Appendix 6 of AD 2026-13-05 - ZONE TEMP procedure

(As Required by AD 2026-13-05)

ZONE TEMP

The amber **ZONE TEMP** caution light illuminates.

Condition: One or more of these occur:

- A zone duct overheat
- Flight deck temperature control is failed.

1. Temperature selector (affected cabin) . . . . . . Select a cooler temperature

   This step prevents the trim air modulating valve from returning to an overheat condition.

2. TRIP RESET switch . . . . . . Push

   The ZONE TEMP light extinguishes if the duct temperature has cooled below limits.

3. Monitor duct temperature.

   If the duct temperature increases rapidly, set the TRIM AIR switch to OFF.

4. Choose one:

   - Affected cabin temperature is excessively high:

     Go to the Cabin Temperature Hot procedure.

     End of Procedure.

   - Affected cabin temperature is normal:

     End of Procedure.

Issued on June 26, 2026.

Brian Knaup,

Acting Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[DOT–OST–2025–0633]

RIN 2105–AF38

Procedures in Regulating and Enforcing Unfair or Deceptive Practices

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is amending its regulations regarding the hearing procedures available when the Department proposes a discretionary aviation consumer protection rulemaking declaring a practice to be unfair or deceptive. This final rule revises the hearing procedures established in 2022 to align them with the more robust due process protections originally set forth in 2020, ensuring the use of neutral hearing officers and the issuance of formal findings of fact. Further, this rule rescinds the 2023 Clarification of Formal Enforcement Procedures, which specified that the Department is not limited to administrative proceedings before an Administrative Law Judge, but may also initiate civil enforcement actions in United States District Court. The Department now finds this clarification unnecessary and redundant because its authority to seek judicial enforcement is established clearly by statute.

DATES: Effective July 31, 2026.

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

SUPPLEMENTARY INFORMATION:

I. Background

A. The Unfair and Deceptive Practices (UDP) Statute and the Department's Recent Rulemakings

The Department has authority under 49 U.S.C. 41712 (Section 41712) to investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. Under Section 41712, after notice and an opportunity for a hearing, the Department has authority to order the regulated entity to stop the unfair or deceptive practice. Further, the Department can issue regulations to declare a practice to be unfair or deceptive under the rulemaking authority found in 49 U.S.C. 40113 (Section 40113), which states that the Department may take action, including prescribing regulations, it considers necessary to carry out Part A of Subtitle VII of Title 49 of the U.S. Code, which includes Section 41712.

On December 7, 2020, the Department published a final rule titled ''Defining Unfair or Deceptive Practices'' (2020 UDP Rule) in the **Federal Register**.[1] The 2020 UDP Rule was intended to provide stakeholders with greater clarity regarding the Department's enforcement and regulatory processes with respect to aviation consumer protection actions under Section 41712. Among other things, the 2020 UDP Rule defined the terms ''unfair'' and ''deceptive'' for purposes of Section 41712. The definitions were modeled after Federal Trade Commission (FTC) precedent; they also reflect the Department's longstanding interpretation of those terms.

The 2020 UDP Rule also set forth procedures the Department would use when conducting future discretionary rulemaking [2] and enforcement actions under the authority of Section 41712. Specifically, under the 2020 UDP Rule, if the Department proposes a discretionary rule that would declare a practice to be unfair or deceptive, then interested parties have the right to request a hearing to challenge the technical, economic, or other assumptions that underlie the Department's proposed rule. These procedures were designed to ensure that discretionary consumer protection rules are grounded in a robust factual record, subjected to rigorous due process protections, and aligned with Section 41712, which requires notice and an opportunity for a hearing before the Department declares a practice to be unfair or deceptive.

On February 2, 2022, the Department issued a final rule titled ''Procedures in Regulating Unfair or Deceptive Practices'' (2022 UDP Rule),[3] which modified these hearing procedures. The 2022 UDP Rule increased the burden of proof for granting a hearing from a ''plausible'' showing that the rule depended on disputed factual issues to a ''clear and convincing'' showing that a hearing is in the public interest. It also removed the requirement for a neutral officer to preside and issue formal findings of fact, requiring only that an officer provide minutes of the meeting. Furthermore, it eliminated the explicit right to cross-examine witnesses, granting the Department broad discretion over the level of party participation. These changes reduced the transparency of the process, including how the hearing actually influences the final regulation.

On August 29, 2022, the Department issued ''Guidance Regarding Interpretation of Unfair or Deceptive Practices'' (Guidance).[4] The Guidance, which was issued without notice and comment, expounded on the definitions of ''unfair'' and ''deceptive'' found in the 2020 UDP Rule.

On June 16, 2023, the Department issued another final rule titled ''Clarification of Formal Enforcement Procedures for Unfair or Deceptive Practices'' (Clarification).[5] At that time, the Department determined it was necessary to clarify that, when taking enforcement action, the Department is not limited to initiating a proceeding before an administrative law judge, but retains the option to bring a civil action in a United States District Court under its independent statutory authority.[6]

On April 3, 2025, the Department issued a Request for Information (RFI) titled ''Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs.'' [7] The Department solicited information to identify regulations, guidance documents, paperwork, and other administrative burdens that can be modified or repealed, consistent with the law. In response to the RFI, industry stakeholders including Airlines for America (A4A), the International Air Transport Association (IATA), and United Airlines, as well as a libertarian think tank (Reason Foundation) recommended that the Department take action to reinstate the 2020 UDP hearing procedures, rescind the 2022 UDP Rule, and rescind the Guidance.

B. Notice of Proposed Rulemaking (NPRM)

On October 30, 2025, the Department issued an NPRM proposing changes in three areas of the UDP framework as described below.

1. Revision to UDP Hearing Procedures

As noted above, the 2020 UDP Rule set forth procedures that DOT would use to conduct hearings on future discretionary aviation protection rulemakings. The 2022 UDP Rule made significant changes to those procedures that increased the burden on stakeholders and reduced the formality of the proceedings. The 2025 NPRM proposed to revert these procedures

[1] *See* U.S. Department of Transportation, Final Rule, ''Defining Unfair or Deceptive Practices,'' 85 FR 78707 (RIN 2105–AE72) (Docket DOT–OST–2019–0182) (Dec. 7, 2020), available at *https://www.transportation.gov/sites/dot.gov/files/2020-12/Defining%20Unfair%20or%20Deceptive%20Practices%20Final%20Rule%20-%2085%20FR%2078707.pdf.*

[2] Discretionary rulemakings are ones that are not specifically required by statute. 14 CFR 399.75(b). If Congress specifically directed the Department to issue a rule finding a practice to be unfair or deceptive, then the hearing procedures described herein would not apply. *Id.*

[3] U.S. Department of Transportation, Final Rule, ''Procedures in Regulating Unfair or Deceptive Practices,'' 87 FR 5655 (RIN 2105–AF03) (Docket DOT–OST–2021–0142) (Feb. 2, 2022), available at *https://www.federalregister.gov/documents/2022/02/02/2022-01589/procedures-in-regulating-unfair-or-deceptive-practices.*

[4] U.S. Department of Transportation, Guidance Document, ''Guidance Regarding Interpretation of Unfair or Deceptive Practices,'' 87 FR 52677 (RIN 2105–ZA18) (Docket DOT–OST–2019–0182) (Aug. 29, 2022), available at *https://www.federalregister.gov/documents/2022/08/29/2022-18170/guidance-regarding-interpretation-of-unfair-and-deceptive-practices.*

[5] U.S. Department of Transportation, Final Rule, ''Clarification of Formal Enforcement Procedures for Unfair or Deceptive Practices,'' 88 FR 39352 (RIN 2105–AF18) (DOT–OST–2021–0142) (June 16, 2023), available at *https://www.federalregister.gov/documents/2023/06/16/2023-12845/clarification-of-formal-enforcement-procedures-for-unfair-and-deceptive-practices.*

[6] The 2020 UDP Rule explained that the Department had the option of taking enforcement action by filing a complaint with a DOT ALJ, but that rule did not mention DOT's separate statutory authority (at 49 U.S.C. 46016 and 46107) to take action in U.S. District Court.

[7] U.S. Department of Transportation, Request for Information, ''Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs,'' 90 FR 14593 (Docket DOT–OST–2025–0026) (April 3, 2025), available at *https://www.federalregister.gov/documents/2025/04/03/2025-05557/ensuring-lawful-regulation-reducing-regulation-and-controlling-regulatory-costs.*

back to the 2020 standards, with minor modifications.

a. Standard for Granting a Hearing

The 2020 UDP Rule allowed for a hearing if a petitioner showed that: ''(i) the proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act; (ii) the ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; and (iii) the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule.''

In contrast, the 2022 UDP Rule allowed for a hearing to be granted if the General Counsel found that a hearing was in the public interest. Factors to be considered in determining whether a hearing was in the public interest included, but were not limited to the first three factors set forth above, along with ''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 ''whether the hearing would unreasonably delay completion of the rulemaking.'' The 2025 NPRM proposed to reinstate the original three-part test.

b. Level of Proof for Granting a Hearing

The 2020 UDP Rule required a petitioner to establish a ''plausible prima facie case'' that the three factors for granting a hearing were met. The 2022 UDP Rule made it more difficult to obtain a hearing by requiring the petitioner to establish a ''clear and convincing showing'' that a hearing was in the public interest. The 2025 NPRM proposed a return to the ''plausible prima facie case'' standard.

c. Explaining the Rationale for Granting or Denying a Hearing; Appeal Rights

The 2020 UDP Rule required a written explanation from the DOT General Counsel only when a hearing was denied. The 2022 UDP Rule expanded this requirement to include a written explanation for *granting* a hearing. The 2025 NPRM proposed reverting to the 2020 standard, requiring an explanation only for denial. For the first time, the Department added a proposal that if the General Counsel denied the petition in whole or in part, that decision may be appealed to the Secretary within 30 days.

d. Qualifications of Hearing Officer

The 2020 UDP Rule required the General Counsel to appoint a ''neutral officer'' to conduct the hearing. The 2022 UDP Rule removed the word ''neutral,'' thereby allowing the General Counsel to appoint an officer from the Department's Office of Aviation Consumer Protection (OACP), the office that typically drafts the consumer protection rules, to preside. The 2025 NPRM proposed to reinstate the neutral officer requirement.

e. Conduct of the Hearing

The 2020 UDP Rule required the hearing officer to provide a ''reasonable opportunity to participate in the hearing through the presentation of testimony and written submissions.''

The 2022 UDP rule weakened the rights of participants by eliminating the guarantee that they could present testimony and written submissions. The 2025 NPRM proposed to reinstate these participation rights at the hearing.

f. Issuance of Proposed Findings of Fact

The 2020 UDP Rule required the hearing officer to ''place on the docket minutes of the hearing with sufficient detail as to fully reflect the evidence and arguments presented on the issues, along with proposed findings addressing the disputed issues of fact identified in the hearing notice.'' The 2022 UDP Rule eliminated this requirement, requiring only minutes of the meeting. The 2025 NPRM proposed to reinstate the requirement for formal findings of fact.

g. Closing Procedures

The 2020 UDP Rule limited closing statements or comments on the docket to hearing participants. The 2022 UDP Rule allowed all ''interested parties'' to file comments, even if they had not participated in the hearing itself. The 2025 NPRM proposed to revert to the 2020 standard, limiting closing statements or comments on the docket to those who participated in the hearing.

In the 2025 NPRM, the Department explained that the 2022 UDP Rule was promulgated in response to Executive Orders that have since been rescinded and are inconsistent with current Department and Administration policy. We noted that the 2022 UDP Rule was based on the stated goal of streamlining the hearing procedures to allow the Department greater efficiency and flexibility to issue the underlying consumer protection rules without being ''bogged down by overly prescriptive procedural constraints.'' [8]

We stated that we have now reconsidered these justifications for the 2022 rulemaking and support the recodification of the 2020 procedures. We found that ''any delay associated with following the 2020 procedures for applicable discretionary rulemakings would not only be minimal, based on past practice with these procedures, but also would be outweighed by the Department's development of higher quality rulemakings and enforcement actions. The Department produces its best work when it is informed by robust public input, the best available data, and sound law and economics, and these procedures increase opportunities to receive those essential building blocks for good governance that would strengthen the overall quality and fairness of the Department's administrative actions.'' [9]

2. Revocation of 2023 Clarification

The Department proposed to revoke the 2023 Clarification regarding enforcement action in U.S. District Court. The Department found this clarification unnecessary, as its ''authority to bring an action in the United States District Court to enforce Section 41712 is grounded in statute, settled, and does not need to be clarified.'' [10]

3. Consolidation of Similar Provisions; Planned Revocation of Guidance

Finally, the Department proposed to consolidate 14 CFR 399.75(a) and (d) into a single section to improve clarity and administrative efficiency. 14 CFR 399.75(a) states that the Department must use the definitions of ''unfair'' and ''deceptive'' set forth in § 399.79 when it issues a proposed or final regulation declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), unless the regulation is specifically required by statute. Per 14 CFR 399.75(d), the Department's rulemaking must ''articulate the basis'' for its conclusions that a practice is unfair or deceptive, using those definitions. The 2025 NPRM also expressed the Department's intent to revoke the 2022 Guidance ''at a later date'' (*i.e.,* in a separate rulemaking proceeding) because it was unnecessary, potentially confusing, and issued without notice and comment.[11]

[8] 87 FR 5655, 5657.

[9] 90 FR 48849–48852.

[10] *Id.* at 48852.

[11] *Id.* at 48851. A separate proceeding is necessary because the Office of the Federal Register has indicated that agencies cannot amend two distinct parts of the **Federal Register** in the same rulemaking document.

C. NPRM Comments

The Department received 15 comments on the NPRM. Eight were from individuals who generally supported the proposed rule as offering sensible due process protections, although one cautioned that more rigid hearing procedures could slow down rulemaking, potentially to the detriment of consumers.

Industry and Policy Groups

A4A and IATA supported the NPRM. A4A expressed the view that the proposal would ''ensure rulemakings are fully informed and give stakeholders a fair opportunity to participate in the regulatory process.'' [12] They specifically endorsed the transparency of the proposed hearing process, the appointment of a neutral hearing officer, the ability of participants to address the hearing officer's findings, and the consolidation of subsections 399.75(a) and (d).[13] However, A4A recommended that the Department retain explicit consideration of potential delays to a rulemaking caused by a hearing. A4A also recommended limiting participation by interested parties to the factual issues specified in the hearing notice and requiring parties to submit a brief statement in advance describing the testimony or written submission that will be presented to the Department and its pertinence to the factual issues specified in the notice. They argued that this is necessary to prevent hearings from considering ancillary issues.[14]

IATA supported the NPRM and the Department's broader deregulatory agenda. IATA specifically supported the more flexible ''plausible'' standard for obtaining a hearing; the appointment of a neutral officer; limiting comments on the officer's hearings to those entities or individuals that participated in the hearing; the right of parties to appeal the denial of a hearing to the Secretary; and the consolidation of subsections 399.75(a) and (d). IATA argued that the standard for denying a hearing should focus on whether a hearing would advance the consideration of the proposed rule, rather than whether it would cause unreasonably delay in the rulemaking.

The Reason Foundation and the Center for Regulatory Freedom (CRF) also supported the NPRM. The Reason Foundation argued that rigorous procedures modeled after FTC's regime are necessary to avoid regulatory overreach and to ensure high-quality rules. Similarly, CRF argued that these procedures are a way of ensuring that DOT rulemakings are based on clear standards and a solid informational foundation, not ''shifting policy priorities.'' They argued that this is especially important to the airline industry, which is constantly innovating and evolving.[15] They stressed the importance of regulatory certainty, particularly for small businesses. A4A, IATA, Reason Foundation, and CRF supported rescinding the 2022 UDP Rule, the 2022 Guidance, and the 2023 Clarification.

Consumer Advocates

The Department received various comments opposing the proposed rule. Samuel Levine, former director of the Bureau of Consumer Protection for FTC, argued that the proposed hearing procedures would significantly weaken the Department's ability to issue timely aviation consumer protection rules in the future. He contended that the proposed rule should be read against the backdrop of the airline industry's history of advocating for weakened consumer protection regulations and weakened DOT enforcement. Finally, he argued that the traditional notice-and-comment process set forth in the Administrative Procedure Act (APA) is sufficient to gather public input about proposed rules, without additional hearing procedures.

Seven consumer advocacy organizations [16] filed a joint comment urging the Department to discontinue the NPRM. They argued that the Department has not identified an actual problem necessitating these changes, nor provided ''sound economic principles and analysis supported by rigorous cost-benefit requirements and data-driven decisions'' to justify this rule, as required by DOT Order 2100.7.[17] They contended that the procedural hurdles in the proposed rule increase regulatory burdens, rather than relieving them. The consumer advocacy organizations emphasized that discretionary aviation consumer protections enjoy bipartisan support and are beneficial to consumers. They noted that Congress already sets adequate procedural rulemaking protections in the APA and argued that additional procedural hurdles violate Congress's command that DOT maintain a regulatory system ''in which decisions are reached promptly.'' [18] Finally, they argued that if the procedures are retained, the Department should deny hearing requests from petitioners who failed meaningfully to participate in the initial notice-and-comment period.

Lastly, the Citizens Rulemaking Alliance (CRA) urged the Department to withdraw or revise the proposed rule, arguing that it may have significant adverse effects on small businesses because it may change how DOT enforces UDP principles. CRA argues that DOT should reconsider the effect of the rule under several statutes designed to protect small businesses from regulatory overreach.[19]

D. DOT Response

After reviewing the comments, the Department is finalizing the NPRM as proposed. We believe that the hearing procedures set forth in the NPRM afford appropriate due process protections to parties who request a hearing, while ensuring that discretionary UDP rulemakings are based on an adequate factual foundation. We also find that the new proposal to allow an appeal from denials of petitions for hearings ensures due process protections for stakeholders.

[12] A4A at 2.

[13] *Id.* at 2–3.

[14] A4A also argued that DOT should clarify whether OACP takes enforcement action on a per-passenger basis or a per-flight basis. We note that this issue is beyond the scope of this NPRM, which focuses on hearing procedures.

[15] CRF argued that the final rule should include a large number of ''good government'' principles for rulemaking and enforcement, such as using neutral hearing officers and limiting reliance on informal guidance documents. Some of those principles are already within the scope of this NPRM; some are already reflected in parts of the 2020 UDP Rule which have never changed; and others are reflected in other recent documents such as OACP's Notice of Proposed Guidance regarding enforcement matters (91 FR 385 (January 6, 2026), available at *https://www.federalregister.gov/documents/2026/01/06/2025-24282/notice-regarding-investigatory-and-enforcement-policies-and-procedures-of-the-office-of-aviation* and DOT's proposed revisions to 49 CFR part 5 (90 FR 20956 (May 16, 2025); available at *https://www.federalregister.gov/documents/2025/05/16/2025-08724/administrative-rulemaking-guidance-and-enforcement-procedures*).

[16] National Consumers League (NCL), American Economic Liberties Project, Consumer Action, Consumer Federation of America, FlyersRights, Travelers United, and U.S. PIRG.

[17] NCL at 1, citing *https://www.transportation.gov/mission/ensuring-reliance-upon-sound-economic-analysis-department-transportation-policies-programs* (January 29, 2025), paragraph 5.

[18] *Id.* at 6, citing 49 U.S.C. 40101(a)(7) (the ''Secretary of Transportation shall consider the following matters, among others, as being in the public interest and consistent with public convenience and necessity: . . . developing and maintaining a sound regulatory system that is responsive to the needs of the public and in which decisions are reached promptly to make it easier to adapt the air transportation system to the present and future needs of—(A) the commerce of the United States; (B) the United States Postal Service; and (C) the national defense.'').

[19] CRA at 1 (''While styled as 'procedures, the rule alters the substantive risk environment, compliance expectations, and documentation obligations of thousands of small entities that fall within the statutory definition of 'ticket agent,' 49 U.S.C. 40102(a)(45), and numerous small air carriers.'')

Burden and Small Business Impact

We disagree with the contention that this rulemaking increases regulatory burdens or violates DOT Order 2100.7. As we explain in the Regulatory Analysis, this rule is strictly one of internal DOT procedure. It does not impose substantive compliance costs on regulated entities; rather it requires the Department to engage in more formalized hearing procedures to improve the quality of its regulations. For the same reasons, we disagree with CRA that the rule substantively burdens small businesses.

Value of Codifying Procedures

While we agree that the hearing procedures set forth in the NPRM are not required by the APA, there is a statutory basis for them. Section 41712 provides for notice and an opportunity for a hearing before the Secretary may order an air carrier, foreign air carrier, or ticket agent to stop an unfair or deceptive practice. While Section 41712 does not prescribe specific procedures that the Department must use for its hearings, the proposed hearing procedures were developed by the Department to increase public participation in matters of significant economic and technical importance. Prior to 2020, the Department occasionally held hearings in connection with various rulemakings; however, those procedures were not codified in regulation and were conducted on an ad hoc basis. Codifying these procedures provides transparency and certainty for all stakeholders.

Marginal Delay in Rulemakings

We disagree with the suggestion that hearings are designed to delay rulemakings unduly. Recent DOT experience with public hearings demonstrated that such proceedings can improve the regulatory record without preventing the timely publication of a final rule.[20] Furthermore, the Department is eliminating the principle from the 2022 UDP rule that hearings may be denied based on a generalized public-interest test, which includes consideration of ''whether the hearing would unreasonably delay completion of the rulemaking.'' [21] In the Department's view, if the petitioner meets the three-part factual test, then a hearing is warranted and worth the wait. The value of a higher quality, more defensible rule based on robust data outweighs the marginal delay of the hearing itself.

Participation Standards

Finally, we find it unnecessary automatically to ''deny hearing requests from petitioners who did not substantively participate in the public comment period.'' [22] Because a petition for a hearing must be filed ''before the close of the comment period,'' [23] the petition itself constitutes participation. The General Counsel retains the discretion to deny petitions that are superficial or fail to meet the plausible prima facie standard.

We also remain firm in our decision to revoke the 2023 Clarification as unnecessary and redundant, and to consolidate sections 399.75(a) and (d) for improved administrative efficiency. As we indicated in the NPRM, we also intend to revoke the 2022 Guidance in a separate rulemaking.

Rulemaking Analyses and Notices

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

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. This rule primarily involves agency procedure and interpretation. By adopting enhanced procedures for future rulemaking activities, the Department ensures that its actions are rooted in fairness, due process, and an adequate factual foundation.

Under this rule, discretionary rulemakings are subject to a hearing procedure. This rule allows interested parties to request a hearing when the Department proposes a rule to classify a practice as unfair or deceptive; when the issuance of the NPRM raises one or more disputed scientific, technical, economic, or other complex factual issues; or when the NPRM may not satisfy the requirements of the Information Quality Act. Allowing interested parties an opportunity for a hearing ensures that they can test the information upon which discretionary consumer protection regulations rely.

The Department expects that requests for hearings will continue to occur occasionally when the Department issues discretionary aviation consumer protection rulemakings under its authority to regulate unfair or deceptive practices. This final rule revises the standard for granting a hearing by returning to a ''plausible prima facie'' case standard, which should make it easier for regulated entities to request a hearing than the previous ''clear and convincing showing'' standard. While the Department lacks data allowing it to distinguish the costs and time of conducting the hearings from one hearing standard to the other, the Department believes that any incremental costs and time associated with the hearing procedure modifications contained in this final rule are small relative to the baseline scenario in which the Department had hearing procedures with less robust public participation mechanisms. Previous discretionary rulemakings involving unfair or deceptive practices in aviation consumer protection have attracted substantial interest from consumer advocates, airline industry advocates, and the general public. The Department previously engaged with these parties with both the benefit of a formal process and without a formal hearing process, and the Department expects that future hearings will require similar investments of time and resources by the Department and interested parties.

The Department has experience using hearing procedures to supplement traditional notice-and-comment rulemaking.[24] The hearing procedures provide consistency in the Department's exercise of its UDP authority by mirroring the statute's hearing requirement to ensure rulemakings enacted under the same authority ensure due process and are grounded in fairness and supported by an adequate factual foundation. The Department believes that its experience with hearings prevent it from leading to excessive delays in issuing aviation consumer protection rules.

This rule does not impose any more than *de minimis* regulatory costs. The rule provides an additional mechanism for industry to provide input to the Department on its discretionary aviation consumer protection rulemakings. Private industry should not experience more than minimal additional costs relative to the status quo because it already engages in significant

[20] *See, e.g.,* Docket DOT–OST–2022–0089 (refund rule), available at *https://www.regulations.gov.*

[21] See current 14 CFR 399.75(b)(2)(v).

[22] NCL at 1.

[23] 14 CFR 399.75(b)(1), below.

[24] *See, e.g.,* Recording of the Public Meeting on the Airline Ticket Refunds and Consumer Protections NPRM, *available at https://www.transportation.gov/airconsumer/Airline_Refund_NPRM/March21_Public_Hearing_* Recording (Mar. 21, 2023) (UDP rulemaking); and Accessible Lavatories on Single-Aisle Aircraft: Part 1; Reopening of Comment Period and Public Meeting, *available at https://www.federalregister.gov/documents/2021/11/19/2021-25000/accessible-lavatories-on-single-aisle-aircraft-part-1-reopening-of-comment-period-and-public-meeting* (Dec. 16, 2021) (civil rights rulemaking).

information exchange with the Department. Industry has the option of continuing to use historical mechanisms for providing input to discretionary aviation consumer protection and is not required to make use of the alternatives set forth in this rule. The Department should not experience significant additional costs because it has considerable experience conducting analysis in support of aviation consumer protection rules as well as hearings analogous to those in this rule. Such efforts are consistent with the Department's normal business operations, and any additional resources needs could be accommodated through a simple and temporary realignment of internal resources.

B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.,* aircraft with up to 60 seats/18,000-pound payload capacity). *See* 14 CFR 399.73. The Department has determined that this rule does not have a significant economic impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

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

E. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. The DOT has determined there are no new information collection requirements associated with this rule.

G. Unfunded Mandates Reform Act

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

H. National Environmental Policy Act

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

I. Privacy Act

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

J. Statutory/Legal Authority for This Rulemaking

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

K. Regulation Identifier Number

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

List of Subjects in 14 CFR Part 399

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

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

PART 399—STATEMENTS OF GENERAL POLICY

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

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

Subpart F—Policies Relating to Rulemaking Proceedings

■ 2. Revise § 399.75 to read as follows:

§ 399.75 Rulemakings relating to unfair or deceptive practices.

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

(b) *Procedural requirements.* Except as provided in paragraph (c), when issuing a proposed regulation to determine a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), the Department shall adhere to the following procedural requirements:

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

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

(i) The proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issue that is genuinely in dispute or that may not satisfy the requirements of the Information Quality Act (Section 515 of Pub. L. 106–554);

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

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

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

(4) *Explanation and appeal of denial.* If a petition is denied in whole or in part, the General Counsel shall include a detailed explanation of the factual basis for the denial, including findings on each of the relevant factors identified in paragraph (b)(2) or (3) of this section. The General Counsel's denial of a petition, in whole or in part, may be appealed by the petitioner to the Secretary within 30 days of the date on which the General Counsel's explanation of the factual basis for the denial is issued.

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

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

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

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

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

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

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

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

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

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

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

Subpart G—Policies Relating to Enforcement

■ 3. Amend § 399.79 by revising the heading of paragraph (f), and removing paragraph (g) to read as follows:

§ 399.79 Policies relating to unfair and deceptive practices.

* * * * *

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

Issued in Washington, DC, under authority delegated in 49 CFR part 1.27(n).

Gregory Zerzan,

General Counsel.

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