

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC**

Family Seating in Air Transportation

Docket DOT-OST-2024-0091

COMMENTS OF THE TRAVEL TECHNOLOGY ASSOCIATION

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November 7, 2024

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The Travel Technology Association (“Travel Tech”) respectfully submits these comments in response to the Department’s Notice of Proposed Rulemaking (“NPRM”) in Docket DOT-OST-2024-0091 (89 Fed. Reg. 65272 (August 9, 2024)). Travel Tech generally supports the Department’s efforts to facilitate adjacent seating for families traveling with children, as part of the agency’s overall agenda of assisting consumers. But Travel Tech submits these comments to alert the Department to potential issues with the regulation, should it be finalized as currently proposed.¹

Travel Tech represents the leading innovators in travel technology, including Global Distribution Systems, online travel agencies, and other intermediaries, including metasearch companies, travel management companies, and short-term rental platforms, which enable consumers to easily search, compare, and book travel. These technology innovators created the infrastructure from which travelers, suppliers, and intermediaries benefit today. Travel Tech members provide suppliers with access to a global audience of customers seeking to travel while at the same time offering these customers a transparent and competitive set of travel options. Our members are on the frontlines of travel and tourism and recognize the great benefit affordable travel brings to consumers, suppliers, and the travel and tourism economy. More information about Travel Tech, its membership, and its mission can be found at <https://traveltech.org/about/>.

Travel Tech and its members applaud the Department for launching this proceeding to address a concern for consumers and implement underlying Congressional directives. Travel Tech also observes that the NPRM appropriately emphasizes requirements for air carriers and not for ticket agents, including online travel agents, Travel Management Companies, Global Distribution Systems, and other intermediaries, including metasearch sites. This is appropriate because seating assignments are entirely under the control of air carriers. Air carriers determine if agencies are allowed to distribute seats and, of course, control the seating process up to and at the time of the flight.

¹ Travel Tech limits its comments to issues that implicate the interests of its members that are ticket agents or otherwise engaged in the distribution of information related to air transportation. Travel Tech does not address every issue in the NPRM. The Department should draw no conclusions as to whether Travel Tech supports or opposes a proposal upon which Travel Tech has not commented.

I. Air carriers are the appropriate focus for the family seating regulation.

Air carriers are the entities that set, enforce, and disclose seating policies for their aircraft. Ticket agents do not play a role in establishing or enforcing these policies. As such, the Department’s focus in this proceeding appropriately is on air carrier policies and procedures for accommodating young children. Air carriers, accordingly, should bear the responsibility for instituting any requirements for family seating. Based on its review of the proposed rule and the requirements intended to ensure fee-free family seating, Travel Tech endorses the Department’s approach to place the emphasis and burden on air carriers to ensure compliance. The following comments are intended to highlight areas of concern from Travel Tech and its members – but as stressed below, agents and metasearch sites are not implicated by the rulemaking. Travel Tech urges the Department to confirm its carrier-centered requirements in any Final Rule.²

II. The definition of an “online platform” regulated by the new rules should be amended.

The proposed § 261.3 would define an “online platform” within the scope of the new family seating requirements 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 carrier or ticket agent.

But the only actual usage of this term in the new regulations would be in the proposed § 261.4(c)(1) and § 261.5(b)(1), which specifically refer to the obligations of an air carrier’s “public-facing online platforms.”

Given that ticket agents are not in control of – or have any role at all in – the seating policies and practices of air carriers and that the regulatory requirements at issue explicitly are only applicable to air carriers, Travel Tech recommends that the Department replace the term “online platform” with “air carrier online platform,” to avoid any confusion or any suggestion that the Department is imposing policy disclosure requirements on agents.³ The definition should specify that the covered online booking platforms are those that are directly operated by air carriers.

III. The Department should confirm that air carriers are solely responsible for family seating-triggered refunds in the Final Rule.

The proposed § 261.9(a) provides that if an air carrier cannot provide adjacent seating for families, one of the possible remedies is a ticket refund to the consumer. The NPRM does not indicate that a ticket agent is the party that must issue such a refund, and the Department has not proposed to amend the recently adopted 14 C.F.R. § 399.80(*l*), which specifies under what circumstances agents are responsible for refunds as the “merchant of record.” An agent has no

² Additionally, the Department lacks the authority to regulate metasearch sites or other intermediaries that allow a consumer to search for, but not to purchase, air transportation. The Department recently committed to specifically reviewing its jurisdiction in a future rulemaking proceeding. *See* 89 Fed. Reg. 34620, 34636-37 (April 30, 2024).

³ Likewise, the NPRM does not – nor should it – propose to regulate other disclosures made by ticket agents (*contrast* proposed § 259.5(b)(16)), or to restrict the fees that agents may independently assess for their own services.

effective means to know that a consumer has been unable to obtain adjacent seating for their family from an air carrier – and requiring consumers, once denied such accommodations by and already interacting with an air carrier, to return to the agent to obtain a refund would only serve to burden and frustrate those consumers. The Department, thus, should confirm its intent that Part 261-based refunds are to be the sole responsibility of air carriers.

In the alternative, if the Department determines that a ticket agent that is the “merchant of record” is responsible for ticket refunds triggered by the unavailability of family seating, then those refunds should be subject to the same requirements applicable to other ticket refunds – *i.e.*, agents are responsible only for those elements of the transaction for which they are the merchant and not for any ancillary fees collected directly by the air carrier; an air carrier is required to reimburse an agent that issues a refund if the air carrier is in possession of the consumer’s funds. *See generally* 14 C.F.R. § 260.6(d) and (e).⁴

IV. Regulating ticket agents and other intermediaries would require significant revisions.

If – despite the fact that air carriers are responsible for their own seating policies and ticket agents play no role in setting or implementing them, nor have any direct means to access them – the Department were to consider including agents within the scope of the Final Rule, it must be emphasized that no requirement for agents (or metasearch sites or other intermediaries) was proposed in the NPRM. Travel Tech respectfully submits that a supplemental NPRM or an entirely new rulemaking proceeding would be required if the Department were to propose to expand the scope of the rulemaking. *See, e.g.*, [Nondiscrimination on the Basis of Handicap in Air Travel](#), 55 Fed. Reg. 8008, 8025 (March 6, 1990) (“a new requirement on which interested persons have not had the chance to comment” should not be included in a final rule). Thus, agents and other intermediaries could not and should not be obligated to make any disclosures by the final rule, absent further proceedings.⁵

V. The Department should not utilize this proceeding to solicit input on other subjects.

Despite this proceeding explicitly having been identified to concern “Family Seating in Air Transportation,” at the end of the discussion of proposals in the NPRM the Department also solicits comments regarding whether other services should be required to be included in air carrier fares and whether separate fees for such services should be prohibited. This is a matter for which Travel Tech has concerns that overlap with some of those previously identified by A4A and other air carrier trade associations (*see* <https://www.regulations.gov/comment/DOT-OST-2024-0091-0212>). Travel Tech respectfully suggests that the issues raised in § II(K) of the NPRM best should

⁴ Additionally, to the extent that 14 C.F.R. § 260.6(e), consistent with § 503 of the FAA Reauthorization Act of 2024, requires air carriers to “promptly” reimburse ticket agents for refunds made to consumers, Travel Tech urges the Department to ensure that the existing refund procedures – and any amendments made by this proceeding – specify the meaning of that term, such as by cross-referencing the definition of a “[p]rompt refund” for consumers in § 260.2.

⁵ Nor should any new data-sharing obligations be imposed on ticket agents. TSA Secure Flight data already is shared with air carriers by agents, and ARC rules separately require that passenger information be shared, so no further agent-to-carrier disclosures should be needed in order for air carriers to comply with Part 261. *See, e.g.*, § 4 of the [Industry Agents’ Handbook](https://www2.arccorp.com/globalassets/iah/iah.pdf) (<https://www2.arccorp.com/globalassets/iah/iah.pdf>) (“[g]enerally accepted reservation practices require ... passenger information to be given to the airline at the time the reservation is made”).

be addressed in a stand-alone rulemaking proceeding, in contrast to them being an afterthought in this docket.

VI. The Department should ensure that ticket agents have access to all seating data.

Travel Tech members aim to make air transportation shopping more accessible and more enjoyable for consumers. Ticket agents and other intermediaries make the comparison of product offerings easier for consumers. To that end, the Department should not take any steps that would directly or indirectly reduce their access to valuable information related to the availability of adjacent seating for all consumers, not just consumers traveling with young children. Moreover, although not proposed in this proceeding, Travel Tech urges the Department in a future rulemaking to consider the benefits of opening the marketplace by ensuring that agents not only can enable their customers to select seat assignments for young children alongside adults (as previously proposed, but not included in this docket), but also to select, and purchase if required, all types of seating for all consumers who are traveling together.⁶

VII. The Department should be wary of the unintended consequences of the new rule.

Finally, the Department should be wary that the burdens associated with complying with the regulations could result in air carriers eliminating the availability of their seat assignment APIs to ticket agents, allowing agents some access to seat assignments but slowing or limiting the data available, or continuing the trend of withdrawing their products from agents altogether. Such an outcome would not serve the interests of competition and consumers, who would have more limited access to information, as well as to the agents and other intermediaries that specifically provide and enable comprehensive and impartial venues for shopping for air transportation.

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⁶ Travel Tech in its prior comments, including in Docket No. DOT-OST-2022-0109, has emphasized the importance of ensuring that ticket agents and other intermediaries have access to air carrier information – especially but not only if disclosures to consumers are mandatory. *See, e.g., Supplemental Comments of the Travel Technology Association and Response to the Recommendations of the Aviation Consumer Protection Committee* (April 6, 2023) (<https://www.regulations.gov/comment/DOT-OST-2022-0109-0741>) (“all seating fees, not just those involving a child sitting with an accompanying adult, should be considered critical to booking decisions”).

In conclusion, Travel Tech [appreciates] the Department's efforts to support consumers and stands ready to collaborate on ensuring the final rule effectively addresses family seating without unintended negative impacts on ticket agents and the broader travel industry. We urge the Department to consider our recommendations and look forward to continued engagement on this and other important consumer issues.

Respectfully submitted,



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