

Department of Transportation Issues Final Rule on Ancillary Fees

On April 30, the U.S. Department of Transportation (DOT) issued its [final rule](#) on enhancing transparency of airline ancillary service fees. In its [comments](#) to the proposed rulemaking filed in January 2023, ASTA urged DOT to, among other things, require ticket agents in offline transactions to provide disclosures only upon the consumer's request.

The final rule reflects adoption of ASTA's position, as it requires ticket agents to disclose ancillary fees to consumers who request them following disclosure that such fees apply to the searched itinerary. Specifically, in an offline transaction, the airline or ticket agent must disclose that baggage fees, change fees, and cancellation fees apply when a fare is quoted, if that is the case, and ask the consumer if they wish to hear the specific fees that apply. If the consumer requests such information, then the ticket agent must disclose the requested information that applies to the fare and itinerary quoted.

Additionally, as ASTA advocated for, DOT excluded corporate travel agents, defined as "a ticket agent that provides travel services to the employees of a business entity pursuant to a written contract with that entity for the business travel of its employees," from coverage under the final rule. The Department concluded, correctly in our view, that there was no need to apply transparency rules for corporate travel arrangements that are contractually entered into by sophisticated entities. This represents a significant victory for travel management companies and other agencies that book a significant amount of business travel.

In the final rule, DOT requires airlines to share critical ancillary fee information with ticket agents. However, contrary to ASTA's recommendation, DOT did not require the carriers to use the Global Distribution Systems (GDSs) to distribute such fee information. Instead, DOT stated whether carriers share the required data through GDSs, by direct connect or by NDC, is left up to them a business decision. ASTA also supported other approaches to further streamline the transaction process, such as referring the consumer to the carrier's website to avoid the necessity of a lengthy recitation of the disclosures. Ultimately, however, this was not adopted in the final rule.

In its comments, ASTA also urged DOT to require that fee data related to baggage and all seating fees be distributed by carriers to ticket agents in a transactable format at all points of sale. Unfortunately, DOT declined to impose any requirement in the final rule that ancillary fees be transactable at the point of ticket purchase. DOT continues to maintain that the inability to transact baggage, change or cancellation fees does not harm consumers.

Fortunately, DOT did not move forward with its proposal to require a seller of air transportation to refund a fee for any critical ancillary service charged if the fee was not disclosed at the time the consumer searched for and purchased air transportation.

However, DOT maintains its view that the failure by a carrier or ticket agent to provide the ancillary fee disclosures required by the rule is an unfair and deceptive practice.

Given the complexity of implementation from a technological and systems viewpoint, ASTA asked DOT for an implementation period of at least 18 months. The final rule's compliance period is as follows: (1) airlines must share the required data with ticket agents not later than October 30, 2024; (2) airlines must meet the disclosure requirements by April 30, 2025; (3) ticket agents that are not small businesses (under the Small Business Administration definition) must meet the disclosure requirements not later than October 30, 2025; and (4) ticket agents that do satisfy the SBA definition of a small business are provided an additional six months to comply, to April 30, 2026.

It is important to note that Airlines for America (A4A) and several airlines have already sued the DOT to prevent the final rule from going into effect. They argue that the final rule should be vacated as it is contrary to statute, exceeds DOT's authority, and is arbitrary, capricious, and an abuse of discretion.

ASTA will continue to follow the lawsuit, and any other challenges to the final rule that may impact its ultimate implementation, and update its members accordingly.