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May 15, 2024

The Honorable Maria Cantwell
Chair
The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Sam Graves
Chairman
The Honorable Rick Larsen
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Office of the Secretary: Refunds and Other Consumer Protections*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, Office of the Secretary (DOT) entitled “Refunds and Other Consumer Protections” (RIN: 2105-AF04). We received the rule on April 30, 2024. It was published in the *Federal Register* as a final rule on April 26, 2024. 89 Fed. Reg. 32760. Except for the pending information collection, the stated effective date of the rule is June 25, 2024.

According to DOT, this final rule requires prompt, automatic refunds to consumers when an air carrier cancels or makes a significant change to a scheduled flight and the consumer is not offered or rejects alternative transportation and travel credits, vouchers, or other compensation. Before making such an offer to a consumer, DOT stated that the rule requires air carriers and ticket agents to inform consumers of their right to a refund, if that is the case. DOT noted that it is defining for the first time the terms “cancellation” and “significant change” to provide clarity and consistency to consumers with respect to their right to a refund. According to DOT, the rule also implements the requirements under the FAA Extension, Safety, and Security Act of 2016, Pub. L. No. 114-190, 130 Stat. 640 (July 15, 2016), 49 U.S.C. § 41704 note, and the FAA Reauthorization Act of 2018, Pub. L. No. 115-254, 132 Stat. 3337 (Oct. 5, 2018), 49 U.S.C. § 42301 note prec., to mandate that airlines refund consumers for fees for ancillary services that passengers paid for but did not receive and for checked baggage fees if the bag is significantly delayed. DOT also explained that the rule establishes requirements for airlines to provide vouchers or travel credits to passengers whose travel plans are disrupted by circumstances beyond their control related to serious communicable disease.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress,

whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* on April 26, 2024. 89 Fed. Reg. 32760. The *Congressional Record* shows that the House of Representatives received the rule on May 1, 2024. 170 Cong. Rec. EC-4083 (daily ed. May 7, 2024). The *Congressional Record* does not yet reflect the date of receipt by the Senate. According to DOT, the House of Representatives and the Senate received the rule on April 30, 2024. Email from Senior Attorney, DOT, to CRA Rules, GAO, *Subject: DOT final rule submission for CRA review - Refunds and Other Consumer Protections* (Apr. 30, 2024). Except for the pending information collection, the rule has a stated effective date of June 25, 2024. Therefore, the stated effective date is less than 60 days from the date of receipt by Congress.

Enclosed is our assessment of DOT's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Clereece Kroha
Senior Trial Attorney
Department of Transportation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
ENTITLED
“REFUNDS AND OTHER CONSUMER PROTECTIONS”
(RIN: 2105-AF04)

(i) Cost-benefit analysis

In this final rule, the Department of Transportation, Office of the Secretary (DOT) included a statement discussing the costs and benefits of the rule. According to DOT, the rule will reduce inconsistencies in granting consumers airline ticket refunds that stem from the lack of universal definitions for “cancellation” and “significant change” of itinerary. DOT stated that the consumer time savings are estimated to be about \$3.8 million annually from the expected reduction in resources consumers will need to expend to obtain the refunds they are owed. DOT also noted that the rule implements statutory mandates pertaining to fee refunds for delayed baggage and ancillary services that a consumer does not receive. DOT stated that the expected economic impacts of these fee refund provisions are \$16 million annually in increased refunds to consumers and \$7.1 million annually in administrative costs for airlines. Additionally, DOT noted that the rule requires airlines to provide five-year transferrable travel credits or vouchers to passengers who cancel travel for reasons related to a serious communicable disease. DOT explained that the expected societal benefits are from infected passengers who cancel air travel due to the option of receiving the travel credit and the reduction in exposure of uninfected passengers to serious contagious disease. DOT estimated the annual costs to range from \$3.4 million when there is not a public health emergency to \$482 million when there is a public health emergency.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

DOT prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the need for and objectives of the rule; (2) a description of the significant issues raised by the public comments; (3) a description of the small entities affected by the rule; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule; and (5) a description of the regulatory alternatives considered and the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. DOT stated that it did not receive any comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, the initial regulatory flexibility analysis, or the economic impacts of the rule.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

DOT determined that this final rule may result in expenditures of \$100 million or more, adjusted annually for inflation, in any one year by the private sector. DOT explained that the Act permits agencies to provide the assessment required by the Act as part of any other assessment prepared in support of the rule. DOT noted that it provided the assessment required by the Act

within the Regulatory Impact Analysis (RIA) prepared in support of the rule. DOT stated that, as described in the RIA, the primary costs that would be incurred by business are administrative costs from baggage and ancillary fee refunds and those related to the collection of documentation of serious contagious disease from passengers.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO's major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: "the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

DOT did not discuss the Act in this final rule. In its submission to us, DOT indicated that the Act is not applicable.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On October 31, 2016, DOT published an advance notice of proposed rulemaking. 81 Fed. Reg. 75347. On July 21, 2021, DOT published a proposed rule (2021 Proposal). 86 Fed. Reg. 38420. According to DOT, DOT received 29 comments on the 2021 Proposal.

In a separate effort on August 22, 2022, DOT published a proposed rule (2022 Proposal). 87 Fed. Reg. 51550. According to DOT, the Aviation Consumer Protection Advisory Committee (ACPAC), a statutorily required federal advisory committee that evaluates and provides recommendations to DOT on consumer protection programs, discussed the 2022 Proposal in three meetings and held an all-day public meeting. DOT stated that ACPAC identified and voted on recommendations at a separate meeting. DOT noted that it extended the comment period to provide the public an opportunity to consider and comment on any ACPAC recommendations. Additionally, DOT explained that it conducted a public hearing on March 21, 2023, at which it heard from various stakeholders and subject matter experts. DOT stated that it reopened the comment period after the hearing to provide the public an opportunity to comment on the issues discussed at the hearing. According to DOT, DOT received over 5,300 comments on the 2022 Proposal.

DOT stated that it issued this final rule for the 2021 Proposal and the 2022 Proposal. DOT responded to comments in the rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

DOT determined that this final rule contains information collection requirements (ICRs) under the Act. According to DOT, this rule imposed 10 new ICRs. DOT stated that the ICRs relate to allowing airlines to require passengers requesting travel credits or vouchers because their travel is affected by a serious communicable disease to provide documentation from a medical professional. DOT estimated for airline passengers the total burden hours of these ICRs to be 13,500,000 hours and the total cost to be \$249,480,000. DOT estimated for medical assistants the total burden hours of these ICRs to be 6,750,000 hours and the total cost to be \$175,095,000. DOT estimated for airline customer service representatives the total burden hours of these ICRs to be 2,241,000 hours and the total cost to be \$57,392,010. DOT estimated the total burden hours for these ICRs to be 22,491,000 hours and the total cost to be \$481,967,010. DOT noted that these estimated costs assume that there is a public health emergency. DOT stated that its RIA for the rule estimated the cost to be about \$3.4 million when there is not a public health emergency. DOT stated that it has sought approval from OMB for these ICRs. DOT stated that it will publish a separate notice in the *Federal Register* announcing OMB approval and advising the public of the associated OMB control number.

Statutory authorization for the rule

DOT promulgated this final rule pursuant to sections 41712 and 41702 of title 49, United States Code; section 2305 of the FAA Extension, Safety, and Security Act of 2016, Pub. L. No. 114-190, 130 Stat. 640 (July 15, 2016), 49 U.S.C. § 41704 note; and section 421 of the FAA Reauthorization Act of 2018, Pub. L. No. 115-254, 132 Stat. 3337 (Oct. 5, 2018), 49 U.S.C. § 42301 prec. note.

Executive Order No. 12866 (Regulatory Planning and Review)

DOT determined that this final rule is economically significant under the Order.

Executive Order No. 13132 (Federalism)

DOT determined that this final rule does not propose any provision that (1) has substantial direct effects on the states, the relationship between the national government and 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. DOT noted that states are statutorily preempted from regulating in this area pursuant to section 41713 of title 49, United States Code, and, therefore, the consultation and funding requirements of the Order do not apply.