

DOT Issues Airline Ancillary Fee Proposal

DOT Issues Airline Ancillary Fee Proposal

On September 26, 2022, the U.S. Department of Transportation (DOT) issued a notice of proposed rulemaking titled “Enhancing Transparency of Airline Service Fees” (NPRM). The NPRM, which applies to airlines (both U.S. and foreign) and ticket agents, is further to an Executive Order issued by President Biden in July 2021 addressing competition in the U.S. economy. Among other things, the Executive Order directs the DOT to consider a proposed rule to ensure that consumers have certain ancillary fee information at the time of ticket purchase.

The salient elements of the NPRM are presented below:

1. Airlines and ticket agents, with respect to desktop and mobile websites marketed to U.S. consumers that either advertise or sell air transportation (*i.e.*, covered websites), would be required to disclose the following ancillary fee information on the first page displayed in response to a consumer search for air transportation when fare and schedule information is provided (*i.e.*, initial search results):
 - i. fees for a first and second checked bag and carry-on bag, along with applicable weight and dimension limits; and
 - ii. fees for changes and cancellations, along with a summary of applicable change and cancellation policies.
2. Baggage fees in initial search results would have to be presented as “passenger-specific information” when a consumer conducts a search that takes into account a characteristic that may impact the fees to be charged, such as military or frequent flyer status or method of payment (e.g., an airline co-branded credit card). Regardless of whether a passenger conducts a passenger-specific or anonymous itinerary search, if a particular fare category presented in the initial search results prohibits checking a bag or traveling with a carry-on bag, that prohibition would have to be disclosed along with any associated penalty.
3. In the case of consumers seeking to purchase air transportation for which at least one passenger is aged 13 or younger, airlines’ and ticket agents’ covered websites would be required to disclose, in initial search results, any applicable fee for the minor to be seated next to an accompanying adult in the same class of service (*i.e.*, adjacent seating of minors). Fees for adjacent seating of minors would have to be transactable at *all points of sale*.
4. Airline and ticket agent covered websites on which air transportation is sold would be required to disclose, before the execution of a booking transaction, whether the booking can be canceled without penalty within 24 hours of booking or whether the consumer has the option to hold the reservation for 24 hours at the quoted price, consistent with the carrier’s or ticket agent’s policy (as applicable).
5. Fees for baggage, changes and cancellations, and the adjacent seating of minors as described above (collectively, core ancillary services) would have to be disclosed during in-person or telephonic transactions at the time the airline or ticket agent quotes a fare for an itinerary.
6. In cases where a fee for a core ancillary service is collected without disclosure being provided as required under the NPRM (*e.g.*, in the initial search result on a covered website), the seller of the air transportation would be required to refund the fee to the



Jonathon H. Foglia

Member

jfoggia@cozen.com
Phone: (202) 912-4871
Fax: (202) 861-1905

Related Practice Areas

- Aviation Litigation
- Aviation Regulatory
- Transportation & Trade

Industry Sectors

- Aviation

- customer.
7. For air-inclusive tour packages sold by ticket agents on covered websites, if the airline is not known at the time of booking, the baggage information would not have to be provided as otherwise required under the NPRM, so long as the ticket agent:
 - i. prominently discloses in the initial search results for a selected itinerary that airline baggage fees may apply and vary based on passenger-specific factors; and
 - ii. provides the specific baggage fee information required under the NPRM to customers once the airline is known, including to customers who purchased the tour package before the airline's identity became known.
 8. In the case of ticket agents to which an airline provides fare, schedule, and availability information for the sale or display of the airline's flights, the airline would be required to furnish the ticket agent with usable, current, and accurate fee information and related rules on core ancillary services. Such fee information and rules must be sufficient to allow the agent to comply with the NPRM's baggage, change and cancellation, and adjacent seating fee disclosure requirements. Airlines would be required to ensure that fees for the adjacent seating of minors are transactable by ticket agents.
 9. The DOT's proposed requirements would take effect six months after the adoption of any final rule following the completion of this rulemaking proceeding.

The NPRM follows the DOT's issuance in early 2017 (during the final days of the Obama administration) of a proposed rule addressing similar disclosure requirements for baggage fees in initial search results on airline and ticket agent websites. The Trump administration subsequently withdrew that proposal. The current NPRM goes further than the 2017 proposal by encompassing change and cancellation fees and policies as well as fees (and transactability) for the adjacent seating of minors.

Public comments on the NPRM are due within 60 days of its publication in the *Federal Register* (expected in the coming days).
