



## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary of Transportation**

#### **14 CFR Part 399**

**[DOT–OST–2025–0633]**

**RIN 2105–AF38**

### **Procedures in Regulating and Enforcing Unfair or Deceptive Practices**

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** The Department proposes to reinstate the hearing procedures used when conducting a discretionary rulemaking action under its authority to regulate unfair or deceptive practices in air transportation or the sale of air transportation. This notice of proposed rulemaking (NPRM) also seeks comment on the rescission of a final rule published by the Department.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. To the extent practicable, DOT will consider late-filed comments.

**ADDRESSES:** You may submit comments by any of the following methods (please choose only one of the ways listed):

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management System; U.S. Department of Transportation, Docket Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590-0001. Mailed comments must be received by the close of the comment period.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You must include the agency name and docket number (DOT–OST–2025–0633) or the Regulation Identifier Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted to [https:// www.regulations.gov](https://www.regulations.gov), including any personal information provided.

*Privacy Act:* Anyone can search the comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT’s compliance with the Privacy Act, visit <https://www.transportation.gov/privacy>.

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

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously. Follow the search instructions on <https://www.regulations.gov> to view public comments.

**FOR FURTHER INFORMATION CONTACT:** Robert Gorman, Beth Brodsky, or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. S.E., Washington, D.C. 20590; 202-366-9342; 202-366-7152 (fax); robert.gorman@dot.gov, beth.brodsky@dot.gov, or blane.workie@dot.gov (email).

## **SUPPLEMENTARY INFORMATION:**

### **I. Rulemaking Background**

#### *A. The Department's Unfair or Deceptive Practices Statute*

The Department has authority under 49 U.S.C. 41712 (Section 41712) to investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. Under Section 41712, after notice and an opportunity for a hearing, the Department has authority to order the air carrier, foreign air carrier, or ticket agent to stop the unfair or deceptive practice. On its face, Section 41712 provides adjudicatory authority to the Department to issue case-by-case orders to stop a particular practice.

The Department can issue regulations to declare a practice to be unfair or deceptive under Section 41712 using rulemaking authority found in 49 U.S.C. 40113 (Section 40113), which states that the Department may take action, including prescribing regulations, it considers necessary to carry out Part A of Subtitle VII of Title 49 of the U.S. Code, which includes Section 41712. The Department's authority to issue regulations under Section 41712 is limited to declaring a practice to be unfair or deceptive after notice and an opportunity for a hearing. The Department's rulemaking authority under Section 41712 does not extend beyond that application. Pursuant to another statute, 49 U.S.C. 46301, the Department has authority to issue civil penalties for violations of Section 41712 or for any regulation or order issued under the authority of Section 41712.

To avoid misapplication of legal authority under Section 41712, the Department offers additional clarification. When Congress has provided the Department with explicit rulemaking authority outside of Section 41712 or Section 40113, then the Department follows that direction. However, when Congress has not provided the Department with explicit rulemaking authority, and the Department seeks to declare a practice to be unfair or deceptive, the following procedures must be followed:

1. *Enforcement*: The Department may investigate an air carrier, foreign air carrier, or ticket agent to determine whether that individual air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. The Department must use the definitions of unfair or deceptive, and the procedures proposed in this rulemaking, to declare the practice to be unfair or deceptive. If, after notice and an opportunity for a hearing, the Department finds the practice to be unfair or deceptive, the Department may order the air carrier, foreign air carrier, or ticket agent to stop the practice. The Department may issue civil penalties, as appropriate.

2. *Rulemaking*: Trivial or speculative harms are insufficient to initiate a rulemaking. The Department may initiate a rulemaking only if it has evidence to suggest that an unfair or deceptive practice may be occurring. The Department investigates the practice, gathers data, and formulates a body of evidence demonstrating that a problem exists in the market. The Department issues a notice of proposed rulemaking using the definitions and procedures proposed in this rulemaking, to declare the practice to be unfair or deceptive. If, after notice and an opportunity for a hearing, the Department finds that the practice is unfair or deceptive, the Department may issue a final rule declaring what the unfair or deceptive practice is. After the final rule is effective, the Department may take enforcement action against an air carrier, foreign air carrier, or ticket agent for violation of the regulation following the enforcement procedures proposed in this rulemaking.

The Department is analyzing its past use of Section 41712 under the direction of Executive Order 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative” (February 19, 2025). This Executive Order instructs the executive branch to direct its enforcement resources to regulations squarely authorized by constitutional Federal statutes, and it requires the Department to review its regulations to identify those that are based on anything other than the best reading of its underlying statutory authority. The Department finds that the best reading of its statutory authorities allows the Department first to investigate and then to declare a practice to be unfair or deceptive following the procedures that would be codified in the regulation proposed today. The Department’s rulemaking authority is therefore limited to a declaration of what is unfair or deceptive when supported by evidence after notice and an opportunity for a hearing.

This best reading of the statute is consistent with longstanding principles found in Executive Order 12866, as well as DOT Order 2100.6B, which both contemplate that regulations be supported by statutory authority, and direct the Department to consider whether a specific problem exists that must be addressed through rulemaking. Speculative harms do not support a need to regulate, nor do strained or unduly broad readings of statutory authorities.

*B. The Department’s 2020 Hearing Provisions for Discretionary Aviation Consumer Protection Rulemakings and Subsequent Revisions to the Procedures in 2022*

On December 20, 2020, the Department published in the *Federal Register* a final rule titled: “Defining Unfair or Deceptive Practices” (2020 UDP Rule).<sup>1</sup> The 2020 UDP Rule was intended to provide regulated entities and other stakeholders with greater clarity about the Department’s enforcement and regulatory processes with respect to aviation consumer protection actions under Section 41712. Among other things, it set forth procedures the Department would

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<sup>1</sup> See U.S. Department of Transportation, Final Rule, “Defining Unfair or Deceptive Practices,” 85 FR 78707 (RIN 2105-AE72) (Docket DOT-OST-2019-0182) (Dec. 7, 2020).

use when conducting future discretionary rulemaking actions under the authority of Section 41712. Those procedures were revised meaningfully by a final rule the Department published on February 2, 2022 titled: “Procedures in Regulating Unfair or Deceptive Practices” (2022 UDP Rule).<sup>2</sup> This NPRM proposes to rescind the 2022 UDP Rule and to reinstate the procedures for discretionary rulemaking hearings set forth in the 2020 UDP Rule.

In addition, the 2020 UDP Rule defined the terms “unfair” and “deceptive” for purposes of Section 41712. The definitions were modeled after Federal Trade Commission (FTC) precedent; they also reflect the Department’s longstanding interpretation of those terms. Those definitions remain unchanged since DOT published the 2020 UDP Rule, and there are no modifications to them proposed in this NPRM. However, without going through notice and comment, on August 29, 2022, the Department expounded upon these definitions in an unnecessary and potentially confusing interpretative rulemaking titled: “Guidance Regarding Interpretation of Unfair or Deceptive Practices” (Guidance).<sup>3</sup> The Department will rescind the Guidance at a later date.

### *C. The 2023 Clarification of Formal Enforcement Procedures for Unfair or Deceptive Practices*

The Department issued another final rule on June 16, 2023, titled: “Clarification of Formal Enforcement Procedures for Unfair or Deceptive Practices” (Clarification).<sup>4</sup> This final rule was intended to “provide a more complete statement of formal enforcement procedures available under existing DOT authority” than was provided in the 2020 UDP Rule. At that time, the Department determined it was necessary to clarify, when taking enforcement action, that DOT is not limited to initiating a proceeding before an administrative law judge, but also has the

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<sup>2</sup> See U.S. Department of Transportation, Final Rule, “Procedures in Regulating Unfair or Deceptive Practices,” 87 FR 5655 (RIN 2105-AF03) (Docket DOT-OST-2021-0142) (Feb. 2, 2022).

<sup>3</sup> See U.S. Department of Transportation, Guidance Document, “Guidance Regarding Interpretation of Unfair or Deceptive Practices,” 87 FR 52677 (RIN 2105-ZA18) (Docket DOT-OST-2019-0182) (Aug. 29, 2022).

<sup>4</sup> See U.S. Department of Transportation, Final Rule, “Clarification of Formal Enforcement Procedures for Unfair or Deceptive Practices,” 88 FR 39352 (RIN 2105-AF18) (DOT-OST-2021-0142) (June 16, 2023).

option to bring a civil action in a United States District Court. The Department now proposes to rescind the regulations issued in that rulemaking because it was done without notice and comment and because it is unnecessary. The Department's authority to bring an action in the United States District Court to enforce Section 41712 is grounded in statute, settled, and does need to be clarified in regulation.

On April 3, 2025, the Department issued a Request for Information (RFI), titled: "Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs."<sup>5</sup> The Department solicited information to identify regulations, guidance documents, paperwork, and other administrative burdens that can be modified or repealed, consistent with the law. In response to the RFI, Airlines for America, the International Air Transport Association, United Airlines, and the Reason Foundation recommended that the Department take action to reinstate the 2020 UDP hearing procedures, rescind the 2022 UDP Rule, and rescind the 2023 Guidance.

## **II. Proposal to Reinstate the 2020 UDP Rule's Hearing Procedures**

The 2022 UDP Rule made the following six revisions to the hearing procedures used for the Department's discretionary aviation consumer protection rulemakings: (1) changed the standard for when the General Counsel should grant a hearing request to an amorphous "public interest" standard; (2) changed the level of proof necessary for granting a public hearing from "plausible" to "credible and convincing;" (3) added a requirement for the Department to provide a rationale for granting a petition rather than only for denying a petition; (4) eliminated the requirement for a neutral hearing officer, giving the General Counsel discretion to appoint an adjudicator (who need not be neutral) from within or outside the Department, and granted the adjudicator more discretion to decide when and how testimony would be presented at a hearing; (5) eliminated the requirement that the hearing officer issue proposed findings on disputed issues

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<sup>5</sup> See U.S. Department of Transportation, Request for Information, "Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs," 90 FR 14593 (Docket DOT-OST-2025-0026) (April 3, 2025).

of fact; and (6) changed the closing procedures to include an opportunity for all interested parties to file statements or comments in the docket instead of only the parties that participated in the hearing.

These revisions were promulgated in response to Executive Orders that have since been rescinded and are inconsistent with current Department and Administration policy. In revising the procedures in 2022, the Department found a need to “streamline” these regulations to ensure that consumer protection rulemakings were not “unduly delayed,” noting that “it is important to balance the need for robust public participation with the need for procedures that provide the Department with enough flexibility to ensure important rulemakings are not bogged down by overly prescriptive procedural constraints.” The Department has reconsidered these justifications for the 2022 rulemaking and supports the recodification of the 2020 procedures. The Department finds that any delay associated with following the 2020 procedures for applicable discretionary rulemakings would not only be minimal, based on past practice with these procedures, but also would be outweighed by the Department’s development of higher-quality rulemakings and enforcement actions. The Department produces its best work when it is informed by robust public input, the best available data, and sound law and economics, and these procedures increase opportunities to receive those essential building blocks for good governance that would strengthen the overall quality and fairness of the Department’s administrative actions.

In addition, the 2022 revisions gave the Department too much discretion and authority for granting and overseeing hearings, imposed too onerous a standard on petitioners requesting a hearing, and did not provide regulated entities and other stakeholders with sufficient clarity, certainty, transparency, or due process in connection with the Department’s aviation consumer protection rulemaking actions. This rulemaking, therefore, proposes to reinstate the hearing procedures established by the 2020 UDP Rule and to require the Department to follow those procedures when engaging in discretionary aviation consumer protection rulemakings issued under Section 41712 that are not defined as high-impact or economically significant within the

meaning of the Department’s regulatory procedures. Any such high-impact or economically significant rulemakings would be subject to special procedures outlined in section 12 of DOT Order 2100.6B.<sup>6</sup> These procedures are proposed to be reinstated in a separate pending rulemaking action.<sup>7</sup> If adopted, these reinstated hearing procedures would increase transparency, provide for more robust public participation, and strengthen the overall quality and fairness of the Department’s administrative actions.

### *1. Hearing Procedures*

Under this proposal, the reinstated UDP hearing procedures would permit any interested party to file a petition for an evidentiary hearing when the Department proposes a new discretionary rule declaring a practice by airlines or ticket agents to be unfair or deceptive. The petition must be directed to the attention of the General Counsel and must be filed before the close of the comment period on the proposed rule.

To obtain a hearing, the requesting party must make a plausible showing that: (1) the proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act; (2) the ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; and (3) the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule. Even if the petitioner establishes these elements, the General Counsel may still deny the petition if the hearing would not advance consideration of the pro-

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<sup>6</sup> See U.S. Department of Transportation, DOT Order 2100.6B, “Policies and Procedures for Rulemakings,” available at <https://www.transportation.gov/regulations/dot-order-21006b-rulemaking-and-guidance-procedures> (Mar. 10, 2025).

<sup>7</sup> See U.S. Department of Transportation, Notice of Proposed Rulemaking (NPRM), “Administrative Rulemaking, Guidance, and Enforcement Procedures,” 90 FR 20956, 20967 (RIN 2105-AF32) (Docket DOT-OST-2025-0007) (May 16, 2025) (*see* proposed section 5.17(a)). The comment period for this NPRM closed on June 16, 2025.

posed rule. If the General Counsel denies a petition, the denial must be accompanied by a detailed statement of reasons.

The Department notes, in the 2020 UDP Rule, that a petition for a hearing may be denied if the General Counsel determines that a “hearing would unreasonably delay completion of the rulemaking.”<sup>8</sup> The provision was retained in the 2022 UDP Rule.<sup>9</sup> However, the Department now proposes to remove this factor because it is duplicative of the preceding provision that allows the General Counsel to deny a hearing if it would “not advance the consideration of the proposed rule,” which could involve considerations of timing. Nevertheless, the Department seeks comment on the removal of this factor and whether the public finds any value in its retention.

The proposed procedures also provide that the General Counsel must appoint a neutral officer to preside over the hearing and must allow a reasonable opportunity to question the presenters. After the hearing is closed, the neutral officer would place minutes of the meeting in the docket, along with proposed findings of fact on the disputed issues. Interested parties who participated in the hearing would be given the opportunity to file statements of agreement or objection to the proposed findings. After the hearing, the General Counsel would consider the record of the hearing, along with the neutral officer’s findings, and determine whether: (1) to terminate the proposed rulemaking; (2) to modify the proposed rule by filing a new or supplemental notice of proposed rulemaking; or (3) to finalize the rule without material changes. Any of these choices must be accompanied by a notice in the *Federal Register* explaining the basis for the decision.

The Department also proposes to modify the procedures further by adding a provision granting an opportunity to appeal to the Secretary for parties aggrieved by the General Counsel’s denial of a petition.

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<sup>8</sup> See 14 CFR § 399.75(b)(3)(ii) as finalized in the 2020 UDP Rule.

<sup>9</sup> See 14 CFR § 399.75(b)(2)(v) as finalized in the 2022 UDP Rule.

## *2. Hearing Procedures Rationale*

The Department believes these hearing procedures are consistent with Section 41712, which requires the Department to provide notice and an opportunity for a hearing before finding that a regulated entity is engaged in an unfair or deceptive practice. The hearing procedures the Department proposes to reinstate would be helpful in cases where the Department's proposed rulemaking may be premised on complex or disputed issues of fact. Importantly, the traditional notice-and-comment procedures of the Administrative Procedure Act remain the default process. Thus, a hearing may be granted only if an interested party shows that the traditional notice-and-comment process is inadequate to examine the issues to permit a fully informed judgment. While the hearing procedures may add time to the overall rulemaking process in certain circumstances, as written, they would promote fairness, due process, and well-informed rulemaking, without unduly delaying the proceeding itself.

## **III. Rescission of Other Rules**

The Department also proposes the rescission of the 2023 Clarification. The Department promulgated the 2023 Clarification without going through formal notice and comment, and the Clarification is also unnecessary. The Department's authority to bring an action in the United States District Court to enforce Section 41712 is grounded in statute, settled, and does not need to be clarified.

Finally, the Department proposes to consolidate the provisions currently found at 14 CFR 399.75(a) and (c). Section 399.75(a) requires the Department to use the definitions of the terms "unfair" and "deceptive" found in section 399.79. Section 399.75(c) requires the Department to articulate the basis for concluding that the practice is unfair or deceptive to consumers using those definitions. For the sake of regulatory efficiency, the Department proposes to consolidate these two sections into one regulation at section 399.75(a), but the requirement is the same: First, the Department must employ the definitions found in section 399.79 when declaring a practice to

be unfair or deceptive. Second, the Department also must explain in the rulemaking document that declares a practice to be an unfair or deceptive practice how that practice satisfies the definitional prongs of unfairness and deception found in section 399.79. The Department seeks comment on whether the revised language sufficiently communicates these two requirements.

## **V. Administrative Procedure**

Under the Administrative Procedure Act, an agency may waive the normal notice and comment procedures if the action is a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(3)(A). The Department did not request comment before publishing the 2022 UDP Rule, stating that the rule “revises only internal processes applicable to the Department’s administrative procedures ... for which notice and comment are not required.”<sup>10</sup> However, because this NPRM seeks to reinstate procedures from the 2020 UDP Rule that confer express rights on regulated parties and other stakeholders, the Department seeks public comment on this proposal. The Department also seeks public comment on rescinding the Clarification.

Before these proposed policies and procedures are adopted as final regulations, consideration will be given to comments that are submitted timely to the Department as prescribed in the preamble under the ADDRESSES section. The Department seeks comment on all aspects of this proposal. Any comments submitted will be made available at <https://www.regulations.gov> or upon request.

## **VI. Regulatory Analyses and Notices**

*A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review).*

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not

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<sup>10</sup> *See* 2022 UDP Rule, 87 FR at 5657.

reviewed it. This proposed rule primarily involves agency procedure and interpretation.

Adopting enhanced procedures for future rulemaking activities would help to ensure that the activities are rooted in fairness, due process, and an adequate factual foundation.

Under this proposed rule, future discretionary rulemakings could be subject to a hearing procedure. This proposed rule allows interested parties to request a hearing when the Department proposes a rule to classify a practice as unfair or deceptive; when the issuance of the NPRM raises one or more disputed scientific, technical, economic, or other complex factual issues; or when the NPRM may not satisfy the requirements of the Information Quality Act. Allowing interested parties an opportunity for a hearing ensures that they can test the information upon which discretionary consumer protection regulations rely. However, following this proposal's requirements to provide a sufficient factual basis to support an "unfair" and "deceptive" finding should reduce the need for the Department to hold such hearings.

Nevertheless, requests for hearings are expected to occur occasionally. While the Department lacks data that would allow it to distinguish the costs and time of conducting the hearings from the costs of conducting its normal business operations, the Department believes that any incremental costs and time would be small relative to the baseline scenario in which the Department did not enact the rule. Previous discretionary rulemakings involving unfair or deceptive practices in aviation consumer protection have attracted substantial interest from consumer advocates, airline industry advocates, and the general public. The Department engaged with these interested parties without the benefit of a formal process, and the engagements required investments of time and resources by the Department and interested parties. Because these engagements were informal and with uncertain scopes, they were not as efficient as would be expected under a more formal process for interested parties as would be the case under this proposed rule. Without a formal process, parties tend to overinvest in preparation, incurring unnecessary costs, or underinvest, leading to additional engagements and administrative costs.

For future rulemakings, establishing formal hearing procedures may reduce costs and time by increasing certainty about opportunities for engagement.

The Department has experience using hearing procedures to supplement traditional notice-and-comment rulemaking.<sup>11</sup> The hearing procedures would provide consistency in the Department's exercise of its UDP authority by mirroring the statute's hearing requirement to ensure rulemakings enacted under the same authority ensure due process and are grounded in fairness and supported by an adequate factual foundation. The Department believes that its experience with hearings would prevent it from leading to excessive delays in issuing aviation consumer protection rules.

This proposed rule would not impose any more than *de minimis* regulatory costs. The proposal would provide an additional mechanism for industry to provide input to the Department on its discretionary aviation consumer protection rulemakings. Private industry should not experience more than minimal additional costs relative to the status quo because it already engages in significant information exchange with the Department. Industry has the option of continuing to use historical mechanisms for providing input to discretionary aviation consumer protection and is not required to make use of the alternatives set forth in this rule. The Department should not experience significant additional costs because it has considerable experience conducting analysis in support of aviation consumer protection rules as well as hearings analogous to those in this rule. Such efforts are consistent with the Department's normal business operations, and any additional resources needs could be accommodated through a simple and temporary realignment of internal resources.

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<sup>11</sup> See, e.g., Recording of the Public Meeting on the Airline Ticket Refunds and Consumer Protections NPRM, available at [https://www.transportation.gov/airconsumer/Airline\\_Refund\\_NPRM/March21\\_Public\\_Hearing\\_Recording](https://www.transportation.gov/airconsumer/Airline_Refund_NPRM/March21_Public_Hearing_Recording) (Mar. 21, 2023); Recording of the Public Meeting on the Enhancing Transparency of Airline Ancillary Service Fees NPRM, available at [https://www.transportation.gov/airconsumer/AirlineAncillaryFeeNPRM/March30\\_Public\\_Hearing\\_Recording](https://www.transportation.gov/airconsumer/AirlineAncillaryFeeNPRM/March30_Public_Hearing_Recording) (Mar. 30, 2023); and Accessible Lavatories on Single-Aisle Aircraft: Part 1; Reopening of Comment Period and Public Meeting, available at <https://www.federalregister.gov/documents/2021/11/19/2021-25000/accessible-lavatories-on-single-aisle-aircraft-part-1-reopening-of-comment-period-and-public-meeting> (Dec. 16, 2021).

### *B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 14192 (“Unleashing Prosperity Through Deregulation”). This proposed rule is not expected to be an Executive Order 14192 regulatory action because this proposed rule is not significant under Executive Order 12866.

### *C. 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. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.*, aircraft with up to 60 seats/18,000-pound payload capacity). *See* 14 CFR 399.73. The Department has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. However, the Department invites comment on the potential impact of this rulemaking on small entities.

### *D. Executive Order 13132 (Federalism)*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). The proposed rule does not include 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.

#### *E. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this proposed rule does 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 13175 do not apply.

#### *F. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT 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 OMB for each collection of information it conducts, sponsors, or requires through regulations. The DOT has determined there are no new information collection requirements associated with this proposed rule.

#### *G. Unfunded Mandates Reform Act*

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

#### *H. National Environmental Policy Act*

The Department has analyzed the environmental impacts of this proposed rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined it is categorically excluded pursuant to DOT Order 5610.1D, “Procedures for Considering Environmental Impacts” (July 1, 2025). Categorical exclusions (CEs) are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* DOT Order 5610.1D § 9. 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.* § 9(b). The Department’s Operating Administrations (OAs) may apply CEs established in another OA’s procedures. *Id.* § 9(f). To do so, the Operating Administration “must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.” *Id.* This rulemaking, which sets procedures for departmental unfair or deceptive practices rulemaking actions, is categorically excluded pursuant to 23 CFR 771.117(c)(20): “Promulgation of rules, regulations, and directives.” The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

#### *I. Privacy Act*

Anyone may search the electronic form of all comments received into any of OST’s dockets by the name of the individual submitting the comment or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review DOT’s complete Privacy Act Statement published in the *Federal Register* on April 11, 2000 at 65 FR 19477–8.

#### *J. Statutory/Legal Authority for This Rulemaking*

This rulemaking is issued under the authority of 49 U.S.C. 40113(a), which grants the Secretary the authority to take action the Secretary considers necessary to carry out 49 U.S.C. Subtitle VII (Aviation Programs), including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

## *K. Regulation Identifier Number*

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in Spring and Fall of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

### **List of Subjects in 14 CFR Part 399**

Airfare advertising, Consumer protection, Rulemaking proceedings, Unfair or deceptive practices.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR part 399 as follows:

### **PART 399—STATEMENTS OF GENERAL POLICY**

- 1. The authority citation for Part 399 is revised to read as follows:

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

### **Subpart F—Policies Relating to Rulemaking Proceedings**

- 2. Section 399.75 of Subpart F is amended to read as follows:

#### **§ 399.75 Rulemakings relating to unfair or deceptive practices.**

(a) *General.* Unless specifically required by statute, the Department shall only issue a proposed or final regulation under the authority of 49 U.S.C. 41712(a) if the Department articulates the basis for declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers, employing the definitions of “unfair” and “deceptive” set forth in § 399.79.

(b) *Procedural requirements.* Except as provided in paragraph (d), when issuing a proposed regulation to determine a practice in air transportation or the sale of air transportation to be unfair

or deceptive to consumers under the authority of 49 U.S.C. 41712(a), the Department shall adhere to the following procedural requirements:

(1) *Request for a hearing.* Following publication of a proposed regulation, and before the close of the comment period, any interested party may file in the rulemaking docket a petition, directed to the General Counsel, to hold a hearing on the proposed regulation. The General Counsel shall determine whether to grant the petition in accordance with the requirements of this section.

(2) *Grant of petition for hearing.* Except as provided in paragraph (b)(3) of this section, the petition shall be granted if the petitioner makes a plausible *prima facie* showing that:

(i) The proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issue that is genuinely in dispute or that may not satisfy the requirements of the Information Quality Act;

(ii) The ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; and

(iii) The resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule.

(3) *Denial of petition for hearing.* A petition meeting the requirements of paragraph (b)(2) of this section may be denied if the General Counsel determines the requested hearing would not advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by this section.

(4) *Explanation and appeal of denial.* If a petition is denied in whole or in part, the General Counsel shall include a detailed explanation of the factual basis for the denial, including findings on each of the relevant factors identified in paragraph (b)(2) or (3) of this section. The General Counsel's denial of a petition, in whole or in part, may be appealed by the petitioner to the

Secretary within 30 days of the date on which the General Counsel's explanation of the factual basis for the denial is issued.

(5) *Hearing notice.* If the General Counsel grants the petition, or if the denial of a petition is reversed on appeal to the Secretary, the General Counsel shall publish notification of the hearing in the **Federal Register**. The document shall specify the proposed rule at issue and the specific factual issues to be considered at the hearing. The scope of the hearing shall be limited to the factual issues specified in the notice.

(6) *Hearing process.* (i) A hearing under this section shall be conducted using procedures approved by the General Counsel, and interested parties shall have a reasonable opportunity to participate in the hearing through the presentation of testimony and written submissions.

(ii) The General Counsel shall arrange for a neutral officer to preside over the hearing and shall provide a reasonable opportunity to question the presenters.

(iii) After the hearing and after the record of the hearing is closed, the hearing officer shall place in the docket minutes of the hearing with sufficient detail as to reflect fully the evidence and arguments presented on the issues, along with proposed findings addressing the disputed issues of fact identified in the hearing notice.

(iv) Interested parties who participated in the hearing shall be given an opportunity to file statements of agreement or objection in response to the hearing officer's proposed findings. The complete record of the hearing shall be made part of the rulemaking record.

(7) *Actions following hearing.* (i) Following the completion of the hearing process, the General Counsel shall consider the record of the hearing, including the hearing officer's proposed findings, and shall make a reasoned determination whether to terminate the rulemaking, to proceed with the rulemaking as proposed, or to modify the proposed rule.

(ii) If the General Counsel decides to terminate the rulemaking, the General Counsel shall publish a document in the **Federal Register** announcing the decision and explaining the reasons for the decision.

(iii) If the General Counsel decides to finalize the proposed rule without material modifications, the General Counsel shall explain the reasons for the decision and provide responses to the hearing record in the preamble to the final rule.

(iv) If the General Counsel decides to modify the proposed rule in material respects, the General Counsel shall publish a new or supplemental notice of proposed rulemaking in the **Federal Register** explaining the General Counsel's responses to and analysis of the hearing record, setting forth the modifications to the proposed rule, and providing additional reasonable opportunity for public comment on the proposed modified rule.

(8) *Interagency review process.* The hearing procedures under this paragraph (b)(8) shall not impede or interfere with the interagency review process of the Office of Information and Regulatory Affairs for the proposed rulemaking.

(c) When issuing a proposed regulation under this section that is defined as high impact or economically significant within the meaning of DOT Order 2100.6B or 49 CFR part 5, the Department shall follow the procedural requirements set forth therein.

\* \* \* \* \*

## **Subpart G—Policies Relating to Enforcement**

■ 3. Section 399.79 is amended by revising the paragraph (f) heading and deleting paragraph (g) to read as follows:

(f) *Formal enforcement proceedings before an administrative law judge.*

\* \* \* \* \*

Issued in Washington, D.C., under authority delegated in 49 CFR part 1.27(n):

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General Counsel.

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