

July 2021 Aviation Regulatory Update

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DOT PROPOSES NEW RULE REQUIRING AIRLINES TO PROVIDE REFUNDS FOR UNUSED ANCILLARY FEES AND DELAYED BAGS

On Tuesday, July 20, 2021, the U.S. Department of Transportation (DOT or the Department) published a Notice of Proposed Rulemaking (NPRM), [available here](#), concerning proposed requirements for airlines to provide refunds for delayed bags and unused ancillary fees.

The first proposed change would create a requirement under 49 U.S.C. 41704 for airlines to refund checked bag fees if the airline fails to deliver the delayed bags in a timely manner. Specifically, the regulation will require that airlines refund checked bag fees whenever a bag is delayed by more than 12 hours for domestic flight, or more than 25 hours for international flights (including those that comprise a domestic segment), or if a passenger notifies the airline of the lost or delayed checked bag. Under current law, airlines are only required to provide refunds to passengers if their bag is lost.

The NPRM also provides standards to be used to determine the length of a delay and how to determine if and when a refund is due, as well as detailing the statutory requirement that a refund be provided “promptly” and “automatically” when due. Under the proposed rule, the clock for calculating a delay will start when a flight arrives (defined as when the passenger reached their destination and is given the opportunity to deplane from the last flight segment). A bag will be considered delivered:

1. When the bag is transported to a location agreed to by the passenger and airline, regardless of whether or not the passenger is present at the location to take possession of the bag;
2. When the bag has arrived at the destination airport, is available for pickup, and the airline has given the passenger notice of the location and availability of the bag for pickup (in this instance the bag must be actually available for pickup upon notification); or
3. If the airline has a delivery service and the passenger agrees to use this service, when the bag has arrived at the destination airport and the airline has provided notice to the passenger that the bag has arrived and will be delivered.

The NPRM states that each airline will have the ability to determine which of the above options to use in coordinating with each passenger.

DOT is also proposing a change under 49 U.S.C. 42301 related to ancillary fees, such as prepayment for Wi-Fi service or in-flight entertainment (IFE). Under the proposed rule, airlines will be required to provide a refund to a passenger, promptly, for any ancillary fees paid for services related to air travel that the passenger never received. Currently, airlines only have to provide refunds to passengers for optional services that could not be used due to certain occurrences including oversale situations and flight cancellations. This will be retained under the new rule. In the NPRM, DOT explains that the second proposed rule was included because its Office of Aviation Consumer Protection considers failure to

provide refunds to passengers for unused ancillary services, that have already been paid for, to be an unfair and deceptive practice in violation of 49 U.S.C. 41712.

DOT is accepting comments on the NPRM until September 18, 2021.

CDC AND HHS ISSUE NOTICE ON THE TEMPORARY SUSPENSION OF THE ENTRY OF DOGS INTO THE U.S. FROM HIGH-RISK RABIES COUNTRIES

On July 14, 2021, the U.S. Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) issued a temporary suspension on the import of dogs into the United States from high-risk rabies countries, as well as dogs from countries that are not at high-risk for dog rabies, but that have been in any high-risk country within the last six months. The CDC has compiled a list of countries that it deems to be a high-risk threat for dog rabies, which includes all countries in Africa and many countries in Central and South America, the Caribbean, Asia, Eastern Europe, and the Middle East.

Under the temporary suspension, there will be an initial 90-day transition period (from July 14, 2021 to October 14, 2021) during which U.S. citizens and lawful residents relocating from high-risk rabies countries can request a "CDC Dog Import Permit." Dogs must meet certain requirements and owners must submit an application for an import permit to the CDC at least 30 business days (six weeks) before planned travel to the U.S. Issuance of the permit would allow for the import of a dog at one of eighteen U.S. airports. After the transition period ends, dogs can still enter from high-risk rabies countries if they have a permit, but they will only be allowed to enter at approved ports of entry. It is important to note however, although the CDC can issue an import permit for U.S. citizens and lawful residents relocating from high-risk rabies countries, the agency has said that these permits will be issued on an extremely limited, case-by-case basis.

The agencies have indicated that since air carriers are responsible for pets' welfare from boarding until they are cleared for entry, carriers will now be required to:

1. Identify entry destination veterinary facilities or kennels that can provide care for or holding of dogs until final health or action is determined, or that can provide care for or holding of dogs that have been denied entry;
2. Be prepared to cover the costs associated with returning an animal denied entry to the U.S. if an importer abandons the animal (carriers are responsible for costs associated with this under 19 CFR 123.10(e)); and
3. Return animals denied entry to the U.S. to their country of origin on the next available flight.

AAR AND ITS SUBSIDIARY, AAR AIRLIFT GROUP, AGREE TO PAY \$11 MILLION TO RESOLVE FALSE CLAIMS ACT

On July 6, 2021, the Department of Justice (DOJ) issued a press release announcing AAR Corp. and its subsidiary, AAR Airlift Group Inc. (Airlift), have agreed to pay the United States \$11,088,000 to resolve False Claims Act allegations in connection with the aircraft maintenance services performed by Airlift on two U.S. Transportation Command (TRANSCOM) contracts. The allegations involve helicopters that Airlift owned and maintained for use in transporting Department of Defense (DOD) cargo and personnel in support of missions in Afghanistan and Africa. Airlift knowingly failed to maintain nine aircraft pursuant to contract requirements, deeming the helicopters as not airworthy nor certifiable by Airlift as "fully mission capable." The settlement resolves claims brought by a former Airlift employee under the whistleblower provisions of the False Claims Act. The former employee will receive \$2,162,160 of the settlement pursuant to the False Claims Act. In addition to this settlement, AAR and Airlift have agreed to pay \$429,273.69 to the FAA to resolve a separate matter involving deficiencies in Airlift's helicopter maintenance.

The settlement obtained in this matter was the result of a coordinated effort between the Civil Division's Commercial Litigation Branch, Fraud Section; the U.S. Attorney's Office for the Southern District of Illinois; and the U.S. Attorney's

Office for the Middle District of Florida, with assistance from the U.S. Transportation Command, the FAA, Air Force Office of Special Investigations (OSI), Defense Criminal Investigative Service (DCIS), Naval Criminal Investigative Service (NCIS), Army Criminal Investigation Command (CID), Department of Transportation Office of Inspector General, the Defense Contract Audit Agency (DCAA) and Special Inspector General Afghanistan Reconstruction (SIGAR).

TSA ANNOUNCES ANTICIPATED LAUNCH OF ADDITIONAL ENROLLMENT PROVIDERS FOR TSA PRECHECK

On July 8, 2021, the Transportation Security Administration (TSA) published a notice, [available here](#), related to the TSA PreCheck Application Program. Under the TSA PreCheck Program, consumers can apply for expedited airport security screening by voluntarily providing biometric and biographic information and paying the requisite fee for operation of the program. TSA has now announced that it is seeking to launch additional enrollment providers who would be able to establish additional price points for the TSA PreCheck Program. The goal is ultimately to increase opportunities for consumers to be able to apply for membership in the program. TSA is planning for the additional enrollment providers to become available sometime before the end of the year.

FAA RELEASES NEW PSA AND PROPOSES CIVIL PENALTIES AGAINST PASSENGERS FOR ALLEGEDLY INTERFERING WITH FLIGHT ATTENDANTS

On July 6, 2021, the FAA released a Press Release in regards to a [new public service announcement](#) (PSA) and nine instances in which passengers interfered with flight attendants on commercial flights and violated various federal regulations. The PSA, as part of the FAA's Zero Tolerance campaign, features children explaining how to behave on a plane and the importance of not being an unruly passenger. Since January 1, 2021, the FAA has identified 540 potential violations out of 3,271 reports received, equating to more than \$682,000 in fines. About 75% of the reports involve passengers refusing to comply with the federal facemask mandate. The nine most recent civil penalty cases, ranging from \$7,500 to \$21,500, are below:

- \$21,500 – A passenger allegedly drank alcohol not provided by the airline, which is against FAA regulations, and refused to comply with a flight attendant's instruction to stop drinking alcohol and wear a facemask.
- \$18,500 – A passenger allegedly failed to comply with numerous instructions from flight attendants to wear her seatbelt and facemask. The passenger and members of her traveling party played loud, obscene music. The captain returned the plane to the gate for law enforcement to meet the passenger. The passenger began to argue and use obscene language towards the captain as he notified her that she was being removed from the flight. The passenger threatened the passenger in front of her during taxi from the gate and punched the back of the passenger's head as she was leaving the plane.
- \$17,000 – A passenger allegedly failed to comply with numerous instructions from flight attendants to wear a facemask. During final descent, the passenger unbuckled his seat and moved to a different seat closer to the front of the aircraft ignoring crew instructions that it was unsafe to be unbuckled and move about the cabin at that time.
- \$13,000 – A passenger allegedly failed to properly wear a facemask and ignored crew instructions to wear it. The passenger drank alcohol that the airline did not serve, which is against FAA regulations.
- \$10,500 – A passenger allegedly failed to properly wear a facemask over his mouth and nose throughout the flight. After being told that he needed to cooperate and provide information for a passenger disturbance report, he began to argue with the flight attendant and refused to provide his identification. After the plane landed, the passenger approached a flight attendant from behind and touched her, intimidating the flight attendant and causing her to cry.

- \$10,500 – A passenger allegedly made a 911 call reporting the aircraft was being hijacked by a man who was holding up a flight attendant at knifepoint near the front of the aircraft. As the aircraft taxied to the runway, the passenger left his seat twice to go to the lavatory ignoring instructions from flight attendants to stay seated. Because of the 911 calls, the pilots taxied the aircraft to a cargo ramp where law enforcement met the flight and evacuated passengers and crew. The passenger called the FBI and made mention of a bomb, prompting law enforcement to screen the aircraft and all passengers and crew. All of the passenger's claims were false and resulted in a multi-hour delay of the flight.
- \$10,500 – A passenger allegedly failed to comply with numerous instructions from flight attendants to wear a facemask and walked through the cabin to the lavatory while the fastened seatbelt sign was on due to moderate turbulence. While flight attendants told the passenger that it was unsafe to use the lavatory, the passenger argued that he was drinking at the airport for five hours prior to the flight. The flight attendants allowed him to use the lavatory, but he fell on the flight attendants three times after exiting. Once back in his seat, the passenger began vaping and ignored flight attendant instructions to stop. The passenger continued to vape, not wear his facemask, and leave his seat for the remainder of the flight. The captain called for law enforcement to meet the passenger at the gate.
- \$10,000 – A passenger allegedly failed to comply with numerous instructions from flight attendants to wear a facemask and top buckle her seatbelt. The passenger and members of her party played loud, obscene music during the safety announcements and used obscene language towards the flight attendants and other passengers. The captain returned the flight to the gate where law enforcement met the passenger. The passenger was a member of the party mentioned in the second case listed above.
- \$7,500 – A passenger allegedly failed to comply with numerous instructions from the flight attendant to properly wear a facemask. After the passenger told flight attendants that his mask was broken, a customer service supervisor boarded the aircraft and provided the passenger with a facemask that would fit properly. After the supervisor left, the passenger pulled his facemask below his nose and mouth. The supervisor returned and asked the passenger to leave the aircraft, but he refused. The airline had every passenger deplane and the non-compliant passenger was not allowed to reboard.

The FAA has strictly enforced a zero-tolerance policy towards passengers who violate FAA regulations. The passengers have 30 days after receiving the FAA's enforcement letter to respond to the agency.