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Washington, DC 20548

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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: Enhancing Transparency of Airline Ancillary Service Fees*

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 “Enhancing Transparency of Airline Ancillary Service Fees” (RIN: 2105-AF10). We received the rule on April 30, 2024. It was published in the *Federal Register* as a final rule on April 30, 2024. 89 Fed. Reg. 34620. The effective date is July 1, 2024. DOT explained that, after considering comments, it extended the compliance period as follows: (1) airlines must share data with ticket agents as required in the rule no later than October 30, 2024; (2) airlines must meet the critical ancillary service fee disclosure requirements no later than April 30, 2025; (3) ticket agents that do not meet the Small Business Administration (SBA) definition of a small entity must meet the critical ancillary service fee disclosure requirements to consumers no later than October 30, 2025; and (4) ticket agents that meet the SBA definition of a small entity must meet the crucial ancillary fee disclosure requirements to consumers no later than April 30, 2026.

According to DOT, this final rule requires that air carriers and ticket agents clearly disclose passenger-specific and itinerary-specific fees for transporting baggage and changing or canceling a flight before ticket purchase. DOT stated that the rule also requires that carriers provide useable, current, and accurate information regarding ancillary service fees to any entity that is required to disclose such fee information to consumers.

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: Ryan Patanaphan  
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  
“ENHANCING TRANSPARENCY OF AIRLINE ANCILLARY SERVICE FEES”  
(RIN: 2105-AF10)

(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 changes how air carriers and ticket agents disclose information about certain ancillary fees for flights. DOT identified expected costs for consumers, carriers, ticket agents, and third parties involved in data exchange. DOT explained that expected consumer costs ranging from \$239 million to \$331 million annually are due to the time needed by consumers to navigate increased amounts of information. DOT identified expected costs for carriers, ticket agents, and third parties involved in data exchange ranging from \$286 million to \$378 million annually. DOT explained that carrier and ticket agent costs are to modify their websites by adjusting their displays of fares, schedules, and fees. DOT stated that third parties involved in data exchange might incur costs due to the need to update their systems but stated that these entities are already upgrading systems for market reasons and have been for several years. DOT identified expected benefits for consumers. DOT explained that one expected benefit of \$5.5 million annually is that the rule would reduce consumers' excess consumption of air travel that occurs because consumers who are unaware of ancillary service fees behave as if the price for air travel is lower than it is. DOT also identified consumer time savings benefits ranging from \$365 million to \$484 million annually because consumers searching for airfare will no longer need to interrupt their search to find information on ancillary services. DOT also stated that the economic effects of better information on ancillary fees represents a transfer from airlines to consumers of about \$543 million annually in overpayment in fees for consumers or, from the airline perspective, additional revenue from consumers who are surprised by fees and, for example, need to pay a higher fee at the airport to check a bag.

(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 comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

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

DOT stated that the Act requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in expenditures by states, local, or tribal governments, or by the private sector, of \$100 million or more, adjusted annually for inflation, in any one year. DOT explained that agencies may provide the assessment required by the Act as part of other assessments 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.

(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 or in its submission to us.

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

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

On October 20, 2022, DOT published a notice of proposed rulemaking. 87 Fed. Reg. 63718. According to DOT, the Aviation Consumer Protection Advisory Committee (ACPAC) discussed this proposed rule at its meetings on December 8, 2022, and January 12, 2023. DOT stated that ACPAC publicly deliberated and voted on recommendations concerning disclosures. According to DOT, it publicly posted on its website a written summary of the ACPAC recommendations to facilitate the public’s consideration of this proposed rule. Additionally, DOT stated that it conducted a public hearing on March 30, 2023, and reopened the comment period to extend past the hearing date. DOT also noted that a video recording of the hearing was posted to the DOT website. According to DOT, in developing this final rule, DOT considered the comments submitted by members of the public, the recommendations from ACPAC, and the information received during the public hearing. DOT stated that it made several adjustments that reflect the public input received. 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. DOT stated that the ICRs relate to requiring air carriers and ticket agents to disclose information during the booking process. For the ICR that air carriers and ticket agents disclose during the online booking process, the applicable fee and policy information for first and second checked baggage, one carry-on bag, and the applicable fee and policy information for changing and cancelling a reservation, DOT estimated for air carriers and ticket agents the total burden hours to be 1,024,499 hours and the total cost to be \$49,240,657 for the first year for the one time incorporation of information into online platform displays and ongoing costs. After these initial costs in the first year, DOT estimated the annual cost to be \$5,334,404 for ongoing costs such as for maintenance. For the ICR that air carriers and ticket agents disclose during offline transactions that bag, change, or cancellation fees apply to a quoted itinerary and disclose such fees upon request, DOT estimated for air carriers and ticket agents the total burden hours to be approximately 33,123 hours and the total cost to be \$1,042,050 per year. For the ICR that air carriers disclose ancillary fee information to other entities required to disclose fee information to consumers, DOT estimated for air carriers the total burden hours to be 6,180 hours and the total cost to be \$409,734. According to DOT, the rule amended an existing ICR and imposed new ICRs. DOT stated that the rule amended an existing ICR currently approved under OMB Control Number 2105-0561 and that DOT will seek OMB approval for this amendment as part of the renewal of that number due to expire on August 31, 2024. DOT also stated that the rule imposed new ICRs and that DOT has sought OMB approval for these ICRs. DOT stated that it will publish a separate notice in the *Federal Register* announcing OMB approval of the amended and new ICRs and advising the public of the associated OMB control numbers.

Statutory authorization for the rule

DOT promulgated this final rule pursuant to sections 41712 and 40101 of title 49, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DOT determined that this final rule meets the threshold for significant regulatory action under the Order.

Executive Order No. 13132 (Federalism)

DOT determined that this final rule does not include any requirement 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.