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## Proposed U.S. Department of Transportation Passenger Protection Rules Offer Opportunity for Travel Industry Comments

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*On May 21, 2014, the U.S. Department of Transportation (DOT) proposed new passenger protection rules for the airline and travel industries, which would add to DOT's extensive "Enhancing Airline Passenger Protections" regulations issued in December 2009 and April 2011. The proposed rules would have a significant impact on marketing, operational, and distribution activities throughout the industry. The proposed rule has important implications for international airlines serving US markets, domestic airlines, ticket agents, tour operators, online travel agencies, and global distribution systems. Among other things, it would dramatically expand DOT's jurisdiction over and impose significant new requirements on travel distributors, including internet search engines. Affected parties should take advantage of this opportunity to offer their views and concerns on what could become new, potentially burdensome restrictions on industry practices.*

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Like DOT's previous passenger protection regulations, the proposed rules cover a wide variety and range of topics affecting international and domestic airlines, ticket agents, tour operators, and online travel agencies in the following areas:

### **Additional Fee Disclosure**

DOT is considering two proposals for requiring the disclosure of fee information for ancillary services during the air transportation purchase process:

- The first proposal would require all airlines to disclose fee information for ancillary services to all ticket agents to which an airline provides fare information, including Global Distribution Systems (GDSs).

- The second proposal would require all airlines to disclose fee information for ancillary services only to those ticket agents that sell air transportation directly to consumers (excluding GDSs, which only facilitate sales).

### Expanded Reporting of Performance Data

The proposed regulations would require any US airline that accounts for at least 0.5% of domestic scheduled passenger revenue to report performance data to DOT for analysis and publication by the Bureau of Transportation Statistics.

### Expanded Definition of “Ticket Agent”

Would formalize DOT’s interpretation of the term “Ticket Agent” to encompass GDSs, websites with flight meta-search engines, and similar intermediaries that receive compensation in connection with ticket sales. The proposal would, for the first time, formally capture internet search engines within the definition of “ticket agent,” dramatically expanding the scope of DOT’s jurisdiction over unfair and deceptive practices, and potentially creating conflicts with other consumer regulatory regimes (e.g. FTC).

### New Customer Service Standards for Ticket Agents

Would create new “Customer Service Commitments” for ticket agents (including meta-search engines) with annual revenue of \$100 million or more, similar to the “Customer Service Plans” required of airlines. At a minimum, ticket agents would be required to commit to provide prompt refunds, hold reservations at a quoted fare for 24 hours (or allow cancellations without penalty during that period), notify customers in a timely manner of itinerary changes, and respond promptly to customer complaints, among other obligations.

### New Disclosure Requirements for Ticket Agents

Ticket agents with annual revenue of \$100 million or more would be required to disclose the names of airlines for which they market and sell tickets.

### Codification of Code-Share Disclosure

Would formalize the requirement that any code-share arrangement between airlines must appear on the first display presented in response to a search of an itinerary, in an easy-to-comprehend format.

### Data Reporting for Code-Share Operations

Under the proposed rule, US airlines required to report performance data to DOT would need to include on-time arrival, mishandled baggage, and oversales statistics for domestic scheduled flights operated by their code-share partners.

### Eliminating Website Display Bias

Would prohibit undisclosed prioritization of certain airline fare and schedule information by airlines and ticket agents in any internet display of itinerary information covering multiple airlines.

### Extension of Prohibition on Post-Purchase Price Increases

Would extend the existing prohibition on post-purchase price increases for airline tickets to cover ancillary services that are not purchased with the air transportation. This would include ancillary items such as baggage fees.

DOT has requested comments from the airline and travel industries and other interested parties regarding these proposed regulations. Comments are due on August 21, 2014. Under U.S. law, DOT must take all comments into consideration in reviewing and revising the regulations before they are finalized. The comment period is an important opportunity for airlines, ticket agents, and other industry groups to voice their opinions about DOT's proposed rule and offer constructive recommendations for improvements. Pillsbury's Travel Leisure & Hospitality team can advise on these issues.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors of this alert.

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