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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 259 and 399

[Docket No. DOT–OST–2026–0199]

RIN 2105–AF34

Increasing Flexibility on Disclosure of Airline Ancillary Fees

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

ACTION: **Final rule**

SUMMARY: The Department of Transportation (Department or DOT) is issuing this final rule to implement the Fifth Circuit's vacatur of the Department's 2024 Final Rule, Enhancing Transparency of Airline Ancillary Service Fees. Because the legal effect of the court's decision is to reinstate the rules previously in force, this action revises the Code of Federal Regulations (CFR) to restore the Department's regulations on the disclosure of fees for ancillary services as they existed before publication of the 2024 Rule, returning to the standards established in a rule issued in 2011.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: For further information contact Heather Filemyr, Ryan Patanaphan, or Blane A. Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, D.C., 20590, 202-366-9342, 202-366-7152 (fax), heather.filemyr@dot.gov, ryan.patanaphan@dot.gov, or blane.workie@dot.gov (e-mail).

I. SUPPLEMENTARY INFORMATION:

A. Background and Litigation History

On February 3, 2026, the United States Court of Appeals for the Fifth Circuit vacated the Department's 2024 Final Rule, Enhancing Transparency of Airline Ancillary Service Fees (2024

Rule), 89 FR 34620, April 30, 2024.[1] The Court vacated the 2024 Rule on the grounds that the Department violated the Administrative Procedure Act's notice-and-comment requirements by failing to provide an opportunity for public comment on the Nicholas Rupp study (Rupp study), which the Department utilized to estimate the relevance of ancillary fee information to consumers. Though the 2024 Rule is no longer legally enforceable, it remains printed in the CFR. This final rule revises the CFR to reinstate the Department's regulations on the disclosure of fees for ancillary services as they existed before publication of the 2024 Rule.

The litigation history leading to this vacatur involved several challenges from airlines and airline associations. Petitioners initially argued that the Department lacked prescriptive rulemaking authority under 49 U.S.C. 41712 and that the 2024 Rule was arbitrary and capricious. On July 29, 2024, a Fifth Circuit panel granted a stay of the rule, expressing concerns that DOT's authority was limited to adjudicating and to stopping "unfair or deceptive" practices rather than prescribing broad regulations.[2] However, on January 28, 2025, a subsequent panel held that the statutory framework does authorize the Department to prescribe regulations, though it maintained the stay due to the procedural failure regarding the Rupp study.[3] On October 2, 2025, the Fifth Circuit granted a petition for *en banc* review, which ultimately led to the February 3, 2026 decision to vacate the 2024 Rule.[4] That decision, which found that the Department violated the APA's notice and comment requirement by not providing the opportunity for comment on the Rupp study but did not rule on the scope of the Department's authority to issue regulations under 49 U.S.C. 41712 and 40113, has the legal effect of reinstating the rules previously in force—in this case, the 2011 Rule.[5]

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[1] *Airlines for Am. v. U.S. Dep't of Transp.*, 166 F.4th 487 (5th Cir. 2026) (*en banc*).

[2] *Airlines for Am. v. U.S. Dep't of Transp.*, 110 F.4th 672 (5th Cir. 2024).

[3] *Airlines for Am. v. U.S. Dep't of Transp.*, 127 F.4th 563 (5th Cir. 2025).

[4] *Airlines for Am. v. U.S. Dep't of Transp.*, 166 F.4th 487 (5th Cir. 2026) (*en banc*).

[5] *Action on Smoking & Health v. C.A.B.*, 713 F.2d 795, 797 (D.C. Cir. 1983); *see also Prometheus Radio Proj. v. F.C.C.*, 652 F.3d 431, 453 n.25 (3rd Cir. 2011); *Paulsen v. Daniels*, 413 F.3d 999, 1008 (9th Cir. 2005); *Cumberland Med. Ctr. v. Sec'y of Health & Human Servs.*, 781 F.2d 536, 538 (6th Cir. 1986).

B. Reinstatement of the 2011 Rule Framework

The Department's 2011 Rule, titled, "Enhancing Airline Passenger Protections"[6] (2011 Rule), established disclosure obligations to address consumer concerns regarding fees for ancillary services.[7] By reverting to this standard, the Department restores requirements that were designed to ensure transparency without requiring the integrated display of fees during the initial search results as had been required in the 2024 Rule. Specifically, the 2011 Rule required: (1) airlines disclose on their homepages for at least three months any increase in baggage fees or changes in baggage allowances; (2) airlines and ticket agents disclose a notice on the first screen where a fare is shown that additional baggage fees may apply, including instructions on how to access those fees; (3) airlines and ticket agents provide information on e-ticket confirmations regarding free baggage allowances and applicable fees for the first and second checked bag and carry-on bag; and (4) airlines disclose all fees for ancillary services in one central place on the airline's website, permitting non-baggage fees to be expressed as ranges.

C. Removal of 2024 Rule Provisions

This final rule removes all requirements introduced in the 2024 Rule, which are now legally void. Specifically, the 2024 Rule required the disclosure of "critical ancillary service fees"—defined as the fees for a first and second checked bag, a carry-on bag, and ticket changes and cancellations—at the first point in an itinerary search process where fare and schedule information was displayed and required the disclosure of policies for these ancillary services before ticket purchase. These requirements applied to all online platforms of airlines and ticket agents. In addition, the 2024 Rule required airlines to share this fee information with ticket agents with whom they provided fare, schedule, and availability information to ensure the ticket agents could meet these disclosure obligations. The 2024 rule also made minor revisions to

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[6] 76 FR 23110 (Apr. 25, 2011).

[7] Ancillary services are unbundled services that were traditionally included in the base fare of a ticket, such as the transport of passenger baggage (including carry-on baggage), ticket changes and cancellations, seat selection, inflight amenities such as food, and other services.

existing regulations on the form of e-ticket confirmation disclosures by ticket agents, to the prohibition on post-purchase price increases, to customer service plans, and to price advertising. As a result of the disclosure requirements in the 2024 Rule, the Department determined in that rule that certain disclosure requirements from the 2011 Rule had become redundant. Consequently, the 2024 Rule rescinded requirements imposed in the 2011 Rule for airlines: (1) to disclose baggage fee increases or allowance changes on their websites for a three-month period; and (2) to provide a notice on the first screen with a fare quotation that additional fees for baggage may apply and where consumers can view them.

D. Legal Authority

This rulemaking is necessary to conform the CFR with the Fifth Circuit's decision. The Department also issues this rulemaking pursuant to its statutory authority in 49 U.S.C. 40113, which provides the Department general authority to prescribe regulations necessary to carry out its aviation economic duties, and in 49 U.S.C. 41712, which authorizes the Department to prohibit unfair and deceptive practices in air transportation or the sale of air transportation.

E. Good Cause to Forgo Notice-and-Comment Procedures and a 30-Day Effective Date

The APA provides an exception to its notice-and-comment rulemaking procedures when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest.[8] This final rule completes the ministerial act of conforming the Department's regulation with the legal effect of the Fifth Circuit's decision vacating the 2024 Rule and involves no exercise of agency discretion. Accordingly, the Department finds that public comment is unnecessary. For these same reasons, the Department finds good cause to waive the APA's 30-day effective date requirement and to make this rule effective immediately upon publication.[9]

[8] 5 U.S.C. § 553(b)(B).

[9] *See* 5 U.S.C. § 553(d).

F. Regulatory Revisions

This section details the technical changes to the CFR required to implement the Fifth Circuit's vacatur and restore the Department's prior regulatory framework.

1. Fee and Policy Disclosures

The 2024 Rule mandated that carriers and ticket agents with online platforms marketed to U.S. consumers disclose the accurate fee that applied for all critical ancillary services—specifically the first checked bag, second checked bag, carry-on bag, ticket changes or cancellations, and any other services deemed critical by the Secretary after notice and opportunity to comment. Under that rule, the fees must be displayed the first time that fare and schedule information is disclosed after a consumer conducts an itinerary search. It also required disclosure of policy information regarding critical ancillary services before ticket purchase and a specific verbatim notice regarding seat selection to inform consumers that a seat is included in the base fare.[10] Consistent with the Fifth Circuit decision, this final rule removes these disclosure requirements and all associated definitions from 14 CFR 399.85, including the defined terms "Air transportation," "Ancillary service fee," "Ancillary service package," "Anonymous itinerary search," "Break in journey," "Clear and conspicuous," "Critical ancillary service," "Consumer" or "user," "Corporate travel agent," "Online platform," and "Passenger-specific itinerary search."

Furthermore, this action restores the 2011 Rule's requirement that carriers and ticket agents disclose on the first screen offering a fare quotation for a specific itinerary that additional baggage fees may apply and where consumers can see these baggage fees. Under this restored standard, ticket agents may refer consumers to the airline websites or to their own site for specific baggage fee information. This final rule also reinstates the 2011 requirement that carriers must disclose any changes in baggage fees or allowances on their homepage for at least three months following the effective date of the change. To restore the logical structure of the 2011

[10] The required disclosure was as follows: "A seat is included in your fare. You are not required to purchase a seat assignment to travel. If you decide to purchase a ticket and do not select a seat prior to purchase, a seat will be provided to you without additional charge when you travel."

Rule, the Department is also returning sustained requirements, such as the requirement for carriers to disclose all ancillary fees on their websites, to their original paragraph designations (moving this requirement from paragraph (c)(5) back to paragraph (d)).

2. Passenger-Specific and Anonymous Itinerary Searches

The 2024 Rule introduced a distinction between "passenger-specific" searches, which utilized information like frequent flyer status or military affiliation, and "anonymous" searches, which relied solely on itinerary data like route and class of service. It required carriers and ticket agents to offer consumers both options and to disclose the specific fees and policies that applied based on the factors provided by the passenger. Consistent with the Fifth Circuit's decision, this final rule removes all provisions related to passenger-specific and anonymous itinerary searches.

3. Information Sharing and Metasearch Entities

To facilitate the 2024 Rule's disclosure mandates, the Department had required carriers to share critical ancillary fee information with any entity required by law to disclose that information directly to consumers. In addition, the 2024 Rule required carriers and ticket agents that sell air transportation to ensure that critical ancillary fee information is visible to consumers on the first page of their online platforms when consumers are directed there from a metasearch entity's website (an entity that advertises but does not sell air transportation, such as Google flights). Consistent with the Fifth Circuit's decision, this final rule removes these information-sharing and disclosure obligations.

4. Additional Regulatory Revisions

This final rule removes the offline disclosure requirements introduced in the 2024 Rule, which had required carriers and ticket agents to disclose verbally the existence of bag, change, and cancellation fees during in-person or phone transactions. If consumers requested to hear the specific fees that apply, carriers and ticket agents were required to provide that information based on any passenger-specific information provided by the consumer. Section 513 of the FAA

Reauthorization Act of 2024 (2024 FAA Act)[11] directs the Department to update the process for fulfilling disclosure obligations in non-website transactions as may be necessary. However, the Department has determined that the nullification of the 2024 Rule's offline requirements by the Fifth Circuit makes further changes to implement Section 513 unnecessary at this time.

Regarding e-ticket confirmations, the 2024 Rule had replaced the 2011 "text or hyperlink" option for ticket agents with a "text-only" requirement for baggage fee disclosures and added a requirement to mention personal items specifically. This final rule removes the "text only" mandate and the personal item clarification, returning to the flexible disclosure method permitted by the 2011 Rule that allows ticket agents to provide baggage fee information via hyperlinks. The removal of the mandate to include information regarding a passenger's personal item on e-ticket confirmations is required by the Fifth Circuit decision, and it is not intended to suggest that there is not any benefit to its specific mention on the e-ticket.

Other provisions that are removed include clarifications to 14 CFR 399.88 regarding the prohibition of post-purchase price increases[12] and revisions to 14 CFR 399.84 regarding price advertising and percentage-off discounts.[13] These revisions are removed in this final rule as required by the Fifth Circuit's decision, but the Department anticipates future actions in these areas.

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[11] Pub. L. No. 118–63 (May 16, 2024).

[12] In 2011, following a legal challenge, the Department issued an enforcement policy stating that it would only enforce this prohibition for carry-on bags and first and second checked bags when those services are not purchased with the ticket. *See* Guidance on Price Increases of Ancillary Services and Products not Purchased with the Ticket (Dec. 28, 2011). The D.C. Circuit subsequently upheld the rule as applied under that enforcement policy. *Spirit Airlines, Inc.,* v. *U.S. Dept. of Transport.* (D.C. Cir. July 24, 2012), slip op. at 20–21 (*cert. denied* Apr. 1, 2013). Then, in the 2024 Rule, DOT limited the prohibition on post-purchase price increases for ancillary services not purchased with the ticket to only fees for carry-on bags, first and second checked bags, and ticket changes and cancellations. Under 14 CFR 253.7, airlines may not impose any terms restricting refunds of the ticket price, charging monetary penalties on passengers, or raising the ticket price, unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket. The Department plans to explore potential changes to the post-purchase price increase prohibition in a separate rulemaking. Though that rulemaking is pending, the Department intends to continue enforcing the prohibition against price increases for ancillary services after ticket purchase as set forth in the 2011 notice and consistent with the requirements in 14 CFR 253.7.

[13] The Department has initiated a separate rulemaking to propose additional revisions to 14 CFR 399.84. https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=2105-AF37.

II. REGULATORY NOTICES

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

The Office of Management and Budget (OMB) has determined that this final rule is not a significant regulatory action under Executive Order (E.O.) 12866, Regulatory Planning and Review, and OMB did not review this rule under that E.O.[14] The rulemaking is also not significant under DOT's Rulemaking Procedures, 49 CFR part 5, subpart B.

This final rule completes the ministerial act of conforming the Department's regulation with the legal effect of the Fifth Circuit's decision vacating the 2024 Rule, and therefore restores the standards from the 2011 Rule. The final rule will not result in any changes in behavior by firms or consumers, and, consequently, there are no economic costs or benefits. Consumers have not experienced any changes in the airline ticket purchasing process as a result of the 2024 Rule because it was stayed by the Fifth Circuit in July 2024 prior to the *en banc* court's vacatur, and so its repeal will result in no costs or benefits.

B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192, Unleashing Prosperity Through Deregulation requires that, for every new regulation issued by an Agency, at least 10 prior regulations be identified for elimination.[15] Implementation guidance for E.O. 14192 issued by OMB (Memorandum M-25-20, March 26, 2025) defines an E.O. 14192 deregulatory action and an E.O. 14192 regulatory action.[16] This final rule is expected to have neither costs nor benefits, and therefore is neither a regulatory nor a deregulatory action under E.O. 14192 and M-25-20.

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[14] 58 FR 51735 (Oct. 4, 1993).

[15] 90 FR 9065 (Jan. 31, 2025).

[16] Office of Management and Budget, *Guidance Implementing Section 3 of Executive Order 14192, Titled "Unleashing Prosperity Through Deregulation,"* Memorandum M-25-20 (Mar. 26, 2025).

C. Executive Order 13132 (Federalism)

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

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in E.O. 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because none of the requirements in this final rule would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of E.O. 13175 do not apply.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*) requires Federal agencies to review and assess the impact on small entities of any regulation required by 5 U.S.C. 553 or any other law to be published as a proposed rule for public comment prior to issuance of a final rule. Because no notice of proposed rulemaking is required for this rule under the APA (5 U.S.C. 553) or any other law the analytical provisions of the RFA do not apply.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) (PRA), no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule eliminates the disclosure requirements imposed by the 2024 Rule and covered by OMB control number 2105–0588 and restores certain disclosure requirements that had been

removed by the 2024 Rule. Accordingly, this final rule will require revisions to the information collection under OMB Control No. 2105–0588 and approval by OMB. The Department will seek approval from OMB for the changes to the collection of information established in this final rule. The Department will publish a separate notice in the *Federal Register* announcing OMB approval of the revised collection.

G. Unfunded Mandates Reform Act

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

H. National Environmental Policy Act

The Department has analyzed this final rule for the purposes of the National Environmental Policy Act of 1969 (NEPA). In accordance with 42 U.S.C. 4336 and DOT NEPA Order 5610.1D, Procedures for Considering Environmental Impacts, the Department has determined that this rule is categorically excluded.[17] Appendix A of DOT Order 5610.1D provides that "[a]ctions relating to consumer protection, including regulations" are categorically excluded. This rulemaking is not anticipated to result in any environmental impacts, and there are no unusual or extraordinary circumstances present in connection with this rulemaking.

List of Subjects

14 CFR Part 259

[17] *Available at* https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts.

Air carriers and foreign air carriers, Consumer Protection, Reporting and recordkeeping requirements

14 CFR Part 399

Administrative practice and procedure, Air carriers and foreign air carriers, Air rates and fares. Consumer Protection, Law enforcement, Small businesses

For the reasons stated in the preamble, DOT amends 14 CFR chapter II, subchapter A and F, as follows:

PART 259–ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS

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

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, 41708, 41712, 41727, 42301, and 42305.

2. Amend § 259.5 by:

a. Revising paragraphs (a), (b)(4), (13), and (14); and

b. Removing paragraph (b)(15).

The revisions read as follows:

§ 259.5 Customer Service Plan.

(a) *Adoption of Plan*. Each covered carrier must adopt a Customer Service Plan applicable to its scheduled flights as specified in paragraphs (b)(1) through (14) of this section and adhere to the plan's terms.

(b) * * *

(4) Allowing reservations to be held at the quoted fare without payment, or cancelled without penalty, for at least twenty-four hours after the reservation is made if the reservation is made one week or more prior to a flight's departure;

* * * * *

(13) Ensuring responsiveness to consumer problems as required by § 259.7 of this chapter; and

(14) Identifying the services it provides to mitigate passenger inconveniences resulting from flight cancellations and misconnections.

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PART 399–STATEMENTS OF GENERAL POLICY

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

Authority: 49 U.S.C. 40113(a), 41712, 46106, 46107, and 42305.

4. Amend § 399.80 by revising the introductory text and removing and reserving paragraph (o) to read as follows:

§ 399.80 Unfair and deceptive practices of ticket agents.

It is the policy of the Department to regard as an unfair or deceptive practice or unfair method of competition the practices enumerated in paragraphs (a) through (n) of this section by a ticket agent of any size and the practice enumerated in paragraph (s) of this section by a ticket agent that sells air transportation online and is not considered a small business under the Small Business Administration's size standards set forth in 13 CFR 121.201:

* * * * *

5. Revise and republish § 399.84 to read as follows:

§ 399.84 Price advertising and opt-out provisions.

(a) The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations) or tour component (*e.g.*, a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component. Though charges included within the single total price listed (*e.g.*, government taxes) may be stated separately or through links or "pop ups" on websites that display the total price, such charges may not be false

or misleading, may not be displayed prominently, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

(b) The Department considers any advertising by the entities listed in paragraph (a) of this section of an each-way airfare that is available only when purchased for round-trip travel to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless such airfare is advertised as "each way" and in such a manner so that the disclosure of the round-trip purchase requirement is clearly and conspicuously noted in the advertisement and is stated prominently and proximately to the each-way fare amount. The Department considers it to be an unfair and deceptive practice to advertise each-way fares contingent on a round-trip purchase requirement as "one-way" fares, even if accompanied by prominent and proximate disclosure of the round trip purchase requirement.

(c) When offering a ticket for purchase by a consumer, for passenger air transportation or for a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations) or tour component (*e.g.*, a hotel stay) that must be purchased with air transportation, a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, may not offer additional optional services in connection with air transportation, a tour, or tour component whereby the optional service is automatically added to the consumer's purchase if the consumer takes no other action, *i.e.*, if the consumer does not opt out. The consumer must affirmatively "opt in" (*i.e.*, agree) to such a service and the fee for it before that fee is added to the total price for the air transportation-related purchase. The Department considers the use of "opt-out" provisions to be an unfair and deceptive practice in violation of 49 U.S.C. 41712.

6. Revise and republish § 399.85 to read as follows:

§ 399.85 Notice of baggage fees and other fees.

(a) If a U.S. or foreign air carrier has a website accessible for ticket purchases by the general public in the U.S., the carrier must promptly and prominently disclose any increase in its

fee for carry-on or first and second checked bags and any change in the first and second checked bags or carry-on allowance for a passenger on the homepage of that website (*e.g.*, provide a link that says "changed bag rules" or similarly descriptive language and takes the consumer from the homepage directly to a pop-up or a place on another webpage that details the change in baggage allowance or fees and the effective dates of such changes). Such notice must remain on the homepage for at least three months after the change becomes effective.

(b) If a U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent has a website accessible for ticket purchases by the general public in the U.S., the carrier or 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. An agent may refer consumers to the airline websites where specific baggage fee information may be obtained or to its own site if it displays airlines' baggage fees.

(c) On all e-ticket confirmations for air transportation within, to or from the United States, including the summary page at the completion of an online purchase and a post-purchase email confirmation, a U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent that advertises or sells air transportation in the United States must include information regarding the passenger's free baggage allowance and the applicable fee for a carry-on bag and the first and second checked bag. Carriers must provide this information in text form in the e-ticket confirmation. Agents may provide this information in text form in the e-ticket confirmations or through a hyperlink to the specific location on airline websites or their own website where this information is displayed. The fee information provided for a carry-on bag and the first and second checked bag must be expressed as specific charges taking into account any factors (*e.g.*, frequent flyer status, early purchase, and so forth) that affect those charges.

(d) If a U.S. or foreign air carrier has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier must prominently disclose on its website

information on fees for all optional services that are available to a passenger purchasing air transportation. Such disclosure must be clear, with a conspicuous link from the carrier's homepage directly to a page or a place on a page where all such optional services and related fees are disclosed. For purposes of this section, the term "optional services" is defined as any service the airline provides, for a fee, beyond passenger air transportation. Such fees include, but are not limited to, charges for checked or carry-on baggage, advance seat selection, in-flight beverages, snacks and meals, pillows and blankets and seat upgrades. In general, fees for particular services may be expressed as a range; however, baggage fees must be expressed as specific charges taking into account any factors (*e.g.*, frequent flyer status, early purchase, and so forth) that affect those charges.

(e) For air transportation within, to or from the United States, a carrier marketing a flight under its identity that is operated by a different carrier, otherwise known as a code-share flight, must through its website disclose to consumers booked on a code-share flight any differences between its optional services and related fees and those of the carrier operating the flight. This disclosure may be made through a conspicuous notice of the existence of such differences on the marketing carrier's website or a conspicuous hyperlink taking the reader directly to the operating carrier's fee listing or to a page on the marketing carrier's website that lists the differences in policies among code-share partners.

(f) The Department considers the failure to give the appropriate notice described in paragraphs (a) through (e) of this section to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

6. Amend § 399.88 by revising paragraph (a) to read as follows:

§ 399.88 Prohibition on post-purchase price increase.

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

(*e.g.*, a hotel stay) that includes scheduled air transportation within, to or from the United States, to increase the price of that air transportation, tour or tour component to a consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, or an increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer.

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Signed in Washington, D.C.

Gregory Zerzan
General Counsel

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