

DOT Finalizes Two Key New Consumer Protection Rulemakings

On April 24, 2024, the Department of Transportation (DOT) released unofficial publications of the long-awaited final rules on “Refunds and Other Consumer Protections” and “Enhancing Transparency of Airline Ancillary Service Fees”. Both rules have been making their way through the rulemaking process since 2022 and will become effective 60 days after their publication in the Federal Register. We are hearing (informally) that the effective date may be sometime in October. Please let us know if you have questions on how the rule will impact your operations and website/other marketing and sales functions.

Refunds and Other Consumer Protections
14 CFR Parts 259, 260, 262, and 399
[Docket No. DOT-OST-2022-0089]

The so-called “Automatic Refund Rule” is a post-COVID reaction to certain airlines choosing not to refund passengers to their original form of payment after a cancellation or significant change. The new rule will require automatic refunds when a U.S. air carrier or a foreign air carrier cancels or makes a significant change to a scheduled flight and the consumer is not offered (or rejects) alternative transportation, travel credits, vouchers, or other compensation. Automatic refunds must be provided promptly (see definition below), and DOT is requiring airlines and ticket agents to inform consumers of their right to a refund if that is the case before making an offer for alternative transportation, travel credits, vouchers, or other compensation in lieu of refunds. DOT is also defining the terms “significant change” and “cancellation” and imposing other consumer friendly remedies, such as requiring refunds for ancillary service charges that passengers paid for but did not receive and for checked bag fees if a passenger’s bag is significantly delayed. Finally, the rule makes it possible for passengers who are unable or advised not to travel due to a communicable disease to obtain a transferrable voucher or credit valid for five years. Below is a summary of the rule’s major provisions, taken directly from the Rule’s unofficial publication:

Subject	Requirement
Definition of Cancelled Flight	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 not operated by the carrier.

Subject	Requirement
Definition of Significant Change of Flight Itinerary	<p>Define significant change of flight itinerary as a change to the itinerary made by a carrier where:</p> <p>(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;</p> <p>(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;</p> <p>(3) the passenger is scheduled to depart from a different origination airport or arrive at a different destination airport;</p> <p>(4) the passenger is scheduled to travel on an itinerary with more connection points than that of the original itinerary;</p> <p>(5) the passenger is downgraded to a lower class of service;</p> <p>(6) the passenger with a disability is scheduled to travel through one or more connecting airports that differ from the original itinerary; or</p> <p>(7) the passenger with a disability is scheduled to travel on a substitute aircraft that results in one or more accessibility features needed by the passenger being unavailable.</p>
Entity Responsible for Refunding Airline Tickets	<p>Require U.S. and foreign air carriers that are the merchants of record of the ticket transactions to provide prompt refunds when they are due, including for codeshare and interline itineraries.</p> <p>Require ticket agents that are merchants of record of the airline ticket transactions to provide prompt ticket refunds when they are due.</p>
Notification of Right to Refund	<p>Require U.S. and foreign airlines and ticket agents inform consumers that they are entitled to a refund of the ticket if that is the case before making an offer for alternative transportation or travel credits, vouchers, or other compensation in lieu of refunds.</p> <p>Require U.S. and foreign airlines to provide prompt notifications to consumers affected by a cancelled or significantly changed flight of their right to a refund of the ticket and ancillary fees due to airline-initiated cancellations or significant changes, any offer of alternative transportation or travel credit, vouchers, or other compensation in lieu of a refund, and airline policies on refunds and rebooking when consumers do not respond to carriers' offers of alternative transportation or travel credit, vouchers, or other compensation in lieu of a refund.</p>

Subject	Requirement
<p>"Prompt" Ticket Refund</p>	<p>Specify that "prompt" ticket refund means:</p> <ul style="list-style-type: none"> (1) Airlines and ticket agents provide refunds for tickets purchased with credit cards within 7 business days of refunds becoming due; and (2) Airlines and ticket agents refund tickets purchased with payments other than credit cards within 20 calendar days of refunds becoming due. <p>Define "business days" to mean Monday through Friday excluding Federal holidays in the United States.</p>
<p>Automatic Refunds of Airline Tickets</p>	<p>Require carriers who are the merchants of record to provide automatic ticket refunds when:</p> <ul style="list-style-type: none"> (1) a carrier cancels a flight and does not offer alternative transportation or travel credits, vouchers, or other compensation for the canceled flight in lieu of a refund; (2) a carrier significantly changes a flight and the consumer rejects the significantly changed flight itinerary and the carrier does not offer alternative transportation or offer travel credits, vouchers, or other compensation in lieu of a refund; (3) a consumer rejects the significantly changed flight or alternative transportation offered as well as travel credits, vouchers, or other compensation offered for a canceled flight or a significantly changed flight itinerary in lieu of a refund; (4) a carrier offers a significantly changed flight or alternative transportation for a significantly changed flight itinerary or a canceled flight, but the consumer does not respond to the transportation offered on or before a response deadline set by the carrier and does not accept any offer of travel credits, vouchers, or other compensation, and the carrier's policy is to treat a lack of a response as a rejection of the alternative transportation offered; (5) a carrier does not offer a significantly changed flight or alternative transportation for a significantly changed flight itinerary or a canceled flight but offers travel credits, vouchers, or other compensation in lieu of a refund, and the consumer does not respond to the alternative compensation offered on or before a reasonable response date in which case the lack of a response is deemed a rejection; or

Subject	Requirement
Automatic Refunds of Airline Tickets	<p>(6) a carrier offers a significantly changed flight or alternative transportation for a significantly changed flight itinerary or a canceled flight and offers travel credits, vouchers, or other compensation in lieu of a refund and the carrier has not set a deadline to respond, the consumer does not respond to the alternatives offered, and the consumer does not take the flight.</p> <p>Carriers may set a reasonable deadline for a consumer to accept or reject a significant change to a flight or an offer of alternative transportation following a significant change or a cancellation. Carriers that set a deadline must establish, publish, and adhere to a policy regarding whether consumers not responding to a significant change or an offer of alternative transportation following a significant change or cancellation before the carrier's deadline would: 1) have their reservations cancelled and receive a refund; or 2) maintain their reservations and forfeit the right to a refund.</p>
Refunding Fees for Significantly Delayed Bags	<p>Require U.S. and foreign airlines that are merchants of record for the checked bag fee or if a ticket agent is the merchant of record for the checked bag fee, the carrier that operated the last flight segment to provide automatic refunds of checked baggage fees when they fail to deliver checked bags in a timely manner:</p> <p>(1) For domestic itineraries, a refund of baggage fee is due when an airline fails to deliver the checked bag within 12 hours of the consumer's flight arriving at the gate and the consumer has filed a Mishandled Baggage Report.</p> <p>(2) For international itineraries where the flight duration of the segment between the United States and a point in a foreign country is 12 hours or less, a refund of baggage fee is due when the airline fails to deliver the checked bag within 15 hours of the consumer's flight arriving at the gate and the consumer has filed a Mishandled Baggage Report.</p> <p>(3) For international itineraries where the flight duration of the segment between the United States and a point in a foreign country is over 12 hours, a refund of baggage fee is due when the airline fails to deliver the checked bag within 30 hours of the consumer's flight arriving at the gate and the consumer has filed a Mishandled Baggage Report.</p>
Refunding Ancillary Services Fees for Services Not Provided	<p>Require U.S. and foreign airlines that are merchants of record for the ancillary service or if a ticket agent is the merchant of record for the ancillary service, the carrier that failed to provide the ancillary service to provide automatic refunds of ancillary service fees when a passenger pays for an ancillary service that the airlines fail to provide.</p>

Subject	Requirement
<p>Providing Travel Credits or Vouchers to Consumers Affected by a Serious Communicable Disease</p>	<p>Require U.S. and foreign airlines that are merchants of record for the ticket transaction or if a ticket agent is the merchant of record, the carrier that operated the flight to issue travel credits or vouchers, valid for at least five years from the date of issuance and transferrable, when:</p> <p>(1) a consumer is advised by a licensed treating medical professional not to travel during a public health emergency to protect himself/herself from a serious communicable disease, the consumer purchased the airline ticket before a public health emergency was declared, and the consumer is scheduled to travel during the public health emergency to or from the area affected by the public health emergency;</p> <p>(2) a consumer is prohibited from travel or is required to quarantine for a substantial portion of the trip by a governmental entity in relation to a serious communicable disease and the consumer purchased the airline ticket before a public health emergency for that area was declared or, if there is no declaration of a public health emergency, before the government prohibition or restriction for travel to or from that area is imposed; or</p> <p>(3) a consumer is advised by a licensed treating medical professional not to travel, irrespective of a public health emergency, because the consumer has or is likely to have contracted a serious communicable disease and would pose a direct threat to the health of others.</p>
<p>Documentation Requirement for Receiving Credits or Vouchers</p>	<p>Allow U.S. and foreign airlines to require consumers requesting a credit or voucher for a non-refundable ticket when the flight is still scheduled to be operated without significant change to provide, as appropriate:</p> <p>(1) the applicable government order or other document relating to a serious communicable disease demonstrating how the passenger is prohibited from travel or is required to quarantine at the destination for a substantial portion of the trip; or</p> <p>(2) a written statement from a licensed treating medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge concerning a serious communicable disease such as guidance issued by CDC or WHO and the passenger's health condition, that the passenger should not travel to protect the passenger from a serious communicable disease or the passenger would pose a direct threat to the health of others if the passenger traveled. This medical statement may only be required in the absence of HHS guidance declaring that requiring such documentation is not in the public interest.</p>

Subject	Requirement
Service Fees by Ticket Agents for Issuing Tickets	Allow ticket agents to retain the service fee charged when issuing the original ticket if the service provided is for more than processing payment for a flight that the consumer found and so long as the fee is on a per-passenger basis and the existence, amount, and the non-refundable nature of the fee if this is the case, is clearly and prominently disclosed to consumers at the time they purchase the airfare.
Processing Fees for Issuing Refunds, Credits, or Vouchers	<p>Retaining Processing Fee for Required Refunds: Prohibit carriers from retaining a processing fee for issuing required refunds when the carrier cancels or significantly changes a flight.</p> <p>Processing Fee for Issuing Required Credits or Vouchers: Allow airlines to retain a processing fee from the value of a required travel credit or voucher provided to a passenger due to a serious communicable disease. Airlines (not ticket agents) are responsible for issuing travel credits or vouchers to eligible consumers whose travel is affected by a serious communicable disease.</p>

**Enhancing Transparency of Airline Ancillary Service Fees
14 CFR Parts 259 and 399
[Docket No. DOT-OST-2022-0109]**

The purpose of this groundbreaking regulation is to, among other things, ensure that consumers know upfront the fees carriers charge for transporting a first checked bag, a second checked bag, and a carry-on bag and for canceling or changing a reservation. Under the final rule, U.S. air carriers, foreign air carriers, and ticket agents will be required to clearly disclose passenger-specific or itinerary-specific fees for these services to consumers whenever fare and schedule information is provided for flights to, within, and from the United States. Covered entities will also have to provide useable, current, and accurate information regarding fees for these critical ancillary services to any entity that is required to disclose critical ancillary service fee information to consumers, such as third-party ticket agents. Below is a summary of the rule's major provisions taken directly from the Rule's unofficial publication: .

Summary of Major Provisions:

Subject	Requirement
Covered Entities	<p>The final rule applies to U.S. air carriers, foreign air carriers, and ticket agents (excluding corporate travel agents) that advertise or sell air transportation directly to consumers.</p> <p>The Department defers for a later rulemaking the determination of whether metasearch sites that do not sell airline tickets but display airline flight search options directly to consumers are ticket agents that must disclose ancillary fee information required by this rule.</p>

Subject	Requirement
Critical Ancillary Services	<p>The rule defines critical ancillary services as any ancillary service critical to consumers' purchasing decisions. The ancillary services that this final rule identifies as critical to consumers are as follows: (1) transporting a first checked bag, second checked bag, and carry-on bag; and (2) changing or canceling a reservation.</p> <p>Any other service may also be determined, after notice and opportunity to comment, to be critical by the Secretary.</p>
Disclosure of Fees and Policies for Critical Ancillary Services	<p>The rule requires airlines and ticket agents to disclose fees for critical ancillary services during the itinerary search process at the first point where a fare and schedule is provided in connection with a specific flight itinerary. The fee disclosure includes noting that a fare category does not allow changing or canceling a reservation or transporting a checked or carry-on bag if that is the case.</p> <p>Policies for critical ancillary services must be disclosed before ticket purchase when a search is conducted online but are not required to be disclosed with the fare and schedule.</p> <p>The information disclosed must be accurate, clear, and conspicuous. Fees cannot be displayed through a hyperlink, but disclosure is permitted using pop-ups, expandable text, or other means.</p>
Links to Book a Flight with a Carrier or an Online Travel Agency (OTA)	<p>The rule requires airlines and ticket agents that sell airline tickets to disclose critical ancillary service fees on the first page of their online platforms to which consumers are directed after searching for flight options on another entity's online platform (a metasearch site) unless the consumer was already provided accurate fee information on the directing entity's online platform.</p>
Passenger-Specific and Anonymous Searches	<p>The rule requires carriers and ticket agents to disclose the fees for critical ancillary services as passenger-specific itinerary information if a consumer conducts a passenger-specific itinerary search.</p> <p>A passenger-specific itinerary search refers to a search that takes into account information specific to the passenger (e.g., the passenger's status in the airline's frequent flyer program, the passenger's military status, or the passenger's status as a holder of a particular credit card) that was affirmatively provided by that passenger and information specific to the itinerary (e.g., geography, travel dates, cabin class, and ticketed fare class such as full fare ticket) that may impact the critical ancillary service fees to be charged or policies to be applied.</p> <p>An anonymous itinerary search refers to a search that does not take into account information specific to the passenger but does take into account information specific to the itinerary (e.g., geography, travel dates, cabin class, and ticketed fare class such as full fare ticket) that may impact the critical ancillary service fees to be charged or policies to be applied.</p>

Subject	Requirement
Opting Out of Disclosures	<p>The rule does not permit airlines and ticket agents to omit disclosure of first checked, second checked, or carry-on baggage fees with the fare and schedule information on their online platform unless: (1) the airline/ticket agent asks consumers at the beginning of a search if they intend to travel with a carry-on bag or checked bags; and (2) a consumer affirmatively indicates that no one in the booking party intends to travel with carry-on bag or first or second checked bags.</p> <p>The rule does not permit airlines or ticket agents to enable consumers to opt out of display of change and cancellation fees on the airline's or ticket agent's online platform.</p>
Disclosures on Online Platforms	<p>The rule requires airlines and ticket agents to disclose the fees and policies for critical ancillary services on airlines' or ticket agents' online platforms.</p> <p>The rule defines "online platforms" to be any interactive electronic medium, including, but not limited to, websites and mobile applications, that allow the consumer to search for or purchase air transportation from a U.S. carrier, foreign carrier, or ticket agent.</p>
Offline (Telephone, In-person) Disclosures of Airline Ancillary Service Fees	<p>The rule requires airlines and ticket agents to disclose to consumers during an in-person or telephone inquiry that critical ancillary fees apply if that is the case and upon request disclose those fees to consumers.</p>

This Aviation Regulatory Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact [Evelyn Sahr](#) at 202.659.6622 or esahr@eckertseamans.com, [Drew Derco](#) at 202.659.6665 or dderco@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.