, some carriers supported Option B, requiring disclosure of ancillary service fee information to ticket agents that sell transportation only, excluding GDSs and other intermediaries. For example, Delta stated that the Department should refrain from any regulation of airline distribution channels, but option B would have less impact on negotiations between carriers and GDSs. United commented that option B would better allow for development of alternative systems for airlines to provide information directly to travel agents. United also notes that ATPCO (relied on by GDSs) does not have the technological capability to process constantly changing ancillary service prices, which makes this issue more complex than addressing baggage fees. Like AACO, Delta and United seem to indicate that a requirement to distribute ancillary service fee information through GDSs would essentially require carriers to distribute static fees to ticket agents.

China Eastern stated that option B would present fewer technical and development hurdles. Spirit commented that option B is less intrusive and that a requirement to distribute ancillary service fee information to all travel intermediaries as described in option A may cause Spirit to withdraw from one or more GDSs altogether due to increased distribution costs. Insel, a Caribbean carrier, commented that consumers must be informed of the total cost associated with their travel; however, requiring disclosure through GDSs would increase airlines' costs, and those costs would likely be passed on to consumers. Virgin Atlantic is concerned about the burden of ensuring ticket agents that have Virgin Atlantic's fare, schedule, and availability information also have ancillary service fee information and stated that if a carrier has shared information with ATPCO or a direct connect, that should be sufficient.

DOT Response: We have carefully considered the comments regarding whether to require carriers to distribute ancillary service fee information to all ticket agents that a carrier provides with its fare, schedule, and availability information, including GDSs, or only to require carriers to distribute the information to those ticket agents that sell its tickets. We recognize that both options potentially impact relationships among commercial entities and we do not take Department involvement in carrier distribution channels lightly. We recognize that airlines have concerns that being required to provide certain ancillary fee information to GDSs will put airlines at a disadvantage when negotiating contract terms with GDSs. We also understand that airlines have concerns about being required to rely on GDS infrastructure and GDS ability to market dynamic fees as carriers do on their own Web sites. However, airline complaints about the technical deficits of GDSs appear to be focused on dynamic fees. Airlines already rely on the GDSs to distribute baggage fee information and carriers do not provide a strong argument against using GDSs to distribute this information. Meanwhile, ATPCO notes that there are some technical issues to be worked out to distribute information on fees for carry-on items but ATPCO is already working with certain carriers and ticket agents, including GDSs, to distribute and even transact checked bag fees. Further, the proposals in the 2014 NPRM reflect our view that basic ancillary fee information should be shared with all consumers at all outlets. IATA acknowledges that more work needs to be done by the industry in that area. We agree with the comments of Skyscanner that our consumer protection goals would be undermined if we did not require disclosure to intermediaries in arranging for air transportation, such as metasearch entities that operate flight search tools, as those entities would not necessarily have basic ancillary service fee information to provide to consumers. Regarding the ability of GDSs to distribute the information, all three GDSs serving the U.S. market assert they have the technical ability to distribute baggage fee information. In addition, we find persuasive some ticket agent comments that they rely on receiving information through the GDS channel, that alternative distribution methods would be practically disruptive and technically difficult if not impossible to implement, and would cause them to incur significant costs. We recognize that with either option some time would be needed to develop the process for disclosure, particularly in connection with carry-on bags, as ATPCO noted. The proposed implementation period is discussed below in section G.

In connection with the requirement that the distribution method used would have to provide usable, accurate, and current ancillary service fee information so the information would be accessible in real-time, some entities comment that the 2014 NPRM does not define with sufficient specificity what constitutes usable, accurate, and current. Farelogix commented that distribution through GDSs would effectively halt or limit dynamic pricing because according to Farelogix, GDSs are only able to provide static pricing. However, the comments opposing use of GDSs to transmit fee information were focused on the technical limitations of GDSs in the area of dynamic fees (which GDSs dispute); there were no comments indicating that any entity thought that baggage fee information transmitted through GDSs would not be usable, accurate, and current. A4A's comment indicates that the fee information for checked baggage is already available in the GDS systems via ATPCO filings. We note that the proposed requirement to provide

information to GDSs only applies if the carrier is using the GDSs to distribute its fare, and schedule information. We do not believe such a requirement would be unduly burdensome on carriers as it appears that the primary objection of carriers from a technical standpoint relates to limited availability services subject to dynamic pricing, such as seat assignment fees, and seat assignment fee information is no longer included in the proposed requirement. In response to some comments that by imposing disclosure requirements on checked baggage fees the Department would be effectively prohibiting carriers from offering discounts through dynamic pricing, we disagree. Carriers are free under Department rules to offer discounts, whether though dynamic pricing or other methods, if the pricing is properly disclosed. [4] Further, some carriers are already working with GDSs to offer premium seats, so we are not convinced that they could not do the same with baggage fees. The remaining objection, being placed in a disadvantageous position in contract discussions, would be addressed by a prohibition on unilateral contract provisions related to distribution, as discussed more fully below.

After carefully considering all of the comments submitted, the Department has decided to propose requiring carriers to provide information on fees for one carry-on item and first and second checked bag to all ticket agents to which it provides fare and schedule information, including GDSs and other intermediaries in the air transportation marketplace. This option provides for wide distribution with the least disruption to existing business models and the shortest implementation time. We acknowledge that almost any distribution and disclosure requirement will involve Department intervention into business and contractual arrangements. However, the Department is counter-balancing these concerns by including in its proposal a prohibition on unilateral cost increases by GDSs on airlines as discussed in Section E. When the proposed requirement to provide information to GDSs is considered in conjunction with the Department's proposed restriction on certain contract provisions, we believe the Department's regulatory involvement in business arrangements is minimal and justifiable.

We note that in this SNPRM we are proposing to require carriers to provide certain ancillary service fee information to all ticket agents to which it provides fare and schedule information. This would ensure consumers receive key baggage fee information at the same time that they are identifying flight options so that they have enough information to determine the true cost of travel. We believe that furnishing availability information to ticket agents should not be a determining factor in whether the agent receives the ancillary service fee information in question. Requiring carriers to provide required ancillary service fee information to all ticket agents to which they provide fare and schedule information should ensure that all relevant ticket agents are provided with the ancillary service fee information without imposing an overly broad requirement. We seek comment on the substance of the proposal and whether the description of ticket agents that should receive basic ancillary service fee information is sufficiently broad.

D. Transactability

The NPRM: In the NPRM, the Department requested comment on the issue of requiring that basic ancillary services be made transactable (*i.e.,* to require that airlines permit online travel agencies to sell these ancillary services). The Department recognized that transactability is a very important business issue for both carriers and ticket agents and noted that we want to avoid causing a negative impact on innovation or unnecessarily intruding into business and commercial arrangements. We further noted that carriers and stakeholders have assured the Department that they share our goal of transparency and assume that the various stakeholders 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. However, we left open the possibility of requiring transactability and requested comments on the issue.

Comments: Consumer advocacy organizations' comments generally favored transactability. Consumers Union and U.S. PIRG stated that ancillary services should be transactable through ticket agents or, at a minimum, customer-specific quotes with ancillary service fees should be provided and guaranteed to be available once the ticket has been purchased. Travelers United and NCL commented that the Department should not concern itself with how the data is used but rather should require airlines to release all ancillary service data and let market innovations determine how it is provided to consumers. Open Allies commented that the Department should require airlines to provide basic ancillary service fee information to ticket agents in a format that allows ticket agents not only to disclose the information to consumers but also to sell the services.

Open Allies stated it believes that the lack of transactability is unlikely to be resolved by carriers absent a rule. The organization commented that ticket agents should be able to sell services because consumers support transactability. It pointed to a survey it conducted which showed 72 percent of survey respondents believe transparency includes transactability. Open Allies also noted that requiring transactability would save time and be more efficient for consumers. If transactability is not required, it contended, consumers will have to go to airline Web sites to find and purchase a service found on a ticket agent Web site and, unless fees are unchangeable, the service may no longer be available, or available at the quoted price, at that time. According to Open Allies, airlines are the only entities that ''disaggregate'' pricing and as a consequence the Department should regulate ''pricing transparency'' which is only possible with transactability. Open Allies disagreed with the carrier position that GDSs have greater bargaining power than airlines in contract negotiations, noting the reduced GDS fees airlines have negotiated since GDS deregulation. Open Allies also said the decreased number of legacy carriers in the United States has increased airline negotiating power. The organization argued that transactibility is necessary because, if the Department relied on requiring the carriers to lock in prices for ancillary services at the time consumers purchased tickets, it would be difficult to enforce and costly and time consuming to develop systems that would enable fees to be locked for individual consumers. Meanwhile, consumers would still face the inconvenience of having to go to airline sites to purchase the ancillary service, which would increase their transaction costs.

Several travel agents filed similar comments favoring transactability, stating that disclosure alone is not sufficient. According to those travel agents, add-on fees are complex and change from airline to airline, preventing travel agents from providing completely accurate quotes to customers. Although requiring

[4] In response to A4A's comment that the requirement to distribute static baggage fees through GDSs to comply with previous rule has prevented airlines from offering dynamic baggage fee pricing, we note that is the result of airline pricing decisions and GDS contract restrictions and not a Department requirement. Airlines are free to offer static or dynamic fees under Department rules, as long as the prices are properly disclosed.

disclosure of the cost of bags and seat assignments would help, according to these commenters, consumers would still be surprised because the price of services may go up before they buy them. They also stated that GDSs have the ability to provide transactabilty and airlines would benefit from increased sales of ancillary services, creating a ''win-win'' for the entire value chain. ASTA commented that the only option the Department should consider is transactability. According to ASTA, airlines, U.S. airlines in particular, have proven unresponsive to market influences to sell ancillary services through ticket agents and without requiring transactability. ASTA asserted that the Department will effectively be forcing agents to send customers to a competitor if it does not require transactability.

Travel Tech commented in support of transactability, stating that the existing GDS infrastructure already permits transaction of various airline service fees, such as baggage, in some cases, and also allows seat assignments for certain carriers' inventory. According to Travel Tech, the only question is whether airlines will allow ticket agents to transact the services once the airline makes the information available through GDSs. Travel Tech also commented that consumers should be able to purchase ancillary services at their preferred outlet to avoid the increased search and transaction costs of not having ancillary services available for purchase through ticket agents.

Amadeus, Sabre and Travelport also commented that consumers using ticket agent outlets experience increased transaction time without transactability. They stated that they are ready to implement transactability and point to their own technological developments and existing agreements with carriers on distribution of ancillary services. Sabre provided information regarding 23 carriers for which it both displays and transacts at least one ancillary service. Travelport stated ancillary services can be transacted using older technology but that it has introduced a new platform to allow airlines to differentiate their products from competing airlines. Amadeus stated that requiring transactability is the only way the Department can meet the goal of transparency. Amadeus commented that disclosure without transactability will confuse consumers. Amadeus stated that it already has a product that will enable transactability and that 58 airlines are already using this product, but concludes that the Department cannot rely on the market to move towards transactability because the factors that have inhibited widespread implementation are still present, particularly in the case of U.S. airlines.

Orbitz stated it is a member of Travel Tech and commented to elaborate on Travel Tech's comments. Orbitz stated that if the Department imposes disclosure requirements on ticket agents without transactability, consumers will only be more confused. Orbitz pointed to the static nature of some fees and dynamic nature of others, which will increase the confusion. Meanwhile, according to Orbitz, the Department should not assume that airlines will negotiate to allow ticket agents to transact ancillary services. The outcome of the rule may be that ticket agents that compete with airlines and offer consumers choices that they might not otherwise have been aware of, are left with an inferior product and asymmetrical disclosure requirements that disadvantage ticket agents and lead to consumer harm.

Corporate travel agents also supported transactability. BCD commented that the Department should require transactability through GDSs and if the information is not transactable, corporate travel agents should not be required to disclose those ancillary service fees. BCD stated customers will be frustrated if it is not able to book the services that it has just disclosed to its customers. BCD also stated its customers depend on having all of the costs of travel tracked through its systems so if it cannot book all services the customer wants, its travel cost data will not be accurate. CWT commented that to provide consumer benefit, the Department must require that ancillary services be transactable through GDSs or agents will be unduly burdened and the existing distribution system will be undermined. BTC commented that for consumers transparency and transactability are ''interlocked'' and without transactability, the booking process for consumers and travel agents involves multiple steps and is more confusing and time consuming as a result. BTC also commented on the risk of increased costs or lost opportunities to purchase certain ancillary services if they are not purchased at the time the ticket is purchased. International Airline Passengers Association also commented in favor of transactability and supported BTC's comments.

A4A opposed transactability, reiterating its view that there is no consumer harm to address. A4A also identifies practical considerations, including that some carriers do not allow for payment of baggage fees at time of ticketing even when travel is purchased directly from the carrier and many consumers do not know at time of ticketing whether or how many bags the consumer will want transported. Several carrier comments reflect agreement with the Department's tentative decision not to require transactability, including those of Delta and United. Frontier also opposed transactability, stating that it would increase airline costs which would in turn be passed on to consumers. Virgin Atlantic opposed a transactability requirement because it would undermine carrier ability to control its distribution scope and costs and essentially mandates the commercial relationship between a carrier and its agents solely to the benefit of agents.

DOT Response: We have carefully considered all of the comments supporting and opposing transactability. We note that the Department has already prohibited post-purchase price increases on transporting baggage. The Department's Enforcement Office has also indicated that it intends to pursue enforcement action against carriers that increase fees for baggage not provided with the ticket but traditionally included in the price of the ticket (*i.e.,* carry-on bag, 1st and 2nd checked bag). Therefore, the Department's existing rule regarding baggage fee price increases has already addressed the concern that ticket agents will provide consumers information on baggage fees that will be inaccurate or the price will increase before the consumer has the opportunity to purchase baggage transportation services. Regarding seat assignment fees, since the Department has tentatively concluded that advance seat assignments are not truly intrinsic to air transportation, and consequently determined not to propose a requirement that ticket agents disclose fees for seat assignments, consumers will not be presented with seat assignment options that they cannot purchase immediately. This means consumers will not be confused by being presented a seat assignment that they cannot obtain, or risk being unable to purchase their chosen option at the advertised price.

We recognize that requiring airlines to make both baggage and seat assignments transactable services through ticket agents would potentially increase consumer satisfaction and decrease transaction costs of time spent on shopping and booking when using ticket agent Web sites to book travel. We are also aware of the importance of transactability as a business matter to ticket agents that must provide the services consumers want and expect or risk losing business. We recognize that comments by some stakeholders,

including ticket agents and consumer advocacy groups, indicate that airlines are not motivated to enter into agreements to allow transactability. In addition, we recognize that many consumers do not purchase baggage transportation at the same time they purchase travel, so there may be limited incentive for either ticket agents or carriers to negotiate agreements on transactability in this area. However, we are encouraged by the progress reported to date by both carriers and ticket agents in reaching some agreements that permit ticket agents to sell select carrier ancillary services. We also note that both ticket agents and airlines have stated that airlines have a strong incentive to make airline ancillary services more widely available to consumers in order to sell more of those services. Accordingly, we believe that carriers and ticket agents may be able to reach agreements to transact various ancillary services if there is sufficient benefit to all commercial entities in the transaction. We also recognize that corporate travel agents have additional concerns specific to their business model regarding customer frustration with a travel agent's inability to transact certain services as well as business concerns regarding tracking costs for corporate travel clients. However, we feel the benefits of having the information available for consumers outweighs any frustration caused by the inability to purchase through a ticket agent, particularly since the only fees that must be disclosed under the current rulemaking are baggage fees, which are not permitted to be increased. Regarding tracking the costs of travel for business purposes, the same problem exists if a consumer does not decide to check a bag until the date of travel and pays at the airport. At least under the disclosure requirement, corporate travel agents can include the amount of bag fees that potentially may be incurred in a travel record for purposes of record keeping. Ultimately we believe there are even greater incentives for both carriers and ticket agents to come to agreements regarding transacting ancillary services in the corporate travel arena than in connection with leisure travel.

Finally, in connection with technical issues related to transactability, we note that some stakeholders alleged that a requirement to distribute ancillary service fees through GDSs would essentially require carriers to distribute static fees to ticket agents instead of the dynamic fees currently available on carrier Web sites. ATPCO's comments support that view to some extent based on its description of the current capability for entities to transact checked bag fees using ATPCO codes and the complexity of carry on and seat assignment fees, which would require more development by ATPCO. However, we also note that GDSs comment that they have been developing technology solutions and the technology already exists for ancillary services to be transactable through GDSs. Meanwhile, although carriers object to undue intrusion into their businesses, they also point to agreements carriers have reached on transacting ancillary services to support the position that the market is solving the disclosure problem. This leads us to conclude that technical obstacles to transactability are not insurmountable and would not require disclosure of only static baggage fees. Meanwhile, we remain of the view that the Department should limit its intervention concerning commercial negotiations in this area at this time and continue to rely on market forces to a large extent. Therefore, we are proposing a revised disclosure option that we believe offers the maximum consumer disclosure benefit while stopping short of requiring transactability. At this time, the Department is relying on competition and market forces but will continue to monitor the issue. If the Department identifies evidence of consumer harm resulting from a lack of transactability and a market failure preventing resolution of the problem, we will revisit the issue in a future rulemaking. At this time, however, we are not proposing a transactability requirement.

E. Contract Provisions Among Carriers, GDSs, and Other Ticket Agents

The NPRM: In the NPRM, we noted that if we adopted a provision requiring carriers to disclose ancillary service fee information to ticket agents and ticket agents to disclose it to consumers, it would be unlawful to provide fare information that did not include the fees for basic ancillary services. Accordingly, we stated that 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 acting as intermediaries would be prohibited from imposing charges for the distribution of required ancillary service fee information. We also noted that we would expect GDSs to work in good faith with carriers and other ticket agents that are able to agree on alternative distribution methods that do not include the GDSs to allow integration of information obtained through other sources and information obtained through GDSs.

Comments: Travel Tech commented that the ban on GDSs charging additional fees should only apply to existing contracts and that the language of the rule should be changed to clarify this. Travel Tech also argued that if a requirement for carriers to provide basic ancillary fee information only to ticket agents that sell a carrier's tickets directly to consumers is adopted, it should be changed to make it clear that the contract limitation only applies to those ticket agents. Travel Tech also argued that carriers should be required to provide the same fees for ancillary services that carriers display on their own sites and not higher service fees, otherwise ticket agents would effectively be prohibited from negotiating with carriers regarding the ancillary service fees the ticket agent must disclose and ticket agents that display fees to consumers would be limited in the fees they could display to consumers. Amadeus commented that the Department should clarify that the prohibition against imposing additional charges on carriers for distributing ancillary service fee information expires at the termination of an existing contract. Amadeus also argued that, during the existing contract period, the carrier should provide the same fee information to the GDSs that is available on the carrier's Web site. In contrast, Travelport opposed the contractual provision and stated it is confusing and that the Department should not interfere with contractual negotiations.

Open Allies commented that it is acceptable to ban the imposition of additional charges on carriers, but only for the length of the existing contract. Open Allies also argued that carriers should be required to provide the same fees for ancillary services, not higher fees, to ticket agents during the term of the existing contracts. ASTA opposed the contract provision, stating that it is outside the scope of Department authority. It also asserted that, as the provision is drafted, it is unclear about which ticket agents are covered. According to ASTA, most travel agents receive airline flight information through GDSs and their contracts with airlines are through the Airlines Reporting Corporation (ARC) and can be unilaterally amended by the airlines but not travel agents. Further, as a practical matter, travel agents are not in a position to unilaterally impose charges on airlines. ASTA commented that it would be inappropriate for the Department to prohibit travel agents from imposing charges on consumers, but it appears the Department meant to only cover ticket agents acting as

intermediaries and prevent charges to carriers. However, according to ASTA, that is not clear from the proposed rule text. AACO commented that even if the Department prohibited GDSs from imposing an explicit fee in connection with the requirement to disclose certain ancillary service fee information, GDSs could still introduce adjustments in other service charges to compensate for the requirement.

DOT Response: The Department has considered the comments regarding a contract provision prohibiting ticket agent intermediaries from imposing additional charges on carriers in connection with distributing ancillary service fee information along with fare information. We recognize that some ticket agents oppose any Department involvement in contractual arrangements between private entities, and we are similarly reluctant to insert the Department into such arrangements. However, since the Department is proposing to impose a new legal requirement on carriers and the ticket agents that distribute carrier fares and certain ancillary service fees, we believe it is appropriate to put in place a short term restriction on unilateral changes to contract arrangements.

We recognize that distribution of ancillary service fees has been very controversial, in particular in GDS dealings with carriers, and in order to prevent business disputes from interfering with the implementation of a new Department requirement we have determined it is appropriate to implement a regulation with limited scope that covers only existing contracts that were negotiated based on a different regulatory background. The proposed restriction is only intended to cover contract provisions regarding charges imposed on airlines by ticket agent intermediaries for distributing certain ancillary fee information that the rule requires to be distributed along with fare information. The proposed restriction would only impact contracts for their current term at the time a final rule is issued in order to reflect the changed regulatory environment; future negotiations will enable all parties to negotiate based on the regulatory changes.

We believe that in practice the proposed disclosure requirement will not require significant investment in new technology by GDSs since GDSs already have a significant amount of baggage information through ATPCO filings. Accordingly, we would expect GDSs to work with carriers in good faith and not attempt to circumvent the restriction on additional charges by adding charges in other areas to evade the restriction. To the extent that a GDS engaged in such tactics, the Department would consider it a violation of the provision preventing such charges. The restriction only limits unilateral imposition of new charges on airlines by intermediary ticket agents. It is not intended to prevent good faith negotiations to revise existing contracts or to carry over to any new contracts negotiated after issuance of this final rule. We agree with some commenters that the rule text should be clarified to make clear it covers only existing contracts and have made the appropriate changes in the proposed rule text. We have also revised the proposed rule text in connection with ASTA's comment that the provision could be read to apply to travel agents that do not receive information directly from carriers. We do not intend for the proposed restriction to cover such contracts.

In connection with comments that carriers should be required to provide the same fees for ancillary services that carriers display on their own sites and not higher service fees, we have decided not to propose such a restriction. It is not the Department's position that the same ancillary service fees must be charged at all outlets, merely that consumers should be informed of the basic ancillary service fees so they can determine the true cost of air transportation and make an informed decision before making a purchase. Therefore, we tentatively believe it is appropriate to leave it to carriers and ticket agents to determine the ancillary service fees that will be charged through ticket agents. Although we recognize that this means a carrier would not be prohibited from implementing different fees for baggage, depending on the outlet from which the consumer chooses to purchase air transportation, as a practical matter, we believe it would be challenging for carriers to implement varying charges in the current technological environment. Therefore, under the proposed provision, carriers and ticket agents will have the opportunity to come to agreement on this issue as new contracts are negotiated and new commercial and technological arrangements are put in place.

F. Customer-Specific or Itinerary-Specific Fee Information

The NPRM: The NPRM recognized that requiring carriers to disclose basic ancillary service fee information to ticket agents is not helpful to consumers if it is not displayed to them. Further, to address the issue of consumer difficulty in finding basic ancillary service fee information, the information must be displayed by both carriers and ticket agents in specific amounts, not a range of fees. The NPRM proposed to require carriers to provide customer-specific information if a consumer provides identifying information and itinerary-specific information if identifying information is not provided. The NPRM further proposed to require ticket agents to provide itinerary-specific information. In the NPRM, we stated that ''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). By contrast, ''itinerary-specific'' fee information does not 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. For itinerary-specific information, the NPRM proposed that both carriers and 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, when displaying itinerary-specific information, the NPRM stated that 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. In either case, whether customer or itinerary-specific fee information is displayed, both airlines and ticket agents that have Web sites marketed towards U.S. consumers would have to 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 search for a specific flight itinerary.

During the comment period, an important clarification was made regarding the NPRM. A4A pointed out that the NPRM stated ''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)'' Notice at 29977. A4A observed that this is customer-specific information that ticket agents would not need to meet the requirement to provide ''itinerary specific'' fee information. In response to the A4A inquiry, Department staff confirmed that the NPRM statement was

an error.[5] Nevertheless, as the NPRM stated, ticket agents may come to agreements with airlines that would enable the ticket agent to provide customer-specific ancillary service fee information.

Comments: We received extensive comments supporting greater disclosure. Of consumers favoring greater disclosure, several also comment in favor of a standardized display of some kind, whether a table or other format. In connection with innovative alternatives and solutions not considered, Travelers United and NCL commented that better display of information is needed but do not argue for or against the display requirements proposed, supporting instead a requirement that all data be made available so market innovation can improve how the information is provided to consumers. Open Allies supported greater disclosure of ancillary service fees and stated that the Department should require airlines to provide ticket agents information to provide customer-specific, transactable, quotes. Open Allies argued that if the Department does not require carriers to provide enough information for ticket agents to display customer-specific quotes, consumers will not have enough information in the ticket agent channel and may choose flight options that are more costly than the option they would have chosen if the ticket agent displayed more information. Travel Tech supported a disclosure requirement that is the same for carriers and ticket agents and stated the Department should require carriers to provide customer-specific quotes so that carriers and ticket agents are on equal footing. Amadeus generally supported the proposed display requirements for itinerary-specific fees and stated that the Department should also require carriers to provide customer-specific fee information to ticket agents so that ticket agents may provide customer-specific fee quotes when the ticket agent has sufficient information about the passenger. Amadeus argued that the Department should ensure that consumers dealing with the indirect ticket agent channel have access to the same ancillary fee data that is available from the airline channel.

Southwest Airlines also supported a requirement to disclose ancillary service fees, stating that consumers are not necessarily able to determine the true cost of their own travel because they do not know how much bag fees will be for a particular flight option and as a result sometimes choose flights that they otherwise would not have chosen. Southwest also stated that requiring display of baggage fees will put downward pressure on those fees. Global Business Travel Association commented in favor of the proposed disclosure requirements, commenting that the Department should require both airlines and ticket agents to display certain ancillary service fees on the first page of search results.

However, many commenters opposed proposed display requirements which would result in carriers providing customer-specific information to consumers that identified their customer category while ticket agents would only be required to provide itinerary-specific information. ASTA pointed out that if the Department adopts display requirements as proposed in the NPRM, carriers would be subject to different disclosure requirements to the extent that a consumer provides identity information to a carrier, which according to ASTA discriminates against and disadvantages ticket agents and defeats the stated regulatory intent. Orbitz also opposed proposed display requirements, stating that providing more information at the start of the booking process will overwhelm and confuse consumers. Further, according to BCD, display requirements will impose additional compliance costs on travel management companies like BCD without providing an opportunity to recoup those costs by offering enhanced services, and those costs will be passed on to BCD clients. CWT also argued that the Department should consider the differences between corporate and leisure travelers and stated that only those fees that can be booked in advance should have to be disclosed, and they should also be transactable or the requirement undermines the distribution system. Instead, CWT supported leaving the existing disclosure requirements unchanged.

Many airlines and airline associations also opposed new display requirements. A4A commented that the proposal is not needed as the Department has already implemented fee disclosure requirements, including requirements for disclosures on carrier and ticket agent Web sites and in e-ticket confirmations. A4A argued that the Department should rely on market pressures to encourage carriers to provide any further disclosures to consumers regarding ancillary service fee information. According to A4A, there is no evidence of consumer injury to support additional display requirements, and the consumer comments and complaints regarding fees that the Department relies on are not specific enough to justify new display rules. In addition, A4A stated that a requirement that airlines and ticket agents provide itinerary-specific display results that are not based on the identity of the customer will provide inaccurate information to consumers that may be eligible for ancillary service fee discounts based on factors such as frequent flyer membership or method of payment. Air New Zealand and Copa commented on the increased costs that airlines will incur to ensure that ticket agents have additional and correct information to provide to consumers.

Google, Inc. (Google), Hipmunk, Inc. (Hipmunk), Kayak Software Corporation (Kayak), Skyscanner Limited (Skyscanner), Travelzoo, Inc. (Travelzoo), and TripAdvisor LLC (TripAdvisor), referring to themselves as the ''Metasearch Providers,'' filed joint comments summarizing their ''consensus views on the nature of the services they provide and the Department's jurisdiction.'' The Metasearch Providers argued that they have a different role from other ticket agents and should not be subject to display requirements because it is unnecessary and could hamper a consumer's search and discourage overall innovation. The Metasearch Providers stated that display of baggage and seat assignment fees is not necessarily useful to consumers that are just exploring travel options. They also stated that disclosure requirements would impose significant costs for programming and may discourage entities operating flight search tools from displaying prices at all. CCIA commented that display requirements should not apply to entities operating metasearch tools because those entities have strong incentives to provide their users with accurate information and a requirement to show particular information for every flight search would dampen innovation in the flight search exploration process. According to CCIA, the Department should require airlines to provide dynamic ancillary fee data without imposing any ''rigid'' display requirements, particularly on metasearch entities. Finally, both TripAdvisor and Skyscanner argued that requirements to disclose information to consumers should not apply to them and instead it should be left to the metasearch entities to determine the best method of disclosure to consumers.

DOT Response: After reviewing the comments and considering the options, the Department has determined that it would be more transparent and better serve consumers to have a uniform,

[5] See DOT–OST–2014–0056–0624, Summary of Proceedings, DOT Meeting with Airlines for America (A4A) (posted September 15, 2014).

more specific, display requirement for consumers. Currently, the burden is on the consumer to research the airline's fees and policies to try to determine which baggage fees may apply to the consumer's air travel. However, we think it is reasonable for consumers to be able to obtain fee information that applies to specific categories of customers. We do not want to interfere with business agreements or impose additional complexity on airlines and ticket agents by requiring airlines to provide personal information regarding their customers to ticket agents. Therefore, we have not proposed to require carriers or ticket agents to provide information that is specific to individuals. Instead, this SNPRM would propose to require carriers to provide the fees for specific categories of customers to ticket agents. It would also require carriers and ticket agents to modify their Web pages to allow consumers the option to indicate any factors that may impact the fees that the consumer might pay to transport baggage. As some of the comments suggested, we agree that it should be optional for consumers to provide the information. Some consumers might prefer to search for flight options without providing that information. Other consumers might be searching for multiple passengers, each of whom might fall into a different customer category, in which case the consumer might need to search flight options more than once to determine what baggage fees applied to each passenger's air travel. However, we believe consumers should have those options rather than having only the option to review multiple static lists to try to determine which baggage fees apply. In the Department's view, the burden of identifying specific baggage fees more appropriately falls on the carrier and ticket agent rather than the consumer. Accordingly, we believe consumers should have the option to provide information to obtain more specific fee information if the consumer chooses to do so.

We seek comment on whether the proposal in this SNPRM covers the appropriate categories of consumers that may be eligible for specialized baggage fees and should be included in the proposal. In the 2014 NPRM, we identified the following categories: Military, credit card holders (method of payment), and frequent flyer members. We have included those same categories in this SNPRM. We seek comment on whether those categories of consumers are sufficient to provide most consumers with specific baggage fee information. In the alternative, should the Department include any additional customer categories in the requirement? We also seek comment on whether the Department should include in the requirement a general obligation to disclose that baggage fees may be reduced or waived based on other consumer characteristics to be specified by the carrier. In other words, if there are additional categories of consumers that may be eligible for specialized baggage fees on a particular airline but it is not a general category across airlines and is not identified in this rulemaking, should the airline be required to provide additional notice to consumers?

Regarding method of payment, we are aware that there are many credit cards that may provide consumers with the benefit of free or reduced baggage fees. Should we identify specific credit cards that must be included in the list of options that consumers may select or simply require that all carrier-affiliated cards offering baggage fee benefits be included as options for consumers?

Regarding frequent flyer programs, we recognize that there is variation in each carrier's program, for example, different levels of membership with different benefits depending on the consumer's status. Should we specify the levels of membership and status for which information must be provided or is it sufficient to state that each carrier should identify the levels of membership and provide relevant benefit information for all levels of membership (*i.e.,* information on benefits pertaining to baggage fees) to all ticket agents?

In addition, there are also carrier-alliance programs that confer their own benefits. Should we require airlines to provide information regarding carrier-alliance programs as well? If so, would it be necessary for each carrier to identify the levels of membership and provide relevant benefit information for all levels of membership (*i.e.,* information on benefits pertaining to baggage fees) to all ticket agents?

G. Web Site and Mobile Application Displays; Consumer Opt-Out; and Implementation Period

The NPRM: The 2014 NPRM made clear that to comply with the proposed ancillary service fee disclosure requirement, airlines and agents would have to modify their Web sites to display the basic ancillary service fees adjacent to the fare information on the first page that displays a requested itinerary with fare. The NPRM asked for comment about several aspects of the proposed disclosure options, including whether ancillary service fee information should be displayed only upon a consumer's request or always provided on the first page of search results and whether disclosure of basic ancillary service fee information should be required on limited availability sites, such as corporate travel Web sites. Both proposals would have required that carriers and ticket 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 basic ancillary services on the first page on which a fare is displayed in response to a search for a specific flight itinerary. The NPRM made clear that to comply with the proposed disclosure 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 that displays a requested itinerary with fare. The NPRM also sought comment on whether the Department should require carriers and agents to provide information on standard fees for baggage or require a variety of baggage fees to be displayed, and if a variety of fees for each service, how such fees should be arranged in displays. We also asked for information on the technological feasibility and cost of requiring this information to be displayed. Finally, the NPRM also requested comment on whether we should leave the existing requirements on baggage disclosure in place instead of adopting either of the proposals. We also encouraged interested parties to provide comments regarding any innovative alternatives or solutions that the Department may not have considered but that would address the lack of disclosure of ancillary service fees in all sales channels.

Comments: We received extensive comments in connection with these issues. In addition to consumer comments generally supporting greater disclosure, some consumers comment in support of specific display requirements, including over 20 supporting display of fees on the first page displaying fares and six supporting display later in the search process but before purchase. Several consumers also commented in favor of a standardized display of some kind, whether a table or other format. Consumer advocacy groups Consumers Union and U.S. PIRG supported a requirement to display ancillary service fee information automatically alongside the fares on the first page of search results displayed to consumers. They further commented that to the extent all ancillary service fee information is provided (*i.e.,* beyond

baggage fees) and this would crowd the page, then a link should be provided along with clear and conspicuous notice that other fees may apply. In connection with innovative alternatives and solutions not considered, Travelers United and NCL commented that better display of information is needed but they do not argue for or against the display requirements proposed, supporting instead a requirement that all data be made available so market innovation can improve how the information is provided to consumers. In connection with how ancillary service fee information should be displayed, Open Allies urged the Department to allow carriers and ticket agents flexibility in how information is disclosed and expresses concern that too much information on a screen will make it hard for consumers to comprehend. Open Allies supported the proposal to permit the use of links or rollovers provided that a prominent notice adjacent to the advertised fare makes clear that ancillary service fees are disclosed via a link or rollover. Regarding an opt-out option, Open Allies stated it ''doubts that most consumers would select the opt-out option,'' but agreed providing that flexibility makes sense. Travel Tech supported a disclosure requirement that is the same for carriers and ticket agents. In connection with how the information is displayed, Travel Tech urged the Department to allow flexibility, including the use of links or roll-overs. It also urged the Department to extend that flexibility to mobile displays. Regarding opt-out, Travel Tech supported allowing the option of an opt-out that is not pre-selected and includes notice that ancillary service fees may apply. According to Amadeus, display of ancillary service fee information does not need to be provided on the first screen, it only needs to be provided before a booking decision is made.

Orbitz opposed proposed display requirements, stating that providing more information at the start of the booking process will overwhelm and confuse consumers. Orbitz also commented that any display standard adopted will quickly become obsolete or hinder innovation as technology changes. Orbitz also opposed imposing display requirements on mobile platforms as it would be difficult to implement and would impair the user experience. In connection with corporate travel sites, Orbitz opposed any display requirements, noting that display content is typically negotiated by the businesses involved. BCD also opposed display requirements on corporate travel agent sites, arguing that if it is not able to transact ancillary service fees, it should not be required to display such fees. According to BCD, display requirements will impose additional compliance costs on BCD without providing an opportunity to recoup those costs by offering enhanced services and those costs will be passed on to BCD clients. CWT also argued that the Department should consider the differences between corporate and leisure travelers and stated that only those fees that can be booked in advance should have to be disclosed and they should also be transactable or the requirement undermines the distribution system. In connection with Section 399.85, CWT commented that it should not be changed.

A4A argued that the proposed disclosure requirement will cause sub-optimal displays, providing fee information that consumers may not be interested in and taking up screen space that could be used to provide additional flight options or other information. A4A noted that the fee information might vary for every segment of the itinerary and argues that the sheer volume of information displayed is likely to overwhelm rather than assist consumers. A4A also stated that the proposed display requirements are contrary to the current carrier trend to offer bundled pricing and differentiated seat products and limit carriers' ability to provide such offerings. In addition, A4A stated that a requirement that airlines and ticket agents provide itinerary-specific display results that are not based on the identity of the customer will provide inaccurate information to consumers that may be eligible for ancillary service fee discounts based on factors such as frequent flyer membership or method of payment. Regarding searches for multiple passengers, A4A stated the search results displayed might not reflect the discounts available to some members of the group. A4A also noted that if more information must be displayed, search results will likely take longer to display due to increased processing time.

Regarding mobile applications, A4A commented that the problem of displacing information such as additional flight options on Web sites is particularly acute on mobile devices ''because first-screen space is limited and valuable,'' therefore the Department should not expand the display rules to mobile applications. Delta also opposed display requirements stating that it would have a negative impact on speed and performance of reservations systems and would be costly and time consuming to implement. United opposed a requirement to display basic ancillary service fees at the first point in a search process where a fare is listed, stating that it will waste time for consumers because search results will be slowed by additional processing time for the information, then consumers must review additional information they are not interested in or click on links or pop-ups to see the information. Meanwhile, fewer flight options will be displayed on each screen. United also argued that search results may display inaccurate information depending on whether the consumer is conducting an anonymous search but is entitled to reduced fees, or a consumer is searching for multiple passengers, and similar concerns.

CCIA also commented that display of ancillary service fee information could result in screen clutter, which would be frustrating to users and that the proposed display requirements ''are not adequately designed to work on a mobile platform'' and may impede the consumer experience. TripAdvisor also commented that the Department should exempt mobile displays from display requirements or tailor requirements to a range of display sizes. Skyscanner commented that display of a large volume of information is unfeasible on a mobile device so, if implemented, displays would become less useful to users of mobile sites or mobile applications. Displays would be slower and include fewer options in a more cluttered presentation. USTOA opposed the proposed display requirements, stating that they will limit development of new business models, and questions how tour operators that sell bundled packages that may include airfare would comply with disclosure requirements.

DOT Response

Disclosure and Display Requirements

We recognize that the comments reflect legitimate concerns about the fact that if more information must be displayed, more screen space is consumed and search results will likely take longer to display due to increased processing time. However, we also note that many of the comments on this issue focused on the amount of screen space and increased processing time required for the display of seat assignment fees, which are generally dynamically priced and therefore would require additional processing time. As noted earlier, we have decided not to include disclosure of seat assignment fees in this proposal. Regarding baggage fees, although displaying such fees may also require some additional processing time and

will use some additional screen space, it is a cost that carriers have chosen to state separately from airfare and is information that consumers and consumer advocates have repeatedly stated that consumers need in order to determine the true cost of travel.

Nevertheless, we agree it is important to make the information as easy to provide and as useful to consumers as possible. Accordingly, we request comment on whether we should permit the baggage fee information to be displayed by links or roll-overs on all displays or on certain mobile displays.

Regarding the comment by A4A and others that the fee information might vary for every segment of the itinerary and the volume of information displayed is likely to overwhelm rather than assist consumers, this concern does not apply to baggage fees since carriers must apply the baggage allowances and fees that apply at the beginning of a passenger's itinerary throughout his or her entire itinerary pursuant to 14 CFR 399.87.[6]

Some comments expressed concern that the Department's proposed display requirements are contrary to the current carrier trend to offer bundled pricing and customized pricing. The Department's consumer protection rules in this area are intended to protect consumers from being surprised by unexpected fees and to allow them to discern the true cost of air transportation before making a purchase. To the extent carriers or ticket agents choose to offer bundled fares that include baggage in addition to, or instead of, offering fares that do not include baggage fees, they would not be prohibited from doing so. Under this proposal the display of such fares would only be required to make clear that there is no additional baggage fee associated with that fare if that is the case.

Regarding air-tour packages, we recognize that air transportation may be purchased in bulk by the seller of the tour package and the carrier may be unknown at the time of purchase which may make it difficult to provide specific baggage fee information. Accordingly, we have tentatively concluded not to require ticket agent sellers of air-tour packages to provide disclosure of specific baggage fees in certain circumstances. Specifically, if air transportation is arranged at a later date and specific airline and baggage fee information is not known at the time of booking, ticket agents would not be required to display the baggage fee. However, when displaying such air-tour package prices, such ticket agent displays would be required to prominently disclose that baggage fees may apply if that is the case. In addition, ticket agents would be required to disclose in online displays and oral communications that baggage fees may apply and that those fees may be reduced or waived based on the passenger's frequent flyer status, method of payment or other consumer characteristic. This exception would not apply to air carriers or foreign air carriers selling air-tour packages. We request comment on whether this exception for certain air-tour packages adequately addresses concerns of air-tour package sellers. We also request comment on whether such an exception adequately protects consumers.

Opt-Out

Regarding the concern that consumers may not be interested in baggage fee information being displayed and it may take up screen space that could be used to provide additional flight options or other information, we recognize there may be reasons that consumers wish to opt-out of display of baggage fees, for example if the consumer will be traveling without checked baggage. We agree that it is reasonable to provide entities the flexibility to provide such an option. Most of the comments on this issue agreed that it was reasonable to provide an opt-out option. In addition, if an entity anticipates that there will be a significant impact on the speed of search results or particular display options the entity provides, the option to provide an opt-out for baggage fees would address those concerns by providing carriers and ticket agents the option to provide consumers what may be a faster or more streamlined display of search results, if consumers choose such displays. We anticipate that basic baggage fee information will be useful to many, if not most, consumers, and that they will often choose displays that include such information. However, by providing an opt-out option for baggage fee information, entities that display flight information would still have the flexibility to provide search results without that information if the consumer chooses a display option that does not include it. Accordingly, our proposal would permit carriers and ticket agents to provide various opt-out options. Opt-out options could include the choice to opt-out of seeing all baggage fee information that would otherwise be required to be displayed (first and second checked bag and carry-on bag) or to opt-out of seeing some of those fees. For example, a consumer might choose to see fees for carry-on and first checked bag, but not second checked bag. Another option might be that a consumer could choose to see only carry-on bag. A third option could be to see first and second checked bag fees but not the carry-on bag fee. The opt-out options that may be provided would be up to the carrier or ticket agent and no opt-out would be required under the proposal.

We seek comment on whether providing the flexibility to furnish a variety of opt-out options addresses some of the concerns of carriers and ticket agents regarding increased processing times and screen clutter. We also seek comment on whether providing opt-out options would adequately protect consumers.

Display of Search Results on Mobile Displays

In connection with applicability to mobile applications (apps) and mobile Web sites, several commenters state that the Department should consider more limited requirements for mobile outlets because implementation of new rules in the mobile environment is technically more difficult and detailed disclosures may be difficult to incorporate and display, particularly considering the screen size of some mobile devices. We recognize some of the inherent limitations of displays designed for mobile outlets. Comments suggesting more limited disclosure requirements for mobile outlets focused on the complexity of potential disclosure requirements. The limitation of disclosure requirements to certain baggage fees will reduce the amount of screen space used for additional disclosures.

In addition, some commenters stated concern that there would be technical difficulty in implementing increased disclosure requirements and increased processing time; however, we note that similar concerns apply to non-mobile internet displays. However, we have determined that the consumer benefit to having basic ancillary service fee information outweighs the potentially increased processing times. As some commenters noted, consumers in increasing numbers are using apps to book travel. Therefore, we believe it is important that the same consumer protections apply to apps as to other outlets directed to consumers. Accordingly, we have tentatively concluded that the disclosure requirements should be the same on apps as on Web sites or mobile Web

[6] We note that carriers always have the option of waiving a baggage fee or offering a lower baggage fee than advertised for any segment of an itinerary. As the Department's Office of Aviation Enforcement and Proceedings has stated regarding Section 399.87, it does not prevent a carrier from charging a lower fee as a courtesy. [Cite is FAQ 50]

sites. We request comment on whether allowing disclosure via links or pop-ups would simplify the disclosure process and reduce technical issues and speed processing times for mobile outlets.

We also note that the FTC has provided guidance regarding internet disclosures (See .com Disclosures: How to Make Effective Disclosures in Digital Advertising, available at *https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf*). The FTC's guidance notes that using hyperlinks, rollovers, or pop-ups for price and certain other disclosures may be less effective. Consistent with DOT's position in this SNPRM, the guide states that ''consumers should not have to click on hyperlinks to understand the full amount they will pay.'' The guide therefore suggests that fee or cost information should be disclosed adjacent to the price claim, unless the information is very complex. Similarly, the guide notes that rollovers or mouseovers ''may not work on mobile devices that have no cursor to hover over a link.'' Finally, the guide cautions that pop-ups may be blocked by software or otherwise ignored by consumers.

Accordingly, we request that commenters provide any consumer research or data that indicates whether hyperlinked or other disclosures not adjacent to the fare on a mobile site would or would not be effective.

Implementation Period

In connection with the time to implement rule, the Department is tentatively of the view that a six month implementation period to display consumer-specific fee information for a first checked bag, a second checked bag and a carry-on bag to consumers whenever fare and schedule information is provided would be appropriate and should provide enough time for both carriers and ticket agents to update Web sites and apps. We recognize that in order to make technical changes and accommodate new information, individual ticket agents will need to know in detail how the information will be distributed from carriers to the ticket agent and have the information from carriers well before the display deadline. We anticipate carriers will work in good faith with ticket agents, including GDSs and other ticket agent intermediaries, to ensure that the distribution method and details are worked out well in advance of the display deadline. In this regard, we have tentatively concluded that carriers should ensure ticket agents have the information no later than three months before the display deadline. We note many of the comments state that a lengthy implementation period will be necessary to implement any disclosure requirement and some suggested several years. However, many of the reasons presented for the multi-year implementation period had to do with the complexity of disclosing multiple dynamic fees. Since the Department is limiting the requirement to disclosure of one carry-on item and a first and second checked bag, the Department believes a six month implementation period is appropriate.

We request comment on whether this proposed implementation period is too lengthy or too short. If the proposed implementation period is either too lengthy or too short, how long of an implementation period would be appropriate?

H. Revised Baggage Fee Disclosure Requirements and 14 CFR 399.85(b) and (c)

This proposed rule, if adopted, would require carriers and ticket agents to provide customer-specific baggage fee information for one carry-on item and a first and second checked bag if they provide fare information. We are tentatively of the view that there would no longer be a need for a requirement that airlines and ticket agents provide a general statement on the first screen on which the agent or carrier offers a fare quotation for a specific itinerary that additional airline fees for baggage may. We are proposing in this SNPRM to remove the requirement under 14 CFR 399.85(b) that displays of fare quotations must include a statement that fees for baggage may apply and where consumers can see these baggage fees. The requirement to provide the more general statement that baggage fees may apply would be limited to certain ticket agent displays related to air tour packages that are unable to provide customer-specific baggage fee information.

In addition to eliminating rule text under 14 CFR 399.85(b), we are considering eliminating the requirement in 14 CFR 399.85(c) regarding disclosure of bag fee information on e-ticket confirmations as it may be of limited use.

We seek comment on whether eliminating 14 CFR 399.85(b) would be appropriate if the proposed requirement to display customer-specific baggage fee information is adopted. We also seek comment on whether we should consider keeping the existing requirement 14 CFR 399.85(b) with revisions to reflect the proposed changes. If the 14 CFR 399.85(b) disclosure requirement should be kept but modified, what changes would be appropriate?

Regarding 14 CFR 399.85(c), we request comment on whether the proposed revision would be appropriate and adequately inform consumers of the applicable baggage fees if the proposed requirement to display more specific baggage fee information is adopted. If not, what changes or additions would better ensure that consumers are provided with the specific baggage fee information that will be required if the proposal is adopted?

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. This section contains a summary of costs and benefits associated with this SNPRM. More detail on the economic impact of this proposed rule can be found in the Regulatory Impact Analysis (RIA), which is available in the docket. Due to the lack of key pieces of data, the Department was unable to quantify the costs and the benefits of the rule proposed in this SNPRM.

Under this SNPRM, the Department is proposing that all ticket agents and airlines that provide fare and schedule information to consumers while doing business in the United States be required to provide fee information to consumers for first and second checked bag, and one carry-on item adjacent to the fare. The information would include the necessary fee information to allow the display of these fees as either the standard fees charged by the carriers, or, at the consumer's choice, as the customer-specific charge if the consumer elects to provide his or her customer category information including, but not limited to, military/veteran status, frequently flier category, and method of payment. Airlines can potentially establish a large number of customer-specific factors that impact the fee that a consumer would pay for a carry-on and first and second checked bag. We solicit comment on whether the Department should limit the categories that have to be displayed on a ticket agent's Web site to the most commonly used categories. If the Department adopts such a limitation, how should

the most commonly used categories be determined?

Carriers would be required to transmit this baggage fee information to all ticket agents to which they provide fare and schedule information, including GDSs and other intermediaries in the air transportation marketplace. Ticket agents and carriers would be required to be compliant with the rule within six months of its final publication date.

Ticket agents would be allowed to design the presentation of these fees as best suits them as long as they are available at the time when fares are first presented. This fee information must be customer-specific, *i.e.* specific to the individual and his/her any unique circumstances, unless the passenger opts out.

Costs of the SNPRM

1. Direct Costs to Carriers

Carriers would incur costs related to preparing and transmitting ancillary service fee information to OTAs and GDSs. These costs would include the one-time set up costs to develop internal systems/processes to distribute the baggage fee information. These set-up costs would include upfront planning time to develop procedures to collect and distribute the necessary data, as well as any potential IT and software development costs to transmit data which is not already being transmitted to GDSs and ticket agents via ATPCO or NDC.

Carriers would also incur some incremental ongoing costs to manage and transmit data relating to any changes in baggage fees defined as basic ancillary service fees by this rulemaking. Carriers might also incur some additional costs for system updates to any new IT systems or programs incorporated for the purposes of complying with this rule. For this analysis, only the ongoing costs which would not have occurred except for the rulemaking are considered.

Carriers can present the information in a format of their choosing, including allowing consumers to opt out of viewing the information, or choosing only some of it, if that is their preference. The Department is requesting further comments on this specific issue with this SNPRM.

Multiple commenters to the 2014 NPRM provided information on likely costs to carriers of the proposed requirement for basic ancillary service fee information, though most of these costs comments were directed at the possible inclusions of requiring transactability for these fees as well as their display (*i.e.,* that consumers would be able to pay for these ancillary services on the OTAs and GDSs), an alternative which was considered by the Department but not adopted for this SNPRM.

One mainline carrier (Delta) commented that the proposed rule as described in the NPRM would require the redesign of carrier distribution systems to provide ancillary fees at the first point of search. Delta estimates it would take 12 months and cost $1 million redesign its systems.

An economic consultant (who submitted comments with the carrier trade association, A4A) argued that the costs to carriers to comply with the requirement for greater transparency as proposed in the NPRM would cost more than $3 million in the first year, and $7.2 million over 10 years. This commenter also argued that carriers would incur significant additional ongoing costs for managing estimates of the process of ''development and debugging programs and procedures that the carriers will have to create to report ancillary fee information.'' The commenter noted that carriers typically employ one full time employee to monitor and debug the baggage fee information reporting to ATPCO. He also noted that carriers spend approximately $1 million to ''establish each link to a GDS''.

ATPCO also commented that the costs to carriers of compliance with the requirement as proposed in the NPRM could be quite high, noting that ATPCO's efforts alone to comply with the simpler baggage fee information requirements of the 2011 consumer rule cost over $1 million.

The Department believes that the estimates from commenters to the 2014 NPRM overstate the likely costs to carriers of this SNPRM for several reasons. While reviewing these comments, the Department noted that much of the comments were directed to the challenges and additional costs of transferring information for advance seat assignment, which is dynamic information, changing frequently as carriers manage their loads. The cost for the transmittal of real-time advance seat assignment information to ticket agents would thus be significantly more than the transmittal of baggage fee information, which changes much less frequently. Additionally, the Department notes that several carriers are already in agreement to start providing that information to GDSs; and some carriers are moving to IATA's NDC which will allow for easier customization of flight and pricing options to consumers and at a lower cost to carriers (once they have incorporated NDC into their systems). And while the Department agrees that there will be ongoing costs to maintain and transmit data required by the rule, the Department does not believe that the SNPRM, if adopted as proposed, would generate the need for an additional full-time staff equivalent for each carrier, on average, to monitor and debug ancillary fee data shared with travel agents, given the current pace of technological improvements in all reporting systems, the pace at which carriers are adopting NDC, and the staff resources already committed to monitoring data transmittals.

Given the existing questions and comments to the 2014 NPRM, the Department does not believe that it has enough information to confidently quantify the total cost to carriers of complying with the proposed rule. The Department believes that the costs of compliance are likely to be less than $1 million per carrier, but is nevertheless seeking additional information on the likely costs to carriers of the requirement as specified in this SNPRM.

2. Direct Costs to Ticket Agents

Ticket agents would incur costs related to accepting ancillary service fee information from GDSs and carriers and posting that information on their Web site engines, and of communicating the additional fee information to consumers during reservation phone calls. The most significant cost to ticket agents is likely to be the one-time cost to reprogram their Web site search engines to provide the necessary baggage information.

Larger ticket agents and OTAs are likely to have in-house capability to reprogram their Web sites accordingly, but small tickets agents probably will not. As the US Tour Operators Association (USTOA) noted in its comment to the 2014 NPRM, many tour operators are unlikely to have in-house web programmers and would likely need to hire consultants and contractors to bring their Web sites into compliance.

Ticket agents that market and sell online to consumers already have systems in place to receive flight and cost information from carriers and GDSs, but it is unclear whether these systems have the capacity to receive and process all the necessary information to comply with the proposed rule. Several commenters to the NPRM argued that the RIA for the 2014 NPRM underestimates the costs to ticket agents to update their systems to comply with the rule. The Department is seeking comments on this specific issue with this SNPRM.

At least three commenters noted that there could be significant ongoing compliance costs for ticket agents and tour operators to provide baggage fee information as per the proposed requirement, primarily in terms of longer times during reservation phone calls. The Department acknowledges that there may be additional time at the beginning of a call as ticket agents discuss baggage fees earlier in the reservation process but notes that such earlier discussion of baggage fees may also limit the likelihood of increased call time at the end of the call as some consumers are surprised by additional baggage fees and may revisit their flight searches.

Ticket agents would also incur some ongoing costs to refresh the required baggage fee information when it changes. The Department does not expect that these costs would be significant, since the systems to transmit the data are already in place and the programming to display the required baggage fee has already occurred. In addition, these fees need only be updated when changed.

We believe that the cost impacts of the proposal in this SNPRM would differ significantly from the costs which would have been incurred under the 2014 NPRM, since the current proposed rule no longer includes advance seat assignment in the basic ancillary service fees to be covered. Thus, the Department is seeking additional information on the potential costs of this SNPRM on ticket agents.

3. Other Cost Issues—Additional Costs to GDSs and/or ATPCO

It is unclear if GDSs would incur additional costs to process the information required by this SNPRM. For this analysis, the relevant incremental costs to the GDSs would be those costs of efforts/improvements which they would otherwise not have incurred, but for this rulemaking. Costs for efforts of GDSs to collect and transmit the needed baggage fee information to ticket agents that were already planned or which would occur in the future for reasons other than this rule (such as responding to market forces) are not considered to be due to the rule. According to some of the comments received, GDSs are already improving the capacity of their systems to manage more ancillary service fee information.

Comments to 2014 NPRM regarding costs to GDSs to comply with it were somewhat inconsistent. At least two comments (one for from a carrier and another carrier trade association supported study) claimed that GDSs would incur significant costs. Yet one GDS (Sabre) commented that it already has the capability to comply with the requirements proposed in the 2014 NPRM (although it noted that ticket agents do not already have the needed systems in place). The Department thus expects that this SNPRM, if adopted as proposed, would not have significant costs to GDSs.

ATPCO could also potentially incur additional costs to process the required information, due solely to this rulemaking, although this is also very uncertain. In its comments to the NPRM, ATPCO stated that it already has the capacity to meet the proposed 2014 NPRM requirements. The Department also expects that the SNPRM would not entail significant costs for ATPCO.

Costs to Consumers of Additional Time Waiting for Search Results

Several commenters to the 2014 NPRM, including A4A, Delta, and IATA, argued that the Department's analysis should take into account potential costs to consumers from additional time spent waiting for the research results to load, given additional processing time required to display more ancillary fees. These commenters specifically cited the likely increased time needed to access real time information for up-to-date seat assignment fee information. A study prepared for A4A by Dr. Daniel L. Rubinfeld estimated the additional wait times to consumers would cost approximately $805 million per year, based on the assumption that the proposed rule would add approximately 20–40 seconds to each itinerary search (drawn from a survey by A4A of its members). Elsewhere in its submittal, A4A estimates that the additional processing time for the proposed ancillary service fee information would cost approximately $139 million a year from an estimated loss of 5.5 million hours per year for online ticket agents alone.

The Department notes that most of the costs relating to additional processing times and added wait times for consumers raised by commenters focus on the additional time and cost for transmitting advance seat assignment information, which, as noted above, is dynamic and thus more complicated and expensive to keep up-to-date. Since the SNPRM does not include advance seat assignment, the needed time to process and display the required fee information should be much less than what was estimated by commenters in response to the 2014 NPRM.

Additionally, to provide more flexibility to ticket agents, this SNPRM would permit ticket agents to provide consumers the opportunity to opt-out of receiving the baggage fee information for carry-on and first and second checked baggage, if so desired. If ticket agents do choose to incorporate such an opt-out feature, additional time for processing and displaying information on baggage fees which the consumer does not want to see should be significantly reduced. The cost of waiting for baggage fee information, which the consumer does want to see, should be off-set by the value to the consumer of getting that information (hence the choice made to receive it). The Department acknowledges that some portion of consumers may misjudge/underestimate the amount of time it would take to receive all the baggage information, especially in the beginning period after implementation and that, therefore, there will be some additional wait time and costs to consumers but that this cost will decrease over time.

Since the SNPRM does not include seat assignment fees in the basic ancillary fee data that must be communicated, the Department believes that there would not be significant additional wait time for consumers. Nevertheless, the Department is seeking additional comment on this issue.

Benefits of the SNPRM

1. Time Saving Benefits to Consumers

Both consumers who purchase directly from carrier Web sites and those who use travel agents would benefit. A significant number of leisure travelers book online via online travel agencies, use metasearch engines, or even use their businesses travel management company. But since OTA Web sites do not currently have customer category-specific bag fees, these consumers must check multiple airline Web sites in order to get an accurate estimate of the flight costs including the fees for basic ancillary services related to carry-on and first and second checked bags. While information on baggage fees is already required to be available from travel agents, it is often available through links, which requires significant time and effort from the consumer to determine the actual fee that must be paid. The consumer must click the link or links to get the baggage information for the itinerary being considered and recalculate their cost. Not all consumers purchasing tickets via an OTA would experience a time savings, as not all consumers are concerned with baggage fees. For some consumers the additional cost for baggage will not factor into their choice of a flight, and as such these consumers

wouldn't search for baggage fees and thus would not benefit from the requirements proposed in this SNPRM. Additionally, in some markets there is only one (or perhaps two) carriers that offer flights at the preferred time or at a fare which the consumer would consider; these consumers also would not benefit. But the Department believes that many consumers seek out at least some baggage information, which would result in the time savings for those individuals.

Meanwhile, a little more than a fourth of airline passengers purchase tickets directly from carrier Web sites (PhoCusWright estimates this figure at 23%).[7] While these consumers have the most direct access to ancillary service fees, many carrier Web sites also do not include basic ancillary service fees when first quoting an itinerary fare. Thus, some consumers must access multiple Web pages to reach the information they need to calculate a cost to them which includes posted fare plus the fees for carry-on and first and second checked bags. Since the SNPRM would require that basic ancillary service fee information be consolidated in one place on carrier fare displays, some portion of consumers purchasing tickets on carrier Web sites would spend less time searching for the desired fee information.

Not all consumers purchasing from carrier Web sites would benefit. Consumers who purchase from a carrier Web site are more likely as a group to be aware of the carrier's baggage fees and policies. Many of these consumers are going directly to the carrier Web site because that carrier is one of the few or the only one to offer flights at the desired time and to the desired destination, or because the consumer is a member of the carrier's affinity program. Nevertheless, some portion of those consumers who purchase tickets on a carrier Web site do check to see what the baggage fees would be for their desired itinerary, and these consumers would save time under this SNPRM.

Together, the time savings may be quite significant. The Department does not yet have the information to confidently estimate the value of this benefit so it is seeking additional comment on it.

2. Better Informed Consumer Purchasing Decisions

The increased transparency in ancillary service fee information would also lead to some portion of consumers making more informed purchasing choices: (1) Those who learn of the baggage fees for a flight they intend to purchase but do so near the end of the purchasing process, and (2) those who remain unaware of the baggage fee information until after they make a purchase. Both of these consumer groups may end up making purchasing decisions they otherwise would not have made had they been aware of the associated baggage fees when first reviewing search results.

Research has shown that when consumers first see a price which is lower than the final price they must pay (whether due to delayed display of taxes, fees, shipping and handling, etc.) they often end up paying more than if the first price they see is the final, total price (including taxes, fees, and/or shipping and handling). Studies and experiments have demonstrated that partitioned pricing (the separating of a price into its components) and the timing for when different pieces of pricing information (such as taxes) are revealed in a purchasing situation can lead to increases in consumer demand.[8]

If revealing full prices later in the purchasing process leads to more purchases than if the full price had been seen immediately, (at least some) consumers are purchasing at a price higher than they otherwise would have. These ''sub-optimal'' choices lead to what economists call a ''dead-weight loss.''

In other research conducted in market situations in which one group of consumers knows more about products and/or prices than others, some economists have proposed a ''tourists and natives'' framework, in which consumers are divided into two groups—those with access to more information about lower prices/better quality (the natives) and those with very limited information who will often pay more (the tourists). (Some researchers have called these two groups ''savvy'' and ''unsavvy'' travelers.) This framework has two price-equilibriums; the ''tourist'' one is higher than the one for ''natives.'' With respect to this SNPRM, one could consider the consumers who are well informed regarding fees for ancillary services (*i.e.* aware of itinerary-specific baggage fees) in contrast to other travelers (perhaps those who rarely travel) who are not aware of variance in carry-on and checked baggage fees. The result is that the latter group would end up, on average, paying more.

While both of these theoretical constructs are useful in understanding how and why some consumers may be making sub-optimal air travel purchasing decisions, the Department does not have enough information to quantify or monetize this benefit.

3. Benefits to Businesses Employees That Travel

Many businesses are also concerned with the ancillary fees associated with baggage. Travel can be a significant expense for many companies and ancillary service fees can substantially increase trip costs.

Many business travelers book flights via travel management companies that seek the best flight at the best price for the traveler, given his or her parameters. But much of the information needed to ensure that each traveler gets the best full price taking into account base fare, mileage club memberships, specific credit cards used and any other potential discounts are not often readily available. Travel managers have complained that not all baggage fee information needed to ensure that business travel is booked according to company policy is readily accessible and readily incorporated into internal reservation tracking or accounting programs. The information must be manually entered, often based on receipts or information provided by the travelers themselves. Thus, many businesses either pay more than they needed to for a particular flight or must have employees spend time seeking out the appropriate fee information in order to make the best choice. The increased effort results in higher company travel costs.

These costs associated with searching for baggage fee information have been identified repeatedly to the Department by travel management company representatives and raised at meetings of the Advisory Committee for Aviation Consumer Protection. In addition, several commenters, including trade associations, a GDS and at least one advocacy group, noted that benefits to business travelers of this requirement could be significant.

While there is much interest in the industry on the impact of unbundling

[7] PhoCusWright (2011) ''U.S. Online Travel Overview.''

[8] Deborah Shenck, ''Exploiting the Salience Boas in Designing Taxes,'' (*New York University Law and Economics Working Papers,* Paper 233, 2010) has an informative and extensive review of past work in this area. See also Morwitz, Vicki, Greenleaf, Eric, Shalev, Edith and Johnson, Eric J., The Price Does Not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing (February 26, 2009). Available at SSRN: *http://ssrn.com/abstract=1350004*. Note, though that some studies have found that partitioned pricing can also lead to negative brand recognition and may hurt sales in the future, if the fees are perceived to be excessive and within the seller's ability to control. This differs somewhat from the situation here, since the separate portions of the price are taxes imposed by state, local and federal governments (as opposed to shipping fees, etc.).

and ancillary service fees on the costs of business travel, the Department did not find adequate data on this impact to estimate the benefits of this requirement for these business travelers, but notes that they may be significant for some entities.

4. Benefits to Ticket Agents

While there is concern about the added costs of this provision to ticket agents in terms of additional programming expenditures and staff time to communicate the added baggage fee information, there is also the possibility that ticket agents may experience some benefits of the SNPRM. At least one commenter raised the point that ticket agents would be able to access ancillary service fee information more quickly in response to consumer requests, and could conclude some transactions with consumers more quickly. The Department agrees that ticket agents may benefit from the rule in this manner but is unable to estimate by how much.

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 rule proposed in this SNPRM would have some impact on a significant number of small entities, as discussed in the Initial Regulatory Flexibility Analysis.

For purposes of rules promulgated by the Department regarding aviation economic and consumer matters, an airline is a small entity for purposes of the Regulatory Flexibility Act if it provides air transportation only with aircraft having 60 or fewer seats and no more than 18,000 pounds payload capacity.[9] The Small Business Administration (SBA) size standard for small business for both travel agents and tour operators is $20.5 million in average annual receipts (SBA does not have a size standard for ticket agents as defined by the Department; travel agents and tour operators are the most applicable categories for which such data was found).

A significant number of small entities would be impacted by this SNPRM. Due to the relative lack of key pieces of data, the Department was unable to quantify the costs of the proposed rule to small (or large) entities, but notes that some small entities may incur substantial costs. The primary costs of the rule arise from programming, data management and other related costs to carriers and ticket agents to transmit or display the required baggage information. The Department is seeking additional information on the potential costs and benefits of the requirements proposed in the SNPRM.

C. Executive Order 13132 (Federalism)

This SNPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). The notice does not contain 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 SNPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). The SNPRM would not 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

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DOT has determined that the proposals included in this SNPRM would impose new information collection requirements on the affected entities. Accordingly, we are seeking comment on the impact of the requirements proposed in this SNPRM.

The first collection of information proposed here is a requirement that air carriers and foreign air carriers provide useable, current, and accurate fee information for a first checked bag, a second checked bag, and one carry-on bag to all ticket agents that receive and distribute the air carrier's or foreign carrier's fare and schedule information. The second information collection is a requirement that air carriers, foreign air carriers, and ticket agents that provide an air carrier's or foreign carrier's fare and schedule information to consumers in the United States receive the information from carriers and disclose the air carrier's or foreign air carrier's fees for a first checked bag, a second checked bag, and one carry-on bag.

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 that air carriers and foreign air carriers provide certain baggage fee information to all ticket agents that receive and distribute the carrier's fare and schedule information.

Respondents: Air carriers and foreign air carriers that provide fare and schedule information to ticket agents and charge baggage fees for a carry-on bag, first checked bag, or second checked bag. We estimate that approximately 206 carriers will be impacted by this requirement.

Estimated Annual Burden on Respondents: Approximately 8 hours per respondent. Note that 8 hours is the basis used for computing the costs of providing baggage fee information, but since airlines already share this information with each other to facilitate code-share and interline ticketing, it likely overestimates the actual amount of additional time that most carriers will have to spend to meet the requirement.

Estimated Total Annual Burden: 1,648 hours for all respondents.

Frequency: Once information is provided, new or additional information only needs to be provided when baggage fee information changes; varies by airline but for most carriers is infrequent and will likely be less than annually.

2. Requirement that air carriers, foreign air carriers, and ticket agents that provide carrier fare and schedule information to consumers in the United States disclose carrier's fees for a first checked bag, a second checked bag, and one carry-on bag.

Respondents: Air carriers, foreign air carriers, and ticket agents that provide carrier fare and schedule information to consumers in the United States. We estimate that as many as 206 air carriers and foreign air carriers and as many as 600 ticket agents may be impacted by this requirement.

Our estimate is based on the following information and assumptions: Ticket

[9] See 14 CFR Chapter 11. Note that the Small Business Administration definition of small carriers is not used.

agents includes online travel agencies (OTAs), brick-and-mortar travel agencies, corporate travel agencies, and tour operators that market airline tickets. As described in the Regulatory Impact Analysis accompanying this SNPRM, there may be approximately 9,500 travel agencies and over 2,500 tour operators in the United States, although not all of those entities market air transportation online to consumers in the United States. In addition, most ticket agents rely on GDSs to create online fare and schedule displays. GDSs and entities that create or develop and maintain their own online fare and schedule displays, such as many of the impacted airlines and the largest travel agents, will incur some planning, development, and programming costs to reprogram their systems to provide online displays of fare and schedule information that includes baggage fee information on their Web sites. Therefore we estimate that about five percent of United States ticket agents, including GDSs and large travel agencies, or as many as 600 ticket agents, will be impacted by this requirement. Many smaller carriers also rely on GDSs to create online fare and schedule displays so our estimate of 206 impacted carriers may be overstated.

Estimated Annual Burden on Respondents: Approximately 80 hours per respondent. Our estimate is based on the following information and assumptions: The primary costs to respondents for the disclosure requirement would arise from programming, data management, Web site modification and other related costs to carriers and ticket agents to display the required baggage information. Revising Web site displays in this manner would likely be similar to the revisions that carriers and ticket agents needed to make to their Web sites to comply with the requirement to include all taxes and fees in fare displays in connection with the Enhanced Airline Passenger Protections II rulemaking. Our estimate of those costs was 80 hours per respondent as discussed in the Regulatory Impact Analysis prepared in connection with the Enhanced Airline Passenger Protections II rulemaking (2011) (see page 59, *https://www.regulations.gov/document?D=DOT-OST-2010-0140-2046.*)

Estimated Total Annual Burden: Approximately 64,480 hours for all respondents (based on an assumption of 16,480 hours for carriers and 48,000 hours for ticket agents).

Frequency: Once information is incorporated into Web site displays, the displays would not need to be revised. It would likely be a one-time cost.

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 SNPRM.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this SNPRM pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer protection, including regulations.'' The purpose of this rulemaking is to enhance protections for air travelers and to improve the air travel environment. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Issued this 9th day of January 2017 in Washington, DC.

Anthony R. Foxx,

Secretary of Transportation.

List of Subjects

14 CFR Part 399

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

PART 399—[AMENDED]

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

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

■ 2. Section 399.85 is amended by removing paragraph (b).

§ 399.85 Notice of baggage fees and other fees.

* * * * *

(b) Removed.

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■ 3. A new section 399.90 is added to read as follows:

§ 399.90 Transparency in airline pricing, including ancillary service 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 a first checked bag, a second checked bag, and one carry-on bag wherever fare and schedule information is provided to consumers that may be purchasing or considering purchasing air transportation. Nothing in this section should be read to require that these ancillary services must be transactable (*e.g.,* purchasable online or at other points of sale).

(b) Each air carrier and foreign air carrier shall provide useable, current, and accurate information for fees for a first checked bag, a second checked bag, and one carry-on bag to all ticket agents that receive and distribute the air carrier's or foreign carrier's fare and schedule information. The information should be sufficient to allow ticket agents to express fees as itinerary-specific or customer-specific charges. ''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), etc.

(c) Each air carrier, foreign air carrier or ticket agent that provides an air carrier's or foreign carrier's fare and schedule information to consumers in the United States must disclose the air carrier's or foreign air carrier's fees for a first checked bag, a second checked bag, and one carry-on bag.

(i) The fee information disclosed to a consumer for these ancillary services must be expressed as customer-specific charges as provided in subpart (b) if the consumer elects to provide his or her customer category information to the carrier or ticket agent, such as frequent flyer type, payment method, or military status.

(ii) If the consumer conducting a search does not opt out of receiving baggage fee information but elects not to provide his or her customer category information to the carrier or ticket agent, and conducts an ''anonymous'' search, 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), and ticketed fare class (*e.g.,* full fare ticket—Y class).

(iii) This provision does not apply to air-tour packages advertised or sold online by ticket agents if the air transportation component is not finalized and the carrier providing air transportation is not known at the time of booking. However, the agent 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 unless no baggage fees will apply. An agent may refer consumers to carrier Web sites where specific baggage fee information may be obtained or to its own site if it displays carriers' baggage fees. In online displays and oral communications, prior to purchase, each ticket agent must disclose that baggage fees may apply if that is the case and that those fees may be reduced or waived based on the passenger's frequent flyer status, method of payment or other consumer characteristic.

(d) 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 and one carry-on bag as specified in paragraph (c) at the first point in a search process where a fare is listed in connection with a specific flight itinerary, adjacent to the fare. When providing customer-specific fee information, if more than one baggage fee may be responsive to the search parameters, *e.g.,* fee for a particular frequent flyer status and fee for a particular method of payment, the lowest cost option must be identified and displayed. Carriers and ticket agents may permit a consumer to opt out of being provided search results with the fees for a first checked bag, a second checked bag or one carry-on bag, or any single baggage fee (*e.g.,* second checked bag) or any combination of baggage fees (*e.g.,* carry-on and second checked bag) but the opt-out option must not be pre-selected and must make clear which fee or fees will not be displayed.

(e) In any oral communication with a prospective consumer and in any telephone calls placed from the United States, an air carrier, foreign air carrier or ticket agent must inform a consumer, upon request, of the fees for a first checked bag, a second checked bag and one carry-on bag as specified in paragraph (c).

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

(g) It is an unfair and deceptive practice in violation of 49 U.S.C. 41712 for an air carrier or foreign air carrier to fail to provide the fees for a first checked bag, a second checked bag and one carry-on bag as described in paragraph (b) to those ticket agents to which the carrier provides its fare and schedule information or for a U.S. carrier, foreign carrier, or ticket agent to fail to provide the fees for a first checked bag, a second checked bag and one carry-on bag to consumers as described in paragraph (c) and (d).

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