

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC

Docket OST-2016-0208

Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided

September 20, 2021

Comment of FlyersRights.org

FlyersRights.org has signed on to joint comments submitted by a large number of air passenger and consumer organizations. FlyersRights.org makes the following additional comments on the Department of Transportation's Proposed Rulemaking to implement Sec. 2305 of the FAA Extension, Safety, and Security Act of 2016, providing passengers for refunds of baggage fees when baggage is not delivered on time.

FlyersRights.org is surprised to learn that the airlines need further incentives to deliver checked bags on time and minimize the amount of time a bag is delayed once it has been delayed:

“[C]onsumers may be negatively impacted by a 15-hour deadline because carriers may have less incentive to deliver the delayed bag on the next flight when flights are scheduled once a day. This is because even if the bag arrives on the carrier's next flight, the 15-hour deadline would have already passed. Setting the timeframe for returning bags to 25 hours exceeds the minimum length of delay in the statute but increases the likelihood that carriers can meet the deadline even if their flights are scheduled 24 hours apart. The Department believes that the 12-hour deadline for domestic flights and 25-hour deadline for international flights provides carriers sufficient time to recover and return the bags to consumers. It also incentivizes carriers to return bags as soon as possible, limiting the inconvenience to consumers.” 86 Fed. Reg. 38423 (July 21, 2021)

The airlines typically argue that market competition alone provides passengers with the best product at the lowest prices. The Department seems to be advancing a notion that (1) market competition, (2) 14 CFR § 254.4's prohibition on airlines capping their own liability for consequential damages arising from delayed, lost, or damaged personal property or bags in domestic air travel at less than \$3800, and (3) Article 19 to the Montreal Convention's limitation on damages arising out of delayed baggage to approximately \$1400 are all insufficient motivators, and that instead, delaying the triggering a refund of a baggage fee (anywhere from

\$30 to \$100) from 0 or 15 hours to 25 hours will prevent airlines from taking more than 24 hours to deliver a delayed bag.

One solution to incentivize the speedy return of delayed bags to consumers would be for the Department of Transportation to order the airlines to include a legally sufficient notice that passengers are, under the Montreal Convention, entitled to up to approximately \$1400 to compensate for delayed bags in international travel, including domestic legs of an international itinerary. Article 3 of the Montreal Convention provides “The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.” The Department can also require airlines to provide conspicuous notices that passengers are entitled to refunds of the baggage fees paid for delayed bags. The Department can also require airlines to post prominent notices of these passenger rights to consequential damages and refunds at appropriate baggage claim and check-in areas under the airline’s control. The Department can also coordinate with airports to post passenger rights information. All of these will provide the incentives the Department seeks.

Accordingly, we request more information to support the airlines’ need for more incentives to deliver bags concurrent with the passenger and to minimize the length of the delay when on-time baggage delivery was not provided. In the excerpt from the NPRM, the Department notes a concern for international routes that operate only once every 24 hours. It is unclear how an airline will be more incentivized to transport a delayed bag on the next flight (with a resulting delay of 24 hours) when a refund is triggered at 25 hours rather than 15 hours. If an airline in this scenario knows it would be unable to meet a 15 hour deadline, would it still not put the bag on its next flight, limiting the delay to 24 hours? Would the delay likely then be 48 hours? 72 hours? If the airlines need further incentives in scenarios such as this, we suggest the Department of Transportation use its existing authority to prevent unfair and deceptive practices and fine airlines for not putting the bag on its next flight.

An expansion of the rule from 0-15 hours up to 24 hours will actually have the opposite result for passengers and will result in longer delays for passenger baggage on more frequent routes without providing any benefits on less frequent routes. On international routes that operate more than once per day, an airline that could limit the baggage delay to 8 hours, 12 hours, or 16 hours, etc. may no longer have the incentive to do so.

FlyersRights.org sees no reason to not adopt a zero hour delay rule. Providing a financial incentive for delivering on-time baggage will result in more on-time baggage.

Penalties for Late Refunds

A strong incentive is needed to ensure the airlines provide the appropriate refund within the required time if passengers are required to initiate the refund process. FlyersRights.org proposes a \$100 fine per day that the refund for a delayed bag or an unprovided ancillary service is overdue. If an airline misses the deadline to pay, without some type of compounding fine, airlines will not properly be incentivized to promptly provide the baggage refund and minimize any further delay in providing the refund. If there is no penalty to the airline for late payment, especially if passengers are required to initiate the refund request, the airlines will frustrate the purpose of the law with inaction and further delay.

Respectfully,

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About FlyersRights.org

FlyersRights.org, established in 2007, is the largest airline passenger organization. It publishes a newsletter, operates a free hotline for airline passengers at 877- FLYERS6, advocates for passenger rights and interests, and represents passengers on the FAA Aviation Rulemaking Advisory Committee dealing with air safety.