

# Aviation Group Client Update

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## **DOT ISSUES PROPOSED RULE ON TRANSPARENCY OF AIRLINE ANCILLARY FEES AND OTHER CONSUMER PROTECTION ISSUES**

Today, the Department of Transportation (DOT) issued a Notice of Proposed Rulemaking (NPRM) regarding Transparency of Airline Ancillary Fees and Other Consumer Protection Issues. This is the third major consumer protection rulemaking proposed by the Obama Administration, following the two Enhancing Airline Passenger Protections rules.

The NPRM has nine components:

1. **Clarification of the definition of “Ticket Agent”:** DOT proposes to codify in its regulations a definition of “ticket agent” that includes all entities involved in the sale or distribution of air transportation, including entities that arrange for (but do not sell) air transportation in exchange for compensation.
2. **Display of ancillary service fees through all sales channels:** DOT is considering two alternative proposals regarding disclosure of ancillary service fees:
  - Require carriers to disclose such fees to all ticket agents to which a carrier provides fare information, including Global Distribution Systems (GDS); or
  - Require carriers to disclose such fees to all ticket agents to which a carrier provides fare information and which sell air transportation directly to consumers; this would exclude GDSs and other ticket agents that arrange for, but do not sell, air transportation.
3. **Expansion of the definition of “Reporting Carrier”:** DOT proposes to expand the pool of reporting carriers pursuant to 14 CFR Part 234 (Airline Service Quality Performance Reports) from any carrier that accounts for at least 1% of domestic scheduled passenger revenue to any carrier that accounts for 0.5% of domestic scheduled passenger revenue.
4. **Data reporting for domestic code-share partner operations:** The proposed rule requires reporting carriers to include on-time performance, mishandled baggage, and oversales data for their domestic scheduled flights operated by code-share partners.
5. **Minimum customer service standards for large ticket agents:** DOT proposes to require ticket agents with annual revenues of \$100M or more to commit to:
  - Providing prompt refunds where ticket refunds are due, including fees for optional services purchased but not used due to flight cancellation or oversale;
  - Providing an option to hold a reservation at the quoted fare without payment for, or to cancel without penalty within, 24 hours;

- Disclosing cancellation policies, seating configurations, and lavatory availability on flights;
  - Notifying customers in a timely manner of itinerary changes; and
  - Responding promptly to customer complaints.
6. **Website disclosure of code-share services:** DOT proposes to amend its code-share disclosure regulation (14 CFR Part 257) to require that carriers and ticket agents disclose code-share arrangements on the first display in response to a search for an itinerary in a format that is easily visible to the viewer, as required by 49 U.S.C. § 41712(c).
  7. **Disclosure of carriers marketed by large ticket agents:** The proposed rule would require large ticket agents (annual revenues of \$100M or more) to maintain and display lists of carriers whose tickets they market and sell, and/or to disclose that not all carriers that serve a particular market are marketed on that ticket agent website.
  8. **Prohibition on undisclosed airfare display bias:** DOT proposes to prohibit undisclosed biasing by carrier and ticket agents in any internet display of fare and schedule information of multiple carriers.
  9. **Prohibition on post-purchase price increases for baggage fees:** DOT proposes to modify 14 CFR 399.88 to prohibit price increases after the purchase of air transportation for any passenger baggage fees.

In addition, the NPRM proposes several amendments and corrections to Enhancing Airline Passenger Protections II rule, including baggage disclosure requirements under 14 CFR 399.85(a) and (b), the standard applicable to reporting tarmac delays under 14 CFR Part 244, civil penalties for tarmac delay violations, required oral disclosure of material restrictions on travel vouchers offered in oversale situations under 14 CFR Part 250, limitation of the flight status notification requirement (14 CFR 259.8), and removal of the rebating provision in 14 CFR 399.80(h).

Comments are due **90 days after publication in the Federal Register**. If you have any questions or would like further information regarding the proposed rules or assistance in preparing comments, please contact our office.

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