

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****14 CFR Parts 259, 260, 399****[Docket No. DOT–OST–2022–0089]****RIN No. 2105–AF04****Airline Ticket Refunds and Consumer Protections**

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The U.S. Department of Transportation (Department or DOT) is proposing to codify its longstanding interpretation that it is an unfair business practice for a U.S. air carrier, a foreign air carrier, or a ticket agent to refuse to provide requested refunds to consumers when a carrier has cancelled or made a significant change to a scheduled flight to, from, or within the United States, and consumers found the alternative transportation offered by the carrier or the ticket agent to be unacceptable. The Department is also proposing to require that U.S. and foreign air carriers and ticket agents provide non-expiring travel vouchers or credits to consumers holding non-refundable tickets for scheduled flights to, from, or within the United States who are unable to travel as scheduled in certain circumstances related to a serious communicable disease. Furthermore, the Department is proposing to require U.S. and foreign air carriers and ticket agents provide refunds, in lieu of non-expiring travel vouchers or credits, if the carrier or ticket agent received significant financial assistance from the government as a result of a public health emergency. The NPRM proposes to allow carriers and ticket agents to require consumers provide evidence to support their assertion of entitlement to a travel voucher, credit, or refund.

DATES: Comments should be filed by November 21, 2022. Late-filed comments will be considered to the extent practicable. Petitions for a hearing pursuant to 14 CFR 399.75(b)(1) must also be filed by November 21, 2022.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2022–0089 by any of the following methods:

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

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

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2022–0089 or the Regulatory Identification Number (RIN 2105–AF04) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

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

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

FOR FURTHER INFORMATION CONTACT: Clereece Kroha or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342 (phone), clereece.kroha@dot.gov or blane.workie@dot.gov (email).

SUPPLEMENTARY INFORMATION:**I. Introduction***A. Purpose*

This NPRM is intended to ensure that travelers are treated fairly when airlines cancel flights to, from, or within the United States or make significant changes to the scheduled itineraries to, from, or within the United States that consumers purchased, which includes significant changes to the quality of the air travel specified in the itinerary. Currently, the Department’s regulations at 14 CFR part 259 require that airlines provide prompt refunds “when ticket refunds are due.” Further, the Department’s regulations at 14 CFR part 399 require that ticket agents “make proper refunds promptly when service cannot be performed as contracted.” This NPRM proposes to clarify that when carriers cancel flights or make

significant changes to flight itineraries and the contracted service was not provided, ticket refunds are due if consumers do not accept the alternative transportation offered by carriers or ticket agents. It also proposes to define “significant change of flight itinerary” and “cancelled flight” to protect consumers and ensure consistency among carriers and ticket agents with regard to when passengers are entitled to refunds.

This NPRM is also designed to ensure consumers are treated fairly by limiting their financial losses on forgone air travel when: (1) they are restricted or prohibited from traveling by a governmental entity due to a serious communicable disease (e.g., as a result of a stay at home order, entry restriction, or border closure); (2) are advised by a medical professional or determine consistent with public health guidance issued by the Centers for Disease Control and Prevention (CDC), comparable agencies in other countries, or the World Health Organization (WHO) not to travel during a public health emergency to protect themselves from a serious communicable disease; or (3) are advised by a medical professional or determine consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel, irrespective of any declaration of a public health emergency, because they have or may have contracted a serious communicable disease and their condition would pose a threat to the health of others. Under the Department’s current regulation, there is no requirement for an airline or a ticket agent to issue a refund or travel credit to a passenger holding a non-refundable ticket when the airline operated the flight and the passenger does not travel, regardless of the reason that the passenger does not travel. It is the Department’s goal to protect consumers’ financial interests when the disruptions to their travel plans were caused by public health concerns beyond their control. This financial protection would further incentivize individuals to postpone travel when they are advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have a serious communicable disease that would pose a threat to others.

*B. Statutory Authority**1. Unfair Practice*

DOT issues this NPRM pursuant to the authority set forth in 49 U.S.C. 41712. This provision authorizes the Department to take action to address

unfair or deceptive practices or unfair methods of competition by air carriers, foreign air carriers, or ticket agents. On December 7, 2020, the Department issued a final rule that, among other things, requires the Department to provide its reasoning for concluding that a certain practice is unfair or deceptive to consumers when issuing aviation consumer protection rulemakings that are not specifically required by statute and are based on the Department's general authority to prohibit unfair or deceptive practices under section 41712. That final rule also adopted definitions for the terms "unfair" and "deceptive."¹ This NPRM is based on the unfair component of 49 U.S.C. 41712. Under the Department's final rule implementing section 41712, a practice is "unfair" to consumers if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. Proof of intent is not necessary to establish unfairness.²

Pursuant to its authority under section 41712, the Department in this NPRM proposes to require that airlines and ticket agents provide prompt ticket refunds to consumers for flights cancelled or significantly changed by carriers. The Department also proposes to require, under its authority in section 41712, in concert with 49 U.S.C. 40101(a) and 41702, that carriers and ticket agents provide non-expiring travel credits or vouchers, and—under certain circumstances—refunds, to consumers who are restricted or prohibited from traveling by a governmental entity or are advised by a medical professional or determine consistent with public health guidance not to travel to protect themselves or others from a serious communicable disease. The Department's tentative basis for concluding that the practices this NPRM would prohibit are "unfair" is articulated in the paragraphs that follow.

An airline's or ticket agent's practice of not providing a prompt refund to a ticketed passenger when the carrier

cancels or significantly changes the passenger's flight and the passenger does not accept the alternative offered is "unfair" to consumers as it causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. Consumers are substantially harmed when they pay money for a service that the airline does not provide, and the airline or ticket agent refuses to provide a refund or unduly delays issuance of the refund. According to the Department's data, the average cost for a domestic one-way ticket was \$292 for calendar year 2020 and \$307 for 2021.³ The Department does not publish data on the average cost of international airline tickets. According to Sabre Global Demand Data, however, the average one-way fare between the United States and a foreign point is \$513 in 2020. It is not sufficient for carriers or ticket agents to only offer vouchers to passengers instead of the money paid for a service the airline did not provide. This is particularly true in certain situations, e.g., the consumer bought the airfare for a specific event and the cancelled flight or significantly changed flight itinerary prevents the consumer from attending or significantly impacts the consumer's ability to attend the event. Regardless of the reason, consumers may reasonably prefer and are entitled to refunds. The availability of a voucher does not sufficiently mitigate the substantial harm of failing to provide a prompt refund.

This harm is also not reasonably avoidable by consumers. Consumers are unable to avoid these injuries because cancellations or significant changes to their flights are outside of their control. An airline association has asserted that consumers who paid a lower fare for "non-refundable" flights could have avoided the harm by paying a higher fare for fully refundable tickets.⁴ In DOT's view, however, the term "non-refundable" does not apply in cases where the airline cancels the flight or makes a significant change in the service provided. A reasonable consumer would not expect that he or she must pay more to purchase a refundable ticket in order to be able to recoup the ticket price when the airline fails to provide the service paid for

through no action or fault of the consumer.

It is also the Department's view that the tangible and significant harm to consumers of not receiving a refund is not outweighed by countervailing benefits to consumers or competition. While the Department recognizes that a nonrefundable ticket allows consumers to pay a lower price for an airline ticket, the Department does not expect that this proposed requirement would result in airlines no longer offering a nonrefundable ticket category as the term nonrefundable has generally been understood not to apply in cases where the airline cancels the flight or makes a significant change in the service provided. Indeed, for decades, the Department's Office of Aviation Consumer Protection has made clear that it interpreted the prohibition against unfair practice to mean airlines cannot refuse to refund passengers holding non-refundable tickets when the carrier cancels or makes a significant change to a flight. This has not resulted in airlines no longer offering nonrefundable tickets to consumers.

Similarly, it is an "unfair practice" by an airline or a ticket agent to not provide non-expiring travel credits or vouchers, and—under certain circumstances—refunds, to consumers who are restricted or prohibited from traveling by a governmental entity due to a serious communicable disease (e.g., as a result of a stay at home order, entry restriction, or border closure) or are advised by a medical professional or determine consistent with public health guidance (e.g., CDC guidance) not to travel to protect themselves or others from a serious communicable disease. Consumers are substantially harmed when they pay money for a service that they are unable to use because they were directed or advised by governmental entities or medical professionals not to travel to protect themselves or others from a serious communicable disease, and the airline or ticket agent does not provide a non-expiring credit or voucher or a refund. This loss of the value of their tickets is a substantial harm that is not reasonably avoidable because the only way to avoid it is to disregard direction from governmental entities or medical professionals not to travel and risk inflicting serious health consequences on themselves or others. Consumers who decide to travel even if they are particularly vulnerable to contracting a serious communicable disease due to age or a health condition would be putting themselves at risk. Consumers who will lose the entire value of their tickets may choose to travel even when

¹ On February 2, 2022, the Department published a final rule title *Procedures in Regulating Unfair or Deceptive Practices*. See, 87 FR 5655. This final rule, among other things, simplifies the hearing procedures set forth in 14 CFR 399.79 when the Department proposes a discretionary aviation consumer protection rulemaking declaring a practice to be unfair or deceptive. The procedures finalized by this rule do not change the requirement that the Department articulate the basis for concluding that a practice is unfair or deceptive to consumers when issuing discretionary aviation consumer protection rulemakings under the authority of 49 U.S.C. 41712.

² See *Final Rule, Defining Unfair or Deceptive Practices*, 85 FR 78707, Dec. 7, 2020.

³ Bureau of Transportation Statistics, <https://www.transtats.bts.gov/AverageFare/>.

⁴ See, e.g., *Airline Ticket Refunds, Presentation by Airlines for America to the Advisory Committee for Aviation Consumer Protection (ACPAC)*, Dec. 2, 2021, <https://www.regulations.gov/document/DOT-OST-2018-0190-0030>.

they have been advised not to travel because they have or may have contracted a serious communicable disease, even though they would be risking harm to others to avoid financial loss. These types of actions by consumers are not in the public interest. The tangible and significant harm to consumers of losing the entire value of their ticket is not outweighed by potential countervailing benefits to consumers or competition. In response to restrictions and health concerns that limited consumers' ability to travel during the COVID-19 pandemic in 2020, many airlines recognized the unfairness of retaining consumers' money when the consumer did not utilize the airlines' service and provided vouchers when consumers did not travel. However, complaints received by the Department show that numerous consumers were unable to use these vouchers before they expired during the pandemic. Further, the Department is aware of that some airlines and ticket agents did not provide vouchers or refunds to consumers who were unable to travel. Requiring airlines and ticket agents to provide non-expiring travel credits/vouchers or refunds provides consumers the opportunity to postpone travel and still retain some portion of the value of their ticket when they are advised by a medical professional or determine consistent with public health guidance (e.g., CDC guidance) not to travel because they have or may have a serious communicable disease.

2. Safe and Adequate Air Transportation

49 U.S.C. 41702 states that an "air carrier shall provide safe and adequate interstate air transportation."⁵ The Department's predecessor, the Civil Aeronautics Board (CAB), relied on section 404(a) of the Federal Aviation Act of 1958 (subsequently codified as 49 U.S.C. 41702 in Pub. L. 103-272), requiring air carriers "to provide safe and adequate service, equipment and facilities," as authority to adopt its first regulation restricting smoking on air carrier flights.⁶ The Department relied on this same authority in issuing a 2016 final rule prohibiting the use of e-cigarettes aboard aircraft (81 FR 11415; Mar. 4, 2016). The Department explained in the 2016 final rule that the CAB found that "nonsmoking

passengers on aircraft may be assigned to a seat next to, or otherwise in close proximity to, persons who smoke and cannot escape this environment until the end of the flight." The Department noted that the CAB relied on its authority to provide for "adequate" service to address this issue in adopting the smoking ban. *Id.* at 11420-11421. With regard to e-cigarette use, the Department stated that, in addition to the direct effects of inhaling the aerosol from e-cigarettes, "passengers may reasonably be concerned that they are inhaling unknown quantities of harmful chemicals, and that they will not be able to avoid the exposure for the duration of the flight." *Id.* at 11421. In prohibiting the use of e-cigarettes, the Department relied on its authority to ensure adequate service under section 41702. *Id.*

Similar to its prior actions related to smoking and the use of e-cigarettes, the Department issues this NPRM pursuant to the authority provided in § 41702 to ensure safe and adequate service. The Department proposes to require U.S. carriers to provide non-expiring travel vouchers or credits, or in certain circumstances refunds, to consumers holding non-refundable tickets for scheduled flights within the United States in circumstances where consumers are restricted or prohibited from traveling by a governmental entity due to concerns about a serious communicable disease or are advised by a medical professional or determine consistent with public health guidance not to travel to protect themselves or others from a serious communicable disease. The Department finds that passenger concerns about being seated next to, or in close proximity to, a passenger who may have a serious communicable disease justify the Department's use of its authority to ensure adequate service under section 41702. In line with the statute, this proposed requirement would promote safe and adequate air transportation by reducing incentives for individuals who have been advised against traveling because they have or may have a serious communicable disease to travel in an attempt to retain some portion of the value of their ticket. This proposal would also allow consumers who are particularly vulnerable to a serious communicable disease to avoid having to choose between forfeiting the value of a ticket or attempting to travel in spite of their vulnerability by allowing them to receive a travel credit and postpone travel during a public health emergency.

Further, 49 U.S.C. 40101(a) directs the Department in carrying out aviation economic programs, including issuing

regulations under 49 U.S.C. 41702 and 41712, to consider certain enumerated factors as being in the public interest and consistent with public convenience and necessity. These factors include "the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices" and "preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation", as well as "assigning and maintaining safety as the highest priority in air commerce." Based on the forgoing discussion, the Department views this proposal as consistent with the statutory mandate of section 40101(a).

C. Unfair or Deceptive Practice Request for a Hearing

For the reasons discussed in Section I.B.1., the Department tentatively concludes that the practices it proposes to prohibit in this NPRM are unfair and deceptive. Specifically, pursuant to its authority under section 41712, the Department in this NPRM proposes to require that airlines and ticket agents provide prompt ticket refunds to consumers for flights cancelled or significantly changed by carriers if a consumer does not accept alternative transportation offered by carriers or ticket agents. The Department also proposes to require, under its authority in section 41712, in concert with 49 U.S.C. 40101(a) and 41702, that carriers and ticket agents provide non-expiring travel credits or vouchers, and—under certain circumstances—refunds, to consumers who are restricted or prohibited from traveling by a governmental entity or are advised against traveling to protect themselves or others from a serious communicable disease.

Pursuant to the Department's regulations at 14 CFR 399.75(b)(1), any interested party may file a petition to hold a hearing on the proposed rule prior to the close of the comment period. As stated in the **DATES** section, petitions must therefore be received by November 21, 2022.

The Department's regulations 14 CFR 399.75(b)(2) provide that the Department will grant a petition if the petitioner makes a clear and convincing showing that granting the petition is in the public interest. Factors considered in determining whether a petition is in the public interest include "(i) Whether the proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality

⁵ An "air carrier" is defined as "a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation." "Interstate air transportation" is defined as "the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft" within the United States. 49 U.S.C. 40102(a)(2) and (a)(25).

⁶ 38 FR 12207, May 10, 1973.

Act; (ii) Whether the ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; (iii) Whether the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; (iv) Whether the requested hearing would advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by this section; and (v) Whether the hearing would unreasonably delay completion of the rulemaking." DOT must also provide an explanation of the

basis for the decision on a petition. (14 CFR 399.75(b)(3)).

D. Summary of the Proposed Regulatory Provisions

The Department is proposing to enhance its aviation consumer protection requirements applicable to refunds by amending the Department's regulations in 14 CFR parts 259, 260 and 399. On July 21, 2021, the Department issued a Notice of Proposed Rulemaking titled "Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided." ⁷ That NPRM proposes, among other things, adopting

a new part under Subchapter A of Title 14 of the Code of Federal Regulations, 14 CFR part 260,⁸ which would address refund requirements related to fees for significantly delayed checked bags and fees for ancillary services that are paid for but not provided.⁹ In addition to the July 2021 NPRM, this proposed action—Airline Ticket Refunds and Consumer Protections—would substantially increase the protections provided to consumers by adding sections to the proposed part 260, amending part 259, and amending part 399 as provided in the summary table below.

Subject	Proposal
Refunding Airline Tickets	Amend 14 CFR parts 259, 260, and 399 to require U.S. and foreign airlines and ticket agents to provide prompt ticket refunds for "cancelled flights" or "significant changes of flight itinerary" when consumers do not accept alternative transportation.
Definition of Cancelled Flight	Amend 14 CFR parts 260 and 399 to define cancelled flight as a flight that was published in a carrier's Computer Reservation System (CRS) at the time of the ticket sale but was not operated by the carrier.
Definition of Significant Change of Flight Itinerary.	Amend 14 CFR parts 260 and 399 to define significant change of flight itinerary as a change made by a carrier where: (1) the passenger is scheduled to depart from the origination airport three hours or more (for domestic itineraries) or six hours or more (for international itineraries) earlier than the original scheduled departure time; (2) the passenger is scheduled to arrive at the destination airport three hours or more (for domestic itineraries) or six hours or more (for international itineraries) later than the original scheduled arrival time; (3) the passenger is scheduled to depart from a different origination airport or arrive at a different destination airport; (4) the passenger is scheduled to travel on an itinerary with more connection points than that of the original itinerary; (5) the passenger is downgraded to a lower class of service; or (6) the passenger is scheduled to travel on a different type of aircraft with a significant downgrade of the available amenities and travel experiences.
Notification of Right to Refund	Amend 14 CFR parts 259 and 399 to require U.S. and foreign airlines and ticket agents inform consumers that they are entitled to a refund if that is the case before making an offer for travel credits, vouchers, or other compensation in lieu of refunds.
Providing Non-Expiring Travel Credits or Vouchers.	Amend 14 CFR parts 259 and 399 to require U.S. and foreign airlines and ticket agents issue non-expiring travel credits or vouchers to: (1) consumers who are restricted or prohibited from traveling in relation to a serious communicable disease (<i>e.g.</i>, stay at home order, entry restriction, border closure), <i>irrespective of a public health emergency being declared</i>, by a governmental entity, whether it be a foreign government or Federal, State or local government; (2) consumers who are advised not to travel <i>during a public health emergency</i> by a medical professional or determine not to travel consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO to protect themselves from a serious communicable disease; and (3) consumers who are advised not to travel, <i>irrespective of a public health emergency being declared</i>, by a medical professional or determine not to travel consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO because they have or may have contracted a serious communicable disease and their condition would pose a threat to the health of others.
Providing Refunds if Receiving Significant Governmental Financial Assistance.	Amend 14 CFR part 260 and 399 to require U.S. and foreign airlines and ticket agents that receive significant governmental financial assistance <i>after the effective date of the final rule</i> in relation to a public health emergency to issue refunds, in lieu of non-expiring travel credits or vouchers, to:

⁷ 86 FR 38420.

⁸ On July 21, 2021, the Department issued a Notice of Proposed Rulemaking titled "Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided." See, 86 FR 38420. That NPRM proposes, among other things, adopting a new part under Subchapter A of Title 14 of the Code of Federal Regulations, 14 CFR part 260, which would address refund requirements related to fees for significantly delayed checked bags and fees for ancillary services that are not provided. The

Department believes that this new proposed rule would be an appropriate vehicle to add the proposed ticket refund requirements. As such, in this NPRM, we are proposing to add sections to the proposed part 260 that addresses ticket refund requirements. The Department will review comments already submitted on baggage fee and other ancillary fee refunds in that rulemaking. Comments on part 260 submitted in response to this rulemaking should solely focus on proposals related to ticket refunds with one exception. This exception

is the proposed regulatory text at 14 CFR 260.9, which would specify that a carrier's failure to ensure that its contract of carriage provisions is consistent with 14 CFR part 260 would be considered an unfair and deceptive practice.

⁹ DOT is not making changes to the proposals from the July 21, 2021 proposed rule in this NPRM. Accordingly, comments submitted in response to the 2021 NPRM regarding the refund requirements related to fees for significantly delayed checked bags and ancillary services need not be resubmitted.

Subject	Proposal
	(1) consumers who are restricted or prohibited from traveling in relation to a serious communicable disease (<i>e.g.</i>, stay at home order, entry restriction, border closure), <i>during a public health emergency</i>, by a governmental entity, whether it be a foreign government or Federal, State or local government; (2) consumers who are advised not to travel <i>during a public health emergency</i> by a medical professional or determine not to travel consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO to protect themselves from a serious communicable disease; and (3) consumers who are advised not to travel <i>during a public health emergency</i> by a medical professional or determine not to travel consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO because they have or may have contracted a serious communicable disease and their condition would pose a threat to the health of others. Eligible consumers must make a request for a refund from the carrier or ticket agent within 12 months of the date that the Department has made a determination that the carrier or the ticket agent received significant financial assistance.
Documentation	Amend 14 CFR parts 259 and 399 to allow U.S. and foreign airlines and ticket agents to require consumers requesting a refund or a non-expiring credit or voucher for a non-refundable ticket when the flight is still scheduled to be operated without significant change to provide, as appropriate: (1) the applicable government order or other document demonstrating how the passenger's ability to travel is restricted; and/or (2) a written statement from a licensed medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge and the passenger's health condition, that the passenger's health would be endangered if the passenger traveled or the passenger would pose a direct threat to the health of others if the passenger traveled.
Service and Processing Fees	Amend 14 CFR part 399 to allow ticket agents to retain a service fee for purchasing the ticket or processing a refund or a non-expiring credit or voucher, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare. Amend 14 CFR parts 259 and 260 to allow airlines to assess a fee for processing a refund or a non-expiring credit or voucher when the flight is still scheduled to be operated without significant change, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare.

II. Applicability

A. Airlines

(1) Covered Carrier

The proposed rule in 14 CFR parts 259 and 260 applies to a certificated or commuter air carrier¹⁰ that operates scheduled passenger service to, within, and from the United States using aircraft of any size, and to a foreign carrier that operates scheduled passenger service to or from the United States using aircraft of any size. The Department's existing regulation at 14 CFR 259.5 requiring carriers to adopt and adhere to a customer service plan, which includes a commitment to provide prompt ticket refunds to passengers when a refund is due, applies to all scheduled flights of a certificated or commuter air carrier if the carrier operates passenger service

¹⁰ A certificated air carrier is an air carrier holding a certificate issued under 49 U.S.C. 41102. A commuter air carrier is an air carrier as established by 14 CFR 298.3(b) that carries passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule, using small aircraft—*i.e.*, aircraft originally designed with the capacity for up to 60 passenger seats. See 14 CFR 298.2. Commuter air carriers, along with air taxi operators, operating under 14 CFR part 298 are exempted from the certification requirements of 49 U.S.C. 41102.

using any aircraft originally designed to have a passenger capacity of 30 or more seats, and to all scheduled flights to and from the United States of a foreign carrier if the carrier operates passenger service to and from the United States using any aircraft originally designed to have a passenger capacity of 30 or more seats.¹¹ As such, section 259.5 presently does not cover U.S. and foreign carriers operating scheduled flights to, from, or within the United States, as applicable, solely using aircraft originally designed to have a passenger capacity of fewer than 30 seats. The Department considered the burden on smaller carriers of adopting and adhering to a comprehensive customer service plan, which extends to all aspects of customer service, and ultimately determined that exempting smaller carriers that do not operate aircraft larger than 30 seats would protect the vast majority of passengers using scheduled service without unduly burdening smaller carriers.

In this NRPM, the Department is proposing to revise section 259.5(b)(5) by defining under what situations a ticket refund would be due and under

what situations passengers cancelling a non-refundable ticket should receive a travel credit or voucher. The proposal would require all U.S. and foreign carriers operating scheduled services to, from, or within the United States to comply with the refund requirement when carriers cancel or make a significant change to a flight itinerary, and to provide non-expiring travel credits or vouchers, or in certain circumstances refunds, when a passenger is unable or advised not to travel due to a concern related to a serious communicable disease, regardless of the size of the aircraft they operate. Carriers that are otherwise not currently covered under section 295.5 to provide refunds when due because they operate only small aircraft would be required, under this proposal, to comply with the specific requirements on refunding and providing vouchers and credits.

The Department has tentatively made the policy decision to include these smaller carriers in the refund and voucher issuance requirements as specified in section 259.5 for the following reasons. With respect to refund, these carriers are already covered in the Department's credit card

¹¹ 14 CFR 259.2, 259.3, and 259.5(a).

purchase refund regulation, 14 CFR part 374. The Department's proposal merely clarifies under what situations a refund is due and does not impose additional requirements on carriers. With respect to communicable disease related travel voucher, credit, and refund issuance, this proposal would impose new requirements on carriers, including these smaller carriers. The Department has determined that placing this burden on smaller carriers is appropriate because the financial harm and the serious potential health risks this proposal is intended to address and prevent affect consumers traveling on all airlines. The Department believes that the expansion of the applicability of this proposed regulation is particularly meaningful to many consumers traveling on smaller carriers who are from economically disadvantaged small communities. The Department seeks public comments on whether the proposed expansion of the regulation to include smaller carriers is reasonable, and what obstacles, if any, these smaller carriers may encounter to comply.

(2) Covered Flights and Consumers Protected

The current refund requirement in part 259 applies to all scheduled flights of a covered U.S. carrier and all scheduled flights to and from the U.S. of a covered foreign carrier. While proposing to expand the scope of covered carriers for the refund and travel credit issuance requirements, DOT does not propose to expand the scope of covered flights or consumers protected. Nonetheless, the Department is interested in exploring whether clarification regarding the scope of the covered flights and consumers protected is appropriate. Any examination of the applicability of DOT's refund requirement for aviation consumers would not be complete without looking at Regulation Z, as codified in 12 CFR part 226 and 12 CFR part 1026,¹² and the airline refund regulation in 14 CFR part 374, which implements the requirement of Regulation Z with respect to airlines. The applicability provision in 14 CFR 374 states that "this part is applicable to all air carriers and foreign air carriers engaging in consumer credit transactions."¹³ In Supplement I to parts 226 and 1026, the issue of foreign applicability is addressed by explaining that "Regulation Z applies to all persons

(including branches of foreign banks and sellers located in the United States) that extend consumer credit to residents (including resident aliens) of any state. . . ." and that "[i]f an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation."¹⁴ The Department's authority to prohibit unfair or deceptive practices in air transportation or sale of air transportation¹⁵ means that the Department's aviation consumer protection regulations, including the refund regulations in 14 CFR parts 259 and 374, cover flights to, within, and from the United States, irrespective of whether the consumer on those flights is or is not a resident of the United States. While Regulation Z focuses on whether consumers reside in the United States and whether the sellers (airlines or ticket agents) have a branch located in the United States that sells to consumers in the United States,¹⁶ the Department's airline refund regulations have focused on whether the flight subject to the refund request is a flight to, from, or within the United States, irrespective of whether the consumer requesting a refund is a resident of the United States. The Department seeks comments on whether the scope of the refund requirement under parts 259, 260, and 399 should be amended to make clear, consistent with the Department's statutory authority under 49 U.S.C. 41712, that the consumers' place of residence is irrelevant to whether the consumer is entitled to a refund. The Department also seeks comment on whether the Department, as a matter of policy, should limit the applicability of the refund requirement to U.S. consumers (U.S. citizens and residents) on covered flights. Commenters should articulate the reason for their position regarding expansion or limitation, with a focus on whether such a provision would better protect U.S. consumers while not overly burdening airlines with matters that do not significantly impact U.S. consumers.

The Department is also interested in comments regarding whether a limited expansion of the applicability is appropriate to cover certain flight segments between two foreign points. For example, should the Department's

refund requirements in parts 259 and 260 cover segments between two foreign points marketed and operated by a foreign carrier as a part of an international itinerary to or from the United States? Should these proposed requirements only cover the foreign segment if it is marketed as a code-share flight under a U.S. carrier's code? For example, for a passenger traveling between New Delhi and New York via London, should the refund rule cover the cancellation or significant change of the New Delhi-London segment if both New Delhi-London and London-New York segments are sold on the same ticket under a U.S. carrier's code? Should the rule cover an interline itinerary on the same ticket but the New Delhi-London segment is under a foreign carrier's code and the London-New York segment is under a U.S. carrier's code?

This proposed rulemaking, similar to the existing regulation in 14 CFR 259.5 on refunds, would cover only scheduled flights. Public charter passengers oftentimes also face flight cancellations, itinerary changes, and travel plan interruptions related to communicable diseases. The Department's regulation on public charter operations, 14 CFR part 380, has specific consumer protection requirements regarding flight cancellations by a public charter operator¹⁷ or by a direct air carrier¹⁸ and under what conditions a public charter participant (passenger) would be entitled to a refund,¹⁹ including the right to a refund due to a "major change"²⁰ made by the public charter operator as defined in 14 CFR 380.33. Furthermore, the public charter regulation provides that a passenger would receive a full refund (less any applicable administrative fee of no more than \$25) if the passenger wishes to cancel the booking, as long as that passenger provides a substitute passenger in his or her place.²¹ This requirement would potentially address the situation where the charter flight is operated but a passenger is unable or

¹⁷ See, e.g., a public charter operator may not cancel the charter less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip, 14 CFR 380.32(h).

¹⁸ See, 14 CFR 380.43, a direct air carrier may not cancel any charter less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip.

¹⁹ See, e.g., If a charter is cancelled, a refund will be made to the participant within 14 days after the cancellation, 14 CFR 380.32(k); any participant will receive a full refund less an administrative fee upon providing a substitute participant within 14 days, 14 CFR 380.32(m)(2) and 380.32(n).

²⁰ 14 CFR 380.32(r).

²¹ 14 CFR 380.32(m)(2).

¹² The Department's refund regulation in 14 CFR part 374 refers to both 12 CFR part 1026 and Regulation Z of the Board of Governors of the Federal Reserve, which is in 12 CFR part 226. See 14 CFR 374.3(b).

¹³ 14 CFR 374.2.

¹⁴ See, 12 CFR Appendix Supplement I to Part 226—Official Interpretations. See also 12 CFR Appendix Supplement I to Part 1026—Official Staff Interpretations.

¹⁵ Air transportation means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft. See 49 U.S.C. 40102 (a)(5).

¹⁶ The Department would consider an airline that has a website that markets to U.S. consumers to be a branch located in the United States.

unwilling to travel because of a concern related to a serious communicable disease. It is the Department's view that the regulatory framework protecting public charter passengers in the event of charter operator-initiated cancellation or changes or passenger-initiated changes due to a concern regarding communicable disease has been in place for many decades, which has been adequately addressing issues unique to public charter operations. The Department does not propose to amend the separate requirements regarding passenger refunds applicable to public charter operations.

B. Ticket Agents

The proposed rule, similar to the existing rule on refunds in 14 CFR 399.80(l), applies to ticket agents of any size. A "ticket agent" is defined in 49 U.S.C. 40102(a)(45) to mean a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation. "Air transportation" is also a defined term by statute, which essentially encompasses flights to, from, or within the United States.²² In this NPRM, the Department proposes that the refund and travel voucher or credit issuance requirements apply to retail ticket agents selling tickets directly to consumers for scheduled passenger service to, from, or within the United States. The Department is limiting the proposed applicability to scheduled service as it believes that there are other adequate consumer protection mechanisms already in place to protect consumers who purchase public charter air transportation (14 CFR part 380) and single entity charter air transportation (14 CFR part 295) from ticket agents. Similar to the scope of covered flights and protected consumers for airline refunds, the Department is interested to know whether it is adequate to require ticket agents to provide refunds and travel credits or vouchers, as appropriate, for flights to, from, or within the United States regardless of whether the seller has a location in the U.S. through which the transaction occurred and regardless of whether the consumer is a U.S. resident, or whether the Department should focus on refund requests for U.S. based transactions by U.S. residents. The Department also seeks comments on whether the rule should cover tickets for flights to,

within, or from the United States sold by a ticket agent from a foreign location, and to what extent regulating such transactions would benefit U.S. consumers.

III. Refunding Airfare for Cancelled or Significantly Changed Flights

A. Background

The Department has the authority to prohibit unfair or deceptive practices by airlines and ticket agents in air transportation or the sale of air transportation under 49 U.S.C. 41712. For well over 20 years, the Department's Office of Aviation Consumer Protection has informed airlines operating flights to, within, and from the United States that a refusal to refund passengers when an airline cancels or significantly changes a flight and passengers do not accept alternative transportation would be an unfair business practice in violation of section 41712, regardless of whether the passenger has purchased a non-refundable ticket. In a letter to U.S. carriers issued in 1996, the Office of Aviation Enforcement and Proceedings (now the Office of Aviation Consumer Protection) reminded carriers that a refusal to refund or an application of penalties to non-refundable tickets would be considered grossly unfair and a violation of section 41712 in situations where the change of flight time or travel date was necessitated by carrier action or "an act of god", e.g., where the carrier cancels a flight for weather or mechanical reasons. The letter also explained that any contract of carriage or tariff provision mandating such a result would also be grossly unfair and a violation of section 41712.²³

The Office of Aviation Consumer Protection's longstanding view that it is an unfair practice in violation of section 41712 for airlines to refuse refunds or impose monetary penalties on passengers holding nonrefundable tickets when the carrier cancels a flight or makes a significant change to a flight itinerary remained the same even when air travel was disrupted on a large scale. For example, following the aftermath of the terrorist attacks on September 11, 2001, the Department's Office of Aviation Consumer Protection issued a letter²⁴ to major U.S. airlines and U.S., international, and regional airline associations, reminding them of airlines' responsibility to provide refunds upon request to passengers who wish to

cancel their trip as a result of a flight cancellation or significant schedule change made by the carriers. Recognizing the dramatic impact of the terrorist attacks on airline personnel and schedules, the deluge of refund requests that airlines received, and the added time needed to process them, the Office of Aviation Consumer Protection nonetheless stated that it expected carriers to dedicate the appropriate resources necessary to process refunds in a timely manner.

The Department reiterated this interpretation of 49 U.S.C. 41712 in a 2011 final rule. The Department's aviation consumer protection regulation in 14 CFR 259.5(b)(5), adopted in 2011, requires covered U.S. and foreign air carriers to adopt and adhere to a customer service plan, which must include, among other things, a commitment that carriers will provide prompt refunds to consumers when ticket refunds are due. Although the rule text does not specify under what situations a ticket refund would be due, in the preamble of the 2011 final rule implementing this requirement, the Department discussed extensively circumstances under which a refund, including a refund of non-refundable tickets, should be provided. These circumstances include flight cancellations or significant flight delays where consumers choose to not travel because of these disruptions. The Department stated:

We reject some carriers' and carrier associations' assertions that carriers are not required to refund a passenger's fare when a flight is cancelled if the carrier can accommodate the passenger with other transportation options after the cancellation. We find it to be manifestly unfair for a carrier to fail to provide the transportation contracted for and then to refuse to provide a refund if the passenger finds the offered rerouting unacceptable (e.g., greatly delayed or otherwise inconvenient) and he or she no longer wishes to travel. Since at least the time of an Industry Letter of July 15, 1996 . . . , the Department's Aviation Enforcement Office has advised carriers that refusing to refund a non-refundable fare when a flight is [cancelled] and the passenger wishes to cancel is a violation of 49 U.S.C. 41712 (unfair or deceptive practices) and would subject a carrier to enforcement action.²⁵

In the 2011 final rule, the Department also stated that while the Department views it as manifestly unfair for carriers

²³ See, *Industry Letter to U.S. Air Carriers*, July 15, 1996, https://www.transportation.gov/sites/dot.gov/files/docs/19960715_2.pdf.

²⁴ See, *Email to Major Airlines and Aviation Associations*, September 25, 2001, https://www.transportation.gov/sites/dot.gov/files/docs/20010925_0.pdf.

²⁵ See, *Final Rule, Enhancing Airline Passenger Protections*, 76 FR 23110, at 23129, April 25, 2011. *see also id.* (the Office "continue[s] to believe that there are circumstances in which passengers would be due a refund, including a refund of non-refundable tickets and optional fees associated with those tickets, due to a significant flight delay").

²² 49 U.S.C. 40102(a)(5). "Air transportation" means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

to refuse to provide prompt refunds when consumers choose to not travel and to not accept alternative transportation following a cancelled or significantly delayed flight, the Department was persuaded by industry commenters that it should not adopt a strict standard of what constitutes a significant delay for the purpose of determining whether a refund of the airfare is due. In deciding not to adopt a strict standard, the Department explained that the definition of a significant delay depends on a wide variety of factors such as the length of the delay, length of the flight, and the passenger's circumstances. The Department declared that its Office of Aviation Consumer Protection would continue to monitor how carriers apply their non-refundability provision in the event of a significant change in scheduled departure or arrival time and would determine based on the facts and circumstances of the delay whether a failure to provide a refund in response to such a delay is an unfair and deceptive practice.

More recently, in April and May 2020, the Office of Aviation Consumer Protection issued two notices reminding airlines and ticket agents that their obligation to refund passengers for cancelled or significantly changed flights remains unchanged even given the impact of the COVID-19 pandemic.²⁶ The May 2020 notice also acknowledged that neither the term "significant change" nor "cancellation" is defined in regulation or statute. It noted that, based on the Office of Aviation Consumer Protection's review of the refund policies and practices of U.S. and foreign air carriers, airlines define "significant change" and "cancellation" differently when fulfilling their obligation to provide refunds. Because "cancellation" and "significant change" are not defined in the context of ticket refunds, the Office of Aviation Consumer Protection stated that airlines may develop reasonable interpretations of those terms.

Similar to the refund requirement on airlines in section 259.5, the Department's aviation consumer protection regulation requires ticket

agents to provide prompt refunds when the services paid for by consumers cannot be provided as contracted. Specifically, 14 CFR 399.80(l) declares it an unfair or deceptive practice by a ticket agent of any size to fail or refuse to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale. This provision, originally adopted by the Civil Aeronautics Board, has not been amended since at least 1960s. The regulation in section 399.80(l) also does not specify what situations would constitute "service [that] cannot be performed as contracted," which would impose refund obligations on ticket agents.

With respect to the timeliness of a refund when it is due, carriers and ticket agents are subject to the credit refund requirements of Regulation Z as discussed earlier. The Department's regulation, 14 CFR part 374, implements Regulation Z with respect to airlines. These regulations establish that, with respect to refund requests involving airline tickets purchased with a credit card, the airline must transmit a credit statement for a passenger refund to the credit card issuer within seven business days of receipt of full documentation for the refund requested. Further, the Department's regulation in 14 CFR part 259 requires airlines to provide refunds involving airline tickets purchased with cash or check within 20 days after receiving a complete refund request.

These time frames for refunding consumers have been challenging for airlines and ticket agents when air travel was disrupted in a large scale. For example, in the early months of the COVID-19 pandemic, airlines responded to travel restrictions imposed by various governments and the rapidly reduced consumer demand by cancelling significant amounts of flights and making drastic adjustments to the schedules of the flights that were still operating. These cancellations and schedule changes by airlines, in conjunction with cancellation requests by many consumers who had already booked travel but decided that they no longer wished to travel during a pandemic, led to an unprecedented number of refund requests, which airlines had difficulty processing in a

timely manner. In addition, many airlines were facing cashflow difficulties, which resulted in them initially being reluctant to process refund requests. Similar to the airlines' situation, ticket agents also faced a drastic increase in refund requests from consumers. In addition to facing the similar cashflow difficulties arising from the large numbers of refund requests, ticket agents' cashflow situation may have been more challenging because they were not the ultimate recipients of the consumer funds originally used to purchase the ticket. Consumers complained that many ticket agents only offered travel credits or simply passed the requests on to airlines, failing to provide a refund.

Since March 2020 when the COVID-19 public health emergency was declared in the United States, the Department's Office of Aviation Consumer Protection has received a significant number of consumer complaints regarding airlines and ticket agents refusing to provide a refund or delaying processing of refunds when their flights were cancelled or significantly changed due to the impact of the public health emergency.²⁷ Consumers, many holding non-refundable tickets, allege that after flight cancellations or changes that affected their travel were made by airlines, instead of providing refunds, they were offered travel vouchers or credits for future use. Consumers often mention the financial difficulties they are already suffering from the effect of the pandemic, which are exacerbated by the inability to receive timely refunds of their airfares. In addition, consumers assert that the airline vouchers or credits are not useful to them due to the lack of available flights or their inability or unwillingness to travel overall because of government restrictions and health concerns.

Despite the Office of Aviation Consumer Protection's efforts to ensure airlines' and ticket agents' compliance with their refund obligations, the significant delays in providing refunds led the Office of Aviation Consumer Protection to pursue enforcement action

²⁶ See "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel" (May 12, 2020) ("May 12, 2020 Enforcement Notice"), available at https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020; "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel" (April 3, 2020) ("April 3, 2020 Enforcement Notice"), available at https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020.

²⁷ See, *Report to the White House Competition Council: U.S. Department of Transportation's Investigatory, Enforcement and Other Activities Addressing Lack of Timely Airline Ticket Refunds Associated With the COVID-19 Pandemic*, September 9, 2021, <https://www.transportation.gov/individuals/aviation-consumer-protection/dot-report-airline-ticket-refunds>. From January 1, 2020 to June 30, 2021, the Department received a total of 105,327 complaints concerning refunds. In comparison, from July 1, 2018 to December 31, 2019, the Department received a total of 2,264 complaints concerning refunds. This change represents an increase of 4,552%.

in appropriate instances. The Department's existing regulations pertaining to refunds have exacerbated this challenge and made it more difficult to monitor compliance and enforce requirements. This is because the existing refund requirement provides that airlines have an obligation to provide prompt refunds when refunds are due, but the Department's longstanding position on refunding airfare due to cancellations and significant delays is not codified in rule text. Also, the terms "cancelled flight" and "significant change of flight itinerary" are not defined in regulation, which has resulted in inconsistency among carriers on when passengers are entitled to refunds.

The Aviation Consumer Protection Advisory Committee (ACPAC) has also considered the issue of refund requirements applicable to airlines and ticket agents.²⁸ In a December 2, 2021 public meeting, the ACPAC examined the Department's current airline ticket refund regulations and enforcement activities, and received presentations from representatives of the airline industry, consumer rights advocacy groups, State consumer protection agencies, and ticket agents.²⁹ Focusing on the massive airline cancellations and changes during the COVID-19 pandemic, consumer rights advocates shared the frustration many consumers felt regarding not receiving timely refunds after airlines cancelled or made significant changes to their flights. They also expressed concern about airline internal policies that are not transparent or consistent in how delays and cancellations are defined and how lack of clarity or consistency affected passengers' refund eligibility. Airline representatives described the challenges airlines faced handling the massive volume of refund requests during the COVID-19 pandemic. They expressed support for the Department's effort to codify its longstanding policy regarding refunds but emphasized the long history of airlines' compliance with the existing regulation and advocated against prescriptive regulations establishing a hard time limit for significant changes that trigger a refund. Representatives of ticket agents expressed understanding of consumer frustration when requesting

refunds through ticket agents but emphasized the ticket agents' role in acting as intermediaries between consumers and airlines in the process. They opined that in most refund cases ticket agents have no role in determining refund eligibility nor are they the appropriate source of refund issuance. Ticket agent representatives stated that they support the Department's effort to clarify "significant change" that triggers a refund requirement.

This NPRM proposes to clarify that airlines and ticket agents have an obligation to promptly refund consumers' airfares when airlines cancel or significantly change flight schedules or the quality of their services by including such language in the rule text. This rulemaking would also ensure the consistency of consumer protections and industry compliance across the board by defining the terms "significant change of flight itinerary" and "cancelled flight." The Department has reconsidered the rationale it stated in the 2011 final rule for not adopting a stricter standard that defines a "significant change," and believes that the benefit of maintaining a performance-based standard, namely, the flexibility for airlines to determine the type of flight schedule changes that warrants a refund, does not justify the negative impact of such a standard on consumers. Indeed, the airline industry's and ticket agents' overall reactions to refund requests during the initial period of the COVID-19 pandemic, including refusal to issue refunds for cancelled or significantly changed flights and retroactively revising refund policies to apply more stringent criteria for refund eligibility, have shown that it is difficult and at times impossible to enforce the current standard by monitoring how carriers apply their non-refundability provisions in the event of a significant change and determining, on a case by case basis, whether a failure to provide a refund in response to such an itinerary change is an unfair or deceptive practice.

B. Proposals

In this NPRM, the Department is proposing to specifically require airlines and ticket agents to promptly refund airline ticket purchase prices if a passenger's flight itinerary is cancelled or significantly changed by an airline. We further propose to define "cancelled flight" and "significant change of a flight itinerary" that would result in a consumer being entitled to a refund. In the Department's view, by holding out in its Computer Reservation System (CRS) to the public a flight itinerary

with specific characteristics, including origin and destination airport, scheduled departure and arrival dates and times, and other features material to a consumer, the carrier is making an offer of a specific service. The consumer, having accepted that specific offer by purchasing a ticket for a specific flight itinerary, is acting reasonably in expecting to be provided the service that was purchased. Thus, the carrier would be obliged to provide the flight as promised or provide a refund if unable to provide that specific flight and the consumer finds the alternative transportation offered by the carrier to be unacceptable. The carrier's failure to do so would be an unfair practice. Similarly, a ticket agent selling a ticket for the flight listed by the carrier is offering a specific service and is similarly engaging in an unfair practice if it does not provide a refund or assist the consumer in obtaining a refund from the carrier. This is because the harm to consumers is substantial and unavoidable when they do not receive the air transportation service that they purchased and, as discussed above, no countervailing benefit that outweighs the harm has been provided.

(1) Defining "Cancelled Flight"

Although the Department interprets its aviation consumer protection regulation to require airlines and ticket agents to issue a refund for flights that are cancelled by airlines, the regulation does not define "cancelled flight" for the purpose of issuing a ticket refund.³⁰ The Department proposes to define a cancelled flight to mean a covered flight that was listed in the carrier's CRS at the time the ticket was sold to a consumer but was not operated by the carrier. Under this proposed definition, the reason that the flight was not operated (*e.g.*, mechanical, weather, air traffic control) would not matter. Also, the removal of a flight from a carrier's CRS after a consumer has purchased a ticket on that flight would not negate the obligation to provide a refund. For example, a flight would be considered a "cancelled flight" for the purpose of ticket refunds even if it was removed from the carrier's CRS six months before the passenger's scheduled departure, if the passenger had purchased the flight eight months prior to the scheduled departure.

³⁰ For reporting purposes, a cancelled flight is defined as "a flight operation that was not operated but was listed in a carrier's computer reservation system within seven calendar days of the scheduled departure." See 14 CFR 234.2.

²⁸ The ACPAC is a statutorily required committee most recently extended to 2023 by the FAA Reauthorization Act of 2018. The ACPAC evaluates current aviation consumer protection programs. It also provides recommendations to the Secretary for improving and establishing additional consumer protection programs that may be needed.

²⁹ See, Advisory Committee for Aviation Consumer Protection (ACACP) Docket: <https://www.regulations.gov/docket/DOT-OST-2018-0190>.

(2) Defining “Significant Change of Flight Itinerary”

The NPRM proposes to require that airlines and ticket agents provide prompt refunds when an airline makes a “significant change of flight itinerary” and the passenger does not accept the alternative transportation offered and requests a refund. This proposal would cover any significant changes made by a carrier after the consumer purchased the ticket, including significant changes to an alternative flight accepted by the passenger after the initial flight was cancelled. In proposing a definition of a significant change of flight itinerary, the Department focused on what change, from a consumer’s perspective, would materially alter the value of the airline ticket as compared to the original ticket. Based on this principle, the Department has tentatively determined that, at a minimum, changes that affect departure and/or arrival times, departure or arrival airport, a change in the type of aircraft that causes a significant downgrade in the air travel experience or amenities available onboard the flight, as well as the number of connections in the itinerary, would be significant to consumers. As such, the NPRM proposes to define a “significant change of flight itinerary” as a change to a flight itinerary made by a marketing or operating carrier that involves one of the following:

- A revised departure time that is scheduled to depart from the passenger’s origination airport three hours or more earlier than the original scheduled departure time for a domestic flight itinerary, and six hours or more earlier for an international flight itinerary, regardless of the final arrival time;
- A revised arrival time that is scheduled to arrive at the passenger’s final destination three hours or more later than the original scheduled arrival time for a domestic flight itinerary, and six hours or more later for an international flight itinerary, regardless of the initial departure time;
- A change in the original departing airport or the final arrival airport;
- An increase in the number of connecting points;
- A downgrade of the class of service; or
- A change in the type of aircraft that causes a significant downgrade of the available amenities and travel experience.

The Department seeks general comments regarding whether this approach is reasonable and fair to passengers while not imposing undue burden on carriers and ticket agents.

The Department further seeks suggestions on any other changes to flight itineraries that airlines may make that should also be considered a “significant change of flight itinerary.” The Department also seeks comments on whether there are any operational concerns from airlines and ticket agents when implementing these proposed definitions into their refund policies that should be taken into consideration.

i. Early Departure and Late Arrival

When booking an air travel itinerary, aside from cost, the departure and arrival times are two of the major considerations for most passengers. Consequentially, a major change in the departure or arrival time is likely to cause significant disruptions to the passenger’s travel and planned activities before and after the air travel. To define the extent of early departure or delayed arrival that should be considered as “significant changes,” the Department considered three options.

The first option, which we are proposing in this NPRM, is a set timeline of three hours applicable to domestic itineraries and another set timeline of six hours applicable to international itineraries that would constitute a significant departure and arrival change. Under the NPRM, airlines and ticket agents would be free to apply a shorter time period to constitute a significant departure or arrival change but would not be able to increase it beyond three hours for domestic flights and six hours for international flights. The Department considers this approach to be the most straightforward, clearly defined standard that would be easily understood by airlines and consumers. A bright line standard such as this would also make it easier for carriers and ticket agents to train personnel on how to respond to refund requests and would streamline and possibly expedite the refund review and issuance process. The Department proposes different timeframes for domestic itineraries and international itineraries, recognizing that many international itineraries involve long-haul flights for which carriers should be afforded more leeway before a change of departure or arrival time becomes grounds for a refund. However, the Department also recognizes that the proposed standard would allow international flights with shorter flight durations (*e.g.*, flights between Miami and Nassau) a much longer window of early departure or late arrival before a refund becomes due than some domestic flights with longer durations (*e.g.*, flights between New York and Honolulu). The Department

seeks comments on whether, despite these variations, the standards drawn between domestic and international itineraries are reasonable for most refund requests and, if not, how the standards should be revised.

In applying the proposed standard to a refund request, airlines and ticket agents would consider the departure time of the first flight segment and the final arrival time of the last flight segment to determine whether a refund is due. In other words, an early departure of a connecting flight or a late arrival of a flight that is not the final flight, even exceeding the proposed timeframe, may not necessarily result in a passenger being entitled to a refund. For example, in a situation where a passenger is traveling from New York to Los Angeles via Denver, with a layover of 5 hours at Denver, if the passenger’s first flight from New York to Denver was delayed and it resulted in an arrival delay of 3.5 hours into Denver, but the passenger was able to catch the flight from Denver to Los Angeles and experienced no delay in arriving at the final destination, there is no requirement for a refund despite the 3.5-hour arrival delay into Denver. Conversely, in the same example, if the passenger’s flight from New York to Denver operated on time but the flight from Denver to Los Angeles has a change that results in a departure time of 3.5 hours earlier, and the passenger was able to catch that flight and arrived in Los Angeles in time, that 3.5 hour early departure in Denver would not be a “significant change of flight itinerary” for the purpose of receiving a refund.

Another issue the Department wishes to clarify in application of the proposed standard is that the international standard of 6 hours would apply to the initial flight segment’s departure and final flight segment’s arrival even if that flight segment is a domestic flight, as long as the domestic segment is on the same ticket as the international segment(s). To illustrate this, assume a passenger is traveling from Chicago to London with Boston as the connecting point, and all flight segments are on the same ticket. Under the proposal, if the departure time of the flight from Chicago to Boston is changed to an earlier time, the early departure must exceed six hours for the passenger to be eligible for a refund. On the reverse route, when the passenger is traveling from London, stopping at Boston and then continuing to Chicago, the late arrival of the flight from Boston to Chicago must exceed six hours before the passenger would be eligible for a refund. This would not be the case if the two flight segments are on separate

tickets, and in that situation, each ticket would be treated as a separate itinerary, one domestic and one international. The Department welcomes comments on applying this proposed standard, particularly any operational challenges that could occur.

The second option the Department considered is the option of not defining the timeframes of early departure and late arrival. Under this approach, the Department would continue to use the word “significant” to describe the amount of time lapse that would justify a refund. The Department recognizes that the level of disruption and inconvenience to passengers caused by early departure or late arrival may differ depending on many factors, including each affected passenger’s individual situations. However, determining refund eligibility based on these individualized factors is not the most efficient way to address refund issues. The Department is focused on striking a balance between considering all relevant factors on the one hand, and ensuring the efficiency, consistency, and certainty of its

regulation on the other hand. In that regard, although this second option retains all the flexibility the current regulation affords the industry, the Department has concerns that this option of leaving the determination of refund-qualifying flight schedule time changes to individual airlines is not the best way to achieve this balance and may not be in the public interest. Complaints submitted to the Department’s Office of Aviation Consumer Protection show that under the current regulation, airlines’ policies differ in the amount of schedule time change required for a passenger to qualify for a refund. This causes consumer confusion and creates challenges for the Department in enforcing its consumer protection regulation. The Department seeks comments on whether continuing to provide airlines the flexibility to define significant change is a better option than the proposed approach (option 1) of defining a significant departure or arrival change to mean beyond three hours for domestic flights and six hours

for international flights. Which option would better ensure consumers are treated fairly? Proponents of this approach are invited to articulate how to improve consistency across the industry when applying this standard to reduce compliance cost and consumer confusion.

A third approach considered by the Department is to define significant departure and arrival through adoption of a tiered structure based on objective factors that would be most likely to impact the level of consumer inconvenience and harm caused by the flight itinerary time change. For illustration purposes only, below is an example of a tiered standard based on the factor of total travel time as originally scheduled. As the original travel time (including total flight duration and layover time) is an objective pre-determined factor, the presumption is that the longer the original scheduled total travel time is, the more tolerant a consumer is to an itinerary change involving early departure or late arrival.

Original scheduled total travel time (measured from the schedule departure time of the first flight segment to the scheduled arrival time of the last flight segment)	Projected arrival delay or early departure as offered to passenger	Result
3 hours or less	2 hours or less	Refund Not Required.
	More than 2 hours	Refund Due.
3–6 hours	3 hours or less	Refund Not Required.
	More than 3 hours	Refund Due.
6–10 hours	4 hours or less	Refund Not Required.
	More than 4 hours	Refund Due.
More than 10 hours	5 hours or less	Refund Not Required.
	More than 5 hours	Refund Due.

An obvious negative aspect of this very specific standard is that it is more difficult for carriers to implement and for consumers to understand. This table also does not distinguish single-segment flight itineraries from multi-segment flight itineraries with connections. For itineraries with multiple segments, when factoring in the layover time, should the layover time be weighed the same as the actual flight duration time? For example, for refund purposes, should a multi-segment itinerary with a total travel time of 9 hours (6-hour total flight duration time and 3-hour layover time) be treated the same as a single-segment itinerary with a total travel time/flight duration of 9 hours? From the industry perspective, is adopting this type of tiered standard practical? What are the obstacles to implementing this? From the consumer perspective, does this type of tiered standard better reflect the inconvenience and disruption caused by a flight schedule

change? Besides the total scheduled travel time, is there any other objective benchmark that should be considered as the basis of calculating whether a refund is due? For all commenters, if the idea of this table is workable, are the numbers proposed in the first two columns reasonable and practical?

ii. Change of Origination or Destination Airport

Besides departure and arrival times, most consumers are also concerned about origin and destination airports when booking a flight itinerary. In the event that a carrier-initiated change results in a passenger departing from or arriving at a different airport, it is likely that additional time and cost would be incurred by the passenger because consumers normally travel from and to airports that are most convenient to them. As such, the Department views that such a change in most cases would significantly reduce the value of the passenger’s original ticket and,

therefore, a refund would be due if the passenger no longer wishes to travel because of this change. The NPRM’s proposal focuses on the change of the origination or destination airports and does not propose to require a refund if a carrier changes the connecting airport(s), as long as the change of connecting airport(s) does not cause early departure from the origination airport or delay in arriving into the final destination beyond the proposed hours. The Department invites comments on whether the change of origination or destination airports should entitle passengers to a refund and whether the change of connecting airports should also be included in this category. In this regard, we are especially interested to know the public’s view on refund eligibility related to the change of a connection airport when the original booking included an extended period of layover time (e.g., over 12 hours). The Department’s concern is that in these

situations, passengers are more likely to choose a particular connection airport in the original booking for a particular purpose such as conducting business, visiting family, friends, or tourist sites at that location. Changing that layover point to another airport may materially affect the value of the trip to passengers. We also seek comment on whether further refining refund eligibility based on the length of layover time at the original connection airport is overly burdensome for carriers to implement.

iii. Increase of the Number of Connection Points

Although the NRPM does not propose to include the change of any connection airport as a “significant change,” the Department believes that adding to the number of connection points in an itinerary would significantly affect the value of a ticket because the more connection points, the more likely passengers are going to experience flight irregularities, complications, and disruptions, as well as mishandled checked baggage. Further, certain passengers such as families with young children may have a strong preference for non-stop flights because of the convenience and pay more for such flights. In fact, comparing airfares between two given points, itineraries with fewer connection points are generally priced higher than itineraries with more connection points. Under this proposal, a carrier changing a non-stop itinerary to a one-connection itinerary, or changing a one-stop itinerary to a two-stop itinerary, even if the change would not add to the total travel time or cause early departure or late arrival, would qualify as a “significant change” for which the passenger would be entitled to a refund upon request. The Department believes that this is a reasonable ground for refund eligibility because in those situations, passengers likely paid a higher fare for an itinerary with fewer connection points or no connection and, as the result of the carrier’s change, received service of less value. On the reverse side, if the change of the itinerary results in a decrease in the number of connections, then no refund is required.

iv. Downgrade in the Class of Service

Another ground for refund eligibility proposed in this NPRM is a carrier-initiated downgrade in the class of service. Under the Department’s oversales regulation, when a passenger on an oversold flight is offered accommodation or is seated in a section of the aircraft for which a lower fare is charged, the passenger is not entitled to

denied boarding compensation but is entitled to an appropriate refund for the fare difference.³¹ Here, the Department is proposing that when a passenger is downgraded to a lower class of service, either on the originally booked flight or on an alternative flight offered by the carrier, and the passenger declines the downgrade, a refund of the entire unused ticket price must be offered. The proposal is not limited to situations where the entire flight or the class of service the passenger was initially booked on was oversold. Downgrade of a passenger could occur for other reasons such as weight and balance or change of aircraft. It is the Department’s view that a downgrade in the class of service significantly changes the passenger’s ticket value and travel experience and is a reasonable ground for a refund. The Department seeks comments on whether a downgrade in the class of service should be considered a “significant change of flight itinerary” based on which a refund would be due, or whether the Department should require airlines to provide a refund of only the ticket price difference, and not mandate that carrier provide a full refund if the passenger does not accept the downgrade, similar to the existing oversales regulation.

v. Aircraft Downgrade

The change of aircraft is often required for operational reasons. For example, inbound flight delays or mechanical issues can lead to the use of substitute aircraft. While some aircraft substitutions result in significant changes in the passengers’ travel experiences, most do not and would not result in affected passengers qualifying for a refund under this proposal. The Department considers a substitute aircraft of similar size that offers comparable amenities and does not substantially affect the passengers’ overall travel experience to not be a “significant change” to the passenger’s flight itinerary for refund purpose. The Department solicits comments on how to determine whether an aircraft downgrade is a significant change. Should the determination of whether an aircraft downgrade is a significant change be dependent on the person? For example, for a person who uses a wheelchair, a substituted aircraft having a smaller cargo compartment may mean that his or her battery-powered wheelchair cannot fit in the cargo compartment. On the other hand, a person without a disability may not be impacted by the substituted aircraft having a smaller cargo hold. Are there

certain types of changes in amenities or air travel experience that should automatically be considered significant irrespective of the person? Should the Department’s rule specify the types of change on the substitute aircraft that would result in passengers qualifying for a refund, or should the Department allow carriers to make this determination on a case-by-case basis? For passengers with disabilities, DOT proposes that the lack of certain disability accommodation features as the result of aircraft change, such as onboard wheelchair storage spaces and moveable armrests, which negatively impacts the particular passenger’s travel experiences and access to services onboard, would be considered a “significant change” that entitles the passenger to a refund upon request.

(3) Airlines’ Obligation To Provide Full Refunds (Including for Codeshare and Interline Flights)

Under this NRPM, when ticket refunds are due, airlines would be required to provide a full refund equal to the ticket purchase price and including government-imposed taxes and fees and carrier-imposed fees and surcharges (such as fuel surcharges), minus the value of any air transportation that is already used by the passenger. Similar to calculating the amount of denied boarding compensation in an oversales situation, which is based on the passenger’s one-way fare for the affected flight(s), airlines should rely on established industry practices and guidelines to calculate the value of any used portion of the air transportation when providing refunds.

Additionally, consistent with the Department’s longstanding view, it would be an unfair practice for airlines to charge a fee when issuing a refund of a ticket that is cancelled or significantly changed by the carrier. The Department is also proposing to require airlines to ensure that the terms or conditions in their contracts of carriage are consistent with the proposed regulation ³²—

³² While 14 CFR part 260 would address refund requirements related not only to the ticket refunds that are the subject of this NPRM, but also the baggage and ancillary fee refunds proposed in the Department’s July 2021 NPRM, we are proposing in this NPRM to add sections to the proposed part 260 that addresses only ticket refund requirements with one exception. This exception is the proposed regulatory text at 14 CFR 260.9, which would specify that a carrier’s failure to ensure that its contract of carriage provisions is consistent with 14 CFR part 260 would be considered an unfair and deceptive practice. Comments on part 260 submitted in response to this rulemaking should solely focus on proposals related to ticket refunds aside from this one exception.

³¹ See 14 CFR 250.6(c).

specifically that passengers will not be charged a fee when they do not accept an alternative itinerary following a carrier-initiated cancellation or significant change to their original itinerary. The Department believes that it is important to ensure that passengers are provided accurate information regarding their rights to a refund.

The Department has also considered airlines' obligations to provide refunds in codeshare and interline situations. For itineraries issued under one carrier's designator code, the carrier under whose code the ticket was issued (marketing carrier) would be responsible for providing the refund, regardless of whether the marketing carrier is also the operating carrier of the affected flight(s) or whether the marketing carrier is the carrier that cancelled or made significant changes to the flight itinerary. For itineraries that contain flight segments sold under more than one carrier's code (interline itineraries), the Department would require that the carrier that sold the ticket and collected the money from consumers be responsible for providing the refund even though not all flight segments were sold under that carrier's code. This is because that carrier would already have the information on consumer payment instruments, which facilitates issuing the refunds. The Department believes that this approach benefits consumers by streamlining the process for them to obtain refunds and expects that, with minimum burden, carriers will be able to develop a system with their codeshare and interline partners to ensure that refunds are provided timely. The Department seeks comments on the costs associated with establishing such a system for interline and codeshare partners to process refunds according to this proposal and whether there are technical obstacles that should be considered.

(4) Ticket Agents' Obligation To Provide Refunds, Fees, and Disclosure

The Department is proposing to require that ticket agents provide prompt refunds of airline ticket purchase prices or the air transportation portion of tour packages when an airline cancels or significantly changes a scheduled flight itinerary that the ticket agents sold directly to consumers, regardless of whether the ticket agent is in possession of the ticket purchase funds. Approximately 50% of tickets are sold by airlines directly to consumers, and the remainder are sold through

ticket agents.³³ According to the Department's September 2021 report to the White House Competition Council on DOT's activities addressing airline ticket refunds associated with the COVID-19 pandemic,³⁴ approximately 17% of the 105,327 refund complaints the Department received between January 1, 2020 and June 30, 2021 are against travel agents and tour operators. The Department views this significant volume of refund complaints against ticket agents as an indicator that strengthening protections for consumers purchasing air transportation from ticket agents is needed.

According to representatives of ticket agents,³⁵ typically, when a consumer purchases an airline ticket through a ticket agent, the airline is the "merchant of record" recorded on the credit or debit card transaction, meaning the airline name appears on the consumer's card statement and the airline, not the ticket agent, receives the money via an intermediary financial settlement service. Similarly, in the usual process when a carrier-initiated cancellation or significant change to a flight occurs and the passenger requests a refund from the ticket agent, the ticket agent generally initiates an automated refund but the money flows directly from the carrier to the consumers, not through the ticket agent. Also, according to ticket agent representatives, depending on the ticket agents and airlines involved and the terms and conditions applicable, in a small percent of transactions, airlines would remit the consumer funds back to ticket agents, who then remit the funds back to consumers. During the initial months of the COVID-19 pandemic, many airlines suspended the automated process and refunds requested for tickets sold through ticket agents had to be processed manually. Further, ticket agents have stated to the Department that in many cases, they are not able to provide refunds to passengers because the agents do not have possession of the consumer funds. Consumer complaints to the Department have illustrated the difficulty that consumers sometimes have in obtaining a refund for a ticket purchased through a ticket agent when the consumer does not have the means

to determine whether the airline or ticket agent needs to take action to process the refund and which entity is in possession of the consumer's money.

As illustrated in the preceding paragraph, one of the major issues the Department recognized in reviewing COVID-19 related refund complaints against ticket agents is that ticket agents often claimed that they did not have the funds consumers paid for air transportation because the funds have already been remitted to airlines. In many complaints, consumers expressed great frustration as they were forced to go back and forth between the ticket agent and the airline in an effort to chase down their refunds. The Department has considered placing the obligation of refund on the entity that is in possession of the consumer funds at the time the refund request is made, but does not propose this approach because which entity is in possession of the funds would not necessarily be clear to the consumer because multiple entities may be involved in the transaction process. Such uncertainty would result in additional costs, delay, and confusion to consumers.

To minimize consumers' burden, in this NPRM, the Department is proposing to revise the regulation prohibiting unfair or deceptive practices by ticket agents in 14 CFR 399.80 to require that retail ticket agents provide prompt refunds of the airfare or the air transportation portion of the cost of tour packages when an airline cancels or significantly changes a scheduled flight itinerary sold by a retail ticket agent, *i.e.*, ticket agents that sell directly to consumers. This requirement would cover retail ticket agents of all sizes, conducting business online or via brick-and-mortar stores transact directly with consumers. This requirement would not cover wholesale ticket agents who purchase bulk seats and resell them to other ticket agents, as well as Global Distribution Systems because these entities do not transact directly with consumers.

The proposed refund requirements for ticket agents applies to airfare or airfare-inclusive travel package transactions in which the ticket agents' identities are shown in the consumer's financial charge statements, such as debit or credit card charge statements, indicating that, from the consumer's perspective, the ticket agent is the ultimate recipient of the funds irrespective of whether the ticket agent is in possession of the consumer funds at the time of the refund request. Conversely, if, according to the financial statements provided to consumers, an airline is identified as the recipient of the consumer funds in a

³³ Transparency of Airline Ancillary Service Fees and Other Consumer Protection Issues, 79 FR 29970, 29975 (May 23, 2014).

³⁴ See, *Report to White House, Supra*, FN 16.

³⁵ See, *Presentation to the Advisory Committee On Aviation Consumer Protection (ACPAC) by Travel Technology Association—The Role of Online Ticket Agents in Airline Ticket Refund*, Dec. 2, 2021, <https://www.regulations.gov/document/DOT-OST-2018-0190-0034>. The Department received similar input from ticket agent representatives during meetings with staff of the Office of Aviation Consumer Protection on February 9 and 23, 2022.

transaction facilitated by a ticket agent, the airline would be under the obligation to provide the requested refunds without considering whether the airline is in possession of the consumer funds at the time of the refund request. The Department asks for public comments on whether it is reasonable to place the refund obligation on the entity that is the recipient of the funds as identified on the passenger's financial transaction record, without considering whether that entity is in possession of the consumer funds at the time the refund is requested. In relation to this question, the Department notes that, according to our understanding of the information provided by ticket agents, in most cases consumer funds move quickly through the intermediary entities so the entity that is the ultimate recipient of the funds would most likely be in possession of the funds when a refund request is made. To better assess the appropriate ways to place obligations on different parties, the Department is also interested in obtaining information regarding common practices and timelines for ticket agents to settle accounts with airlines.

The Department notes that the proposed approach focusing on the ultimate recipient of consumer funds without considering which entity is in possession of the funds at the time the refund is requested draws a clearer line for consumers to determine who would be responsible for issuing refunds by looking at their financial transaction records. According to some ticket agents, in most cases airlines are the ultimate recipients of consumer funds and would be able to issue the refunds directly to consumers without further delay. What are the situations in which ticket agents' involvement is necessary for airlines to issue refunds? What are the situations in which airlines need to remit the funds back to ticket agents instead of consumers? In those situations where the involvement of ticket agents is required, how can the Department's regulation ensure that ticket agents use their best effort to facilitate the prompt issuance of the refunds by providing all the information necessary for refund issuance to airlines in a timely manner, and by remitting the funds returned from airlines back to consumers? When action by both ticket agents and airlines is required for a refund to be issued, holding both the airline and the ticket agent jointly responsible may avoid potential delays for the airline to return the funds to the ticket agent if that step is needed to complete the refund process, or avoid

the potential delays for ticket agents to provide the information needed for airlines to issue refunds. Should the regulation place the burden of issuing refunds on both airlines, as the recipients of funds, and ticket agents, as the consumer-facing entity in those situations? The Department also seeks input on any innovative solutions that we may not have considered to ensure the consumer is not sent back and forth between the ticket agent and the airline trying to obtain airline ticket refunds.

The Department acknowledges that for transactions in which a ticket agent would be responsible for issuing a refund if due, before issuing the refund, the ticket agent may need further information to verify whether a refund is due under the Department's regulation. In most situations where a refund is due because of airline cancellation or schedule changes (e.g., early departure, late arrival, changes of airports), there would be sufficient information, such as airlines' publications or notifications sent to consumers, to confirm refund eligibility without contacting airlines. However, there may be situations in which a ticket agent does not have the direct information to make such a determination and may need to contact the airline to verify. For example, if a consumer claims that there is a downgrade of the class of service on a flight and the consumer declined travel under the downgrade, the ticket agent may not have access to the consumer's booking record to confirm such a downgrade. Airlines receiving a request from a ticket agent about a refund request should use their best efforts to verify whether the consumer requesting a refund would be eligible for a refund. The Department seeks comment on whether ticket agent's obligation to provide a refund within 7 days for credit card payments and 20 days for cash and other payments should not start until the ticket agent receives refund eligibility confirmation from an airline when the agent is unable to independently confirm the passenger's refund eligibility. If a ticket agent's obligation does not start until the ticket agent receives confirmation from an airline, how can the Department ensure that the airline acts promptly and the passenger is refunded in a timely manner if entitled to a refund?

Another issue the Department considered regarding refunds by ticket agents is the fee for booking travel or issuing a refund which ticket agents may charge and take out of the refunded portion before refunding the consumer. Many consumers filing complaints with the Department expressed

dissatisfaction about ticket agents charging a fee for booking travel that the consumer ultimately did not take and/or charging a fee for the issuance of refunds. Another issue raised by consumers is the existence of the fees that the consumer was not aware of at the time of ticket purchase. Undisclosed fees would be considered a deceptive practice by the Department pursuant to 49 U.S.C. 41712 and 14 CFR 399.79.³⁶ Under this proposal, the Department clarifies that ticket agents are permitted to charge a service fee for booking travel or issuing refunds and to deduct those amounts from the refund provided to consumers, as long as the amount of the fee is on a per-passenger basis and the existence of the fee was clearly and prominently disclosed to consumers at the time they purchased the airfare. The Department is proposing to clarify that ticket agents are permitted to retain the service fee they charge for ticket issuance at the time of purchase in recognition that ticket agents are providing a service apart from airfare, such as specialized knowledge, access to limited availability fares, or tools to comparison shop across various airlines to find the best value for the consumer. Ticket agents have noted that regardless of whether the passenger ultimately travels, the fee for booking travel represents the cost of service already provided by ticket agents. The Department is proposing to clarify that ticket agents may charge a fee for processing refunds while airlines are not permitted to charge such a fee because unlike airlines, ticket agents do not initiate the cancellation or significant changes that result in a refund being due, nor do the ticket agents have any control over the cancellation or significant changes to a flight itinerary. The Department welcomes comments on whether it is reasonable to not permit airlines to charge a ticket purchase service fee or a refund processing fee for flights that the carrier cancelled or significantly

³⁶ Pursuant to 14 CFR 399.79, a practice is "deceptive," within the meaning of 49 U.S.C. 41712, to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter. A matter is material if it is likely to have affected the consumer's conduct or decision with respect to a product or service. A ticket agent's failure to disclose that the booking fee charged at the time of reservation is nonrefundable when the ticket refund is due would likely mislead a consumer to reasonably conclude that the entire money paid for the ticket is refundable when ticket refund is due. Similarly, a ticket agent's failure to disclose the existence and the amount of a fee for issuing a refund is likely to mislead a consumer to reasonably believe that no such a fee would apply when ticket refund is due. Failing to provide either disclosure would be an omission of material information that may affect the consumer's purchase decisions.

changed while allowing ticket agents to do so.

(5) Forms of Refund

In this NPRM, we propose to allow airlines and ticket agents to choose whether to refund passengers by returning the money in the original form of payment or by providing the refund in cash or a form of cash equivalent.³⁷ Typically, airlines and ticket agents refund passengers in the original form of payment, *i.e.*, whatever payment method (credit card, bank account) that the individual used to make the payment. Carriers may choose to continue to do so but also have the flexibility to refund passengers in cash, a check, a prepaid card, or an electronic transfer to the passenger's bank account or other digital payment methods such as PayPal or Venmo. The Department emphasizes that under this proposal, a carrier- or ticket agent-issued travel credit or voucher or a store gift card is not considered a cash equivalent form of payment because these forms of compensation are not widely accepted in commerce. Further, the Department considers that when a carrier or ticket agent issues a prepaid card, any maintenance or usage related fees should be prepaid into the card by the issuer in addition to the full amount of refund that is due.

By expanding the scope of refund forms, the Department's proposal intends to provide consumers, carriers, and ticket agents more flexibility in issuing and receiving refunds. Consumers would have more flexibility to choose the form of refund payments offered by carriers that better suit their needs. For example, this proposal would be beneficial to consumers in situations where a credit card account used to pay for the ticket has been closed. Carriers and ticket agents also would benefit from the flexibility by saving costs from consolidation of refund forms and increasing efficiency. The Department is interested to know whether this proposal would be

beneficial to consumers, carriers, and ticket agents as intended and whether there are any unintended negative impacts. Further, the Department's current refund timeframes (*i.e.*, seven days for credit card purchases and 20 days for cash and other forms of purchases) are based on the form of payment used for the purchase. The Department is interested in comments on whether these timeframes are appropriate and should continue to apply regardless of the form of refund. For example, if a consumer purchased a ticket with a credit card and the carrier offers and the consumer accepts a refund by check, should the carrier have 7 or 20 days to issue the check?

(6) Option To Offer Travel Vouchers, Credits and Other Forms of Compensation for Cancelled or Significantly Changed Flights

The Department proposes to allow airlines and ticket agents to *offer* but not require other compensation choices such as travel credits or vouchers and store gift cards in lieu of refunds. The Department recognizes that while a refund in cash or a cash equivalent form of payment would be preferred by many passengers, some passengers may have travel or purchase plans in the foreseeable future and would prefer to receive travel credits or vouchers or store gift cards, which airlines and ticket agents may offer, as an incentive, at a dollar value of greater than or equal to the refund amount. Allowing airlines and ticket agents this flexibility enables them to preserve cash and benefits consumers by allowing them more choices of compensation for interrupted travel plans. The goal is to ensure that passengers, at a minimum, have the choice of receiving cash or a cash equivalent refund, while allowing airlines, at their discretion, to offer other choices that may better suit the needs or preferences of some passengers.

Under the Department's proposal, the option for carriers and ticket agents to offer compensation other than refund of cash or cash equivalent when a carrier cancels or makes a significant change to a flight itinerary must not be misleading with respect to the passengers' rights to receive a refund. Specifically, while carriers and ticket agents are free to offer these options, information provided by the carriers and ticket agents to the public must not lead consumers, acting reasonably under the circumstances, to believe that these options are their only choices and that they are not entitled to a refund. For example, when a carrier agent discusses the options consumers may have after the carrier cancels or significantly changes a flight, the agent's

failure to clearly disclose that consumers have the option to receive a refund would be a misleading communication. Consistent with the prohibition against deceptive practices under 49 U.S.C. 41712 and the Department's rule defining deceptive practices in 14 CFR 399.79, it would be unlawful for carriers or ticket agents to provide misleading information to consumers affected by cancelled or significantly changed flight itineraries regarding their eligibility to a refund, a material matter that is likely to affect a consumer's conduct or decision with respect to a product or service.

Furthermore, when airlines and ticket agents offer compensation other than refunds to consumers affected by cancelled or significantly changed flight itineraries, the Department's proposal would require airlines and ticket agents to clearly disclose any material restrictions, conditions, and limitations on the compensations they offer, so consumers can make informed choices about which compensations and refunds that would best suit their needs. These material restrictions, conditions, and limitations would include, among other things, the validity period, black-out dates, administrative fees, advance purchase requirements, and capacity restrictions applicable to travel credits or vouchers, and the validity period, administrative and maintenance fees, and purchase restrictions for gift cards.

IV. Providing Travel Vouchers or Credits to Passengers Who Are Unable or Choose Not To Travel Due to Concerns Related to a Serious Communicable Disease; Refund Requirement for Airlines and Ticket Agents Accepting Significant Government Financial Assistance Related to a Public Health Emergency

A. Background

Since the enactment of the Airline Deregulation Act of 1978 that liberalized the airlines' ability to set ticket prices based on, among many other factors, market demands, airlines have developed many innovative ways to price air travel products tailored to different consumer needs. The concept of "booking classes" encompasses categories of tickets that are priced differently based on the levels of flexibility a consumer has to change or cancel the tickets. Tickets in the booking class labeled "non-refundable" generally would be priced the lowest with the most restrictive conditions applicable to consumer-initiated changes to the booking. Airlines' terms and conditions for non-refundable tickets often specify that the passenger

³⁷ The Department's existing interpretation of "cash equivalent" in the context of denied boarding compensation (DBC) payments provides that the only permissible cash equivalent a carrier may offer is a check. The Department has initiated a rulemaking to explore additional means of payments that should be considered as "cash equivalent" in light of the modernization of payment methods, such as a prepaid card or electronic funds transfer. See, *Notice of Proposed Rulemaking, Modernizing Payment of Denied Boarding Compensation*, 84 FR 11658, March 28, 2019. The Department plans to issue a final rule in 2022. Consistent with the Department's proposal in that NPRM, this NPRM also proposes that prepaid cards and electronic fund transfers, among other things, should be considered as "cash equivalent" for the purpose of refund issuance.

would not be eligible to receive any form of compensation, including refunds, credits, or vouchers, should the passenger choose not to travel. As a goodwill or customer service gesture, many airlines sometimes provide travel credits or vouchers, after evaluating the situation on a case-by-case basis, to passengers who changed their travel plans due to unexpected events, such as medical or family emergencies, including passengers who have contracted a serious communicable disease and decided to not travel to protect the health of others. Passengers accepting these credits or vouchers then would have the flexibility to reschedule their travel for a later date but may at times be subject to a rebooking fee.

Approximately 20% of the refund complaints that the Department received from January 1, 2020 to June 30, 2021, involved instances in which passengers with non-refundable tickets chose to not travel because of considerations related to the COVID-19 pandemic.³⁸ Given the impact the pandemic has had on passengers' travel plans, most airlines that fly to, within, and from the United States have offered travel credits or vouchers, despite the lack of a regulatory mandate, in situations where a passenger states that he or she was unable to travel or advised not to travel due to COVID-19 related reasons. However, consumers have complained to the Department that the airline vouchers and credits that they received have inadequate validity periods considering the trajectory and duration of the pandemic. Some complainants informed the Department that they experienced great difficulties in receiving and redeeming travel vouchers issued by or through ticket agents. Others have expressed frustration that the vouchers are limited to booking future travel with the same routing as their original bookings. Consumers believe these types of restrictions significantly reduce the value of the credits or vouchers. Many consumers have also asked that refunds be provided to them instead of vouchers and credits. Consumer organizations and certain members of Congress³⁹ have urged airlines to provide non-expiring credits or refunds in situations where the consumer does not travel due to COVID-related reasons.

During the December 2021 ACPAC public meeting, participants also discussed the issue of airline ticket

refundability when consumers cancel flights due to public health concerns or government restrictions.⁴⁰ With the COVID-19 pandemic as a background, consumer advocates stated that consumers should not be denied refunds when they are unable to travel due to government restriction, health concerns, and cancelled events. Airline representatives focused on the public benefits of having and maintaining the nonrefundable fare product in the marketplace and cautioned that overregulation in this area may result in the elimination of that lower-priced fare product.

The Department is of the view that a regulation is needed to ensure consumers are consistently treated fairly when they are unable or advised not to travel due to reasonable concerns related to a serious communicable disease. The Department considers a consumer who does not travel because he or she has contracted a serious communicable disease or has been advised by a medical professional or determines consistent with public health guidance not to travel because he or she is likely to have contracted such a disease to be acting reasonably. Consumers would also be acting reasonably if they do not travel, during a public health emergency, to protect themselves from a serious communicable disease based on restrictions, advisories, and guidance issued by CDC, comparable agencies in other countries or WHO. Also, a consumer may be unable to travel in relation to a serious communicable disease because of restrictions imposed by a governmental entity (*e.g.*, stay at home order, border closure).

This NPRM proposes to mandate that airlines and ticket agents provide credits or vouchers under certain circumstances and specifies the form and nature of these credits or vouchers. It also proposes that U.S. and foreign air carriers and ticket agents provide refunds during a future public health emergency, in lieu of travel vouchers or credits, to consumers if the carrier or ticket agent receives significant government financial assistance, as determined by the Department, regarding the public health emergency. The Department believes that a regulation defining the baseline of accommodations to non-refundable ticket holders and identifying the specific circumstances that would give rise to the need to accommodate passengers when they cancel or

postpone their travel would greatly enhance consumer protection. Without such requirements, airlines and ticket agents may have different interpretations of what types of event would be sufficient to justify a deviation from the non-refundable terms of a ticket. Such application of interpretations may result in not only increased consumer confusion and frustration, but also increased administrative cost to airlines and ticket agents for handling customer service requests and complaints from consumers with different perspectives.

Aside from enhanced protection of consumers' financial interests, the Department believes that a regulation providing protection to non-refundable ticket holders who are unable to travel by air due to reasonable concerns related to a serious communicable disease is needed to promote and maintain a safe and adequate aviation transportation system. 49 U.S.C. 41702 requires U.S. carriers to provide safe and adequate interstate air transportation and 49 U.S.C. 40101(a) directs the Department in carrying out aviation economic programs such as regulations under 49 U.S.C. 41702 and 41712 to consider certain enumerated factors as being in the public interest. These factors include "the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices" and "preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation," as well as "assigning and maintaining safety as the highest priority in air commerce." Large scale public health emergencies such as the COVID-19 pandemic often lead to a significant loss of human life and profoundly impact how people live and behave. This includes a general reluctance to travel during a pandemic, particularly among certain sectors of the population, such as the elderly, individuals with certain health conditions that may place them at greater risk of serious illness if they contract the disease, or those who are their caregivers. These consumers face heightened risks when traveling during a pandemic because of the potentially more severe consequences of them contracting the communicable disease. Nevertheless, some may take risks and travel if they have expended funds on airline tickets that they are unable to recoup. Similarly, individuals who have contracted a serious communicable disease such as COVID-19 or have been advised by a medical professional or determine consistent with guidance

³⁸ See, *Report to the White House Competition Council*, p. 11.

³⁹ See, https://www.markey.senate.gov/imo/media/doc/flights_credits_all_airlines_combined.pdf.

⁴⁰ See, Advisory Committee for Aviation Consumer Protection (ACACP) Docket: <https://www.regulations.gov/docket/DOT-OST-2018-0190>.

issued by a public health authority not to travel because they are likely to have such a disease may travel, rather than self-quarantine as may be suggested by government-issued advisories, if they are unable to recoup the cost of their ticket. This NPRM would protect passengers' financial interests in airline tickets that they purchased when they are unable or choose not to travel due to reasonable concerns about a serious communicable disease, which would encourage them to postpone travel and avoid potential harm to themselves and others in the aviation system. The Department seeks comments on whether requiring airlines and ticket agents to issue travel credits or vouchers to non-refundable ticket holders in these situations and refunds when entities receive government assistance is an appropriate way for the Department to promote safe and adequate air transportation.

Proposals

(1) Travel Credits or Vouchers to Passengers Who Are Restricted or Prohibited From Traveling by a Governmental Entity in Relation to a Serious Communicable Disease Whether or Not There Is a Public Health Emergency

Under this NRPM, airlines and ticket agents would be required to provide non-expiring travel credits or vouchers, instead of refunds except under limited circumstances as described in paragraph (10) of this section, to a non-refundable ticket holder who is restricted or prohibited from traveling by a governmental entity for reasons related to a serious communicable disease. A consumer may be restricted or prohibited from travel by air through directives such as government issued "stay at home" orders or "shelter in place" orders. Governments may also institute border closure or entry restrictions for certain types of passengers. The governments imposing these restrictions may be a foreign government or the U.S. government at the Federal, State, or local level. The Department believes that it is fundamentally unfair to allow airlines and ticket agents to enforce the non-refundability of tickets on consumers under these types of circumstances, which are out of the consumers' control.

Under this proposal, consumers would be entitled to a non-expiring voucher or credit if, after the consumers purchased airline tickets, a government order was issued to prohibit a passenger from leaving the place of origination or entering into the place of transition or destination or if the government order

renders the passenger's travel meaningless. For example, if a passenger plans to travel to a vacation destination and stay for a week but after the passenger purchased his or her ticket the government of the destination city imposes a seven-day quarantine requirement for all arriving passengers, the purpose of this passenger's travel would be rendered meaningless. In these types of situations, we are proposing that the passenger be entitled to cancel the travel and receive a travel credit or voucher. On the other hand, passengers would not be entitled to a travel credit or voucher if they simply failed to exercise due diligence to ensure that all conditions for travel imposed by the governments of the departure, transit, or arrival locations are met. For instance, a passenger who failed to obtain a negative test result for a communicable disease within 48-hour of departure if required by the government of destination would not be eligible for a travel credit or voucher under this proposal. Further, the Department's proposal would only cover government-issued travel restrictions or prohibitions in relation to a serious communicable disease. This NPRM does not address passengers subject to border closure or entry restriction for reasons not related to a serious communicable disease, such as security reasons. The Department expects that many instances would be analyzed on a case-by-case basis to determine whether a passenger would be eligible to receive a travel credit or voucher under this proposal. We welcome comments on whether the proposed requirement for a non-expiring voucher or credit strikes the right balance given that the travel restrictions are out of the airlines' and ticket agents' control and the differential economic impact of a refund mandate versus a travel credit or voucher on airlines and ticket agents in these circumstances.

(2) Travel Credits or Vouchers to Passengers Who Are Advised or Determine Consistent With Public Health Guidance Not To Travel To Protect Themselves From a Serious Communicable Disease During a Public Health Emergency

The NRPM proposes that, when there is a public health emergency, airlines and ticket agents must provide non-expiring travel credits or vouchers to non-refundable ticket holders who are advised by a medical professional or determine consistent with public health guidance issued by the CDC, comparable agencies, or WHO not to travel by air to protect themselves from

a serious communicable disease. Under this NPRM, for airlines to incur this obligation, the non-refundable ticket holder must have booked the ticket before the beginning of the public health emergency and the travel date must be during the public health emergency.

The NPRM further clarifies that a "public health emergency," as used in this proposed regulation, is defined in the U.S. Department of Health and Human Services (HHS) regulation addressing measures taken by CDC to quarantine or otherwise prevent the spread of communicable diseases, 42 CFR 70.1.⁴¹ The Department believes that adopting HHS's definition of public health emergency is appropriate here to capture large-scale outbreaks of a serious communicable disease that would significantly impact air travel on a regional, national, or global basis, during which the Department's regulation is warranted to ensure a basic level of protection for air travelers affected by the events.

This NPRM is intended to extend broad protection to consumers scheduled to travel by air to, within, and from the United States during a public health emergency and are advised by a medical professional or determine consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel due to a health condition that makes the traveler particularly vulnerable to the disease. In recognition of the significant economic impact of public health emergencies, the Department is proposing to require airlines and ticket agents to provide non-expiring vouchers and credits (and refunds under the limited circumstances

⁴¹ At the time of the publication of this NPRM, the definition for "Public health emergency" in 42 CFR 70.1 is: (1) Any communicable disease event as determined by the Director with either documented or significant potential for regional, national, or international communicable disease spread or that is highly likely to cause death or serious illness if not properly controlled; or (2) Any communicable disease event described in a declaration by the Secretary pursuant to 319(a) of the Public Health Service Act (42 U.S.C. 247d (a)); or (3) Any communicable disease event the occurrence of which is notified to the World Health Organization, in accordance with Articles 6 and 7 of the International Health Regulations, as one that may constitute a Public Health Emergency of International Concern; or (4) Any communicable disease event the occurrence of which is determined by the Director-General of the World Health Organization, in accordance with Article 12 of the International Health Regulations, to constitute a Public Health Emergency of International Concern; or (5) Any communicable disease event for which the Director-General of the World Health Organization, in accordance with Articles 15 or 16 of the International Health Regulations, has issued temporary or standing recommendations for purposes of preventing or promptly detecting the occurrence or reoccurrence of the communicable disease.

as described in paragraph (10) of this section) to these passengers. The Department believes that this strikes the right balance between protecting consumers on the one hand and preserving and ensuring a healthy air transportation industry on the other. The Department notes that although the proposed requirement may result in a large amount of credits and vouchers owed to consumers on carriers' accounting records, it would not result in an immediate reduction of the carriers' revenues. The Department believes that the proposal, which would mandate non-expiring credits and vouchers for consumers to use in the future instead of refunds, would enable airlines and agents to better manage their liquidity and reduce the risk of bankruptcies.

The Department welcomes comments regarding whether it is reasonable to mandate that airlines and tickets agents issue non-expiring travel credits and vouchers to passengers who have purchased their airline tickets before the declaration of a public health emergency and are advised not to travel during a public health emergency to protect themselves from a serious communicable disease. As stated earlier, during the COVID-19 pandemic, many airlines have voluntarily provided vouchers to consumers who were unable or chose not to travel because of health concerns related to the pandemic. These vouchers, however, were valid only for specified time periods and had other conditions and restrictions associated with them. We are interested in comments related to obstacles airlines and ticket agents may face when voluntarily providing travel credits and vouchers to consumers who could not or chose not to travel during the pandemic. Also, we solicit comment on whether airlines and ticket agents should be required to provide consumers more flexibility on the use of vouchers by allowing the use of vouchers by travelers other than the traveler named in the original ticket or use for travel on different interline partners. We are also interested in feedback regarding any difficulties that consumers may have experienced in redeeming credits and vouchers issued to them and what the Department should consider in the proposed regulation to address or resolve these difficulties. With respect to the scope of qualified consumers, the Department's proposal would be limited to consumers who have purchased their tickets before the public health emergency. The Department recognizes that this limitation would not extend the

proposed enhanced financial protection to consumers who purchase tickets during a public health emergency but later find out that their condition or situation has changed such that it results in a reluctance or inability to travel. For example, a consumer may have developed a new health condition after having purchased the ticket during a public health emergency and the new health condition makes the consumer more susceptible to the serious communicable disease. Another example is if the airline reduces the safety measures in place to protect consumers from contracting this serious communicable disease. The Department seeks comments on whether the proposed travel credit/voucher issuance requirement should cover these consumers or if it would be preferable to have a bright line rule that the protections are limited to those consumers who purchased their airline tickets before the declaration of a public health emergency.

(3) Travel Credits or Vouchers to Passengers, Who Are Advised or Determine Consistent With Public Health Authority Guidance Not To Travel Irrespective of a Public Health Emergency, Because the Passenger Has or May Have a Serious Communicable Disease and Would Pose a Direct Threat to Health of Others

Beyond widespread infections of a communicable disease that lead to a "public health emergency" declaration by relevant governing entities, this NPRM also addresses incidents of passengers who are advised not to travel because they have or may have contracted a serious communicable disease and, to protect the health of others, the passengers do not take their scheduled flight. These incidents may occur regardless of whether there is a public health emergency. The NPRM proposes to require airlines and ticket agents to provide non-expiring vouchers and credits, instead of refunds, in these types of incidents, unless the incidents occur during a public health emergency and the airline or ticket agent has received significant financial assistance from their home country as described in paragraph (10) of this section. However, the Department seeks comment on other alternatives.

It is the Department's understanding that airlines in general would allow and prefer that a passenger with a serious communicable disease in the contagious stage not travel, and airlines would likely grant an exception from the tickets' non-refundability to allow the passenger to reschedule travel. In fact, if a passenger carrying a serious

communicable disease wants to travel, airlines would likely take steps to ensure that the health of others in the flight is protected. Such steps include conducting an assessment regarding whether the passenger would pose a direct threat to the health of others, requesting medical documentation, taking precautions to prevent the transmission of the disease in the cabin while transporting the passenger, or if appropriate, denying boarding. In the event that a passenger who has a serious communicable disease wishes to postpone travel, the Department believes that it would be in the interest of carriers, passengers and the public at large for the travel to be postponed. This would protect the health of the public and prevent the further transmission of a serious communicable disease. The Department notes that this proposal only intends to cover passengers who have or are likely to have contracted a serious communicable disease, as determined by current medical knowledge (e.g., directives issued by public health authorities such as CDC) or a medical professional treating the consumer.

This proposal defines a serious communicable disease to mean a communicable disease as defined in 42 CFR 70.1 that has serious consequences and can be easily transmitted by casual contact in an aircraft cabin environment. The analysis of whether a communicable disease is "serious" under this NPRM is similar to the analysis of "direct threat" under the Department's disability regulation.⁴² Under that regulation and this proposal, carriers would consider the significance of the consequences of a communicable disease and the degree to which it can be readily transmitted by casual contact in an aircraft cabin environment. Communicable diseases that are readily transmissible but do not result in significant health consequences (such as the common cold) or those carrying significant health consequences but are not readily transmissible (such as AIDS) are not "serious" communicable diseases for the purpose of this proposal. Conversely, the SARS-CoV-2 virus that causes the COVID-19 infection would be considered a "serious" communicable disease because it is readily transmissible in the aircraft cabin and would likely cause significant health consequences in many people. The Department solicits comment on its definition of a serious communicable disease. Is it sufficiently clear to the regulated entities and the public as to which types of

⁴² See 14 CFR 382.21(b)(2).

communicable diseases would and would not be considered serious? Is there a better way to define serious communicable disease?

The Department, although not a public health agency, believes that using economic tools as incentives to discourage passengers who would pose a risk to the health of others from traveling is consistent with its mission of ensuring that the air transportation system is safe for the public. The Department notes that requests from passengers who are advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have a serious communicable disease infection should be infrequent and place little burden on the airlines outside of the context of public health emergencies. The Department solicits comment on the potential for abuse if it adopts, at the final rule stage, its proposal that whether or not there is a public health emergency airlines provide credits or vouchers to individuals who have been advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have a serious contagious disease. The proposed rule would allow airlines to require such persons to provide documentation from a medical professional and/or guidance issued by CDC, comparable agencies, or WHO that the consumer should not travel by commercial air transportation. The Department seeks comment on whether this is sufficient to prevent abuse.

Are there concerns about individuals falsely stating that they have serious communicable disease? If so, how should the Department address these concerns? Are there ways to distinguish between consumers who, after considering public health advisories or medical professional opinions, genuinely determine that they may have contracted a serious communicable disease, and consumers who want to take advantage of the ability to claim vouchers or credits without a real suspicion of having contracted a serious communicable disease? Should the requirement for airlines to provide a credit or voucher only be triggered if the consumer has instructed by a medical professional or public health authority that he or she must quarantine or isolate and therefore cannot fly as opposed to consumers who are advised or determine consistent with public health guidance that they have or may have contracted a serious communicable disease?

In addition, should the Department consider alternatives to requiring

airlines to offer vouchers or credits to consumers who have been advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have contracted a serious communicable disease? If so, are there other actions airlines could take to protect consumers from the harm of losing the value of their tickets? For example, would an airline waiver of change fees be sufficient protection? Given the COVID-19 pandemic, many airlines have suspended change fees for most of their tickets allowing passengers to adjust travel schedules for any reason without contacting the airline. Some airlines have also created an economy class of tickets that allow for full refunds when the passenger cancels before departure under most circumstances. Should the Department require airlines to allow consumers to change their tickets without charging a fee instead of providing them non-expiring vouchers or credits? If so, should such a requirement apply to all classes of tickets, regardless of airline change fee policies? In addition, should the Department place additional requirements on airlines, such as allowing consumers to change the ticket multiple times or to keep the ticket open so that the consumer could select the new flight at a later date? The Department welcomes comments on its proposal as well as suggestions on alternative methods to protect consumers who are advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have a serious communicable disease.

(4) Supporting Documentation To Be Provided to Airlines or Ticket Agents

The Department is cognizant of the airline industry's longstanding ticket pricing practice that applies restrictions and fewer flexibilities to less expensive ticket categories. While proposing a regulation to ensure that passengers who have legitimate reasons to postpone travel are accommodated, the Department believes that it is reasonable for airlines and ticket agents to implement safeguards to prevent abuse. Under this proposal, airlines and ticket agents would have the option to assess the validity of passengers' reasons to postpone travel before issuing travel vouchers, credits, or refunds to them.

To determine whether a passenger's ability or willingness to travel is impacted due to government restrictions related to a public health emergency, this proposal allows airlines and ticket agents to require passengers to present materials to demonstrate that

government requirements are restricting their air travel. These requirements could include a quarantine isolation order or a border closure notice or entry restriction issued by a government. A local stay at home order that restricts local travel may also be a reasonable ground if it impacts the passenger's entry or exit of the local vicinity through air travel. To the extent that a passenger is asserting an inability or unwillingness to travel to protect himself or herself or others from a serious communicable disease, airlines and ticket agents would be permitted to request that the passenger provide a current written statement from a licensed medical professional attesting that it is the medical professional's opinion, based on current medical knowledge and the passenger's health condition, that the passenger should not travel by commercial air transportation. A general "fear" that a passenger may have about traveling when there is a public health emergency declared would not be sufficient to entitle that passenger to a travel credit or voucher.

The Department seeks comments on the adequacy of types of information that the Department would allow airlines and ticket agents to seek from passengers requesting a travel credit or voucher for future travel. If a public health emergency has been declared and the reason that the passenger is seeking to postpone travel is related to risk to his or her health, should the Department specify that the medical documentation explain the reason that the passenger is more susceptible than others to contracting a serious communicable disease during air travel? What, if any, privacy concerns are there with allowing airlines and ticket agents to seek information from passengers related to their health? What are possible ways to resolve these concerns? Are there ways to reduce or prevent unscrupulous passengers from falsely claiming that they have a serious communicable disease that prevents them from traveling without airlines and ticket agents requesting documentation from passengers about their health? If CDC, WHO or other comparable entities recognize certain groups as being more vulnerable to contracting a serious communicable disease, then would it be sufficient for the medical documentation to affirm that the passenger belongs in one of these groups? For example, in a travel advisory published by the WHO regarding COVID-19,⁴³ WHO advises

⁴³ <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-travel-advice-for-the-general-public>.

that any person in high-risk groups—including those over the age of 60, those with chronic illnesses, and those with underlying health conditions, should consider postponing travel to areas where COVID-19 is widespread. Although technically members of this vulnerable group may still travel, the potential serious health risk from contracting the disease through travel is a material concern that could affect the person's willingness to travel.

The Department seeks comments regarding whether it is reasonable to require airlines and ticket agents to consider and accept a broad scope of "travel restrictions, advisories, and guidance" issued by CDC, comparable agencies in other countries, and WHO, to support a consumer's assertion that it is not safe for them to travel. Are "advisories and guidance" too broad and vague for consideration? For example, CDC's current travel advisory system includes three categories applicable to different countries in the world: Warning Level 3—Avoid all non-essential Travel; Warning Level 2—Practice enhanced precautions; and Warning Level 1—Practice usual precautions. In this example, which Warning Level(s) should be considered as a reasonable level of restriction with respect to allowing non-refundable ticket holders to receive a travel credit?

The Department notes that there are two categories of evidentiary documentation airlines and ticket agents are permitted to request as a condition for issuing the travel credits or vouchers under this proposal—one is government-issued travel restrictions, guidance, advisories applicable to the public or sectors of the public or quarantine orders/isolation advisories applicable to the individual passenger; the other is a written statement by a licensed medical professional issued to the individual passenger. The Department notes that, depending on the reason based on which a passenger is seeking to postpone travel, not all passengers should be required to provide both categories of documentation. For example, a passenger seeking to postpone travel due to a compromised immune system may be required to provide both the government advisory applicable to travelers with a compromised immune system and a written statement by the passenger's doctor attesting that the passenger has a compromised immune system. On the other hand, a passenger seeking to postpone travel due to the destination country's entry restriction should not be required to provide any medical documentation. We expect airlines and ticket agents to use

reasonable judgment to determine what type(s) of documentation is necessary and reasonable to request. We ask whether the proposal that medical documentation be dated within 30 days of the initial departure date is reasonable and appropriate.

Finally, the Department recognizes that many passengers who sought to defer travel during the COVID-19 pandemic may not fall under one of the referenced categories. These are passengers who do not have a health condition themselves but are the caregivers of persons with a health condition, either through family relationship or employment. The Department seeks comments on whether this category of passengers should be included in the protection proposed in this NPRM, and if so, what are the documentation carriers and ticket agents may request, that are credible and reasonable. Further, the Department seeks comments on whether this proposal should also cover both passengers who would have difficulty traveling alone and their travel companions if only one of them qualifies for a voucher or refund. For example, if a qualified passenger is traveling with a minor, should the airline also be required to provide a voucher or refund to the minor even if the minor would not otherwise qualify?

(5) Entities Responsible for Issuing Travel Credits or Vouchers

Some of the complaints filed with the Department against ticket agents regarding the issuance of credits and vouchers indicate that they were issued by airlines through the ticket agents, and other were issued by the ticket agents. Some of the airline vouchers would limit the redemptions to bookings with the same ticket agents while others did not have such a restriction. As with issuing refunds for flights cancelled or significantly changed by airlines, for passengers who booked air travel with ticket agents requesting a travel credit due to public health concerns, the Department's proposal would place the obligation of issuing the credits or vouchers on the entity that "sold" the tickets (*i.e.*, identified in the consumer's ticket purchase financial statement). However, the Department is open to suggestions on whether the entity obligated to issue credits or vouchers should be determined based on other criteria that provide consumers more certainty in receiving the credits and more flexibility in redeeming the credits. Specifically, should airlines be solely responsible for issuing credits or vouchers because they are the direct

providers of the air transportation paid for by consumers and the ultimate recipients of the consumer funds? If so, how can the Department best ensure that the credits and vouchers are issued appropriately and promptly by the airline when the airline is not a principal in the original transaction? What role and responsibility should be placed on ticket agents to facilitate the issuance of credits or vouchers by airlines when the ticket agents are the principals of the initial transactions? In addition to answers to these specific questions, the Department also seeks general information on the transactions between airlines and ticket agents that would have an impact on determination regarding how travel credits and vouchers are issued for non-refundable ticket holders who could not or choose not to travel due to public health concerns.

(6) Validity Period for Travel Credits or Vouchers

The Department is proposing to require that airlines and ticket agents provide non-expiring credits or vouchers for future travel to qualifying consumers. The Department has received numerous complaints from customers concerned that the airline vouchers or travel credits provided to them would expire before they are able to use them. These consumers pointed out that given the uncertainty regarding how the COVID-19 pandemic would progress, government travel restrictions in place, and specific health concerns related to flying during the pandemic, they do not expect to travel by air within the validity periods of the credits or vouchers. The validity periods for credits and vouchers generally range from 90 days to two years. The two-year validity period is a result of extensions to the initial validity periods by certain airlines and ticket agents as the pandemic has continued far longer than originally anticipated.

Based in part on the concerns expressed in these complaints, the Department has tentatively decided that the unpredictability of a serious communicable disease justifies a proposed requirement for airlines and ticket agents to provide credits or vouchers for future travel that do not have an expiration date. These non-expiring vouchers or credits would be provided to consumers who purchase tickets but are restricted or prohibited from traveling by a governmental entity (*e.g.*, as a result of a stay at home order, quarantine period, entry restriction, or border closure) due to concerns of a serious communicable disease; are unable or advised not to travel during a

public health emergency to protect themselves from a serious communicable disease consistent with restrictions, advisories and guidance issued by CDC, comparable agencies in other countries, or WHO; or are unable or advised not to travel because they have contracted a serious communicable disease and their condition would pose a threat to the health of others. A non-expiring voucher or credit would provide consumers greater flexibility and assurance that the vouchers or credits would be available when they are ready to travel.

The Department welcomes comments on whether an indefinite validity period for credits or vouchers issued under this proposal is reasonable, and if not, the reason that it is unreasonable and what a reasonable minimum validity period should be. For example, when there is not a public health emergency, for travel credits or vouchers issued to passengers who have been advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have such a disease, is a validity period of one year sufficient to ensure that passengers have ample opportunities to use the credits or vouchers? For travel credits or vouchers issued due to a public health emergency, should the Department require that they be valid for one year, or for the duration of the public health emergency, whichever gives the longer validity period? Commenters are encouraged to provide information on what challenges airlines and ticket agents may face when accommodating the redemptions of travel credits and vouchers that have no expiration dates.

(7) Service Fee by Ticket Agents and Airlines for Processing Credits and Vouchers; Disclosure

Similar to the proposal regarding ticket agents' issuance of airfare refunds when refunds are due, the Department is proposing to allow airlines and ticket agents to charge a processing fee for the issuance of credits or vouchers to non-refundable ticket holders when consumers' travel plans are affected by concerns related to a serious communicable disease, as proposed in section 259.5(b)(6). The Department is of the tentative view that ticket agents and airlines should be allowed to impose a processing fee if the fee is on a per passenger basis and appropriate disclosures were made to the consumer prior to the consumer purchasing the airline ticket because neither the airline or ticket agent initiated the change that is resulting in the need for a credit or voucher. To ensure transparency and

fair treatment of consumers, the existence of the fee must be clearly and conspicuously disclosed to consumers at the time of ticket sale. The Department welcomes comments on whether it is reasonable to permit airlines and ticket agents to charge a processing fee for the issuance of travel credits or vouchers. If airlines and ticket agents should be permitted to charge a fee, what type and manner of disclosure would be sufficient to avoid consumer confusion for fees applicable for these specific circumstances?

(8) Value of Credits and Vouchers; Disclosure of Reasonable Conditions, Limitations, and Restrictions on the Use of Credit or Voucher

The NPRM proposes that the travel credits or vouchers issued to qualified consumers be "a value equal to or greater than the fare (including government-imposed taxes and fees and carrier-imposed fees and surcharges)." The Department is also proposing that the credits or vouchers include any prepayment of unused ancillary services such as baggage fees or seat selection fees. The rationale for including the fees for ancillary services in the credit or voucher given to consumers is that those services have not been provided by the carrier.⁴⁴ On the other hand, under this proposal if the required disclosures have been provided before the consumer purchased the airline ticket, ticket agents would be allowed to deduct, from the credit or voucher given to consumers their service charge, if any, for issuing the original ticket because that service has already been provided. DOT further believes the fee deduction is appropriate because the consumer's flight is operating as scheduled and neither the airline or ticket agent initiated or had control over the change that is resulting in a credit or voucher being provided. We invite comments on whether allowing ticket agents to retain the fees collected for service already provided is reasonable and appropriate.

In addition to proposing that the value of the travel credit or voucher be equal to or greater than the airfare, the Department is considering whether airlines should be required to offer an option to consumers in which consumers may choose to receive the travel credit or voucher redeemable for the same itinerary as the original ticket, regardless of what the ticket cost is at the time of redemption. The Department

believes some consumers may benefit from and prefer this option if they plan to travel on the same itinerary in the future, without worrying about price increases. As airfare fluctuates depending on, among many other factors, travel date, some of the redeemed tickets may be priced less than the original purchase price of the ticket. In those situations, airlines would benefit from offering this option.

Also, the Department proposes to require airlines and ticket agents provide full disclosure of any material restrictions, limitations, or conditions on the use of the credits and vouchers. The Department also proposes to prohibit conditions, limitations, and restrictions imposed on the credits and vouchers that are unreasonable and would materially reduce the value of the credits and vouchers to consumers as compared to the original purchase prices of the airline tickets. For example, under the proposal, a credit or voucher that would severely restrict bookings with respect to travel date, time, or routes would be unreasonable. Similarly, a restriction that a voucher can only be used on one booking and that any residual value would be void afterwards would be considered unreasonable. Further, imposing a rebooking fee or a change fee that reduces the value of the voucher or credit applicable to the new ticket would be considered unreasonable. However, as noted earlier, this NPRM would allow a carrier to retain a service fee for processing the travel voucher or credit, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare. To ensure that consumers have access to the full value of the credits or vouchers, the Department also proposes that carriers may not restrict the redemption of the credits or vouchers by providing that the value of the credits or vouchers may only cover the base fare of the new bookings and would not cover any taxes, fees, or surcharges imposed by the government or the carrier. The Department seeks comments on whether regulating the terms and conditions of the credits or voucher in this specific context is reasonable and what other steps the Department should consider to ensure that passengers receiving credits and vouchers for future travel are adequately protected.

In addition to these proposals that intend to ensure consumers receive accurate information regarding their rights to the full value of travel credits or vouchers, the Department is interested in addressing some

⁴⁴ The Department's rulemaking on *Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided* proposes that airlines must refund any ancillary service fees when the service was not provided. See, *supra*, FN 7.

consumers' concern that they may not be able to use the travel credit or voucher due to their age, health condition, or other reasons. The Department is seeking comments on whether it should require that the travel credit or voucher be transferrable at the consumers' discretion. Adding transferability to the travel credit or voucher would ensure that eligible consumers who spent money on tickets they no longer need would not completely lose the value of the tickets. If adopted, should airlines be required to allow multiple transfers? The Department also seeks comments on whether a regulation is necessary to specifically require that carriers and ticket agents ensure that relevant provisions in their contracts with consumers are consistent with the Department's regulation on issuing travel credits and vouchers if adopted, similar to the one proposed in 14 CFR 260.9 regarding refunds.

(9) Airline Cancelling or Significantly Changing Flights After Passenger Cancellation

Under this NPRM, the protections provided to passengers who purchase a non-refundable ticket on a flight to, within, or from the United States and elect to cancel their travel due to government restrictions or health concerns differ from the protections provided to passengers who purchase a non-refundable ticket on a flight to, within, or from the United States that is cancelled or significantly changed by the airline. An airline cancelling flights or significantly changing flight itineraries would entitle passengers to a refund. A passenger cancelling or postponing travel, despite the flights still operating without a significant change, due to government restrictions or reasonable concerns of a serious communicable disease would entitle the passenger to a travel credit or voucher for future travel, except for limited circumstances where passenger would be entitled to a refund because of significant government assistance provided to the airline or ticket agent. The Department is of the tentative view that if an airline cancels or makes a significant change to a flight after a passenger has already requested to cancel his or her a travel itinerary and received a credit or voucher, then the airline or ticket agent should not be required to replace that voucher with a refund. This is because at the time the passenger requested a cancellation of the ticket, the airline was still planning to operate the flight(s) on the itinerary. The Department believes it is overly burdensome and costly for airlines to

apply refund eligibility to itineraries that have already been cancelled pursuant to passengers' requests prior to the airline's decision to cancel or significantly change the flight. That said, the Department would caution that its Office of Aviation Consumer Protection has the authority to investigate whether an airline or a ticket agent has engaged in an unfair or deceptive practice when it fails to inform a passenger making a request to cancel the itinerary that the passenger is eligible for a refund, if the airline or ticket agents knows or should have known at the time that a flight has been cancelled or significantly changed.

(10) Airlines and Ticket Agents Receiving Significant Government Financial Assistance Related to a Public Health Emergency

The impact of a public health emergency on the aviation industry can be severe. Indeed, the COVID-19 pandemic has led to international flight restrictions, local "stay at home" and "shelter in place" orders, and reduced demand for flying, which resulted in a drastic decrease in the number of flights operated and significant financial loss for airlines and ticket agents. To ameliorate these negative consequences, various governments have provided financial support for airlines and other participants in the aviation industry within their jurisdiction. They have done so through various types of measures, including grants and loans, to sustain the industry through these difficult times and protect airline jobs.

Consumers, consumer advocacy groups,⁴⁵ and certain members of Congress⁴⁶ have urged airlines receiving government financial assistances to provide refunds instead of vouchers or credits to consumers who decided not to travel due to COVID related reasons. They assert that it is fundamentally unfair for airlines to be supported by government funds and refuse to provide refunds to consumers who were not able to travel due to the COVID-19 pandemic. Similarly, in a letter to Congress, the National Association of Attorney Generals urged

⁴⁵ See, e.g., *Airlines: Give Us Refunds, Not Vouchers*, petition by Consumer Reports, https://action.consumerreports.org/20200420_finance_airlinerefundpetition. Consumer Reports, *Letter to Sect. Buttigieg*, <https://advocacy.consumerreports.org/wp-content/uploads/2021/11/CR-letter-to-Sec-Buttigieg-consumer-complaints-11-18-21-FINAL-2.pdf>.

⁴⁶ See, e.g., Senator Edward J. Markey and Richard Blumenthal press release, <https://www.markey.senate.gov/news/press-releases/senators-markey-and-blumenthal-blast-airlines-inadequate-response-to-their-request-to-eliminate-expiration-dates-for-all-pandemic-related-flight-credits>.

Congress to consider and enact laws to require carriers that receive Federal financial relief to provide full refunds to customers who voluntarily cancel their flight reservations for reasons related to COVID-19.⁴⁷ Although consumer advocacy organizations and others have urged the Department to mandate that airlines that received government funds related to the COVID-19 pandemic refund consumers for flights that consumers were unable to take due to government restrictions or advisories related to COVID, the Department is not proposing to do so. The Department does not have the authority to promulgate retroactive rules unless that power is expressly authorized by Congress.⁴⁸ However, pursuant to the Department's authority as described in Section I.B. of this proposed rule, the Department is proposing moving forward to require U.S. and foreign airlines to issue refunds instead of travel credits or vouchers to qualified passengers holding non-refundable tickets for flights that operated without a significant change if the airlines receive a significant amount of government financial assistance related to that public health emergency. The Department seeks comment on how to handle the refund/voucher issuance situation when there is more than one airline on the ticket and not all airlines receive significant government financial assistance. To the extent that a ticket agent sold the ticket to a consumer, as identified by the consumer's financial charge statement, the Department seeks comment on whether the airline receiving government assistance should be required to provide a refund in lieu of the travel credit or voucher.

In determining the scope of "government financial assistance" that would impose a requirement to provide refunds to qualified passengers holding non-refundable tickets for flights that operated without a significant change, the Department referenced the definitions for the terms "Federal award" and "Federal financial assistance" in the Office of Management and Budget's regulation on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. The

⁴⁷ See, National Association of Attorney Generals (NAAG) press release, <https://www.naag.org/policy-letter/attorneys-general-call-for-new-consumer-protections-to-protect-airline-industry-customers/>.

⁴⁸ The Supreme Court, in *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988), said the Administrative Procedure Act is very clear in defining "rule" to mean an agency statement of future effect. The Court stated that agencies do not have the power to promulgate retroactive rules unless that power is expressly authorized by Congress.

regulation in 2 CFR 200.1 defines these terms to include a broad range of financial instruments provided by the Federal government to non-Federal entities. These instruments include direct cash contributions such as grants and direct appropriations, cash contributions or insurance related to loans, loan guarantees, interested subsidies, and non-cash contributions.

Upon consideration, DOT proposes to adopt a definition for “government financial assistance” in the context of requiring airlines and ticket agents to provide refunds in lieu of travel credits or vouchers to qualified passengers affected by a public health emergency to include cash contributions provided by a government entity and accepted by a carrier or a ticket agent selling air transportation to U.S. consumers, even if the carrier or the ticket agent is expected to provide shares or options of shares of ownership in exchange for the cash. The Department’s proposal would exclude financial assistance in the forms of government issued, subsidized, or guaranteed loans and non-cash contributions by a government entity. The proposed definition would cover not only financial assistance provided by the Federal government of the United States to U.S. air carriers and ticket agents based in the United States, but also financial assistance provided by a foreign central government to a foreign airline or a ticket agent selling air transportation to U.S. consumers. The Department’s proposal would require airlines and ticket agents to provide refunds in lieu of travel credits or vouchers to qualified passengers affected by a public health emergency only if the future financial assistance is significant. The Department believes that this approach focuses on the net benefits airlines and ticket agents receive from the government’s direct cash assistance and ensures that some of the benefits they receive would be passed on to consumers, who also suffer from financial losses due to the same event for which airlines and ticket agents are receiving government assistance. The Department seeks comments on whether significant government financial assistance in the form of tax relief or loan forgiveness is similar enough to direct cash contribution such that the Department’s proposal on refunds should include entities receiving these types of financial assistance.

The Department is cognizant that in many cases, government financial assistance is granted with a specific purpose. For example, in the United States, in recognizing the financial difficulties the airline industry faced

due to the COVID–19 pandemic, Congress passed several statutes in 2020 and 2021 that granted payments to passenger air carriers, cargo air carriers, and certain contractors, which must be exclusively used for the continuation of payment of employee wages, salaries, and benefits. The Department is not proposing to require airlines or ticket agents to use the specific financial assistances provided by their government as the sources of consumer refunds. Instead, the Department is proposing that the requirement for airlines and ticket agents to provide cash refunds to qualified passengers holding non-refundable tickets for flights that operated without a significant change would not start until an airline or ticket agent receives significant government assistance. This approach recognizes that airlines and ticket agents would have an increased financial ability to issue cash refunds at that time.

The Department’s proposal is contingent upon airlines’ and ticket agents’ receipt of a “significant” amount of government financial assistance. The NPRM does not propose a specific threshold to determine whether the government assistance is “significant” as the impact of each public health emergency on the airline industry may differ from time to time. Rather, the Department proposes to consider relevant factors, on a case-by-case basis, to determine what amount of government financial assistance provided to an airline would be considered “significant” and therefore trigger the refund requirement in the proposed 14 CFR 260.7. The factors that the Department believes are relevant include: the size of the entity (annual enplanements for airlines, annual revenue, the number of employees), year-over-year comparison of traffic and revenue before and after the public health emergency is declared, and the amount of government financial assistance accepted in relation to the entity’s annual revenue. For foreign carriers, the Department may also consider their enplanements to and from the United States in addition to the total enplanements. The Department notes that taking these factors into consideration, government financial assistance accepted by numerous U.S. and foreign carriers during the COVID–19 pandemic, including financial assistance provided under the CARES Act, could be considered “significant.” The Department seeks comments on whether these considerations are reasonable to determine what amount of government assistance would be

significant enough to trigger the refund requirement. In addition, the Department seeks comment on what other considerations are relevant that are not mentioned here. Should the Department adopt the same amount of government financial assistance as the benchmark for each public health emergency, which would apply to all entities, or should the amounts differ based on the entity’s sizes and other considerations? Should there be a different threshold or a different set of considerations for ticket agents?

Regarding the procedure of determining the amount of government financial assistance that would be considered “significant” for the purpose of airline refunds, the Department seeks comment on a process in which, upon the occurrence of a public health emergency and the provision of government financial assistance to the industry, the Department would apply the relevant factors and seek public comments on what it tentatively views as being “significant” financial assistance that would trigger the refund requirement. This notice and comment process would ensure the public’s views are fully considered before there is a determination as to what is significant using the factors set forth in this rulemaking. It would also ensure that consumers know when they would be entitled to a refund instead of a non-expiring voucher or credit.

The Department emphasizes that to be eligible for a refund under this proposal, a passenger must be otherwise eligible for a non-expiring travel credit or voucher under the proposed provisions in 14 CFR 259.5(b)(6) or 14 CFR 399.80(o)(1)(A), and must have made a refund request from the carrier or ticket agent within 12 months of the date that a determination has been made that the carrier or ticket agent received significant government financial assistance in relation to the public health emergency at issue. Under this proposal, passengers who have already accepted non-expiring travel credits or vouchers but have not redeemed them would be able to seek a refund after the airline or the ticket agent receives the government financial assistance. The Department believes that limiting the refund obligation to 12 months would add certainty to airlines with respect to financial and operational planning, and would also give eligible consumers ample time to seek refunds. The Department seeks comment on the proposed refund eligibility timeframe.

Because this refund requirement for passenger-initiated cancellations is triggered by significant government financial assistance provided to carriers

and ticket agents in relation to a public health emergency, when there is no public health emergency declared, passengers who have or are likely to have contracted a serious communicable disease that poses a direct threat to the health of others or those who are restricted from traveling by a government order in relation to a serious communicable disease and want to cancel their non-refundable tickets would not be eligible for a refund but would be entitled to a non-expiring travel credit or voucher under this proposal.

As with the proposal to require issuance of travel credits and vouchers to passengers holding non-refundable tickets, airlines and ticket agents under the proposed obligation to issue a refund because of their acceptance of significant government financial assistance would be allowed to require proof from passengers to demonstrate that they are unable or advised not to travel consistent with a government restriction, advisory, or guidance related to a public health emergency, and if appropriate, provide medical documentation. Carriers and ticket agents that have previously received required documentation from passengers for issuing travel credits or vouchers may not require documentation again when the passenger wants to exchange the unused credit or voucher for a refund. Carriers and ticket agents under the proposed obligation to issue a refund in these situations would be permitted to offer travel credits of the same or higher dollar value or other compensations, as long as passengers are informed of their eligibility for a refund.

The Department notes again that the proposal to require airlines and ticket agents to issue refunds in lieu of travel credits or vouchers because airlines and ticket agents receive significant government financial assistance related to a public health emergency, if adopted in a final rule, would not apply retroactively. In other words, if the Department adopts this proposal, airlines and ticket agents that have already accepted government financial assistance during the COVID-19 pandemic, would not be required to provide refunds to eligible consumers on the basis of that assistance even if the financial assistance would otherwise be deemed “significant.”

v. Effective Date

We propose that any final rule we adopt take effect 90 days after the publication in the **Federal Register**. We believe this would allow sufficient time for carriers and ticket agents to comply

with the various proposed requirements should they be finalized. We invite comments on whether 90 days is the appropriate interval for implementation of the proposed requirements if adopted in final.

Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866 (“Regulatory Planning and Review”), supplemented by Executive Order 13563 (“Improving Regulation and Regulatory Review”), directs Federal agencies to propose or adopt a regulation only after making a reasoned determination that the benefits of the intended regulation justifies its costs. The Office of Management and Budget has determined that this proposed rule is a significant regulatory action under Executive Order 12866 and requires an assessment of potential benefits and costs. Accordingly, the Department has prepared a regulatory impact analysis for the proposed rule, summarized in this section and available in the docket. Due to a lack of usable data to specify a baseline and evaluate impacts, the analysis is mostly qualitative.

The proposed rule would clarify the requirement that carriers and ticket agents give prompt refunds when a carrier cancels flights or makes significant itinerary changes, including changes that affect the schedule or quality of service. It would create industry-wide definitions for “cancelled flight” and “significant change of flight itinerary” and define “prompt” as within 7 days of a refund request for credit card purchases and 20 days for purchases by other forms of payment.

The proposed rule would also require airlines and ticket agents to give non-expiring travel credits or vouchers to passengers who do not travel to protect themselves or others from serious communicable diseases during a public health emergency and passengers who do not travel due to government restrictions related to a serious communicable disease. Airlines and ticket agents could require documentation showing that the decision was consistent with travel restrictions and guidance issued by health authorities or medical professionals. For passenger cancellation requests made during a public health emergency, airlines and ticket agents would be required to issue cash or cash equivalent refunds rather than credits or vouchers if they received

significant government financial assistance during the public health emergency, although the rule does not define “significant financial assistance.” The issue of significance would be considered in a subsequent and separate administrative process.

Table I summarizes the expected economic impacts of the proposed rule. The expected net benefits of the proposed rule depend on the probability that a future state of the world involves a public health emergency. In the case of no public emergency, the proposed rule will have only modest impacts, but could result in a decrease in transaction costs associated with processing and obtaining compensation for cancellations and significant itinerary changes. Net benefits would be positive by roughly the amount of this reduction in transaction costs. With a public health emergency, however, net benefits are likely to be negative. While benefits are uncertain, we do not expect that the proposed rule would measurably decrease the spread of serious communicable disease for several reasons. These reasons include that the incremental incentive from a non-expiring travel credit relative to baseline industry practices is limited and unlikely to outweigh restrictions imposed by public health authorities or individuals’ own risk preferences in the decision to postpone travel. In addition, during a public health emergency, the proposed rule is likely to increase transaction and documentation costs. The increase in transaction costs is mainly due to uncertainty in the definition of significant government assistance and the requirement creating additional administrative burdens for receiving government funds. The proposed rule could also lead to other societal costs depending on whether it affects industry acceptance of government assistance, but these impacts are uncertain.

In terms of distributional effects, we do not expect significant changes in the absence of a public health emergency. The needed changes to existing airline policies are small, and passengers would only rarely need to use the protections related to serious communicable diseases. With a public health emergency, the number of refunds to passengers is expected to increase, and fewer passengers are likely to forfeit travel credits for trips they cancel due to public health concerns. Thus, while transfers to passengers would largely remain unchanged without a public health emergency, they would increase during a health emergency.

TABLE I—SUMMARY OF ANNUAL ECONOMIC IMPACTS
[2021 Dollars]

	Baseline 1: no public health emergency	Baseline 2: during a public health emergency
Benefits:		
Reduction in cases of serious contagious disease	<i>De minimis</i>	Uncertain.
Costs:		
Documentation	<i>De minimis</i>	\$55.5 million (based on example discussed in regulatory impact analysis).
Transaction costs	Decrease	Increase.
Foregone social benefits of government programs	n/a	Uncertain.
Transfers:		
Refunds (transfer from taxpayers to passengers)	<i>De minimis</i>	Increase.
Redeemed travel credits (transfer from airlines to passengers)	<i>De minimis</i>	Increase.

Certain regulatory alternatives would reduce transaction costs due to the proposed rule. For example, removing the refund requirement when an airline or ticket agent receives significant government financial assistance would eliminate potential transaction costs due to ambiguities and would not risk other social costs. Another alternative that could reduce costs would be not allowing airlines to request documentation from passengers to demonstrate that they are canceling travel due to a government order restricting travel or to protect themselves and others from serious contagious diseases. Airlines would not be able to distinguish these cancellations from other passenger-initiated cancellations, however, and passengers would have an incentive to overuse these protections.

A third regulatory alternative, which would reduce transaction costs and eliminate documentation costs, would be limiting the scope of the proposed rule to adding the new definitions for carrier-initiated “cancelled flight” and “significant change of flight itinerary.” This alternative would not grant additional protections to passengers who purchase non-refundable tickets but are unable or choose not to travel due to conditions related to a public health emergency or contracting a serious communicable disease.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to review regulations and 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. This proposed rule would have some impact on air carriers and ticket agents that qualify as small entities. To assess the impact of this proposed rule, the Department has prepared an initial regulatory flexibility

analysis (IRFA), summarized in this section and available at [regulations.gov](https://www.regulations.gov) under Docket No. DOT–OST–2022–0089.

A description of the reasons why DOT is considering this action, as well as the objectives of the proposed rule, is provided in Sections I–IV of the preamble of this NPRM. The legal basis for the proposed rule is also set forth in Section I of the preamble.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

An air carrier is a small entity if it provides air transportation exclusively with small aircraft, defined as any aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less, as described in 14 CFR 399.73. In 2020, 28 air carriers meeting these criteria reported passenger traffic data to the Bureau of Transportation Statistics. A ticket agent is a small entity if it has total annual revenues below \$22 million (see <https://www.sba.gov/document/support-table-size-standards>, NAICS Codes 561510). This amount excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions, but includes commissions received. Based on data from the 2017 Economic Census, which groups firms by NAICS code and revenue size, 7,827 ticket agents had revenues less than the \$25 million threshold in the census. Because this number is higher than the \$22 million NAICS threshold, this number may overestimate the number of ticket agents who meet the SBA definition of a small business.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule could have potentially significant impacts on some number of small entities, depending

upon whether a public health emergency has been declared. Most potential impacts are due to the proposed requirement that airlines and ticket agent give eligible consumers refunds rather than non-expiring travel vouchers or credits when they receive significant government financial assistance during a public health emergency. Other costs are due to the need to process documentation when passengers cancel travel because they are restricted or prohibited from travel by a government order or to protect themselves and others from serious contagious diseases consistent with travel restrictions and guidance issued by health authorities.

In the baseline case where no public health emergency occurs, the impact of this proposed rule is expected to be minimal because it is normal business practice for airlines and ticket agents to provide refunds under the conditions required by this rule. In the baseline case where a public health emergency occurs, the proposed rule has the potential to have significant impacts on small entities.

The number of passengers who would not travel for public health reasons is difficult to predict, but a hypothetical example illustrates the potential economic costs associated with the documentation requirements of the rule for small air carriers. In 2020, small air carriers in the United States made 1.14 million passenger trips.⁴⁹ If passengers needed to restrict travel for 5% of the trips and provide airlines with documentation, passengers would submit approximately 57,000 forms. We assume that a customer service representative working for an airline or ticket agent would need an average of 5 minutes (0.083 hours) to review

⁴⁹ Bureau of Transportation Statistics. 2021. “Full Year 2020 and December 2020 US Airline Traffic Data.” <https://www.bts.gov/newsroom/full-year-2020-and-december-2020-us-airline-traffic-data>.

documentation and request additional documentation if needed, for a total of approximately 4,750 hours. Using median wage data from the Bureau of Labor Statistics as of May 2020 for customer service representatives, we use an estimate of \$26.84 (\$18.51 median hourly wage times a multiplier of 1.45 to account for benefit costs).⁵⁰ The total estimated annual cost of the forms would be approximately \$127,500, or about \$4,500 per carrier on average. Some of these costs, or additional costs, could be borne by small ticket agents.

In addition, if airline or ticket agents receive significant government financial assistance during a public health emergency, then they would need to issue cash refunds rather than non-expiring travel vouchers or credits. Tying the cash refund requirement to the receipt of government assistance adds costs to accepting that assistance.

Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

The Department did not identify any Federal rules that may duplicate, overlap, or conflict with this proposed rule, which sets forth the circumstances under which airlines must provide travel credits, vouchers, or refunds related to a serious communicable disease or carrier-initiated flight cancellations or significant changes.

Description of Significant Alternatives Considered

The Department analyzed two alternatives that would potentially reduce impacts on small businesses. One alternative is removing the cash refund requirement as a condition of accepting significant government assistance. The Department has tentatively concluded, however, that as a policy matter, airlines receiving significant government assistances should go beyond issuing travel credits and vouchers to consumers whose ability or willingness to travel is significantly impacted by a public health emergency.

A second alternative is to limit the scope of the rule to specifying definitions for “significant change in itinerary” and “cancellation.” The Department has tentatively concluded, however, that removing this portion of the rule would undermine the Department’s goal to protect consumers’ financial interests when the disruptions to their travel plans were caused by public health concerns beyond their

control. The Department also believes that protecting consumers’ financial interests would further incentivize persons not to travel if they have or may have a serious communicable disease.

D. Executive Order 13132 (Federalism)

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

E. Executive Order 13175

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

F. Paperwork Reduction Act

This NPRM proposes a new collection of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 49 U.S.C. 3501 *et seq.*). The proposed rulemaking would allow airlines and ticket agents to require passengers wishing to cancel a flight itinerary that is still operated to provide documentation demonstrating that that they are restricted or prohibited from travel by a government order related to a serious communicable disease, or that they are unable or choose not to travel to protect themselves or other from a serious communicable disease, consistent with restrictions, advisories, or guidance by relevant health authorities or health professionals. For this information collection, a description of the respondents and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

Requirement To Prepare and Submit to Airlines Documentations Demonstrating a Passenger is Unable or Advised Not To Travel Due to Government Restrictions or Concerns Related to a Serious Communicable Disease

Respondents: Passengers restricted from travel due to a government order related to a serious communicable disease, passengers advised by a medical professional or determine consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air because they have or may have contracted a serious communicable disease such that their travel would pose a threat to the health of others, and passengers advised by a medical professional or determine consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel to protect themselves from a serious communicable disease during a public health emergency.

Number of Respondents: The number of respondents would vary greatly depending on whether there is a public health emergency and the magnitude of that public health emergency. When there is a public health emergency with a similar magnitude of the COVID–19 pandemic, the number of respondents could potentially be very high. The Department’s data shows that in 2020, U.S. airlines explained 558 million fewer passengers in domestic air transportation than in 2019.⁵¹ If 1% of this reduction was due to passengers are unable or are advised to not travel for a qualifying reason and were required by airlines and ticket agents to submit documentation, there would be 5.58 million respondents.

Estimated Annual Burden on Respondents: We estimate that each respondent would need 30 minutes (0.5 hours) to obtain a documentation from a medical professional per response, per year. We also estimate that a customer service representative working for an airline or a ticket agent would need an average of 5 minutes (0.083 hours) to review the documentation and request additional documentation if needed. Passengers would spend a total of approximately 2.8 million hours per year (0.5 hours × 5.58 million passengers) to obtain the documentation. Airline and ticket agent customer service representatives would spend approximately 460,000 hours

⁵⁰ Bureau of Labor Statistics. 2022. “Occupational Employment and Wages, May 2020: 43–4051 Customer Service Representatives.” <https://www.bls.gov/oes/current/oes434051.htm>.

⁵¹ Bureau of Transportation Statistics. 2021. “Full Year 2020 and December 2020 US Airline Traffic Data.” <https://www.bts.gov/newsroom/full-year-2020-and-december-2020-us-airline-traffic-data>.

(0.083 hours x 5.58 million forms) per year to review the documentation.

To calculate the hourly value of time spent on the documentation, we used median wage data from the Bureau of Labor Statistics as of May 2020. Respondents would obtain, present, and

submit the documentation on their own time without pay and we estimate the value of this uncompensated activity using a post-tax wage estimate of \$15.42 per hour (\$20.17 median hourly wage for all occupations minus a 17% estimated tax rate). For customer service

representatives, we use an estimate of \$26.84 per hour (\$18.51 median hourly wage times a wage multiplier of 1.45). In this scenario, the total annual estimated documentation costs of the forms would be approximately \$55.5 million (Table II).

TABLE II—EXAMPLE ANNUAL COST ESTIMATE FOR DOCUMENTATION

Group	Forms	Hours per form	Total hours	Hourly time value	Estimated costs (millions)
People restricting travel	5,580,000	0.5	2,790,000	\$15.42	\$43.0
Customer service representatives	5,580,000	0.083	463,410	26.84	12.4
Total			3,253,410		55.5

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

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 proposed rule would have no such effect on State, local, and tribal governments or on the private sector. Therefore, the Department has determined that no assessment is required pursuant to UMRA.

H. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action 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, October 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. Paragraph 4.c.6.i of DOT Order 5610.1C categorically excludes “[a]ctions relating to consumer protection, including regulations.” This proposal relates consumer protection. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Signed August 2, 2022, in Washington, DC.
Peter Paul Montgomery Buttigieg,
Secretary of Transportation.

List of Subjects

14 CFR Part 259

Air Carriers, Consumer Protection, Reporting and Recordkeeping Requirements.

14 CFR Part 260

Air Carriers, Consumer Protection.

14 CFR Part 399

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

For the reasons set forth in the preamble, the Department proposes to amend title 14 CFR Chapter II as follows:

PART 259—ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS [AMENDED]

- 1. The authority citation for 14 CFR Part 259 is revised to read as follows:

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

- 2. Amend § 259.5 by revising paragraphs (a) and (b)(5), redesignating paragraphs (b)(6) through (12) as paragraphs (b)(7) through (13), and

adding new paragraph (b)(6) to read as follows:

§ 259.5 Customer Service Plan.

(a) *Adoption of Plan by Covered Carrier and Requirements for Other Carriers.*

(1) Each covered carrier shall adopt a Customer Service Plan applicable to its scheduled flights, as specified in paragraphs (b)(1) through (13) of this section and adhere to the plan's terms.

(2) Each certificated or commuter air carrier or foreign air carrier that operates scheduled passenger flights to, within, or from the United States solely using aircraft originally designed to have a passenger capacity of fewer than 30 seats shall comply with paragraphs (b)(5) and (6) of this section.

(b) * * *

(5) Where ticket refunds or ancillary service fee refunds are due pursuant to 14 CFR part 260, providing prompt refunds, within 7 days of a refund request as required by 14 CFR 374.3 for credit card purchases, and within 20 days after receiving a refund request for cash or check or other forms of purchases. Carriers may choose to provide the refunds in the original form of payment (*i.e.*, money is returned to an individual using whatever payment method the individual used to make the original payment, such as a check, a credit card, a debit card, cash, or airline miles), or in another form of payment that is cash equivalent as defined in 14 CFR 260.2. Carriers may offer travel credits, vouchers, or other compensation in lieu of refunds, but carriers first must inform consumers that they are entitled to a refund. Carriers must clearly disclose any material restrictions, conditions, or limitations on these compensations they offer, so consumers can make informed choices about the refund or other

compensation that would best suit their needs.

* * * * *

(6) Providing non-expiring travel credits or vouchers, upon request, to a consumer holding a non-refundable ticket as set forth in paragraphs (b)(6)(i)(A) through (i)(C) of this section and subject to paragraphs (b)(6)(ii) through (v) of this section.

(i) In circumstances when:

(A) Regardless of whether there is a public health emergency as defined in 42 CFR 70.1, the consumer is unable to travel because of a U.S. (Federal, State or local) or foreign government restriction or prohibition (*e.g.*, stay at home order, entry restriction, or border closure) in relation to a serious communicable disease that is issued after the ticket purchase.

(B) There is a public health emergency as defined in 42 CFR 70.1, the consumer purchased the airline ticket before the public health emergency was declared, the consumer is scheduled to travel during the public health emergency, and the consumer is advised by a medical professional or determines consistent with public health guidance issued by the U.S. Centers for Disease Control and Prevention (CDC), comparable agencies in other countries, or the World Health Organization (WHO) not to travel by air to protect himself or herself from a serious communicable disease as defined in 14 CFR 260.2.

(C) Regardless of whether there is a public health emergency as defined in 42 CFR 70.1, the consumer is advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air because the consumer has or may have contracted a serious communicable disease as defined in 14 CFR 260.2, and the consumer's condition is such that traveling on a commercial flight would pose a direct threat to the health of others.

(ii) As a condition for issuing the non-expiring travel credits or vouchers in paragraph (b)(6)(i) of this section, carriers may require, as appropriate, the following documentation dated within 30 days of the initial departure date of the affected flight(s):

(A) For any consumer claiming an inability to travel due to a government restriction or prohibition in relation to a serious communicable disease, carriers may require the consumer to provide the applicable government order or other document demonstrating how the requirement restricts the consumer's ability to travel;

(B) For any consumer stating that he or she is not traveling during a public health emergency because the consumer has been advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air to protect himself or herself from a serious communicable disease as described in paragraph (b)(6)(i)(B) of this section, carriers may require the consumer to provide the applicable guidance issued by CDC, comparable agencies in other countries, or WHO, and/or a written statement from a licensed medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge and the consumer's health condition, that the consumer should not travel by commercial air transportation to protect his or her health; and

(C) Regardless of whether there is a public health emergency, for any consumer stating that he or she has been advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air because he has or may have contracted a serious communicable disease that poses a direct threat to the health of others as described in paragraph (b)(6)(i)(C) of this section, carriers may require the consumer to provide the applicable guidance issued by CDC, comparable agencies in other countries, or the WHO, and/or a written statement from a licensed medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge and the consumer's health condition, that the consumer should not travel by commercial air transportation to protect the health of others.

(iii) A carrier may retain a service fee for processing the travel voucher or credit, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare.

(iv) A carrier must promptly issue the non-expiring travel credits or vouchers with a value equal to or greater than the fare (including government-imposed taxes and fees and carrier-imposed fees and surcharges and prepaid ancillary service fees not utilized by the consumer).

(v) A carrier may not impose unreasonable restrictions, conditions, or limitations on the travel credits or vouchers, including conditions that severely restricts booking with respect to travel date, time, or route; a limitation that only allows redemption in one

booking and renders any residual value void; or a limitation that only allows the value of the credits or vouchers to apply to the base fare of a new booking. A carrier must clearly disclose any material restrictions, limitations, or conditions on the use of the credits and vouchers, including but not limited to administrative fees for redemption, advance purchase or capacity restrictions, and blackout dates.

* * * * *

■ 3. Add Part 260 to read as follows:

PART 260—REFUNDS FOR AIRLINE FARE AND ANCILLARY FEES

Sec.

260.1 Purpose.

260.2 Definitions.

260.3 Applicability.

260.4 Refunding fees for ancillary services that consumers paid for but that were not provided.

260.5 Refunding fees for significantly delayed or lost bags.

260.6 Refunding fare for flights cancelled or significantly changed by carriers.

260.7 Refunding fare for flights that consumers choose not to take due to public health concerns or restrictions.

260.8 Providing prompt refunds.

260.9 Contract of carriage provisions related to refunds.

260.10 DOT Determination of Significant Government Financial Assistance

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

§ 260.1 Purpose.

The purpose of this part is to ensure that carriers refund consumers for: (1) ancillary services related to air travel that consumers paid for but were not provided; (2) fees to transport checked bags that are lost or significantly delayed; (3) a consumer's fare for a cancelled flight or a significant change of flight itinerary where the consumer does not accept the alternative transportation, airline voucher or credit, or other compensations offered by the carrier; and (4) a consumer's fare in lieu of the travel credit or voucher specified in section 259.5(b)(6)(i)(A) through (C) of this title, if the carrier received significant financial assistance from a government entity as a result of a public health emergency.

§ 260.2 Definitions.

As used in this part:

Air carrier means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

Ancillary service means any service related to air travel provided by a covered carrier, for a fee, beyond passenger air transportation. Such service includes, but is not limited to,

checked or carry-on baggage, advance seat selection, access to in-flight entertainment program, in-flight beverages, snacks and meals, pillows and blankets, and seat upgrades.

Cancelled flight means a covered flight that was published in the carrier's Computer Reservation System at the time of the ticket sale but was not operated by the carrier.

Cash equivalent means a form of payment that can be used like cash, including but not limited to a check, a prepaid card, funds transferred to the passenger's bank account, funds provided through digital payment methods (e.g., PayPal, Venmo), or a gift card that is widely accepted in commerce. Carriers are prohibited from requiring consumers to bear the burden for maintenance or usage fees related to cash equivalent payment.

Checked bag means a bag or an item other than a bag that was provided to a carrier by or on behalf of a passenger, for transportation in the cargo compartment of a scheduled passenger flight. A checked bag includes a gate-checked bag and a valet bag.

Covered carrier means an air carrier or a foreign air carrier operating to, from or within the United States, conducting scheduled passenger service.

Covered flight means a scheduled flight operated or marketed by a covered carrier to, from, or within the United States.

Government financial assistance means a cash contribution a covered carrier receives directly or indirectly from a government entity including instances where the carrier is expected to provide shares or options of share of ownership in exchange for the cash. It does not include financial assistance in the form of government issued, subsidized, or guaranteed loans and non-cash contributions by a government entity.

Foreign air carrier means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.

Serious communicable disease means a communicable disease as defined in 42 CFR 70.1 that has serious consequences and can be easily transmitted by casual contact in an aircraft cabin environment. For example, the common cold is readily transmissible in an aircraft cabin environment but does not have severe health consequence. AIDS has serious health consequences but is not readily transmissible in an aircraft cabin environment. Both the common cold and AIDS would not be considered serious communicable diseases. SARS is

readily transmissible in an aircraft cabin environment and has severe health consequences. SARS would be considered a serious communicable disease.

Significant change of flight itinerary means a change to a covered flight itinerary made by a covered carrier where: (1) the consumer is scheduled to depart from the origination airport three hours or more for domestic itineraries and six hours or more for international itineraries earlier than the original scheduled departure time; (2) the consumer is scheduled to arrive at the destination airport three hours or more for domestic itineraries or six hours or more for international itineraries later than the original scheduled arrival time; (3) the consumer is scheduled to depart from a different origination airport or arrive at a different destination airport; (4) the consumer is scheduled to travel on an itinerary with more connection points than that of the original itinerary; (5) the consumer is downgraded to a lower class of service; or (6) the passenger is scheduled to travel on a different type of aircraft with a significant downgrade of the available amenities and travel experiences.

Significantly delayed checked bag means a checked bag that is not delivered to the consumer or the consumer's agent within 12 hours of the last flight segment's arrival for domestic itineraries and within 25 hours of the last flight segment's arrival for international itineraries, including itineraries that include both international flight segment(s) and domestic flight segment(s).

Significant government financial assistance means government financial assistance that the Department has determined through a public process to be significant.

§ 260.3 Applicability.

This part applies to all covered carriers that collect fares or fees, including checked baggage fees, for ancillary services to be provided on or in relation to a covered flight.

§ 260.4 Refunding fees for ancillary services that consumers paid for but that were not provided.

A covered carrier shall promptly provide a refund to a consumer for any fees it collected from the consumer for ancillary services related to air travel if the service was not provided, including fees for services on the consumer's scheduled flight, on a subsequent replacement flight if there has been a rescheduling by the carrier, or on a flight not taken by the consumer due to oversales or a flight that is not operated

by the carrier. If a ticket agent collected the ancillary fee, the carrier that is scheduled to operate the flight, or for multiple-carrier itineraries, the carrier scheduled to operate the last segment of the consumer's itinerary is responsible for providing a refund.

§ 260.5 Refunding fees for significantly delayed or lost bags.

Upon receiving a notification pursuant to paragraph (b) of this section from a consumer, a covered carrier that collected a checked baggage fee from the consumer or, if a ticket agent collected the checked baggage fee from the passenger, the covered carrier that is scheduled to operate the flight or the covered carrier that is scheduled to operate the last segment of the consumer's itinerary if multiple-carrier itineraries, shall promptly provide a refund to the consumer of any fee charged for transporting a significantly delayed checked bag.

(a) Determining the length of delay.

(1) For the purpose of determining whether a refund of the baggage fee is due, the 12-hour deadline for domestic itineraries and the 25-hour deadline for international itineraries is calculated from the time when a passenger was given the opportunity to deplane from the aircraft at the passenger's final destination; or, if the final travel segment was on alternate ground transportation, a comparable time when the passenger disembarks from the ground transportation.

(2) For the purpose of determining whether a refund of the baggage fee is due, a delayed bag is considered to have been delivered to a passenger or a passenger's agent if:

(i) The bag has been transported to a location, other than the destination airport, based on agreement by the passenger and the carrier, whether or not the passenger is present to take possession of the bag;

(ii) The bag has arrived at its intended final destination airport and is available for pick up, and the carrier has provided notice to the passenger or the passenger's agent (e.g., via push notice through a mobile application, email, or text message) that the bag has arrived at that airport and is ready for pick up; or

(iii) The bag has arrived at the intended final destination airport and the carrier has provided notice to the passenger or the passenger's agent (e.g. via push notice through a mobile application, email, or text message) that the bag has arrived at that airport and will be delivered to a location that the passenger and carrier have agreed on.

(b) Notification of carrier by passenger about lost or significantly delayed bag.

A covered carrier's obligation to provide a prompt refund for a lost bag or a significantly delayed bag does not begin until passengers provide notification of the lost or significantly delayed bag. If the entity that collected the baggage fee is the same entity that received a mishandled baggage report from the passenger, the filing of the mishandled baggage report constitutes a notification from the passenger for the purpose of receiving a refund, if due, for the baggage fee. In all other situations, passengers must inform the carrier that collected the baggage fee of the lost or delayed bag; or, if a ticket agent collected the bag fee, passengers must inform the carrier that operated the last flight segment about the lost or delayed bag for the purpose of receiving a refund for the baggage fee for a significantly delayed bag.

§ 260.6 Refunding fare for flights cancelled or significantly changed by carriers.

A covered carrier shall promptly provide a refund, as described in section 259.5 of this title, for the fare it collected from a passenger for any cancelled flight or for any flight with a significant change of flight itinerary where the passenger chooses not to accept the alternative transportation, voucher or credit, or other compensation offered by the carrier.

§ 260.7 Refunding fare for flights that consumer choose not to take due to public health concerns or restrictions.

(a) When there is a declaration of a public health emergency as defined in 42 CFR 70.1 and DOT has published a determination pursuant to section 260.10 that the covered carrier received significant government financial assistance as a result of the public health emergency, the covered carrier shall promptly provide a requested refund for the fare it collected from a passenger meeting the criteria of section 259.5(b)(6)(i)(A) through (b)(6)(i)(C) of this title, in the manner consistent with 14 CFR 259.5 and subject to paragraphs (b) through (d) of this section, in lieu of the non-expiring travel credits or vouchers specified in section 259.5(b)(6) of this title.

(b) To receive the refunds, passengers shall make a request for a refund from the covered carrier within 12 months of the date that DOT published a determination pursuant to section 260.10 that the carrier received significant financial assistance. Passengers are also entitled to a refund if they have already received travel credits or vouchers under 14 CFR 259.5(b)(6)(i)(A) or 259.5(b)(6)(i)(B) prior to the date that DOT published a

determination pursuant to section 260.10 that the carrier received significant government financial assistance and the passengers have not redeemed those credits or vouchers. Passengers must also have notified the carrier of their preference of a refund in lieu of the credit or voucher within 12 months of the date that DOT published the determination that the carrier received significant financial assistance in relation to the public health emergency applicable to the customer's refund request.

(c) As a condition for issuing the refunds under this section, carriers may require, as appropriate, any passenger requesting a refund provide documentations specified in 14 CFR 259.5(b)(6)(ii), if such documentation has not already been provided to carriers when the passenger requested non-expiring travel credits or vouchers.

(d) A carrier may retain a service fee for issuing the refund, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare.

§ 260.8 Providing prompt refunds.

When a refund of a fare or a fee for an ancillary service, including a fee for lost or significantly delayed checked baggage, is due pursuant to this part, the refund must be issued promptly consistent with the requirement of 14 CFR 259.5(b)(5).

§ 260.9 Contract of carriage provisions related to refunds.

A carrier's failure to ensure that its contract of carriage provisions are consistent with carriers' obligations as specified by this part will be considered an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 subject to enforcement action by the Department.

§ 260.10 DOT Determination of Significant Government Financial Assistance.

The Department will determine whether government financial assistance provided after [Effective date of the final rule] as a result of a public health emergency is significant through the public process described in this section.

(a) The Department will consider relevant factors in determining whether government financial assistance is significant, including:

- (i) The size of the entity (annual enplanement for airlines, annual revenue, the number of employees);
- (ii) Year-over-year comparison of traffic and revenue before and after the public health emergency is declared;

(iii) The amount of government financial assistance accepted in relation to the entity's annual revenue; and

(iv) For foreign carriers, enplanements to and from the United States in addition to total enplanements.

(b) The Department will publish for comment in the **Federal Register** a proposed determination of whether the government financial assistance is significant, taking into consideration the factors in paragraph (a) of this section.

(c) The Department will publish a final determination in the **Federal Register** of whether the government financial assistance is significant, taking into consideration the factors in paragraph (a) of this section and public comments received on the proposed determination described in paragraph (b) of this section.

PART 399—STATEMENTS OF GENERAL POLICY [AMENDED]

■ 4. The authority citation for Part 399 continues to read as follows:

Authority: 49 U.S.C. 41712, 40113(a). 5. Amend § 399.80 by revising the introductory text paragraph, paragraph (l) and adding 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 (o) 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:

- * * * * *
- (l) Failing or refusing to make a prompt refund to a passenger for the fare that a ticket agent sold to the passenger for any cancelled flight or for any flight with a significant change of flight itinerary and the passenger chooses not to accept the alternative transportation, voucher or credit, or other compensations offered by the carrier or the ticket agent. A prompt refund is one that is made within 7 days of receiving a refund request as required by 12 CFR part 1026 for credit card purchases, and within 20 days after receiving a refund request for cash or check or other forms of purchases. Ticket agents may choose to provide the refunds in the original form of payment (*i.e.*, money is returned to individual using whatever payment method the individual used to make the original payment, such as a check, a credit card,

a debit card, cash, or airline miles), or in another form of payment that is cash equivalent. A ticket agent may retain a service fee for purchasing the ticket or processing the refund, as long as the fee is on a per passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare. Ticket agents may offer travel credits, vouchers, or other compensation in lieu of refunds, but they first must inform consumers that consumers are entitled to a refund if that is the case. Ticket agents must clearly disclose any material restrictions, conditions, and limitations on these compensations they offer, so consumers can make informed choices about the refund or other compensation that would best suit their needs.

For purposes of this paragraph, the following definitions apply:

(1) *Cancelled flight means* a flight that was published in a carrier's Computer Reservation System at the time of the ticket sale but was not operated by the carrier.

(2) *Cash equivalent means* a form of payment that can be used like cash, including but not limited to a check, a prepaid card, funds transferred to the passenger's bank account, funds provided through digital payment methods (e.g., PayPal, Venmo), or a gift card that is widely accepted in commerce. Ticket agents are prohibited from requiring consumers to bear the burden for maintenance or usage fees related to cash equivalent payment.

(3) *Covered flight means a scheduled flight to, from, or within the United States.*

(4) *A significant change of flight itinerary means a change to a flight itinerary consisting covered flight(s) made by a U.S. or foreign carrier where:* (i) the passenger is scheduled to depart from the origination airport three hours or more for domestic itineraries and six hours or more for international itineraries earlier than the original scheduled departure time; (ii) the passenger is scheduled to arrive at the destination airport three hours or more for domestic itineraries or six hours or more for international itineraries later than the original scheduled arrival time; (iii) the passenger is scheduled to depart from a different origination airport or arrive at a different destination airport; (iv) the passenger is scheduled to travel on an itinerary with more connection points than that of the original itinerary; (v) the passenger is downgraded to a lower class of service; or (vi) the passenger is scheduled to travel on a different type of aircraft with a

significant downgrade of the available amenities and travel experiences.

* * * * *

(o) Failing to provide non-expiring travel credits or vouchers, upon request, to a passenger holding a non-refundable ticket in scheduled air transportation to, from, or within the United States sold by the ticket agents as set forth in paragraphs (o)(1)(A) through (o)(1)(C) of this section and subject to paragraphs (o)(2) through (5) of this section, or failing to provide refunds, in lieu of providing travel credits or vouchers specified in paragraphs (o)(1)(A) through (o)(1)(C) of this section, to a passenger holding a non-refundable ticket in scheduled air transportation to, from, or within the United States sold by the ticket agents as set forth in paragraph (o)(1)(D) of this section and subject to paragraphs (o)(2) through (4) of this section.

(1) In circumstances where:

(A) Regardless of whether there is a public health emergency as defined in 42 CFR 70.1, if the passenger is unable to travel because of a U.S. (Federal, State or local) or foreign government restriction or prohibition (e.g., stay at home order, an entry restriction, border closure) in relation to a serious communicable disease that is issued after the ticket purchase.

(B) There is a public health emergency as defined in 42 CFR 70.1, if the consumer purchased the airline ticket before the public health emergency was declared, the consumer is scheduled to travel during the public health emergency, and the consumer is advised by a medical professional or determines consistent with public health guidance issued by the U.S. Centers for Disease Control and Prevention (CDC), comparable agencies in other countries, or the World Health Organization (WHO) not to travel by air to protect the consumer from a serious communicable disease as defined in 14 CFR 260.2; and

(C) Regardless of whether there is a public health emergency as defined in 42 CFR 70.1, if the consumer is advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air because the consumer has or may have contracted a serious communicable disease as defined in 14 CFR 260.2 and the consumer's condition is such that traveling in commercial flights would pose a direct threat to the health of others.

(D) There is a public health emergency as defined in 42 CFR 70.1 and the Department has made a

determination pursuant to 49 CFR 260.10 that the ticket agent has received significant government financial assistance after [Effective date of the final rule] as a result of the public health emergency, if the consumer is eligible for travel credits or vouchers pursuant to paragraphs (o)(1)(A) through (o)(1)(C) of this section. Such passengers must have made a request for a refund from the ticket agent pursuant to this paragraph within 12 months of the date that the Department has made a determination pursuant to 49 CFR 260.10 that the ticket agent received significant financial assistance. Ticket agents must also provide a refund to passengers who have already received travel credits or vouchers under this section prior to the date that DOE made a determination pursuant to 49 CFR 260.10 that the ticket agent received significant government financial assistance if the passengers have not redeemed those credits or vouchers, and have notified the ticket agent of their preference of a refund in lieu of the voucher within 12 months of the date that the Department made a determination pursuant to 49 CFR 260.10 that the ticket agent received significant financial assistance in relation to the public health emergency applicable to the customer's refund request.

For purpose of this paragraph, *government financial assistance* means a cash contribution a ticket agent receives directly or indirectly from a government entity, including instances where the ticket agent is expected to provide shares or options of shares of ownership in exchange for the cash. It does not include financial assistance in the form of government issued, subsidized, or guaranteed loans and non-cash contributions by a government entity; and

For purposes of this paragraph, *significant government financial assistance* means government financial assistance that the Department has determined through a public process to be significant.

(2) As a condition for issuing the non-expiring travel credits or vouchers in paragraphs (o)(1)(A) through (o)(1)(C) of this section or refunds in paragraph (o)(1)(D) of this section, ticket agents may require, as appropriate, the following documentation dated within 30 days of the initial departure date of the affected flight(s):

(A) For any passenger claiming an inability to travel due to a government restriction or prohibition in relation to a serious communicable disease, ticket agents may require the passenger to provide the applicable government

order or other document demonstrating how the requirement restricts the passenger's ability to travel.

(B) For any passenger stating that the passenger is not traveling during a public health emergency because the passenger has been advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air to protect himself or herself from a serious communicable disease as described in paragraph (o)(1)(B) of this section, ticket agents may require the passenger to provide the applicable guidance issued by CDC, comparable agencies in other countries, or WHO, and/or a written statement from a licensed medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge and the passenger's health condition, that the passenger should not travel by commercial air transportation to protect the passenger's health; and

(C) Regardless of public health emergency, for any passenger stating that the passenger has been advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in

other countries, or WHO not to travel by air because the passenger has or may have contracted a serious communicable disease that poses a direct threat to the health of others as described in paragraph (o)(1)(C) of this section, ticket agents may require the passenger to provide the applicable guidance issued by CDC, comparable agencies in other countries, or WHO, and/or a written statement from a licensed medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge and the passenger's health condition, that the passenger should not travel by commercial air transportation to protect the health of others.

(3) A ticket agent must promptly issue non-expiring travel credits or vouchers with a value equal to or greater than the fare (including government-imposed taxes and fees and carrier-imposed fees and surcharges) and prepaid ancillary service fees for which the service is not provided to the consumer.

(4) When issuing travel credits or vouchers pursuant to paragraphs (o)(1)(A) through (o)(1)(C) or issuing refunds pursuant to paragraph (o)(1)(D) of this section, a ticket agent may retain any service fee for issuing the ticket or

charge a service fee for processing a voucher or credit or a refund, as long as the fee is on a per passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare.

(5) A ticket agent may not impose unreasonable restrictions, conditions, or limitations on the travel credits or vouchers issued pursuant to paragraphs (o)(1)(A) through (o)(1)(C) of this section that impact its value, including conditions that severely restricts booking with respect to travel date, time, or route; a limitation that only allows redemption in one booking and renders any residual value void; or a limitation that only allows the value of the credits or vouchers to apply to the base fare of a new booking. A ticket agent must clearly disclose any material restrictions, limitations, or conditions on the use of the credits and vouchers, including but not limited to administrative fees for redemption, advance purchase or capacity restrictions, and blackout dates.

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