

The Secretary of the U.S. Department of Transportation, Pete Buttigieg, signed the following Advance Notice of Proposed Rulemaking (ANPRM) on December 3, 2024, and we are submitting it for publication in the *Federal Register*. While we have taken steps to ensure the accuracy of this Internet version of the ANPRM, it is not the official version. Please refer to the official version in a forthcoming *Federal Register* publication, which will appear on the *Federal Register's* website ([www.federalregister.gov](http://www.federalregister.gov)). Once the official version of this ANPRM is published in the *Federal Register*, this version will be removed from the Internet and replaced with a link to the official version.

**Billing Code 4910-9X**

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**Docket No. DOT-OST-2024-0062**

**RIN No. 2105-AF20**

**Airline Passenger Rights**

**AGENCY: Office of the Secretary (OST), Department of Transportation (DOT)**

**ACTION: Advance Notice of Proposed Rulemaking (ANPRM)**

**SUMMARY:** The U.S. Department of Transportation (Department or DOT) seeks public comment on a rulemaking to ensure consumers experiencing significant flight disruptions are taken care of and protected from financial losses. Specifically, the Department is considering imposing requirements on airlines to provide affected passengers cash compensation, free rebooking, and amenities such as meals, lodging for overnight delays, and transportation to and from lodging. The Department also seeks comment on whether some protections should be provided during any type of disruption, how to determine whether a cancellation or delay is within an airline's control, and how to ensure that passengers receive the correct information from the airline in a timely manner. Additionally, the Department solicits comments on how to ensure that the process for passengers to receive compensation and amenities is clear, simple, straightforward, and prompt, and whether to require certain aspects of the process to be

automatic. Further, the Department seeks comment on whether it should require airlines to offer free rebooking on the same or partner airline to a passenger with a disability and others in the same travel party when one or more accessibility feature needed by the person with disability is unavailable.

**DATES:** Comments should be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT–OST–2024–0062 by any of the following methods:

- *Federal eRulemaking Portal:* go to <https://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

*Instructions:* You must include the agency name and docket number DOT–OST–2024–0062 or the Regulatory Identification Number (RIN 2105–AF20) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the

comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

*Docket:* For access to the docket to read background documents and comments received, go to <https://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Heather Filemyr, John Wood, or Blane A. Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC, 20590, 202-366-9342, 202-366-7152 (fax), [heather.filemyr@dot.gov](mailto:heather.filemyr@dot.gov), [john.wood@dot.gov](mailto:john.wood@dot.gov), or [blane.workie@dot.gov](mailto:blane.workie@dot.gov) (e-mail).

**SUPPLEMENTAL INFORMATION:**

**A. Background and Overview of Existing Requirements**

The Department's regulation at 14 CFR 259.5 requires U.S. and foreign airlines to have and adhere to a customer service plan that identifies the services that an airline provides to mitigate passenger hardships resulting from flight cancellations and misconnections. Under this regulation, airlines are free to choose the services to provide passengers affected by flight disruptions. In 2022, after an unacceptable level of flight delays and cancellations, the Department carefully reviewed these plans to determine how U.S. airlines were caring for their passengers and found that the airlines' commitments in these plans did not guarantee adequate services even for flight delays and cancellations within the airline's control. However, after a two-year DOT push to improve the passenger experience, today, almost all of the largest U.S. airlines voluntarily commit in their customer service plan to provide services such as meals, lodging, and free rebooking to passengers impacted by cancellations and lengthy delays when

airlines are responsible.<sup>1</sup> While the Department had also urged U.S. airlines to voluntarily commit to compensating passengers experiencing significant flight disruptions due to circumstances within the airline's control, no U.S. airline currently guarantees cash compensation, and only three airlines guarantee compensation in credits or frequent flyer miles for airline-caused delays and cancellations.

The ability of airlines to choose the services that they provide to mitigate passenger inconveniences resulting from flight disruptions under current U.S. law contrasts with consumer protection regimes in other jurisdiction like the European Union (EU) and Canada, where airlines are required to provide compensation and assistance to consumers affected by flight disruptions. In the EU, airlines must provide compensation to consumers facing cancellations or lengthy delays unless the airline proves that the cancellation or delay is “caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.”<sup>2</sup> Under that regime, airlines must also provide services, including meals, hotels, and ground transportation to and from the hotel (for overnight cancellations and delays) to passengers facing lengthy delays or cancellations and rebooking to passengers whose flights are cancelled, regardless of the cause of the delay or cancellation and whether it is unavoidable by the airline.<sup>3</sup> United Kingdom regulations impose similar requirements and also use the

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<sup>1</sup> All ten of the largest U.S. airlines guarantee meals and rebooking without charge on the ticketed airline, and nine of the 10 guarantee hotel accommodation and ground transportation to and from the hotel for passengers affected by controllable overnight delays and cancellations. Six of the 10 guarantee fee-free rebooking on a partner airline or another airline with which it has an agreement for controllable cancellations and five do so for lengthy, controllable delays. See <https://www.transportation.gov/airconsumer/airline-customer-service-dashboard>.

<sup>2</sup> See EC No 261/2004, Article 5; see also Joined Cases C-402/07 and C-432/07, *Sturgeon v. Air France*, 2009 E.C.R. I-10923, ¶ 69 (applying EU compensation requirements to delays of three hours or more).

<sup>3</sup> See EC No 261/2004, Articles 5.1, 6.1, 8.1; see also European Commission Notice: Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council Establishing Common Rules on Compensation and Assistance to Passengers in the Event of Denied Boarding and of Cancellation or Long Delay of Flights and on Council Regulation (EC) No 2027/97 on Air Carrier Liability in the Event of Accidents as Amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council (“EU Interpretive Guidelines”) (June 15, 2016) at C 214/13 (“According to the Regulation, the air carrier is obliged to fulfil the obligation of care

“extraordinary circumstances” construct for compensation, with compensation amounts established in pounds.<sup>4</sup> Current Canadian Air Passenger Protection Regulations (APPRs) require airlines to provide compensation for lengthy delays and cancellations that are controllable by the airline and not required for safety purposes and to provide services, including meals, overnight accommodations, and ground transportation to and from the hotel (for overnight cancellations and delays), to passengers for lengthy delays and cancellations that are controllable by the airline, regardless of whether the controllable delay or cancellation is required for safety.<sup>5</sup> Brazilian regulations also contain similar protections for air passengers, including a right to compensation, meals, and hotel accommodations for cancellations and lengthy flight delays.<sup>6</sup>

In developing this notice, Department staff met with individuals from the Canadian Transportation Agency (CTA) on June 1, 2023, and the European Commission (EC) on June 12, 2023, to better understand the requirements under those existing regulatory regimes. On July 19, 2023, at the request of the International Air Transport Association (IATA) and Airlines for America (A4A), Department staff met with representatives of those groups to hear their perspective on compensation and assistance to passengers in the event of flight delays and cancellations. On May 10, 2024, at the request of AirHelp, Department staff met with representatives from that organization about its experience filing claims on behalf of passengers with airlines covered by compensation requirements in foreign jurisdictions, including the EU. On September 10, 2024, Department staff attended a panel discussion moderated by the National

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even when the cancellation of a flight is caused by extraordinary circumstances, that is to say circumstances which could not have been avoided even if all reasonable measures had been taken”), *available at* [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0615\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0615(01)).

<sup>4</sup> See <https://www.caa.co.uk/passengers/resolving-travel-problems/delays-and-cancellations/delays/> and <https://www.caa.co.uk/passengers/resolving-travel-problems/delays-and-cancellations/cancellations/>.

<sup>5</sup> APPRs, ¶¶ 12, 19. Under the Canadian Regulations, airlines must also provide rebooking for cancellations and lengthy delays that are either within or outside the airline’s control. See APPRs, ¶¶ 17, 18. As discussed later in this notice, the Canadian Transportation Agency has initiated a consultation to revise the APPRs.

<sup>6</sup> See ANAC Resolution No. 400 (Dec. 13, 2016).

Consumers League, supported by a grant from AirHelp, and featuring speakers from the Travel Technology Association, U.S. Public Interest Research Group, the White House, and AirHelp, at which those groups discussed this contemplated rulemaking. Senator Edward Markey also gave remarks at that event. All documents submitted to the Department pertaining to these meetings and a summary of the panel discussion have been added to the rulemaking docket.<sup>7</sup>

## **B. Need for Rulemaking**

### **(1) Data Indicates Controllable Cancellations and Lengthy Flight Delays Affect Millions of Passengers**

Cancellations and lengthy flight delays pose significant inconvenience, stress, and financial cost to impacted passengers. Such delays and cancellations cause passengers to lose time, may disrupt other reservations (such as hotel reservations), and may cause passengers to miss important events.<sup>8</sup> Flight cancellations, delays, and missed connections occurred in significant numbers as airlines adjusted their operations to meet the post-COVID pandemic air travel demand and have been the subject of a large number of the complaints about airlines that consumers have submitted to the Department since then.<sup>9</sup>

According to flight performance data reported by the largest U.S. carriers to the Department's Bureau of Transportation Statistics (BTS), in calendar year 2022, the carriers

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<sup>7</sup> Docket available at <https://www.regulations.gov/docket/DOT-OST-2024-0062/>.

<sup>8</sup> See Airline Passenger Protections: Observations on Flight Delays and Cancellations, and DOT's Efforts to Address Them, GAO-23-105524 ("2023 GAO Report"), at 22 (Apr. 2023), available at <https://www.gao.gov/assets/gao-23-105524.pdf>.

<sup>9</sup> Of the 49,958 air travel service complaints that the Department received in calendar year 2021, 13 percent concerned flight problems. See <https://www.transportation.gov/individuals/aviation-consumer-protection/february-2022-air-travel-consumer-report>. Of the 77,656 air travel service complaints that the Department received in calendar year 2022, 32 percent concerned flight problems. See <https://www.transportation.gov/resources/individuals/aviation-consumer-protection/february-2023-air-travel-consumer-report>. While the Department does not have complaint data available for calendar year 2023 because of revisions in how it processes consumer complaints for efficiency, it estimates that it received 88,136 complaints based on receiving 96,853 submissions that year and complaints making up an average of 91 percent of submissions over the past three years. See <https://www.transportation.gov/resources/individuals/aviation-consumer-protection/june-december-2023-and-2023-annual-consumer>. The percentage of complaints that concern flight problems in calendar year 2023 is not known.

combined cancelled 190,038 domestic scheduled passenger flights (approximately 2.7 percent of their total domestic scheduled passenger flights), and over 1.4 million of their domestic scheduled passenger flights (more than 20 percent of their total domestic scheduled passenger flights) were delayed in arriving by 15 minutes or more.<sup>10</sup> Of the more than 1.4 million delayed flights, 85,892 (approximately 6.1 percent) were delayed three hours or more.<sup>11</sup>

In calendar year 2023, these carriers combined cancelled 93,897 domestic scheduled passenger flights (approximately 1.3 percent of their total domestic scheduled passenger flights).<sup>12</sup> Further, more than 1.4 million of the carriers' domestic scheduled passenger flights (approximately 20 percent of their total domestic scheduled passenger flights) were delayed 15 minutes or more that year.<sup>13</sup> Of the more than 1.4 million delayed flights, 95,024 of them were delayed three hours or more, which was approximately 6.8 percent of total flights delayed that year.<sup>14</sup>

A significant percentage of the domestic cancellations that air carriers reported to BTS in 2022 and 2023 were reported as “air carrier”-caused and most of the domestic delays of three hours or more that air carriers reported to BTS listed “air carrier” as a cause of the delay. Carriers reported to BTS that 38 percent of their domestic scheduled passenger flight cancellations were “air carrier”-caused in calendar year 2022, and 28 percent of their domestic scheduled passenger flight cancellations were “air carrier”-caused in calendar year 2023.<sup>15</sup> For domestic scheduled passenger flight delays of three hours or more, the carriers reported to BTS that 65 percent of those delays included an “air carrier” cause of delay in 2022, and 62 percent

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<sup>10</sup> Bureau of Transportation Statistics, On-Time Performance, Marketing Carrier Flight Delays and Cancellations 2022 and 2023, *available at* <https://www.regulations.gov/docket/DOT-OST-2024-0062/>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

included an “air carrier” cause of delay in 2023.<sup>16</sup> These delay percentages do not include additional delays that were reported by carriers as caused by “late arriving aircraft.” Such delays are not reported as “air carrier”-caused even when the reason for the “late arriving aircraft” was within the carrier’s control.

In April 2023, the U.S. Government Accountability Office (GAO) published a report describing its examination of controllable cancellations and delays following the initial disruption to air transportation in 2020 due to the global COVID pandemic and documented concerns with the gap in consumer protections available to passengers facing cancellations and lengthy delays.<sup>17</sup> GAO reviewed data from the Department’s BTS and concluded that as airlines recovered in 2021 and 2022 “[s]ustained cancellation events, or a series of days where an airline cancelled a large percentage of daily flights, lasted longer and became more common as travel demand increased.”<sup>18</sup> GAO estimated that flight cancellations from July 2021 through April 2022 potentially affected over 15 million passengers, and flight delays during that time period potentially affected over 116 million passengers.<sup>19</sup> The 2023 GAO report also concluded that: “[b]eyond DOT’s requirement for airlines to provide cash refunds to passengers for cancelled or significantly changed flights, airline compensation to passengers is generally limited. Airlines are not required to provide accommodations for flight disruptions unless specified in an airline’s contract of carriage or customer service plan, although airlines may provide additional accommodations in certain circumstances. As we have previously reported, airline assistance to

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<sup>16</sup> *Id.*

<sup>17</sup> 2023 GAO Report.

<sup>18</sup> *See id.* at 13 (“In the last half of 2021, there were 6.3 percent more sustained cancellation events than during the same time period in 2018, and 12.2 percent more than in 2019, despite 14 percent fewer scheduled flights compared to 2019. In the first 4 months of 2022, the number of sustained cancellation events increased even more substantially, with 56.9 percent more events in this time period compared to the same 4-month time period in 2018, and 42.9 percent more than in the first 4 months of 2019. There were 12.6 percent fewer scheduled flights during the relevant 2022 time period as compared to the same time period in 2019.”).

<sup>19</sup> *Id.* at 17.



affected passengers can vary significantly. Flight disruptions, particularly if they are long lasting, can significantly inconvenience passengers.”<sup>20</sup>

The Department’s Office of Aviation Consumer Protection investigates large-scale and sustained disruptive events that impact large numbers of passengers to ensure compliance with aviation consumer protection requirements. At times, these investigations can also reveal gaps in protections for aviation consumers, such as the importance for consumers to know whether a cancellation or delay is considered controllable and would entitle them to promised services and amenities. For example, from late December 2022 through early January 2023, Southwest Airlines cancelled 16,900 flights and stranded over two million passengers, reporting most of the cancelled flights to BTS as due to circumstances within the carrier’s control.<sup>21</sup> In July 2024, following a global IT systems issue, Delta Air Lines cancelled more than 5,550 flights over a five-day period.<sup>22</sup> The Department immediately notified U.S. carriers that it considers the flight disruptions resulting from the IT outage to be “controllable” since the issue is a computer outage of the carrier’s equipment and informed carriers that DOT expected the carriers to make good on the commitments that they voluntarily made to customers affected by controllable cancellations and delays. Notably, the Department saw a significant uptick in consumer complaints following each of these events, reflecting significant consumer harm, including financial harm from these controllable cancellations and delays.

## **(2) Inconsistency in How Airlines Determine Controllable Cancellations and Delays**

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<sup>20</sup> *Id.* at 9.

<sup>21</sup> In December 2023, the Department assessed a \$140 million civil penalty against Southwest Airlines for numerous violations of consumer protection laws during and after its operational failures between December 2022 through January 2023. The penalty was 30 times larger than any previous DOT penalty for consumer protection violations. The majority of the penalty will go towards compensating future Southwest passengers affected by cancellations or significant delays caused by the airline. *See Southwest Airlines Co.*, DOT Order No. 2023-12-11, Consent Order (Dec. 15, 2023).

<sup>22</sup> Bureau of Transportation Statistics, Arrival Performance by Carrier, July 19 – 24, 2024, *available at* <https://www.regulations.gov/docket/DOT-OST-2024-0062/>.

The Department is exploring in this ANPRM how to determine which delays and cancellations are controllable such that airlines are held responsible for free rebooking, compensation, and payment for services such as meals, lodging, or transportation to and from lodging. Currently, when a flight disruption involves more than one cause, airlines determine whether the event was or was not controllable in different ways. For example, one airline might look at the first cause, another the longest cause, and another may use yet a different method to deem a multi-factor event controllable or not controllable, potentially ignoring factors that were within their control that caused or exacerbated consumer harm.

At the December 2021 meeting of the Department's Aviation Consumer Protection Advisory Committee (ACPAC), presentations by a representative of the Arizona Attorney General's Office (AAG) and representatives of A4A, among others, addressed the causes of cancellation and delay when weather is involved. The AAG representative explained that airlines have incentive to blame delays on weather because, when a delay is attributed to weather, the airline would not have to provide vouchers, meals, or hotels, and other amenities, if guaranteed in its customer service plan or contract of carriage for controllable events, and air travelers likely are more understanding about weather delays than delays due to mismanagement or short staffing. Also at that meeting, representatives of A4A explained that a weather event can affect multiple areas of airline planning in a scope and scale unique to each circumstance, including scheduling, flight planning, crew planning, aircraft routing, maintenance planning, gate sequencing, and aircraft and passenger support. One A4A representative stated that FAA data indicates that 70 percent of all air traffic delays are caused by weather, which in the representative's view explains why airlines often described weather as the root cause of a delay. The representative asserted that there is no clear demarcation of when a weather event stops

being the original or primary factor for a delay associated with a flight or sequence of flights. An additional A4A representative added that some airlines' contracts of carriage, to the extent they provide for amenities for flight irregularities, exclude delays or cancellations where the cause is outside the airline's control, such as weather. He said that if weather is the original or primary factor, an airline's contractual obligation to provide amenities may not apply based on the wording of the contract of carriage.

Section 512 of the FAA Reauthorization Act of 2024 (2024 FAA Act) requires the Department to direct certain air carriers "to establish policies regarding reimbursement for lodging, transportation between such lodging and the airport, and meal costs incurred due to a flight cancellation or significant delay directly attributable to the air carrier." The statute does not further describe what "directly attributable" to the air carrier means, including when multiple causal factors are involved in a flight disruption. A regulation would be necessary to require air carriers to establish policies under Section 512. The regulation could also clarify which cancellations and delays are directly attributable to a carrier.

### **(3) Challenges Remain for Passengers Seeking Rebooking, Compensation, Notifications, and Services Such as Meals, Lodging, and Transportation to and from Lodging**

As previously discussed, current Department regulations do not require an airline to provide compensation, services, notifications of services due, or reimbursements to passengers impacted by cancellations and lengthy delays that are within its control unless the airline voluntarily commits to do so. Many airlines, including foreign airlines, have not made voluntary guarantees in their customer service plans to provide needed services and compensation to their customers affected by controllable cancellations or delays. In addition, airlines that have made enforceable commitments to their customers for controllable flight cancellations and lengthy controllable delays, including those reflected on the Department's Airline Customer Service

Dashboard,<sup>23</sup> can remove these commitments from their customer service plan at any time. Further, the competition encouraged by the Dashboard has not resulted in any U.S. airline committing to provide cash compensation to passengers for controllable flight cancellations and lengthy controllable flight delays. Also, while many U.S. airlines have committed to providing free rebooking on partner airlines, meals, hotels for passengers affected by overnight cancellations or delays, and transportation to and from the hotel, not all U.S. airlines have, demonstrating a potential need for protections in this area.

In addition, on May 16, 2024, the President signed the 2024 FAA Act into law.<sup>24</sup> Section 512 of the 2024 FAA Act requires the Department to “direct all air carriers providing scheduled passenger interstate or intrastate air transportation to establish policies regarding reimbursement for lodging, transportation between such lodging and the airport, and meal costs incurred due to a flight cancellation or significant delay directly attributable to the air carrier.” Before the 2024 FAA Act was passed by Congress, the Executive Office of the President released a Statement of Administration Policy explaining that the Act “include[d] key consumer protection provisions on airline reimbursement for incurred costs due to controllable disruptions . . . that would set a floor that the Department of Transportation could build on as deemed appropriate by the Secretary of Transportation.”<sup>25</sup>

This ANPRM requests public comment to assist the Department in its consideration of what regulations may be needed to implement the requirements of Section 512 of the 2024 FAA Act, ensure that airlines do not engage in unfair or deceptive practices or unfair methods of

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<sup>23</sup> See <https://www.transportation.gov/airconsumer/airline-customer-service-dashboard>.

<sup>24</sup> Pub. L. 118-63.

<sup>25</sup> See Statement of Administration Policy, Senate Substitute Amendment to H.R. 3935 – FAA Reauthorization Act of 2024 (May 8, 2024), *available at* <https://www.whitehouse.gov/wp-content/uploads/2024/05/SAP-SSA-HR3935.pdf>.

competition by establishing minimum requirements for when and how airlines must compensate passengers and make relevant reimbursements and services available to them, ensure that these protections are not subject to removal at an airline's discretion, and ensure passengers are protected from financial loss whether scheduled to be on a domestic or international flight that is cancelled or significantly delayed due to circumstances within an airline's control.

The Department is also issuing this ANPRM to assist its consideration of what regulations may be needed to ensure that passengers receive timely notifications of available compensation, rebooking, and services such as meals, lodging, and transportation to and from lodging. Some airlines currently condition service guarantees in their customer service plans on affirmative requests by consumers for those services.<sup>26</sup> Many passengers may not know the intricacies of airlines' customer service plan guarantees, and, even when passengers are aware of an airline's commitments, they may not know that a particular cancellation or delay is within the airline's control and so a service is owed.

The Department's ACPAC recently considered the quality and quantity of information on the causes of air carrier delays and cancellations provided to passengers adversely affected by an airline cancellation or delay, focusing on whether it is an unfair or deceptive practice for an air carrier to inform a passenger that a flight is delayed or cancelled due to weather alone when other factors are involved. At the December 2021 ACPAC meeting, a representative of the AAG and representatives of A4A, among others, presented to the ACPAC on the topic. The AAG stated that consumers need accurate information about the reasons for a delay so that they can

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<sup>26</sup> See, e.g., American Airlines Customer Service Plan (updated July 19, 2024), *available at* <https://www.aa.com/i18n/customer-service/support/customer-service-plan.jsp>, and Southwest Airlines Customer Service Plan (revised April 23, 2024), *available at* <https://www.southwest.com/assets/pdfs/corporate-commitments/customer-service-plan.pdf?clk=7396032> (guaranteeing meals and hotel accommodations "upon request" by the passenger).

exercise their rights and make an informed decision about their options at the time and whether to use that airline in the future. Also at that meeting, an A4A representative stated that he did not find withholding information on cause of delay meets the Department's test for unfair or deceptive practices in air transportation. The representative stated that the Department's regulation that requires airlines to provide passengers flight status notification in the event of a known delay, cancellation, or diversion, 14 CFR 259.8, is sufficient to inform consumers of the material information. The representative noted that the current regulation does not require airlines to provide the cause of a flight disruption but addresses material information, such as information that would assist the passenger in deciding when to go to the airport or when to request a refund or rebooking on another flight. The representative added that some airlines' contracts of carriage, to the extent they provide for amenities for flight irregularities, exclude delays or cancellations where the cause is outside the airline's control, such as weather. He said that if weather is the original or primary factor, an airline's contractual obligation to provide amenities may not apply based on the wording of the contract of carriage. The representative raised concern should airlines be required to provide real-time detailed explanations of all subsidiary factors contributing to the delay that was fundamentally caused by weather, stating that airlines may be compelled to publish unsubstantiated information that the airlines lacked adequate time to confirm, which he believed would be a disservice to consumers.

At the December 2022 ACPAC meeting, the ACPAC deliberated on the topic of information provided to consumers adversely affected by airline delays or cancellations. The ACPAC member representing consumers asked that the ACPAC consider recommending that airlines notify passengers when a service or amenity becomes available due to a controllable delay or controllable cancellation. This member stated that his proposal reflected concern that,

without such notifications, passengers would be required to understand an airline’s customer service plan or contract of carriage and affirmatively request amenities from the airline. The member representing airlines opposed the recommendation, noting that information about services and amenities is available through the Department’s Airline Customer Service Dashboard, and expressed concern about whether an airline would have contact information for the passenger to provide a notification for tickets sold through ticket agents. The member representing consumers responded that the Dashboard is useful to consumers, but some may not know about the Dashboard and those who do would be unsure whether the commitments apply to them because they would not know the cause of the delay or cancellation. After discussion, the ACPAC adopted a recommendation that the Department issue a regulation requiring airlines to notify affected consumers of the availability of services and amenities for controllable delays and cancellations, with the member representing airlines voting against the recommendation.

#### **(4) Harm to Consumers, Including Passengers with Disabilities, When Free Rebooking is Not Provided**

In April 2024, the Department published a final rule, Refunds and Other Consumer Protections, codifying and clarifying its longstanding interpretation that, under 49 U.S.C. 41712, airlines must provide refunds to passengers for flights that are cancelled or significantly changed, regardless of whether the cancellation or change is within the airline’s control.<sup>27</sup> In August 2024, the Department issued a second final rule, Refunds and Other Consumer Protections (2024 FAA Reauthorization) to implement the refund-related provisions of the 2024 FAA Act.<sup>28</sup> These final rules (collectively “Refund Rules”) provide, among other things, that passengers are entitled to

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<sup>27</sup> <https://www.federalregister.gov/documents/2024/04/26/2024-07177/refunds-and-other-consumer-protections>.

<sup>28</sup> <https://www.federalregister.gov/documents/2024/08/12/2024-17602/refunds-and-other-consumer-protections-2024-faa-reauthorization>.

an automatic refund if their flight is cancelled and they do not accept any alternatives offered. The Refund Rules also provide that passengers are entitled to an automatic refund if they decide not to travel on a changed itinerary when the change results in a flight departing from the origination airport three hours or more for domestic itineraries and six hours or more for international itineraries earlier or later than the original scheduled departure time, or results in the flight departing from a different origination airport or arriving at a different destination airport.<sup>29</sup>

In addition, under the Department’s Refund Rules, an airline must provide an automatic refund to an individual with a disability (and others in that individual’s reservation) upon notification that the individual decides not to travel on a changed itinerary because: (1) the individual with a disability is downgraded to a lower class of service that results in one or more accessibility features needed by the individual becoming unavailable, (2) the airline changes the aircraft to a substitute aircraft on which one or more accessibility features needed by the individual are unavailable, or (3) the airline changes the flight to schedule the passenger to travel through one or more connecting airports different from the original itinerary.<sup>30</sup>

The Department’s recent Refund Rules provide important new refund protections for passengers who are negatively impacted by a change in an airline itinerary. Those rules, however, do not require airlines to accommodate passengers by offering rebooking to meet the passenger’s needs, including the accessibility needs of passengers with disabilities. In the rulemaking on Refunds and Other Consumer Protections, the Paralyzed Veterans of America submitted a comment requesting the Department require airlines to “expeditiously locate and

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<sup>29</sup> 14 CFR 260.2 (*see* definition of significantly delayed or changed flight at paragraphs (1) and (2)), 260.6(a).

<sup>30</sup> 14 CFR 260.6(b)(1)-(3).



offer alternative transportation that meets the specific needs of the passenger with a disability,” explaining that a “refund is purposeless if the passenger is stranded.”

The Department is using this ANPRM to assist in its assessment of whether it should require airlines to provide rebooking without charge to a passenger when the airline makes a significant change to the passenger’s itinerary. This includes an assessment of whether an airline should be required to provide rebooking without charge to a passenger with a disability, and others in the same travel party, when the carrier makes changes that result in the unavailability of an accessibility feature needed by the passenger with a disability or when the carrier makes other significant changes to the itinerary of an individual with a disability, like a change in the origination or destination airport or cancels a flight.

### **C. Statutory Authority**

The Department’s rulemaking would be based on several statutory authorities.

#### **(1) Unfair and Deceptive Practices and Unfair Methods of Competition**

Section 41712 of Title 49 of the U.S. Code authorizes the Department to prohibit unfair and deceptive practices and unfair methods of competition by air carriers, foreign air carriers, and ticket agents in air transportation and the sale of air transportation. The Department’s rule at 14 CFR 399.79 outlines its policies related to unfair and deceptive practices and defines the terms “unfair” and “deceptive.” A practice is “unfair” to consumers if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.<sup>31</sup> A practice is “deceptive” to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter.<sup>32</sup> A matter is material if it is likely to have affected the consumer’s conduct or decision

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<sup>31</sup> 14 CFR 399.79(b)(1).

<sup>32</sup> 14 CFR 399.79(b)(2).

with respect to a product or service.<sup>33</sup> Proof of intent is not necessary to establish unfairness or deception.<sup>34</sup> The Department elaborated further on the elements of “unfair” and “deceptive” in a 2022 guidance document.<sup>35</sup>

The Department may address unfair and deceptive practices under 49 U.S.C. 41712 and 49 U.S.C. 40113(a), which authorizes the Secretary to “take action the Secretary ... considers necessary to carry out [Part A of Chapter 49 of the U.S. Code, which contains Section 41712], including ... prescribing regulations, standards, and procedures.”

The Department is exploring through this ANPRM whether requirements for services such as rebooking, meals, lodging, and transportation to and from lodging or reimbursements for those services, or compensation are needed to prevent unfair and deceptive practices or unfair methods of competition in the event of cancellations and lengthy delays that are within the airline’s control. The Department is also examining whether notifications by airlines to passengers of available services, reimbursements, and compensation when such services are due are necessary to address unfair and deceptive practices. Additionally, the Department is considering whether it may be an unfair or deceptive practice for an airline to fail to provide free rebooking for significant changes, including changes applicable to passengers with disabilities and others in the same travel party when a change in class of service or aircraft affects available accessibility features or a change in airport occurs. Finally, the Department is weighing whether any other unfair methods of competition should be addressed in this rulemaking. If the Department decides to propose regulations declaring a practice unfair or deceptive, then notice

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<sup>33</sup> *Id.*

<sup>34</sup> 14 CFR 399.79(c).

<sup>35</sup> 87 FR 52677 (Aug. 28, 2022).

and an opportunity to petition the Department for a hearing will be provided in accordance with procedures found in 14 CFR 399.75.

## **(2) FAA Reauthorization Act of 2024**

As described previously, Section 512 of the 2024 FAA Act requires the Department to “direct all air carriers providing scheduled passenger interstate or intrastate air transportation to establish policies regarding reimbursement for lodging, transportation between such lodging and the airport, and meal costs incurred due to a flight cancellation or significant delay directly attributable to the air carrier.” This ANPRM explores how the Department should implement this statutory requirement.

In addition, Section 505 of the 2024 FAA Act requires that certain air carriers must maintain, without charge and available at all times: (1) a customer service telephone line staffed by live agents, (2) a customer chat option that allows for customers to speak to a live agent within a reasonable time, to the greatest extent practicable, or (3) a monitored text messaging number that enables customers to communicate and speak with a live agent directly. Section 505 authorizes DOT to issue such rules as may be necessary to carry out the requirement and provides that airlines must comply with Section 505’s requirements “without regard to whether the Secretary has promulgated any rules to carry out” Section 505. This ANPRM explores whether the Department should propose provisions regarding the manner and timeliness of airline customer service during flight disruptions, whether controllable or not, under this statutory requirement.

### **(3) Safe and Adequate Interstate Air Transportation**

This ANPRM also involves topics related to air carriers<sup>36</sup> that may involve the Secretary’s authority under 49 U.S.C. 41702, which states that “[a]n air carrier shall provide safe and adequate interstate air transportation.”<sup>37</sup> The Civil Aeronautics Board (CAB), the predecessor to the Department, had the authority to ensure that air carriers provide “safe and adequate service, equipment and facilities” under Section 404(a) of the Federal Aviation Act of 1958, which was later codified in 49 U.S.C. 41702.<sup>38</sup> The CAB relied on Section 404(a) to adopt a regulation that restricted smoking on flights by dividing aircraft cabins into smoking and nonsmoking Sections. The CAB reasoned that its authority to require air carriers to provide “adequate service” under Section 41702 includes ensuring that the service does not cause passenger discomfort.<sup>39</sup> The CAB’s regulation and interpretation of “adequate service” was later challenged by a passenger, but the U.S. Court of Appeals for the Fifth Circuit found that “adequate service” referred both to the number of flights provided by an air carrier and the quality of service provided to passengers.<sup>40</sup>

More recently, the Department relied on its authority to provide safe and adequate interstate transportation in Section 41702 in its 2016 final rule prohibiting the use of e-cigarettes

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<sup>36</sup> Pursuant to 49 U.S.C. 40102(a)(2), an “air carrier” means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

<sup>37</sup> Pursuant to 49 U.S.C. 40102(a)(25) “interstate air transportation” means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft— (A) between a place in— (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; or (iv) a territory or possession of the United States and another place in the same territory or possession; and (B) when any part of the transportation is by aircraft.

<sup>38</sup> Codification was effectuated in Pub. L. 103-272 (enacted July 5, 1994).

<sup>39</sup> “[T]he extent and depth of passenger discomfort and annoyance from unsegregated and unregulated smoking on aircraft compels the conclusion that service which does not provide for the effective separation of smokers constitutes neither adequate service nor reasonable practice and cannot be permitted under the act.” 38 FR 12209 (May 10, 1973).

<sup>40</sup> See *Diefenthal v. Civil Aeronautics Bd.*, 681 F.2d 1039 (5th Cir. 1982) (adequate service can refer both to the number of flights scheduled as well as the quality of service provided).

on-board aircraft.<sup>41</sup> In that final rule, the Department reasoned that it had the authority to rely on the “adequate” prong in Section 41702 to ban the use of e-cigarettes. The Department argued that discomfort from e-cigarettes was like the discomfort described by the CAB when it chose to restrict smoking on aircraft in 1973.<sup>42</sup>

Through this ANPRM, the Department is exploring whether providing rebooking, meals, lodging, and transportation to and from lodging during flight disruptions is necessary to ensure that passengers are provided with adequate interstate transportation. In addition, the Department is exploring whether an airline is failing to provide adequate interstate air transportation when it doesn’t offer and, if accepted, provide free rebooking to passengers when there is a significant change to the flight itinerary, including to passengers with disabilities and others in the same travel party when a change in airport, class of service, or aircraft affects available accessibility features.

#### **(4) Air Carrier Access Act**

The Department’s questions in this ANPRM about rebooking for passengers with disabilities, and individuals in the same travel party, relate to the Department’s authority under the Air Carrier Access Act (ACAA), in addition to the other authorities previously discussed.<sup>43</sup> The ACAA prohibits discrimination in airline service because of disability by U.S. and foreign air carriers. When it enacted the ACAA, Congress directed the Department “to promulgate regulations to ensure non-discriminatory treatment of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers.”<sup>44</sup> The Department responded by issuing a final rule that required carriers to provide nondiscriminatory service to individuals with

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<sup>41</sup> 81 FR 11415 (Mar. 4, 2016).

<sup>42</sup> *Id.* at 11421.

<sup>43</sup> 49 U.S.C. 41705.

<sup>44</sup> Pub. L. 99-435, § 3, 100 Stat. 1080, 1080 (1986).

disabilities.<sup>45</sup> The Department is exploring in this ANPRM whether imposing rebooking requirements on airlines is necessary to ensure individuals with disabilities are not denied reasonable access to air transportation when a change in class of service or aircraft affects available accessibility features or when a change in airport occurs.

## **(5) Reporting and Recordkeeping**

The Department is considering whether to impose any reporting requirements under 49 U.S.C. 41708 or recordkeeping requirements under 49 U.S.C. 41709. Among other things, Section 41708(b) authorizes the Secretary to require U.S. and foreign air carriers to file annual, monthly, periodical, and special reports in the form and way prescribed by the Secretary and to provide specific answers to questions on which the Secretary considers information to be necessary. Section 41709 authorizes the Secretary to prescribe the form of records to be kept by an air carrier.

## **(6) Other Authorities**

In carrying out aviation economic programs, the Department is required to consider the factors identified in 49 U.S.C. 40101 as being in the public interest and consistent with public convenience and necessity. Among other things, under 49 U.S.C. 40101(a)(4), the Department is required to consider the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices as being in the public interest. Under Section 40101(a)(9), it is also in the public interest to prevent unfair, deceptive, predatory, or anticompetitive practices in air transportation. The Department is also required by Section 40101(a)(12) to consider as being in the public interest encouraging,

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<sup>45</sup> 55 FR 8008 (Mar. 6, 1990).

developing, and maintaining an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices.

#### **D. Request for Data, Analysis, Views, Recommendations, and Other Comments**

##### **(1) Scope**

##### **(a) Covered Entities**

Which carriers should be covered if DOT were to issue a rule requiring compensation, services such as meals or lodging, or reimbursements for such services when there are controllable cancellations and lengthy, controllable delays? As its primary option, the Department is considering covering certificated carriers, commuter carriers, and foreign air carriers operating to, from, or within the United States, conducting scheduled passenger service with at least one aircraft having a designed seating capacity of 30 or more seats. This would ensure the requirements would apply to substantially all scheduled passenger air traffic to, from, or within the United States.<sup>46</sup> This coverage would be consistent with the carriers currently required to have a customer service plan under 14 CFR 259.5, which addresses the services airlines voluntarily commit to provide their passengers to mitigate passenger inconveniences resulting from flight cancellations or misconnections.<sup>47</sup>

Alternatively, should the Department exclude from coverage carriers that exclusively provide air transportation with aircraft of a designed seating capacity of 60 seats or less and who are considered small businesses for purposes of the Regulatory Flexibility Act?<sup>48</sup> Or should any

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<sup>46</sup> The largest 15 U.S. air carriers accounted for more than 95 percent of domestic scheduled passenger air transportation in 2023. Bureau of Transportation Statistics, Transtats, T-100 Market Data, *available at* <https://www.regulations.gov/docket/DOT-OST-2024-0062/>. Each of these airlines operate an aircraft of 30 or more seats. Bureau of Transportation Statistics, Part 241 Financial Data, Form B-43, *available at* <https://www.regulations.gov/docket/DOT-OST-2024-0062/>.

<sup>47</sup> See 14 CFR 259.5(b)(14).

<sup>48</sup> Under the Regulatory Flexibility Act carriers that exclusively provide air transportation with aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less are small entities. See 14 CFR 399.73.

requirements cover all certificated air carriers, commuter air carriers, and foreign air carriers, regardless of size? Rather than excluding only the smallest carriers entirely, should the Department impose less stringent requirements on U.S. carriers who comprise less than 10 percent of the domestic scheduled passenger revenue<sup>49</sup> or foreign air carriers who have fewer than two million total enplanements to and from the United States?<sup>50</sup> That approach would be like current Canadian regulations discussed further in the following sections, which impose requirements for flight cancellations and delays, and have modified rebooking and compensation requirements for small carriers based on the number of passengers transported.<sup>51</sup> What, if any, other approaches should the Department consider when determining airline coverage requirements?

The Department also seeks information about whether it may be necessary and appropriate to impose any requirements on ticket agents or indirect air carriers. For example, should the Department require ticket agents or indirect air carriers to notify consumers of available services, reimbursements, or compensation provided by airlines for controllable delays or cancellations or refund the fare to consumers if the ticket agent or indirect air carrier is the merchant of record and the passenger elects to return to his or her origination point after the passenger is delayed at a connecting airport?

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<sup>49</sup> Four U.S. carriers, American Airlines, Delta Air Lines, United Airlines, and Southwest Airlines, comprised 10 percent or more of domestic scheduled passenger revenue in 2023, all with over 15 percent. No other carrier comprised more than six percent of domestic scheduled passenger revenue. *See* docket at <https://www.regulations.gov/docket/DOT-OST-2024-0062/>.

<sup>50</sup> Eighteen foreign carriers exceeded two million total enplanements to and from the United States in 2023. *See id.*

<sup>51</sup> Air Passenger Protection Regulations, SOR/2019-150, ¶¶ 17, 19. Canadian regulations define small carrier to mean any carrier that has not transported a worldwide total of two million passengers or more during each of the two preceding calendar years. *Id.* ¶ 2. The CTA has initiated a consultation to amend its regulations, including improving the rebooking obligations for passengers of small airlines but proposed to continue to apply reduced compensation requirements and less stringent rebooking obligations to small carriers. *See* Consultation Paper: Proposed Changes to Clarify, Simplify and Strengthen the Air Passenger Protection Regulations at 10, *available at* [https://otc-cta.gc.ca/sites/default/files/consultation\\_paper\\_-\\_july\\_2023.pdf](https://otc-cta.gc.ca/sites/default/files/consultation_paper_-_july_2023.pdf).



**(b) Covered Flights**

To which flights should any requirements apply? The Department is considering as its primary option applying any requirements to flight itineraries to, from, or within the United States, including itineraries with brief and incidental stopover(s) at a foreign point without a break in the journey.

The Department is considering defining break in journey consistent with the Department's recently issued Refund Rules.<sup>52</sup> Under those rules, a "break in journey" is any deliberate interruption by a passenger of a journey between a point in the United States and a point in a foreign country where there is a stopover at a foreign point that is scheduled to exceed 24 hours. If the stopover at a foreign point is 24 hours or less, those rules specify that whether the stop is a break in journey would depend on various factors, such as whether the segment between two foreign points and the segment between a foreign point and the United States were purchased in a single transaction and as a single ticket/itinerary, whether the segment between two foreign points is operated or marketed by a carrier that has no codeshare or interline agreement with the carrier operating or marketing the segment to or from the United States, and whether the stopover at a foreign point involves the passenger picking up checked baggage, leaving the airport, and continuing the next segment after a substantial amount of time.

Should the Department impose requirements on airlines to provide services and compensation to consumers experiencing significant flight disruptions to, from, or within the United States? If so, should those requirements apply to itineraries with brief and incidental stopover(s) at a foreign point without a break in the journey like the Refund Rules? Under that approach, delays or cancellations to flight segments not initiated by the passenger, whether

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<sup>52</sup> See 89 FR at 32833.

controllable by the airline or not, would not result in a break in journey as only deliberate interruptions by the passenger would constitute a break in journey. The Department solicits comment on whether there is any reason not to cover brief stopovers at a foreign point without a break in the journey. The Department also asks whether there are flight segments or itineraries involving a point in the United States that should be excluded from coverage for any areas being contemplated by this rulemaking. If so, why? Alternatively, should the Department consider establishing a bright line rule on coverage of flights with a break in journey of less than 24 hours rather than relying on a multi-factor test if airlines would be required to promptly offer to provide rebooking and reimbursements? If so, why?

**(c) Multiple Entities Involved**

Which carrier should bear responsibility for providing compensation or services such as meals or hotels if required during a controllable cancellation or delay when one carrier “sold” the airline ticket (i.e., the merchant of record for the ticket transaction),<sup>53</sup> but the flight is operated by a different carrier? What if the merchant of record is a ticket agent? Which option would be the easiest and clearest for the consumer? Based on comments provided by the American Society of Travel Advisors in the Department’s Refund Rule, it is the Department’s understanding that the ticket agent’s name appears as the merchant of record in five to eight percent of all airline ticket transactions by credit cards facilitated by ticket agents, the majority of which involve group bookings, air-inclusive tour packages, or resale of consolidated fares.<sup>54</sup>

Should the Department consider requiring the merchants of record to be responsible for providing compensation for controllable delays and cancellations? How would the Department

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<sup>53</sup> A merchant of record means the entity responsible for processing payments for the airfare, as shown in the consumer’s financial charge statements such as debit or credit card charge statements.

<sup>54</sup> See comment at 4, available at <https://www.regulations.gov/comment/DOT-OST-2022-0089-5192>.

account for situations where the merchant of record is a ticket agent with no control on whether a flight is delayed or canceled? The Department requires merchants of record to be responsible for providing required refunds for airline ticket transactions because they have direct visibility of the passengers' payment instruments information and the total amounts paid for the itineraries. Does that rationale apply to compensation?

One option under consideration is for the operating carrier to be responsible for compliance. Would holding the operating carrier responsible ensure that the carrier that is making the operational decisions that affect the flight's performance is accountable? Are there reasons the "marketing carrier" should be responsible? For example, do "marketing carriers" often make planning decisions such as which flights are cancelled? Should responsibility be tied to consumer perception of which carrier is in control? Do consumers associate branded codeshare partners and their marketing partners, for example SkyWest operating as United Express, or Jazz Aviation operating as Air Canada Express, as the same carrier? If the operating carrier were responsible, should the operating carrier be allowed to rely on their marketing codeshare partner to issue compensation to consumers or assist in providing services such as meals or hotels to consumers on their behalf? The Department notes that the assignment of responsibility to the operating carrier would be consistent with carrier responsibility for providing compensation and services under the EU and Canadian regulations.<sup>55</sup> Please provide any relevant information regarding the EU or Canadian regulations that the Department should consider.

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<sup>55</sup> See EC No 261/2004, Article 3.5; APPRs ¶ 2; *see also* Canadian Transportation Agency, Application of the Air Passenger Protection Regulations: A Guide at 7, *available at* [https://otc-cta.gc.ca/sites/default/files/application\\_of\\_the\\_air\\_passenger\\_protection\\_regulations\\_a\\_guide.pdf](https://otc-cta.gc.ca/sites/default/files/application_of_the_air_passenger_protection_regulations_a_guide.pdf).

Should the Department consider assigning responsibility differently, such as by assigning joint responsibility to carriers with certain arrangements? If so, under what carrier arrangements would joint responsibility be appropriate for domestic or foreign air carriers, and what would be the appropriate terminology to describe the relationship for which joint responsibility would apply (e.g., fee-for-service arrangements, branded codeshare partnerships, or another terminology)? Should carrier responsibility vary depending on the service, reimbursement, or compensation owed? For example, should the operating carrier be responsible for providing any rebooking, while the marketing carrier bears responsibility for compensation and reimbursements, which the carrier could have more time to provide? Should the Department require joint and several liability in some or all circumstances? Should any special considerations apply to the assignment of responsibility for multi-carrier itineraries? Should the final airline in a multi-carrier itinerary be responsible for any compensation requirements, similar to how airlines have generally handled responsibility for mishandled baggage traveling on multi-carrier itineraries?

## **(2) Definition of Controllable**

The Department is considering defining “controllable” cancellations or delays to be those due in whole or in part to any circumstance within the control of the airline. Under this approach, the requirements of any rule would apply if a delay or cancellation involves any factors or event within the control of the airline, including its operating partner, and their employees, subcontractors, or other persons working on their behalf. This approach is being considered to create a standard that can be applied consistently across carriers. It could also address concerns that were noted by a State AG office at the December 2021 ACPAC public meeting that airlines may choose to attribute a delay to weather when the delay is also directly attributable to an

airline. This approach is also consistent with the requirements of Section 512 of the 2024 FAA Act, which instructs the Department to direct air carriers to establish policies for reimbursements for costs of meals, lodging, and transportation to and from that lodging that are due to flight cancellations and significant delays *directly attributable* to the air carrier.

The Department seeks comment on whether this approach for consideration is the most appropriate or whether it should adopt any alternatives. How should the Department treat cancellations or delays with multiple causes, including when some airline cause is involved? The Department's Bureau of Transportation Statistics (BTS), which requires U.S. carriers that account for at least 0.5 percent of the domestic scheduled-passenger revenues to report monthly on the causes of delayed and cancelled flights, allows multiple causes to be reported for delays but requires one cause to be reported for a cancellation.<sup>56</sup> Generally, airlines report on the predominant cause of a cancellation when there are multiple causes for a cancellation. As such, instead of treating a delay or cancellation as controllable if any cause is within the airline's control, should the Department treat a delay or cancellation as controllable only if the predominant cause of the delay or cancellation is within the airline's control? If so, how should the Department define predominant cause? What effect, if any, would each of those approaches likely have on airline performance?

Also, BTS requires airlines to report on the causes of delayed flights in five broad categories – air carrier, extreme weather, National Aviation System, security, and late arriving aircraft.<sup>57</sup> Airlines may use the reporting category of “late arriving aircraft” even if the cause of the late arriving aircraft was due to a circumstance within control of the air carrier. How should the Department treat a delay caused by a late arriving aircraft for the purposes of determining

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<sup>56</sup> 14 CFR Part 234.

<sup>57</sup> 14 CFR 234.4(i).

which delays are controllable under any rule? Should the Department consider the root cause of any late arriving aircraft for the purposes of determining whether a delay resulting from an aircraft arriving late is controllable? Flight disruptions occurring early in the day can disrupt multiple flights using the same aircraft downline. If attributing the root cause of a late arriving aircraft is appropriate, should there be a cut-off point at which a root cause should not be considered for down-line delays? “Late arriving aircraft” is not available as a causal category to airlines when reporting causes for cancellations to BTS.<sup>58</sup> U.S. carriers are required to report causes of cancellations to BTS in four broad categories – air carrier, extreme weather, National Aviation System, and security.<sup>59</sup>

The Department is of the tentative view that it would not be sufficient to define controllable cancellations or delays without providing examples of the delay and cancellation causes that it believes are within the control of the carrier. It is considering basing these examples on a non-exclusive list used by BTS as a guide for the type of occurrences that should be reported as “air carrier delay or cancellation” when U.S. carriers categorize delays and cancellations of domestic scheduled passenger flights and report these delays to BTS. This list is available in the latest comprehensive BTS reporting directive discussing causal reporting dated December 12, 2018.<sup>60</sup> The BTS reporting categories, which were first developed by the Department in 2002 through notice-and-comment rulemaking, are further explained in reporting directives issued by BTS.<sup>61</sup>

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<sup>58</sup> 14 CFR 234.4(h).

<sup>59</sup> *Id.*

<sup>60</sup> BTS has clarified that the Department’s list of air carrier caused delays and cancellations developed under 14 CFR 234.4 “should not be considered a complete list.” BTS Technical Reporting Directive #31 – On-Time Performance (Dec. 12, 2018) at 27, *available at* [https://www.bts.gov/sites/bts.dot.gov/files/docs/explore-topics-and-geography/topics/airlines-and-airports/224571/technical-directive-no-31-time-2019\\_1.pdf](https://www.bts.gov/sites/bts.dot.gov/files/docs/explore-topics-and-geography/topics/airlines-and-airports/224571/technical-directive-no-31-time-2019_1.pdf).

<sup>61</sup> Reporting the Causes of Airline Delays and Cancellations, 67 FR 70535 (Nov. 25, 2002); *see, e.g.*, BTS Technical Reporting Directive #31 – On-Time Performance (Dec. 12, 2018).

Under the December 2018 BTS directive, the following events are considered air carrier-caused, or in other words, due to circumstances within air carrier control: aircraft cleaning, aircraft damage (except bird strikes, lightening/hail damage), airport curfew, awaiting the arrival of connecting passengers or crew, awaiting alcohol test, awaiting gate space, baggage loading, cabin servicing, cargo loading, catering, computer outages involving carrier equipment, crew legality (pilot or attendant rest), damage by hazardous goods, engineering inspection, public health, flight paperwork, fueling, gate congestion, government forms not properly completed (INS, FAA, Agriculture), ground equipment out of service, hot brakes restriction, last minute passenger, late mail from post office, late crew, lavatory servicing, maintenance, medical emergency, out of service aircraft, oversales, positive passenger baggage match, passenger services, potable water servicing, pre-flight check, ramp congestion (blocked by another aircraft under carrier's control), ramp service, removal of unruly passenger, revised weight sheet, shortage of ramp equipment, slow boarding or seating, snow removal (when it is a carrier ramp service function), stowing carry-on baggage, and weight and balance delays.<sup>62</sup> While not currently listed in the BTS directive, the Department is also considering clarifying that delays and cancellations caused by labor strikes of airline personnel are controllable because the Department believes airlines are best capable of addressing or mitigating such delays and cancellations through effective labor management. The Department invites comment on this issue.

Section 511 of the 2024 FAA Act instructed BTS to revise its regulation covering the “air carrier” category for the purposes of airline reporting to BTS under 14 CFR 234.4. Section 511 further provides a list of causes of delay that shall not be included in the “air carrier” reporting

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<sup>62</sup> BTS Technical Reporting Directive #31 – On-Time Performance (Dec. 12, 2018) at 27-28.

category in the revised BTS reporting regulation: (1) aircraft cleaning necessitated by the death of a passenger; (2) aircraft damage caused by extreme weather, foreign object debris, or sabotage; (3) a baggage or cargo loading delay caused by an outage of a bag system not controlled by a carrier or its contractor; (4) cybersecurity attacks (provided that the air carrier is in compliance with applicable cybersecurity regulations); (5) a shutdown or system failure of government systems that directly affects the ability of an air carrier to safely conduct flights and is unexpected; (6) overheated brakes due to a safety incident resulting in the use of emergency procedures; (7) unscheduled maintenance, including in response to an airworthiness directive, manifesting outside a scheduled maintenance program that cannot be deferred or must be addressed before flight; (8) an emergency that required medical attention through no fault of the carrier; (9) the removal of an unruly passenger; and (10) an airport closure due to the presence of volcanic ash, wind, or wind shear. The Department issued the rule addressing the reportable causes of delay and cancellation in 14 CFR 234.4 under different statutory authorities than those it relies upon in this rulemaking, and the 2024 FAA Act does not require the Department to incorporate those statutory exclusions from the “air carrier” reporting category described in Section 511 in this rulemaking.<sup>63</sup> Nevertheless, the Department welcomes comments on whether it should or shouldn’t consider the aforementioned causes of delay as airline-caused for purposes of this rulemaking.

The Department notes that the EU and Canada have requirements for services and compensation in similar circumstances to those addressed in this ANPRM. The EU currently requires compensation for cancellations and delays of three hours or more, unless the airline proves that the cancellation or delay is “caused by extraordinary circumstances which could not

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<sup>63</sup> The Department issued 14 CFR Part 234 under 49 U.S.C. 329, 41708, and 41709.



have been avoided even if all reasonable measures had been taken.”<sup>64</sup> The term “extraordinary circumstances” has been interpreted and narrowly construed in a series of decisions by the Court of Justice of the European Union.<sup>65</sup> In 2013, the European Commission proposed to revise its regulation, EC 261, to provide a list of causes that would be included and excluded from the definition of “extraordinary circumstances,” but that proposal was not finalized.<sup>66</sup>

The Canadian APPRs currently require airlines to provide compensation for cancellations and delays of three hours or more that are within the airline’s control and not required for safety purposes.<sup>67</sup> In 2023, the Canadian Transportation Agency (CTA) began a consultation to revise the APPRs. In its consultation paper, the CTA proposed to eliminate the categories in the existing APPRs and to move to a mode more similar to EC 261, requiring “compensation for inconvenience for all flight disruptions unless there are exceptional circumstances.”<sup>68</sup> To fall within the proposed definition of exceptional circumstances, the CTA consultation paper would require that the event causing the disruption “must have been outside the airline’s control, and not inherent to the normal exercise of the activities of the airline,” and that the “event could not

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<sup>64</sup> EC No 261/2004, Article 5.3; *see also* Joined Cases C-402/07 and C-432/07, *Sturgeon v. Air France*, 2009 E.C.R. I-10923, ¶ 69 (applying EU compensation requirements to delays of three hours or more).

<sup>65</sup> *See* EU Interpretive Guidelines at C 214/15-17 (summarizing cases).

<sup>66</sup> The 2013 EU proposal would have included the following non-exhaustive list of extraordinary circumstances: natural disasters rendering impossible the safe operation of the flight; technical problems which are not inherent in the normal operation of the aircraft, including hidden manufacturing defects revealed by the manufacturer or a competent authority and which impinges on flight safety; security risks, acts of sabotage or terrorism rendering impossible the safe operation of the flight; life threatening health risks or medical emergencies necessitating the interruption or deviation of the flight concerned; air traffic management restrictions or closure of airspace or an airport; meteorological conditions incompatible with flight safety; and labor disputes at the operating carrier or at essential service providers. *See* Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 261/2004 Establishing Common Rules on Compensation and Assistance to Passengers in the Event of Denied Boarding and of Cancellation or Long Delay of Flights and Regulation (EC) No 2027/97 on Air Carrier Liability in Respect of the Carriage of Passengers and Their Baggage by Air, COM(2013), *available at* [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0130](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0130).

<sup>67</sup> APPRs, ¶ 19.

<sup>68</sup> Canadian Transportation Agency, Consultation Paper: Proposed Changes to Clarify, Simplify and Strengthen the Air Passenger Protection Regulations at 6, *available at* [https://otc-cta.gc.ca/sites/default/files/consultation\\_paper\\_-\\_july\\_2023.pdf](https://otc-cta.gc.ca/sites/default/files/consultation_paper_-_july_2023.pdf).

be avoided even if the airline took all reasonable measures to do so.”<sup>69</sup> The CTA consultation paper provided a proposed list of events that would and would not constitute exceptional circumstances.<sup>70</sup>

The Department seeks comment on whether this approach under consideration, which is to rely largely on the list of “air carrier” causes from the 2018 BTS directive, is the most appropriate approach for the Department to use to determine whether a delay or cancellation is controllable and asks for feedback on potential alternatives. Are there benefits to using the currently applicable EU or Canadian categories or any categories for assessing delays and cancellations that those jurisdictions have proposed but not enacted? In addition to the Department’s requests for comment on specific EU and Canadian requirements throughout this notice, the Department also requests comment on whether there are any additional elements of any current or proposed EU or Canadian regulations covering controllable cancellations and delays (including services and compensation available to passengers during such delays) that the Department should adopt in any rule.

Should the Department consider any alternatives for defining controllable? Should the Department consider applying requirements for services when a delay or cancellation is not within the control of the airline? For example, the Department is considering requiring airlines to

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<sup>69</sup> *Id.*

<sup>70</sup> Those circumstances considered exceptional would include: security risks such as war, political instability, illegal acts, sabotage, and terrorism; weather or other atmospheric conditions, or natural disasters, that make it impossible to safely operate the flight, airport operational issues for which the airline is not responsible; hidden manufacturing defects that come to light and affect flight safety; health risks or medical emergencies on route that require a flight diversion or discovered shortly before flight departure that make it impossible to safely operate the flight; air traffic management restrictions, airspace closures, and airport closures; an official NOTAM; orders or instructions from state, law enforcement agency, or airport security officials; and labor disruptions at the airline or by essential air service providers like airport managers, air navigation personnel, or ground handlers. Those circumstances not considered exceptional would include flight crew or cabin crew unavailability; staff shortages at the airline; technical problems that are an inherent part of normal airline operations; any situation the airline knew about, or should have known about, when it sold the ticket to the passenger; and any action, or failure to act, by the airline or others with which the airline has a contractual relationship. *Id.* at 7-8.

provide certain services, such as rebooking, meals, and hotels on domestic flights, regardless of the reason for the flight disruption, as failing to provide those services may not be “adequate” service under 49 U.S.C. 41702. If so, what provisions should apply and why?

### **(3) Rebooking**

#### **(a) General Rebooking Provisions**

Should the Department require airlines to offer rebooking, at no additional cost, to a passenger whose trip is disrupted because of a lengthy, controllable flight delay or cancellation and, if so, under what circumstances should rebooking be required? One option the Department is considering is requiring airlines to promptly offer rebooking without charge on the next available flight to any passenger: (1) whose flight is cancelled due to circumstances, in whole or in part, attributable to the carrier; (2) whose flight is delayed due to circumstances, in whole or in part, attributable to the carrier resulting in the passenger missing a connection on a single ticket; and (3) whose departure on a flight is significantly delayed (i.e., delayed three hours or more for domestic flight or delayed six hours or more for an international flight), in whole or in part, attributable to the carrier.

This method is generally consistent with the commitments the largest U.S. airlines have already made in their customer service plans to provide rebooking at no additional cost in the event of a controllable cancellation or a significant controllable delay as reflected on the Department’s Airline Customer Service Dashboard.<sup>71</sup> However, unlike some customer service commitments that do not define when a delay is significant, the Department is considering requiring airlines to offer rebooking when the passenger’s departure is delayed three hours or more for domestic flights and six hours or more for international flights due to a lengthy,

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<sup>71</sup> See <https://www.transportation.gov/airconsumer/airline-customer-service-dashboard>.

controllable flight delay or cancellation. Additionally, regardless of the length of delay if a controllable delay results in a missed connection, the Department is considering requiring airlines to offer rebooking on the next available flight.

Under this approach, the rebooking offered to a passenger whose departure on a flight is significantly delayed would be prompt and without charge on the next available flight. The Department is considering defining significant delay to be a delay of three hours or more for domestic flight or a delay of six hours or more for an international flight, in whole or in part, attributable to the carrier. This is consistent with Section 512 of the 2024 FAA Act, which requires the Department to direct certain air carriers to establish policies regarding reimbursements for the costs of meals, lodging, and transportation to and from that lodging incurred by passengers whose flights are cancelled or “significantly delayed.” Section 512 defines “significantly delayed” to mean delayed three hours or more for a domestic flight and six hours or more for an international flight. These thresholds are also consistent with the definition of a significantly delayed flight in Section 503 of the 2024 FAA Act and Department’s recent Refund Rules.<sup>72</sup> The Department is considering whether to apply the delay standards in Section 512 of the 2024 FAA Act not only to rebooking requirements but also to compensation requirements and invites comment on whether it should do so. Would a consistent definition of significant delay that would entitle consumers to services or compensation promote awareness of passenger rights and reduce logistical burdens for airlines?

The Department requests comment on the appropriateness of this approach under consideration. Should the Department adopt this approach or should it adopt a different approach? For example, EU and Canadian rules provide for rebooking when a scheduled flight is

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<sup>72</sup> 89 FR at 32833; 89 FR at 65536-37.

cancelled, regardless of the reason for the cancellation.<sup>73</sup> Should the Department, like the EU and Canada, require airlines to provide rebooking regardless of the reason for the cancellation based on its authority to require safe and adequate interstate transportation in 49 U.S.C. 41702? The Canadian rules require airlines to rebook passengers on another flight if their original flight is delayed for three hours or more whether that flight is domestic or international or if the original flight is cancelled.<sup>74</sup> Should requirements to provide rebooking for controllable delays of international flights be based on three-hour delays instead of six-hour delays?

Are there any circumstances in which rebooking requirements for controllable flight disruptions should not apply? What rebooking requirements, if any, should apply when a passenger does not accept the initial rebooking offered by the airline after a controllable delay or cancellation? Under what circumstances do airlines typically offer free rebooking? Under what circumstances do airlines typically charge for rebooking?

**(b) Rebooking on Other Airlines**

The Department is considering requiring an airline to offer an affected passenger the next available flight among flights operated by the airline and its branded codeshare partners. As discussed earlier in this notice, a “branded codeshare partner” typically operates flights for the mainline carrier using the mainline carrier’s name. The mainline carrier in this arrangement is generally responsible for selling the tickets for the flight, and consumers likely would consider the two carriers to be one entity when purchasing airline tickets.

If no flight operated by that airline or its branded codeshare partner would depart within 24 hours of the passenger’s original scheduled departure time, the Department is also considering requiring an airline to offer rebooking on the next available departing flight among those

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<sup>73</sup> EC No 261/2004, Articles 5.1(a), 8; APPRs ¶¶ 10(3), 17, 18.

<sup>74</sup> APPRs ¶¶ 17, 18.

operated by that airline, its branded codeshare partner, and any carrier with which the airline has a commercial agreement, interline or codeshare, to transport the airline’s passengers. An “interline agreement” is a commercial agreement that enables the airlines to work together in providing services to passengers when the passengers travel on multiple airlines on a single itinerary. The agreement typically covers baggage handling, so passengers can check bags seamlessly to their final destination, and a ticketing agreement, to allow a passenger to obtain boarding passes to their destination. Typically, interline agreements enable the airlines to rebook passengers on one another’s flights at a pre-negotiated below-market cost when there is an irregular operation.

Several of the largest U.S. airlines have committed in their customer service plans to rebook passengers on a partner airline or another airline with which it has an agreement at no additional cost when there is a controllable cancellation or significant controllable delay.<sup>75</sup> Some airlines condition their commitment to use partner carriers on their own flights not being available until the next day. This is consistent with the option under consideration of requiring an airline to offer rebooking on any carrier by which the airline has a commercial agreement to transport the airline’s passengers only if the airline cannot provide rebooking within 24 hours using its own branded network.<sup>76</sup> Some airlines do not have interline or rebooking agreements with other carriers and have not made these commitments. Usually, ultra low-cost carriers (ULCCs) do not have these agreements.

The Department requests comment on whether it should adopt the options described for rebooking or if it should adopt an alternate option and why. What effect, if any, would a

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<sup>75</sup> See <https://www.transportation.gov/airconsumer/airline-customer-service-dashboard>.

<sup>76</sup> See e.g., American Airlines Customer Service Plan updated July 19, 2024, *available at* <https://www.aa.com/i18n/customer-service/support/customer-service-plan.jsp>.

requirement to provide rebooking on a carrier with which an airline has an interline or rebooking agreement have on competition among airlines, including those who do not have interline agreements? If the Department should require an airline to offer rebooking on a carrier with which it has an interline or rebooking agreement, should the Department require airlines to publish a list of their interline partners?

At what point, if at all, should the Department require an airline to offer rebooking on another carrier that is not its partner airline? The Canadian APPRs require large airlines to use any carrier to rebook passengers if they cannot rebook passengers on their own or a partner's next available flight leaving that airport within nine hours for controllable cancellations and controllable delays of three hours or more. For cancellations and delays outside the carrier's control, the Canadian APPR requires large airlines to use a non-partner carrier if the airline cannot rebook passengers on their own or a partner's next available flight leaving that airport within 48 hours of the departure time on the passenger's ticket for cancellations and delays of three hours or more.<sup>77</sup> Also, under the Canadian APPRs, if the airline cannot provide rebooking from the airport where the passenger is located that departs within 48 hours, large airlines must use any airline leaving from a nearby airport for rebooking and must get the passenger to the other airport free of charge.<sup>78</sup> Should DOT impose similar requirements? What effect, if any, would a requirement to provide rebooking on any carrier, including non-partner carriers, have on competition among airlines?

The Canadian APPRs currently do not require small airlines to rebook passengers using a non-partner airline.<sup>79</sup> In 2023, the CTA initiated a consultation to revise the APPRs. In its

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<sup>77</sup> See APPRs ¶¶ 17 (1)(a), 18(1).

<sup>78</sup> See APPRs ¶¶ 17(1)(a)(iii), 18(1.1)(a).

<sup>79</sup> See APPRs ¶¶ 17(1)(b), 18(1.1)(b).

consultation paper, the CTA proposed to expand requirements to rebook using any airline to small airlines, if they cannot rebook on their flight or their partner's flight within 24 hours.<sup>80</sup> In addition, the CTA proposed expanding the requirement to use nearby airports after 48 hours to small carriers.<sup>81</sup>

Public comments on the Canadian proposal highlight consumer organizations' general support for eliminating distinctions between large and small airlines to better protect passengers.<sup>82</sup> Small airlines raised issues that rebooking on another airline and/or rebooking within 24 hours is not realistic if one airline operates from the airport or there is a low volume of flights.<sup>83</sup> Some industry members proposed that rebooking obligations only apply when there are viable rebooking options.<sup>84</sup> One airline suggested that rebooking on an unaffiliated airline should not be a requirement and that the passenger should be able to choose the rebooking options that best suits their needs, including being able to choose to rebook with the same airline versus a different one.<sup>85</sup>

The Department's options under consideration currently apply the same rebooking requirements to smaller airlines as to larger airlines. However, the Department invites comment on whether it should adopt that approach or a different one. Should the Department not impose any requirements or have reduced requirements to rebook passengers on other airlines after controllable flight disruptions by small airlines given these airlines may not have interline

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<sup>80</sup> Canadian Transportation Agency, Consultation Paper: Proposed Changes to Clarify, Simplify and Strengthen the Air Passenger Protection Regulations at 10, *available at* [https://otc-cta.gc.ca/sites/default/files/consultation\\_paper\\_-\\_july\\_2023.pdf](https://otc-cta.gc.ca/sites/default/files/consultation_paper_-_july_2023.pdf).

<sup>81</sup> *Id.* at 11.

<sup>82</sup> Canadian Transportation Agency, Consultations on Proposed Changes to Strengthen the Air Passenger Protection Regulations: What We Heard at 11-12, *available at* [https://otc-cta.gc.ca/sites/default/files/consultations\\_on\\_proposed\\_changes\\_to\\_strengthen\\_the\\_air\\_passenger\\_protection\\_regulations\\_what\\_we\\_heard.pdf](https://otc-cta.gc.ca/sites/default/files/consultations_on_proposed_changes_to_strengthen_the_air_passenger_protection_regulations_what_we_heard.pdf).

<sup>83</sup> *Id.* at 12.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*



agreements and may need to pay the ticket price to transport their passengers on another airline? Is it fair to passengers flying on small airlines not to be provided rebooking on other airlines for controllable flight disruptions, particularly when the network of a small airline may be more limited? How, if at all, can the Department incentivize large airlines to provide rebooking reciprocity to small airlines during cancellations and lengthy delays, or disincentivize large airline practices that prevent reciprocity, in order to improve the options for consumers and facilitate competition? What additional requirements might be necessary to ensure that small carriers are not disadvantaged by the size and scale of their networks or other competitive factors that impact their ability to rebook passengers at the same general rate and cost as larger carriers? If small airlines are not required to rebook on other airlines, how should the Department determine which airlines are small – based on size of aircraft, number of U.S. enplanements, revenue, number of employees, or other criteria? Also, what is the best way to ensure passengers are aware of a two-tiered approach? For example, what sorts of disclosures, if any, should passengers flying on small airlines be provided regarding rebooking should there be flight disruptions under any two-tiered approach?

In the alternative, should the Department require rebooking on other airlines by small airlines but consider more stringent rebooking requirements for large U.S. and foreign airlines with flights to, within, and from the United States? For example, should the Department require large U.S. and foreign airlines to provide rebooking on any carrier if the airline cannot rebook passengers on their own or a partner's next available flight within nine hours instead of within 24 hours? This would be similar to the current Canadian APPRs, which apply that requirement to large airlines. If the Department were to adopt more stringent requirements for large airlines, how should the Department determine which airlines are large – based on size of aircraft,

number of U.S. enplanements, revenue, or other criteria? If based on revenue, should the focus be on any U.S. carrier that accounts for at least 10 percent of the domestic scheduled passenger revenue in the most recently reported 12-month period?<sup>86</sup> If based on enplanements, is the appropriate threshold for foreign air carriers at least two million total enplanements to or from the United States?<sup>87</sup>

**(c) Rebooking on Next Available Flight**

The option under consideration is to require airlines to offer to rebook affected passengers on their next available departing flight in the passenger's reserved class of service that would advance the passenger to the final stop of their itinerary. Does this option ensure passengers are reaccommodated as soon as possible on a reasonable and productive route, without adversely affecting passengers with confirmed seats or passengers that might need priority or blocked seats, such as passengers with disabilities? If the Department should require rebooking on the next available flight, how should the Department define available? How, if at all, should the Department address rebooking for multiple passengers traveling on the same reservation? How do airlines currently approach free rebooking during controllable disruptions? How long from the time of a cancellation or significant delay does it typically take for an airline to place a passenger on a replacement flight? How do the airlines decide which passengers to rebook when upcoming flights have limited capacity? Are there current industry rebooking practices that the Department should consider either incorporating into a regulation or prohibiting as part of this rulemaking? Would rebooking a passenger on the next available flight

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<sup>86</sup> Four U.S. carriers - American Airlines, Delta Air Lines, United Airlines, and Southwest Airlines - exceeded this threshold in 2023, all with over 15 percent of domestic scheduled passenger revenue. No other carrier comprised more than six percent of domestic scheduled passenger revenue. *See* docket at <https://www.regulations.gov/docket/DOT-OST-2024-0062/>.

<sup>87</sup> Eighteen foreign carriers exceeded two million total enplanements to and from the United States in 2023. *See id.*

be feasible for airlines in practice? Is this option appropriate to best serve affected passengers? Should any rebooking requirement provide more flexibility for passengers? Even if the airline can rebook the passenger within 24 hours, should the Department require an airline to offer a passenger the option to select any comparable future rebooking on that airline in case the original itinerary no longer meets the passenger's travel needs? If so, how long should airlines be required to make that option available, and how far in the future should the passenger be permitted to rebook without charge? For example, should the passenger be required to rebook within 24 hours of the flight disruption, a week, or another time period? Should the future flight selected be limited to comparable flights departing within a month, a year, or another time period? How would the Department define comparable future rebooking? If rebooking is not comparable, should airlines explicitly be required in a rule to also provide a refund to account for any difference in cost or value? For example, should airlines explicitly be required in a rule to rebook and refund the difference in fare if the passenger is downgraded in fare class?

**(d) Returning Consumers to the Point of Origin When Rebooking is Declined**

The Department is considering requiring that, when a passenger misses a connection because of a controllable flight cancellation or flight delay and the rebooking offered by the airline would cause the passenger to be delayed in arriving at their final stop 24 hours or more, the airline must offer the passenger the option of the next available return flight to the passenger's original departure point of that portion of their itinerary (outbound, intermediate, return) at no additional cost and a refund of the cost of the entire portion of their itinerary with the missed connection (including used segments of that portion) and all subsequent portions of their itinerary. This would be similar to a provision of the Canadian APPRs, which require an airline to provide a refund and return to the point of origin if the passenger's travel no longer

serves its purpose because of the cancellation or lengthy delay and the passenger is no longer at the point of origin (e.g., is delayed departing at a connecting point).<sup>88</sup> Should the Department impose a requirement on airlines to return consumers to the point of origin when the passenger is delayed at a connecting point and no longer wishes to continue their journey? Why or why not? If the Department were to impose such a requirement, should it apply only for extended delays or, similar to the Canadian APPRs, be based on whether the passenger states that his or her travel no longer serves its purpose? Should delays at a connecting point of 24 hours or more be considered extended delays or is there a more appropriate threshold on what is an extended delay? Are there reasons the Department should not require a refund for portions of the itinerary already traveled?

**(e) Rebooking Protections When the Airline Makes a Significant Change to a Passenger's Flight Itinerary, Including for Passengers with Disabilities**

What rebooking protections should apply when an airline makes significant changes to a passenger's itinerary, including a significant change that affects accessibility for a passenger with a disability? The Department is considering proposing to require airlines to promptly offer rebooking at no additional cost to a passenger who is an individual with a disability (and any individuals in the same travel party) upon notification that the individual decides not to travel on the flight due to any of the following changes: the individual with a disability (1) is downgraded to a lower class of service that results in one or more accessibility features needed by the individual becoming unavailable; (2) is scheduled to depart from, arrive to, or connect through one or more airports that are different from the original itinerary; or (3) is scheduled to travel on substitute aircraft on which one or more accessibility features available on the original aircraft needed by the individual are unavailable. The Department is considering proposing that the

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<sup>88</sup> APPRs ¶¶ 17(2)(a), 18(1.2).

airline must offer rebooking on the next departing flight by that airline or its branded codeshare partner that advances the passenger to the final stop of their itinerary, accommodates the individual with a disability, and has open seats for the individual and for all other in the same travel party. The Department is considering proposing to apply this requirement regardless of whether the reason for the change was within the airline's control. In addition, if no flight operated by that airline or its branded codeshare partner would depart within 24 hours of the passenger's original scheduled departure time, the Department is also considering requiring an airline to offer rebooking on the next available departing flight among those operated by that airline, its branded codeshare partner, and any carrier with which the airline has a commercial agreement, interline or codeshare, to transport the airline's passengers.

In the rulemaking, Refunds and Other Consumer Protections, two disability rights advocacy groups, Paralyzed Veterans of America and United Spinal Association, commented that, from the perspective of passengers with disabilities, any change to the origination, connection, and destination airport should be considered a "significant change of flight itinerary."<sup>89</sup> These commenters stated that when booking flights, passengers with disabilities may rely on the specific accessibility features of an airport to select the flights and itinerary, and this may include selecting a particular connecting airport based on the accessibility features needed to accommodate their disabilities during the layover time. In addition, the Paralyzed Veterans of America noted that a "refund" is purposeless if the passenger is stranded and requested the Department require airlines to "expeditiously locate and offer alternative transportation that meets the specific needs of the passenger with a disability."<sup>90</sup>

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<sup>89</sup> See Comment from Paralyzed Veterans of America at 2, *available at* <https://www.regulations.gov/comment/DOT-OST-2022-0089-5262>, comment from United Spinal Association, *available at* <https://www.regulations.gov/comment/DOT-OST-2022-0089-5304>.

<sup>90</sup> See Comment from Paralyzed Veterans of America at 3.

For example, when finding alternative transportation for individuals with disabilities who use wheelchairs, it is imperative that the alternative transportation selected is one where the passenger's wheelchair can be safely stowed. In February 2022, the Department's Air Carrier Access Act (ACAA) Advisory Committee issued a report that recognized the importance of logistical planning to ensure that wheelchairs are safely accommodated on aircraft. The Advisory Committee unanimously agreed on the benefit of passengers with disabilities completing airline forms describing their wheelchairs (e.g., device dimensions, battery type) and recommended that a group that includes disability organizations, airlines, airports, aircraft manufacturers, and wheelchair manufacturers work together to improve consistency within existing airline forms for handling wheelchairs. It is the Department's understanding that this working group, led by the International Air Transport Association (IATA), intends to complete its work by the end of 2024.<sup>91</sup> To ensure that any rebooking requirements provide equitable access to air transportation to people with disabilities, there may be a need for consistent forms for wheelchairs. Should the Department require a consistent wheelchair handling form across airlines for air transportation to, from and within the United States? If so, what information should be included? Should the Department adopt the form developed by the working group led by IATA?

Should the Department propose the rebooking requirements for passengers with disabilities regardless of whether the reason for the cancellation or significant change was within the airline's control as stated earlier in this section? Should the Department only require airlines to provide rebooking without charge to passengers who are individuals with disabilities when lengthy delays and cancellations are within the airline's control or responsibility? Are there circumstances in which airlines should not be required to accommodate passengers by rebooking

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<sup>91</sup> See Final Report, ACAA Advisory Committee Recommendations at 9-10 (Feb. 4, 2022), *available at* <https://www.regulations.gov/document/DOT-OST-2018-0204-0040>.

the passenger on another carrier with which the airline has a codeshare or interline agreement? Are there circumstances in which airlines should be required to accommodate passengers on a carrier with which the airline does not have a codeshare, interline, or any other agreement? If the Department proposes that airlines must provide free rebooking to members in the same travel party as a passenger with a disability, how should the Department define “travel party,” and how can airlines determine which passengers belong to the same “travel party?” Should the travel party be determined based on whether the passengers purchased their tickets in a single transaction, are on the same reservation or on linked Passenger Name Record (“PNR”), or based on other criteria?

Should airlines be required to offer the option of free rebooking for any cancellation or significant delay or change of a domestic flight that qualifies for a refund under Section 503 of the 2024 FAA Act or under the Department’s Refund Rules?

#### **(4) Compensation**

##### **(a) Compensation Amounts**

The Department is considering requiring airlines to pay cash compensation to passengers whose trip is disrupted because of a cancellation or delay due, in whole or in part, to any circumstance within the control of the airline. The Department seeks comment on the effect that requiring compensation for lengthy, controllable delays and cancellations may have on airline performance and profitability as well as the effect that such requirements would have on consumers. A working paper by the European University Institute supports that European compensation and service requirements (discussed later in this ANPRM) have reduced the likelihood and duration of flight delays under that regime, finding “an economically important and statistically significant effect of EC261 regulation [covering compensation and services] on

both departure and arrival delay, as well as on-time performance.”<sup>92</sup> In reaching that conclusion, the working paper compared flights operating on the same route around the same time that were covered by EC 261 with those that were not.<sup>93</sup> A separate study contracted by the European Commission documented an overall increase in the number of cancellations and lengthy delays of flights covered by the EU regulation between 2011 and 2018.<sup>94</sup> That study also documented reduced delays on flights covered by the EU regulation compared with those that were not, concluding that it was “possible” that the EU regulation “has a marginal impact on the proportion of flights delayed” but stating that the impact “does not appear to be significant compared to other factors.”<sup>95</sup> In addition, the Department requests comment on how requiring cash compensation may impact consumer behavior. For example, would requiring cash compensation make consumers impacted by cancellations and lengthy flight delays more likely to continue to travel by air in the future?

The Department is contemplating proposing that cash compensation would be due to a passenger whose arrival at the final stop of the itinerary is delayed by three hours or more for a domestic flight and six hours or more for an international flight because of a controllable flight cancellation or delay. This structure is similar to that used in the Canadian APPRs.<sup>96</sup> In addition, using a three-hour delay threshold for domestic flights and six-hour thresholds for international

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<sup>92</sup> See Hinnerk Gnutzmann and Piotr Śpiwanowski, *Can Regulation Improve Service Quality? Evidence from European Air Passenger Rights*, European University Institute Working Paper, RSCAS 2018/44 (2018) at 8, available at

[https://cadmus.eui.eu/bitstream/handle/1814/58304/RSCAS\\_2018\\_44.docx.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/58304/RSCAS_2018_44.docx.pdf?sequence=1&isAllowed=y).

<sup>93</sup> Flights arriving to the EU from locations outside the EU are covered by EC 261 only if the carrier is an EU carrier. *See id.* at 1 (explaining that differences in EC 261 coverage based on the nationality of the carrier “makes it possible to identify the impact of the regulation while allowing for carrier fixed effects and controlling for route-time effects (e.g., caused by airspace congestion)”).

<sup>94</sup> *See Study on the Current Level of Protection of Air Passenger Rights in the EU*, No. MOVE/B5/2018 – 541 (2020), available at <https://op.europa.eu/en/publication-detail/-/publication/f03df002-335c-11ea-ba6e-01aa75ed71a1>.

<sup>95</sup> *Id.* at 20.

<sup>96</sup> *See APPRs*, ¶ 19(1).



flights to determine whether compensation is owed is consistent both with the definition of significantly delayed in Section 512 of the 2024 FAA Act and with the definition of significantly delayed flight in the Department’s recent Refund Rules.<sup>97</sup> The Department invites comment on these time thresholds for compensation, including whether any compensation should be required for delays of less than three hours.

To determine the compensation amounts that should be paid to consumers, the Department is considering two options. The first option is using amounts comparable to Canadian amounts of compensation applicable to large airlines. The second option is to base the cash compensation amounts on the value of passenger time and the weighted average flight delay. The Department seeks public comment on these options and will also consider additional options recommended by commenters.

For the first option, the Department is considering using the same compensation amounts required for large airlines under the Canadian APPRs, converted from Canadian to U.S. dollars. Canada currently applies the following tiers of cash compensation requirements to cancellations and flight delays that are within the airline’s control and not required for safety:<sup>98</sup>

**TABLE 1: CANADIAN COMPENSATION REQUIREMENTS<sup>99</sup>**

|                                        | <b>Large Carriers</b>                                                  | <b>Small Carriers</b>                  |
|----------------------------------------|------------------------------------------------------------------------|----------------------------------------|
| <b>Delayed Arrival of 3-5:59 hours</b> | \$400 Canadian Dollars (CAD)<br>Approximately \$295 U.S. Dollars (USD) | \$125 (CAD)<br>Approximately \$92 USD  |
| <b>Delayed Arrival of 6-8:59 hours</b> | \$700 (CAD)<br>Approximately \$517 USD                                 | \$250 (CAD)<br>Approximately \$185 USD |
| <b>Delayed Arrival of 9+ hours</b>     | \$1,000 (CAD)<br>Approximately \$738                                   | \$500 (CAD)<br>Approximately \$369 USD |

<sup>97</sup> 89 FR at 32833.

<sup>98</sup> APPRs ¶ 19(1).

<sup>99</sup> Conversions from CAD to USD estimated based on the average conversion rate on the Bank of Canada website for the week of September 3-September 10, 2024.

The Department is considering whether to use amounts similar to Canada to ensure U.S. passenger compensation requirements are in line with other similar international requirements.

Under this first option, the Department is considering requiring an airline to pay compensation of \$300 USD to a passenger whose arrival at the final stop of a domestic flight is delayed at least three hours but less than six hours; \$525 USD to a passenger whose arrival at the final stop of a domestic flight is delayed at least six hours but less than nine hours; and \$750 USD to a passenger whose arrival at the final stop of a domestic flight is delayed at least nine hours.<sup>100</sup> The Department is considering requiring an airline to pay \$525 USD to a passenger whose arrival at the final stop of an international flight is delayed at least six hours but less than nine hours; and \$750 USD to a passenger whose arrival at the final stop of an international flight is delayed at least nine hours. If the Department proposes this option, should it also include reduced compensation amounts for small airlines like the Canadian APPRs? Why or why not?

The second option the Department is considering is to require airlines to pay compensation based on the Department's hourly value of travel time savings for air travel from DOT's Benefit-Cost Analysis Guidance for Discretionary Grant Programs<sup>101</sup> and the weighted average flight segment delay of flights delayed at least three but less than six hours, at least six hours but less than nine hours, and nine hours or more on flight segments within the United

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<sup>100</sup> The Department rounded the converted values of Canadian compensation to the nearest \$25 for purposes of providing compensation amounts for comment in this ANPRM. Conversion rates from Canadian to U.S. Dollars are provided in the docket at <https://www.regulations.gov/docket/DOT-OST-2024-0062/>.

<sup>101</sup> The value was weighted by the proportion of travel that is business and personal. See U.S. Department of Transportation, Benefit-Cost Analysis Guidance for Discretionary Grant Programs, 2024 Update (Dec. 5, 2023), Table A-2, p. 40, n. 2 and 3, *available at* <https://www.transportation.gov/sites/dot.gov/files/2023-12/Benefit%20Cost%20Analysis%20Guidance%202024%20Update.pdf>. The value of travel time in air transportation is \$47.70 per hour for personal travel and \$80.20 for business travel, with a ratio of 88.2 percent personal travel and 11.8 percent business travel.

States using 2022 and 2023 full-year domestic flight performance data collected by BTS.<sup>102</sup>

Under this second option the Department would require an airline to pay compensation of \$200 to a passenger whose arrival at the final stop of a domestic flight is delayed at least three hours but less than six hours; \$375 to a passenger whose arrival at the final stop of a domestic flight is delayed at least six hours but less than nine hours; and \$775 to a passenger whose arrival at the final stop of a domestic flight is delayed at least nine hours. The Department is considering requiring an airline to pay \$375 to a passenger whose arrival at the final stop of an international flight is delayed at least six hours but less than nine hours; and \$775 to a passenger whose arrival at the final stop of an international flight is delayed at least nine hours.

In calculating the compensation amounts for the second option, the Department relies on the BTS data because that data is reported and certified correct by U.S. airlines to the Department. The Department recognizes that BTS data have some limitations as applied to this rulemaking. Notably, BTS only collects flight performance data from U.S. airlines for domestic flight segments, and the data does not reflect passenger trip delay. Accordingly, the data used to establish any compensation amounts from BTS data would necessarily be limited to domestic segment-based delays, not overall delays for passengers arriving at their destinations. The Department invites comment on whether it should use BTS data to establish any compensation amounts or whether an alternate data source would provide information more appropriate to establishing compensation amounts.

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<sup>102</sup> The largest U.S. airlines report certified flight performance data for their domestic scheduled operations to BTS on a monthly basis. Based on 2023 BTS T-100 domestic market-based traffic data, these airlines account for more than 95 percent of domestic passenger air traffic. Bureau of Transportation Statistics, T-100 Market Data, *available at* <https://www.regulations.gov/docket/DOT-OST-2024-0062/>. Additional information on the Department's calculations is available in the docket at <https://www.regulations.gov/docket/DOT-OST-2024-0062/>.

To arrive at the dollar value for compensation for purposes of soliciting comment on option two in this ANPRM, the Department multiplied its estimated weighted average arrival delay for each compensation tier (3-5:59 hours; 6-8:59 hours; 9+ hours)<sup>103</sup> by the Department's hourly value of travel time savings for air travel from DOT's Benefit-Cost Analysis Guidance for Discretionary Grant Programs. This hourly value of travel time savings for air transportation is \$51.54.<sup>104</sup> The Department developed its value of travel time savings "to be used in all DOT benefit-cost or cost-effectiveness analyses."<sup>105</sup> Although the value of travel time savings was not specifically developed for the purpose of assessing the value of time lost due to air travel delays, the Department views the factors used to establish the value of travel time savings – trip purpose, passenger characteristics, passenger income, mode and distance of transportation, and passenger comfort – are also potentially relevant to time lost due to air travel delays.<sup>106</sup>

The Department also closely reviewed the EU compensation regime when developing this notice. The EU, like Canada, uses a three-tiered compensation system, but those compensation regimes have different criteria. Canadian compensation requirements are based on the length of a passenger's delayed arrival and whether the carrier is a large or small carrier.<sup>107</sup> The EU compensation amounts are based on the distance and location of the flight (i.e., whether the flight is entirely within the EU), with a reduction of 50 percent if passengers arrive with delays of less than two, three, or four hours depending upon the distance and location of the

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<sup>103</sup> Additional information about these calculations is provided in the docket for this rulemaking, *available at* <https://www.regulations.gov/docket/DOT-OST-2024-0062/>.

<sup>104</sup> See U.S. Department of Transportation, Benefit-Cost Analysis Guidance for Discretionary Grant Programs, 2024 Update (Dec. 5, 2023), Table A-2, p. 40, n. 2 and 3.

<sup>105</sup> U.S. Department of Transportation, Revised Departmental Guidance on Valuation of Travel Time in Economic Analysis (Sept. 27, 2016) at 1, <https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf>.

<sup>106</sup> *Id.* at 4-7.

<sup>107</sup> Canadian regulations define a large carrier as one that has transported a worldwide total of two million passengers or more during each of the two preceding calendar years. APPRs ¶ 1.

flight.<sup>108</sup> The EU applies the following requirements for compensation in the form of cash, electronic bank transfer, bank order or bank check for cancellations and delays of three hours or more unless the airline proves that the cancellation or delay is “caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.”<sup>109</sup>

**TABLE 2: EU COMPENSATION REQUIREMENTS<sup>110</sup>**

|                                                                                                                                 | <b>Compensation</b>                  | <b>Reduced Compensation if Rerouting is Provided</b>                                                       |
|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|------------------------------------------------------------------------------------------------------------|
| <b>All flights 1500km or less</b>                                                                                               | 250 Euros<br>Approximately \$278 USD | Reduced to 125 Euros (approximately \$139 USD) if passenger arrives less than 2 hours later than scheduled |
| <b>All flights entirely within the EU and all flights between the EU and a location outside the EU between 1500 and 3500 km</b> | 400 Euros<br>Approximately \$445 USD | Reduced to 200 Euros (approximately \$223 USD) if passenger arrives less than 3 hours later than scheduled |
| <b>All other flights</b>                                                                                                        | 600 Euros<br>Approximately \$668 USD | Reduced to 300 Euros (approximately \$334 USD) if passenger arrives less than 4 hours later than scheduled |

Should the Department use a tiered model if it imposes compensation requirements or should the Department require a single level of compensation for all lengthy, controllable delays and controllable cancellations? A tiered approach based on the length of delay as under options one and two would be similar to Canadian regulatory requirements. It would also reflect that passengers lose more time and are likely to experience greater inconvenience and discomfort during longer delays and may provide added incentive for airlines to rebook delayed and cancelled passengers on replacement flights arriving close to the passengers’ originally

<sup>108</sup> EC No 261/2004, Articles 5, 7.

<sup>109</sup> *Id.* By court decision, the EU’s compensation requirements also apply to delays of three hours or more. Joined Cases C-402/07 and C-432/07, *Sturgeon v. Air France*, 2009 E.C.R. I-10923, ¶ 69.

<sup>110</sup> Conversions from Euros to USD estimated based on the conversion rate on the Forbes Advisory website on September 16, 2024.

scheduled arrival times. Instead of a tiered approach based on length of delay, should the Department adopt a different compensation model, such as a model more similar to the EU, with different compensation amounts applicable to domestic and international flights?

If the Department requires airlines to pay compensation, what methodology should the Department use to establish compensation amounts? Should the Department establish compensation amounts using a methodology that provides compensation based on the value of a passenger's lost time, such as the methodology in option two discussed above that would calculate compensation amounts using the Department's hourly value of travel time savings for air travel from DOT's Benefit-Cost Analysis Guidance for Discretionary Grant Programs and BTS data on flight segment delays?<sup>111</sup> Or, instead of determining any compensation amounts based on the value of a passenger's time, should the Department establish any compensation amounts with reference to the rates used in other jurisdictions as under option one? Are there additional or alternate data sources that the Department should examine in order to establish any compensation amounts? Should the Department consider a compensation requirement that includes periodic updates to compensation amounts, such as for inflation using the consumer price index or based on another method?

Should any compensation methodology impose lower compensation requirements on some airlines, similar to the current Canadian regulatory requirements which apply lower compensation requirements to small airlines, or exclude some airlines entirely?<sup>112</sup> For example, should the Department impose lower compensation requirements on airlines that meet the

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<sup>111</sup> The value was weighted by the proportion of travel that is business and personal. *See* U.S. Department of Transportation, Benefit-Cost Analysis Guidance for Discretionary Grant Programs, 2024 Update (Dec. 5, 2023), Table A-2, p. 40, n. 2 and 3, *available at* <https://www.transportation.gov/sites/dot.gov/files/2023-12/Benefit%20Cost%20Analysis%20Guidance%202024%20Update.pdf>. The value of travel time in air transportation is \$47.70 per hour for personal travel and \$80.20 for business travel, with a ratio of 88.2 percent personal travel and 11.8 percent business travel.

<sup>112</sup> *See* APPRs ¶ 19(1).

definition of a small entity for purposes of the Regulatory Flexibility Act or airlines that are small based on other criteria?<sup>113</sup>

Should the Department apply higher compensation requirements to those carriers that comprise a large percentage of domestic scheduled-service passenger revenues (e.g., 10 percent or greater)<sup>114</sup> or comprise a large number of total enplanements to and from the United States (e.g., have two million or more total enplanements to and from the United States)?<sup>115</sup> Would higher compensation requirements further incentivize the largest carriers to make operational changes to reduce the prevalence of controllable cancellations and delays?

Are there circumstances in which compensation requirements should not apply? For example, should compensation requirements not apply if the airline provides sufficient advance notice of the cancellation or delay? Among other options, the Department is considering not requiring compensation if the airline notifies the passenger of the flight cancellation or arrival delay at least eight days before the first scheduled departure for that part of the trip (e.g., before the scheduled departure for the first flight segment of an inbound or outbound portion of the itinerary). An eight-day time period is consistent with the BTS reporting rule which defines a cancelled flight as a flight not operated, but that was listed in the carrier's computer reservation system within seven calendar days of the scheduled departure.<sup>116</sup> Under those rules, a flight removed for the carrier's reservation system more than seven days out are not reportable to the Department. Should the Department instead adopt a longer or shorter period during which any

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<sup>113</sup> Under the Regulatory Flexibility Act carriers that exclusively provide air transportation with aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less are small businesses. *See* 14 CFR 399.73.

<sup>114</sup> Four U.S. carriers, American Airlines, Delta Air Lines, United Airlines, and Southwest Airlines, comprised 10 percent or more of domestic scheduled passenger revenue in 2023, all with over 15 percent. No other carrier comprised more than six percent of domestic scheduled passenger revenue. *See* docket at <https://www.regulations.gov/docket/DOT-OST-2024-0062/>.

<sup>115</sup> Eighteen foreign carriers exceeded two million total enplanements to or from the United States in 2023. *See id.*

<sup>116</sup> 14 CFR 234.2.

exclusion would apply, such as 14 days before the first scheduled departure? If commenters recommend a period longer than eight days, please provide a rationale for the recommended approach along any available data source that the Department can consult to estimate the number of flights that are cancelled more than eight days in advance of the flight. Should higher compensation requirements apply to cancellations and delays that occur closer in time to the scheduled flight to reflect the likelihood of greater inconvenience and costs to passengers from last-minute cancellations and delays? If so, at what point in time should higher compensation requirements apply?

What compensation, if any, should be required if a passenger does not accept any flight offered by the airline and instead elects to receive a refund? In that circumstance, should the Department require compensation in the full amount that would otherwise be required based on the earliest arriving rebooking offered by the airline? Is there any reason for compensation not to be required when a passenger decides not to continue travel because of a controllable delay or cancellation and receives a refund? Canadian regulations require the airline to pay the lowest level of its tiered compensation structure if the passenger elects to accept a refund rather than rebooking.<sup>117</sup> Should the Department similarly require reduced compensation in those circumstances? If the passenger elects to receive a refund, should the Department require different compensation if the airline is unable to offer prompt rebooking (for example, because alternate flights are unavailable) than if the airline offers prompt rebooking?

What compensation, if any, should be required if a passenger accepts rebooking, but does not accept the earliest flight offered by the airline? Should the compensation amount be calculated based on the earliest scheduled arrival of the itinerary offered by the carrier? The

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<sup>117</sup> APPRs ¶ 19(2).



Department requests comment on whether there are other options that the Department should consider.

Do certain groups of passengers, such as passengers with disabilities, encounter unique costs associated with significant cancellations and delays? If so, should a compensation requirement address the potential for increased costs for certain groups of passengers, and how should it address these costs?

**(b) Form of Compensation**

The Department is contemplating requiring airlines to pay compensation in the form of cash or a cash equivalent for controllable flight disruptions rather than in alternative formats such as travel credits or vouchers or airline miles. In the Department's recent Refund Rules, the Department defined "cash equivalent" as a form of payment that can be used like cash, including but not limited to a check, a prepaid card, funds transferred to the passenger's bank account, funds provided through digital payment methods (e.g., PayPal, Venmo), or a gift card that is widely accepted in commerce.<sup>118</sup> The Department does not consider a form of payment to be "cash equivalent" if consumers bear the burden for transaction, maintenance, or usage fees related to the payment. The Department notes that cash or a cash equivalent would provide the highest degree of flexibility to a consumer inconvenienced by a controllable cancellation or delay in how and when to spend the required compensation.

Should the Department propose to allow airlines to provide compensation in a form other than cash or cash equivalent, and if so, under what circumstances would a non-cash option provide more benefit to consumers? Given that cash or a cash equivalent has no restriction on how and where it can be spent, under what conditions, if any, might non-cash compensation with

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<sup>118</sup> See 89 FR at 32833.

limited use represent a better option? If non-cash or non-cash equivalent compensation is an acceptable compensation option, are additional consumer protections needed to ensure consumers are treated fairly and to ensure fair competition? How would the Department determine whether consumers have received the required compensation value with non-cash alternative compensation options? For example, if airlines were to offer miles or rewards points, how would the Department determine whether the miles or points represent a dollar value equivalent to or greater than the compensation amount required, particularly for miles or points that expire, cannot be converted into cash or a cash equivalent, and/or have a dynamic dollar value that changes at the discretion of the airline? How would the Department ensure that any vouchers or airline miles provided as an alternative to cash or cash equivalent compensation provide a benefit and maintain a value equal to or greater than cash or a cash equivalent? What misleading or unfair practices, if any, may occur when airline miles, travel credits or vouchers, or other similar types of compensation are offered in lieu of cash or cash equivalent compensation?

**(c) Automatic Compensation Payments**

Should the Department require airlines to make automatic cash or cash equivalent compensation payments to consumers who are entitled to receive compensation? Under what circumstances, if any, should the Department require airlines to pay cash or cash equivalent compensation automatically, without requiring the submission of information by the consumer? What should a regulatory framework establishing automatic cash or cash equivalent compensation payment process look like to ensure automatic payments are provided effectively and efficiently to affected passengers? What information would airlines need to process automatic cash and cash equivalent compensation payments? Would cash-equivalent

compensation (e.g., a Visa gift card) enable airlines to provide compensation without having to obtain passenger information, such as bank account information? If automatic compensation is required, how should the regulatory framework address disagreements between an airline and passenger about the compensation amounts or whether a given cancellation or delay was outside of the airline's control? Further, in cases where compensation is owed under the laws of multiple jurisdictions, how could a regulatory framework for automatic compensation enable passenger choice to receive compensation under the passenger's preferred regime?

Instead of requiring automatic compensation, should the Department allow airlines to require passengers to submit requests for compensation? What would be the necessary elements of such claims process, if needed? Should airlines be required to accept compensation requests through airline websites, by e-mail, or by phone? If the Department were to allow airlines to require passengers to request compensation, are there ways to ensure that all passengers get the compensation they are entitled to receive? For example, if one passenger submits a compensation request, should that be sufficient to trigger a requirement that all passengers on the flight receive compensation if owed? Should airlines be required to proactively provide a way to request compensation as part of a notification process? What other requirements might be necessary to ensure that a request process results in all passengers getting the compensation they are entitled to, ensure that the request process is easy to navigate, and ensure that compensation disbursement is prompt?

In circumstances in which a third party, such as a private- or public-sector employer, has paid for a passenger's ticket, should any compensation be paid to the passenger or should it be paid to the third-party payor? Are there challenges to either approach?

**(5) Meals, Lodging, and Transportation to and From Lodging**

As reflected on the Department’s Airline Customer Service Dashboard, the largest U.S. airlines all currently guarantee in their customer service plans that they will cover a meal for passengers affected by a cancellation or delay within the airline’s control that results in a passenger waiting three hours or more, and all but one of the largest U.S. carriers currently commit to providing hotel accommodations and travel to and from the hotel when there are controllable overnight delays and cancellations.<sup>119</sup> Some of those airline policies contain limitations, for example, limiting their hotel guarantees to non-local passengers and limiting any reimbursements for hotels to reasonable costs.<sup>120</sup>

Section 512 of the 2024 FAA Act requires the Department to “direct all air carriers providing scheduled passenger interstate or intrastate air transportation to establish policies regarding reimbursement for lodging, transportation between such lodging and the airport, and meal costs incurred due to a flight cancellation or significant delay directly attributable to the air carrier.” For the purposes of Section 512, “significantly delayed” means, “the departure or arrival at the originally ticketed destination associated with such transportation has changed – (1) in the case of a domestic flight, three or more hours after the original scheduled arrival time; and (2) in the case of an international flight, six or more hours after the original scheduled arrival time.” As explained earlier in this notice, the Administration views the 2024 FAA Act to “set a floor that

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<sup>119</sup> See <https://www.transportation.gov/airconsumer/airline-customer-service-dashboard>.

<sup>120</sup> See, e.g., Alaska Airlines Customer Service Plan, *available at* <https://www.alaskaair.com/content/about-us/customer-commitment/customer-commitment-delay-care> (guaranteeing a hotel only if the passenger is delayed overnight at “an airport located 100 or more miles away from [the passenger’s] home”), American Airlines Customer Service Plan (updated July 19, 2024), *available at* <https://www.aa.com/i18n/customer-service/support/customer-service-plan.jsp> (guaranteeing a hotel if the passenger is delayed overnight “away from [their] city of residence”).

the Department of Transportation could build on as deemed appropriate by the Secretary of Transportation.”<sup>121</sup>

**(a) Service Standards**

Consistent with the Administration’s position that the 2024 FAA Act is a floor, the Department is considering requiring airlines to guarantee in their customer service plans that they will cover the cost of meals when a controllable cancellation results in passengers waiting for three hours or more for a new flight or when a flight delay results in passengers waiting for three hours or more. This is consistent with the commitments that the large U.S. airlines have made at the urging of DOT. Should the Department use the three-hour delay threshold from the Dashboard for any meal requirements for both domestic and international delays? Or should it apply different thresholds, such as requiring airlines to cover the cost of meals for domestic delays of three hours or more and international delays of six hours or more?

Canadian, EU, and United Kingdom regulatory meal requirements consider waiting time.<sup>122</sup> Should the Department similarly require airlines to cover more than one meal for longer delays based on actual or expected length of delay, based on a daily per diem allotment per passenger, or based on another metric? Should the Department consider requirements ensuring

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<sup>121</sup> See Statement of Administration Policy, Senate Substitute Amendment to H.R. 3935 – FAA Reauthorization Act of 2024 (May 8, 2024), *available at* <https://www.whitehouse.gov/wp-content/uploads/2024/05/SAP-SSA-HR3935.pdf>.

<sup>122</sup> The Canadian regulation currently requires airlines to provide “food and drink in reasonable quantities, taking into account the length of the wait, the time of day and the location of the passenger.” See APPRs § 14(1)(a). Similarly, EC 261 requires “meals and refreshments in a reasonable relation to the waiting time.” Article 9(1)(a). The EU has further explained that this means that “operating air carriers should provide passengers with appropriate care corresponding to the expected length of the delay and the time of day (or night) at which it occurs, including at the transfer airport in the case of connecting flights, in order to reduce the inconvenience suffered by the passengers as much as possible, while bearing in mind the principle of proportionality.” EU Interpretative Guidelines. The United Kingdom’s Civil Aviation Authority explains on its website that, in the case of a covered delay or cancellation, the airline must provide passengers with meals and hotel “until it is able to fly you to your destination, no matter how long the delay lasts or what has caused it.” See <https://www.caa.co.uk/passengers/resolving-travel-problems/delays-and-cancellations/cancellations/>.

airlines cover a meal with certain qualities, for example that the meal includes a non-alcoholic beverage and an entrée or that the meal meets the dietary restrictions of the affected passenger?

The Department is also considering requiring airlines to guarantee in their customer service plans that they will cover lodging for passengers affected by an overnight delay or cancellation or reimburse passengers for expenses incurred for lodging. If the Department proposes this approach, how should “overnight delay or cancellation” be defined? The Department notes that neither the EU nor Canadian regulations define when a delay is overnight for purposes of their requirements for overnight accommodations. How do those requirements apply in practice in those jurisdictions? Should the Department consider passengers delayed past 10 p.m. or 11 p.m. to be affected by an overnight delay or cancellation and thus entitled to receive lodging, or is there another measure that the Department should consider? Should the original scheduled time of the flight and length of delay be considered in making this determination (e.g., a flight was originally scheduled for 9 p.m. and is delayed for two hours to 11 p.m.)? Should the Department use the three hours for domestic delays and six hours for international delays from the 2024 FAA Act to establish a minimum waiting time that must occur before a passenger would be entitled to receive overnight accommodation? How should the length of the delay impact lodging requirements when a consumer experiences excessive delay (e.g., 12 hours) but the delay is not overnight? Should any requirement to cover lodging be based on the duration of the delay because the passenger may need to obtain lodging for multiple nights during an extended cancellation or delay?

How should the Department define lodging? Should the Department define lodging to include types of accommodation beyond traditional hotels and motels, and if so, what types of accommodation should be included? Are there circumstances when an airline should be required

to cover lodging with more than one bedroom for a traveling party, and if so, in what circumstances? How should a traveling party be defined?

In addition, the Department is considering requiring any lodging provided by the airline must be reasonable in quality (i.e., a safe and healthy environment that is accessible to a passenger who self identifies as a person with a disability) and be nearby to the airport, when available. The Department seeks comment on any options that would ensure lodging requirements appropriately address passenger needs, including any standards to determine what is reasonable and nearby for the purposes of lodging, as well as any additional or different requirements that the Department should apply. The Department also requests comment on whether airlines should be required to cover ancillary lodging costs such as extra bedding, a baby crib, or parking at the lodging, and if so, which ancillary costs should be required to be covered.

The Department is considering allowing airlines to limit lodging to non-local travelers as provided in some current airline policies. If the Department allows airlines to limit lodging to non-local travelers, how should the Department define which travelers are “local”? If the Department does not require airlines to cover the cost of lodging for local travelers, should the Department require airlines to cover travel to and from the passenger’s residence or airport parking costs associated with a controllable cancellation or lengthy, controllable delay for those travelers?

The Department is also considering requiring airlines to guarantee in their customer service plans that they cover transportation to and from lodging to affected passengers, including transportation that is accessible to a passenger who self identifies as a person with a disability. What costs to and from lodging should airlines be required to cover? For example, should airlines be required to cover the cost of shuttle service, driver service such as taxi or ride share,

rental car, or gas mileage for the passenger's vehicle or for friend's vehicle if picking up the passenger? Should the Department require airlines to cover the cost of a driver service such as a taxi or ride share to and from the lodging in all circumstances, or some circumstances, and if so, which circumstances should not be covered and why? The Department is considering allowing airlines to provide in their policies that they will not cover services if the passenger is provided sufficient advance notice of a cancellation or delay. If the Department proposes this approach, what time period should constitute sufficient advance notice? For example, should the Department allow airlines not to cover meals if the passenger is notified of the delay or cancellation at least 12 hours in advance of the scheduled departure because the passenger is less likely to need to purchase a meal at the airport in that circumstance? Should any differing time periods apply to any requirements for meals and lodging and transportation to and from lodging? If so, why?

What requirements for meals, lodging, and transportation to and from lodging, if any, should apply if a passenger accepts a refund, rather than rebooking, in the event of a controllable cancellation or a lengthy, controllable flight delay?

Should the Department, under its authority to ensure "adequate" transportation in 49 U.S.C. 41702, extend any requirement that airlines cover the costs of meals, and lodging for overnight delays, and transportation to and from lodging to all cancellations and lengthy flight delays when the passengers are flying domestically, regardless of whether the cancellation or delay is controllable? Why or why not? Are there additional circumstances in which the Department should consider requiring these services?

**(b) Upfront Services**



The Department is seeking comment on the best way to ensure that passengers receive the services they are entitled to, with minimal expense and hassle. The Department is considering proposing a multi-tiered approach for airlines to provide meals, lodging, and transportation to and from lodging to passengers. Under this approach, an airline would be required to dispense all upfront vouchers or credits for these services as soon as the airline becomes aware of the flight disruption that triggers a passenger's entitlement to services, and, if the airline does not offer and provide those services upfront, then the airline would be required to reimburse passengers for the cost of those services.

The Department is of the tentative view that passengers are best served when airlines cover the upfront costs of meals, lodging, and travel to and from lodging during flight disruptions so that passengers do not have to pay out of pocket for those services. Passengers may not have the means to pay for these unexpected costs, and some passengers may not be able to navigate the process of procuring some or all these services on their own. Under this option, the required services would be provided by airlines directly through physical or electronic vouchers, e-credits, or other mechanisms that ensure passengers receive the services upfront. The Department is concerned that airlines' current policies and procedures for distributing services upfront may be inadequate for meeting passengers' needs and may not be consistently or evenly provided, particularly during widespread flight disruptions. Airlines have disparate policies and processes for distribution and may not plan appropriately to have enough vouchers or credits to provide them to all affected passengers who are entitled to them. Moreover, frontline staff may lack training or instruction regarding when passengers are entitled to each of these services, what services are available upfront, who to prioritize when vouchers or credits are limited, and what costs will be reimbursed when vouchers or credits run out or are not provided. Additionally, long

waits to receive vouchers or credits for services may result in passengers giving up and paying for these services directly themselves.

How should the Department define “upfront” in terms of process and timing? What, if any, requirements might be necessary to ensure that the manner and timeliness of distribution is adequately meeting passengers’ needs? Does this option best address the Department’s concerns, or would an alternate approach better ensure that passengers receive needed services with minimal expense and hassle?

**(c) Reimbursements for Services**

The Department is contemplating proposing to require airlines to reimburse passengers for costs incurred for meals, lodging, and transportation to and from lodging when the airline fails to offer those services or those services are not offered and provided in a timely manner. In lieu of providing vouchers or credits, some airlines currently reimburse passengers for the costs of the services during wide-spread controllable disruptions. However, airlines do not consistently disclose when passengers are eligible for reimbursements for services and what costs the airlines will reimburse for and how much they will cover. Moreover, because the process for requesting reimbursement is different for each airline, it can be difficult for passengers to navigate, and the timing of the reimbursement payment is discretionary and often lengthy.

The Department believes frustrated and inconvenienced passengers may purchase a service that the airline should be providing if the passenger is unaware of when and where a service or voucher is available. How should any proposed requirements ensure that passengers are aware of the airlines’ obligations to provide a service, so that the consumer would not purchase the service out-of-pocket expecting reimbursement? How should any requirements for airlines to provide reimbursements apply, if at all, if the passenger purchased the service

themselves before the airline notifies the passenger that the airline will provide the service?

Should the Department require airlines to offer passengers the option of choosing reimbursements even if the airline also offers to provide a service or a voucher for the service?

Should airlines be required to provide documentation that the passenger received the service upfront in lieu of reimbursement, if so, what kind of documentation should be required?

**(i) Automatic Reimbursements for Services**

The Department is considering how reimbursements for services should be provided, including whether reimbursements should be automatic or requested by the passenger. Due to concerns that the process for requesting reimbursements can be cumbersome for passengers, one option would be to require automatic reimbursements in some circumstances without submission of information by the passenger. The Department is considering requiring automatic reimbursement for a minimum amount after an established time period if an affected passenger does not submit receipts of their costs for meals, lodging, or transportation to and from lodging, and the airline has no documentation of the passenger receiving the service upfront. On the other hand, if the passenger submits receipts during that time period, the Department is considering proposing that the airline must reimburse the passenger for those expenses up to a pre-established maximum threshold for each service. The Department invites comment on what time period should apply to the submission of receipts and the minimum and maximum amounts for reimbursement if the Department proposes this approach. In addition, in both scenarios, the Department would consider requiring the airline to provide the reimbursement within a defined period and solicits comment on what that time period should be.

The Department is seeking comment on this approach and what requirements would be necessary to ensure that it produces the expected outcomes for passengers. Under what

circumstances, if any, should the Department require airlines to pay reimbursements automatically, without requiring the submission of information by the consumer? How would the automatic payment process work? Would an airline need to obtain a passenger's bank account information to process a reimbursement? Would cash-equivalent compensation (e.g., a Visa gift card) enable airlines to provide reimbursements without having to obtain passenger information, such as bank account information?

Would establishing minimums and maximums make obtaining meals, lodging, and transportation to and from lodging more predictable for consumers during a cancellation or lengthy delay compared with current airline practices? If it proposes this approach, how should the Department determine the minimum and maximum amounts that airlines must reimburse consumers for these services? Should these values be nationwide or regional? Should the Department adjust these minimum and maximum values periodically to account for market pricing? Should the values for lodging be adjusted seasonally? Should any minimum payments for meals, lodging, and transportation to and from lodging, apply regardless of whether the consumer submits receipts? If the Department establishes minimum reimbursement amounts, should the Department require that if the airline offers a meal, lodging, or transportation to and from the lodging instead of providing reimbursement for that service, the airline must provide a service with equal value to the minimum reimbursement amount? How should that value be determined? Should the airline be required to provide reimbursement unless they present the passenger with documentation that the passenger received the service upfront?

Instead of requiring reimbursements based on minimum and maximum cost thresholds, should the Department require airlines to provide reimbursements for "reasonable" costs? If so, how should the Department establish the amount of reasonable reimbursements in any proposal?

For example, should the Department establish reasonable reimbursement amounts for lodging or meals based on what airlines provide their own crews, based on per diem rates established by the U.S. General Services Administration, or using another methodology?<sup>123</sup>

**(ii) Claims for Reimbursement**

For passenger claims for reimbursements supported by receipts, the Department is considering whether it is appropriate to require airlines to approve and pay a complete claim or deny a complete claim, with a written explanation of the airline's reason for denying the claim if it does so, no later than a set timeframe after the complete claim is received. The Department invites comment on what timeframe should apply if the Department proposes this approach. If the Department does not propose automatic reimbursements for services during a set time period, should it establish a set time period during which passengers must submit claims for reimbursement, and, if so, what should that time period be?

Should the Department place any limits on information that airlines may request from passengers to process their claims or establish a minimum basis for what qualifies as a "claim" the airline must accept? What other requirements, if any, should the Department establish for any process for consumer-provided information? For example, should the Department require airlines to establish their own policies and procedures for which reimbursements will be approved and not approved, provide opportunity for passengers to resubmit claims if corrections are needed and establish an internal appeals process? Should the Department require that airlines make any claims process streamlined, easy to access, available at any time, and with clear and conspicuous instructions and disclosures of airline policies for compensation or reimbursements? Are there circumstances in which the Department should permit airlines to reject, rather than

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<sup>123</sup> See <https://www.gsa.gov/travel/plan-book/per-diem-rates>.

respond to, submissions that do not provide sufficient information to process the claim? If an airline rejects a claim for reimbursement because they provided the service upfront, should the airline be required to present documentation of the passenger having received the service?

## **(6) Cancellations and Delays Covered by Foreign Legal Requirements**

As previously discussed, EU and Canadian regulations require services and compensation similar to those on which the Department solicits comment in this ANPRM. How can the Department best avoid duplicative burdens on airlines? Are there provisions that are needed to ensure passengers receive favorable outcomes when more than one law applies to a controllable cancellation or lengthy controllable delay?

Both the EU and Canadian regulations limit entitlement to compensation if the passenger has already received compensation for the same delay or cancellation in another jurisdiction.<sup>124</sup> The EU regulation also limits entitlement to other services if the passenger has already received that service for the same delay or cancellation under another regime.<sup>125</sup> The European Commission has further clarified that if a passenger accepts only compensation or a service (but not both) under a different regime, the passenger's entitlement to receive the compensation or service not accepted is unaffected under EU law.<sup>126</sup> Should the Department adopt similar limits to those under EU and Canadian regulations? How do these limits operate in practice? Can airlines efficiently provide a consumer their choice of benefits when more than one jurisdiction's regulation applies to an event?

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<sup>124</sup> See CTA, Air Passenger Protection Regulations – Regulatory Impact Analysis Statement, *available at* <https://otc-cta.gc.ca/eng/air-passenger-protection-regulations-regulatory-impact-analysis-statement> (noting that “passengers would only be able to receive compensation . . . if they have not already received compensation for the same event under a different regime”), *see also* EC No 261/2004, Article 3.1(b). Canadian regulations clarify that mere eligibility for compensation under another jurisdiction's law is not a permissible basis for refusing compensation. *See* APPRs, ¶ 3(3).

<sup>125</sup> EC No 261/2004, Article 3.1(b); *see also* EU Interpretive Guidelines at C 214/7.

<sup>126</sup> EU Interpretive Guidelines at C 214/7.

The Department is considering whether to require the airline to notify passengers of any differences in value of reimbursements, services, and compensation owed under any DOT requirements and the law of a foreign jurisdiction, if applicable, so that passengers would have the ability to accept a reimbursement, service, or compensation on an informed basis when the laws of multiple jurisdictions apply. The Department seeks comment on whether these options are appropriate, feasible for airlines, and benefit consumers, particularly if the Department were to decide to require automatic compensation and reimbursements. Would the value of services, such as lodging or a meal, likely be the same under any DOT-imposed requirement and the law of a foreign jurisdiction?

**(7) Information Provided to Passengers**

The Department is concerned that airlines do not sufficiently inform passengers about their rights when there are controllable cancellations and lengthy delays that entitle passengers to services such as meals, lodging, and rebooking. To address harm to consumers, the Department solicits comment on whether to require airlines to: (1) notify passengers of the required or promised services, (2) disclose proactively whether the cancellation or delay is controllable and would entitle passengers to services, (3) respond to passengers' questions about reasons for disruptions and whether they qualify for services, (4) make information about services and reimbursements clear, easy to find, and accurate, and (5) explain the differences, if there are any, in the policies between codeshare partners for services and reimbursements.

If the Department requires airlines to provide compensation or rebooking without charge or to cover the costs of meals, lodging, and transportation to and from lodging, should the Department require notifications of available compensation, rebooking, or costs of meals, lodging, and transportation to and from lodging? As discussed earlier in this notice, at the

December 2022 ACPAC meeting, the ACPAC recommended that the Department issue a regulation requiring airlines to notify affected consumers of the availability of services and amenities for controllable delays and cancellations, with three of the four members voting in favor of the recommendation.<sup>127</sup> The Department is considering requiring airlines to promptly notify consumers when a required service, reimbursement, or compensation is owed. The Department is considering requiring airlines to provide such notification when the airline expects that an entire flight segment will be subject to a controllable cancellation or delay that would entitle the passengers to services, reimbursements, and compensation. As an alternative, the Department is also considering instead requiring individualized notifications when only some passengers on a flight would be owed compensation, rebooking, or a service (e.g., when some passengers on a flight miss a connecting flight due to a controllable cancellation or delay) and seeks comment on whether it is feasible for airlines to do so. Are there challenges to providing individualized notifications or to providing these notifications to passengers who purchase air transportation from ticket agents, and if so, how should the Department address such challenges? What would be the costs for airlines to provide individualized notifications?

Where and by what means should any required notifications be provided? The Department is considering requiring that airlines provide notifications on the carrier's primary website, to passengers who contact the airline's customer service representative, at the boarding gate area, and/or through a method that the passenger has elected to receive flight status notifications. Should these or different notification methods apply? Should the Department require airlines to establish reasonable policies, procedures, and/or training for airline customer service staff to ensure that staff provide passengers proper notification of available

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<sup>127</sup> See ACPAC December 8 and 9, 2022 Meeting Minutes at 26, *available at* <https://www.regulations.gov/document/DOT-OST-2018-0190-0110>.



reimbursements, compensation, and services and provide services promptly where applicable? If airlines are permitted to require passengers to affirmatively request compensation or services, should airlines be required to proactively provide information on how to make that request or provide a link or other avenue for submitting the request in any notification regarding the cancellation or delay? The Department also requests comment on what requirements are needed to ensure passengers who identify to airlines as persons with disabilities receive effective notification.

What timing requirements, if any, should apply to any notifications? The Department is considering a proposal that notifications for reimbursements, services, and compensations must be promptly provided to consumers. If the Department should require prompt notifications, is additional clarification needed regarding when a notification is “prompt?” Should the Department establish a set timeframe following the occurrence of a cancellation or delay during which an airline must provide any required notifications? The Department would expect airlines to begin to provide notifications soon after the delay or cancellation rather than hours after it. Should different timeframes apply to any notifications about compensation and to any notifications about rebooking or services that are likely needed during or soon after the delay or cancellation?

Should the Department require airlines to notify passengers in real time of the specific cause of a lengthy delay or cancellation? If so, how can the Department ensure that information provided by the airline is accurate?

#### **(8) Timely Customer Service**

Section 505 of the 2024 FAA Act requires that air carriers selling tickets for scheduled passenger air transportation on an aircraft that, as originally designed, has a passenger capacity

of 30 or more seats must maintain, without charge and available at all times: (1) a customer service telephone line staffed by live agents, (2) a customer chat option that allows for customers to speak to a live agent within a reasonable time, to the greatest extent practicable, or (3) a monitored text messaging number that enables customers to communicate and speak with a live agent directly. Section 505 authorizes DOT to issue such rules as may be necessary to carry out the requirement and provides that airlines must comply with Section 505's requirements "without regard to whether the Secretary has promulgated any rules to carry out" Section 505.

In enforcement matters, the Department has taken the position that the practice of not providing adequate customer service assistance when a carrier cancels or significantly changes a passenger's flight is an unfair practice and also that the practice is deceptive when a carrier advertises a particular service to consumers as an available means of obtaining customer service assistance and fails to provide that service or fails to provide the service within a reasonable time period.<sup>128</sup> However, the Department's regulations do not currently set forth specific requirements for timely customer service assistance or contain provisions addressing Section 505 of the 2024 FAA Act. The Department is considering whether to propose minimum timely customer service requirements, particularly for passengers affected by cancellations and delays. Should the Department establish specific minimum wait times for customer service during or after a cancellation or lengthy delay, and what should the minimum wait times be or what should minimum wait times be based on? Should any minimum customer service wait time be based on the type of customer service the passenger seeks, for example, customer service about rebooking, refunds, compensation, etc.? Should the Department consider requiring airlines to make call center service available at all times during a disruption, regardless of whether the other means of

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<sup>128</sup> See *Southwest Airlines Co.*, DOT Order No. 2023-12-11, Consent Order (Dec. 15, 2023).

assistance are available as well? Should the Department consider as an option letting airlines determine a minimum standard of customer service and requiring the airline to put it in their customer service plan? The Department invites comments on these options for improving the timeliness of customer service.

## **(9) Reporting and Recordkeeping**

What recordkeeping and reporting requirements should apply to the areas covered by this ANPRM, if any? The Department is considering proposing that airlines must submit periodic reports regarding compliance with any requirements adopted. The intent of this option would be to enable the Department to monitor airline implementation of and compliance with any requirements effectively and efficiently and to facilitate enforcement of noncompliance, when appropriate. Such reports may include, for example, information about cancellations and lengthy flight delays that the airline determined were controllable and not controllable and the specific bases for the carrier's determinations; information about notifications, services, reimbursements, and compensation provided; and information about requests for services and claims for reimbursements and/or compensation, including the airline's responses. Should the Department require reports and, if so, should the Department require airlines to report on a fixed interval? Should different reporting requirements, if any, apply to foreign carriers, and, if so, why?

## **REGULATORY NOTICES:**

### **A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The Office of Management and Budget (OMB) has determined that this ANPRM is a significant regulatory action under Executive Order 12866. Executive Order 12866 requires agencies to provide a meaningful opportunity for public participation. Accordingly, we have

asked commenters to answer a variety of questions to elicit practical information about alternative approaches and relevant data. These comments will help the Department evaluate whether a NPRM is needed and if so, the content of the NPRM. If the Department issues a NPRM after the completion of the comment period on this ANPRM, it will prepare a regulatory impact analysis for the proposed rule, assessing the potential benefits, costs, and transfers. The Department seeks any information, data, and analysis that would help the Department understand the economic impacts of the potential regulatory options discussed within this notice.

**B. Executive Order 13132 (Federalism)**

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This ANPRM does not propose any requirement that (1) has substantial direct effects on the States, the relationship between the national government and the 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. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

**C. Executive Order 13175**

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

#### **D. Regulatory Flexibility Act**

When a Federal agency is required to publish a notice of proposed rulemaking (5 U.S.C. 553), the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the agency to conduct an initial regulatory flexibility analysis (IRFA). An IRFA describes the impact of the rule on small entities (5 U.S.C. 603). An IRFA is not required if the agency head certifies that a rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605). Under the Regulatory Flexibility Act, carriers that exclusively provide air transportation with aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less are small businesses.<sup>129</sup> If the Department proposes to adopt the consumer protections discussed in this ANPRM, it is possible that it may have some impact on small entities. We invite comment to facilitate DOT's assessment of the potential impact of adopting the possible regulatory requirements discussed in this ANPRM on small entities.

#### **E. Paperwork Reduction Act**

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), no person is required to respond to a collection of information unless it displays a valid OMB control number. This ANPRM is not covered by the Paperwork Reduction Act because it does not propose any new information collection burdens. If the Department proposes to adopt information collections in a NPRM, the burdens associated with such a collection will be analyzed at that time.

#### **F. Unfunded Mandates Reform Act**

The Department has determined that the requirements of Title II of the Unfunded Reform Act of 1995 do not apply to this document.

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<sup>129</sup> See 14 CFR 399.73.

## **G. National Environmental Policy Act**

The Department has analyzed the environmental impacts of this ANPRM pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).<sup>130</sup> In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.<sup>131</sup> Paragraph 4(c)(6)(i) of DOT Order 5610.1C provides that "actions relating to consumer protection, including regulations" are categorically excluded. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

**SIGNED THIS 3rd DAY OF December, 2024, IN WASHINGTON, D.C.**

- Original Signed -  
Peter Paul Montgomery Buttigieg  
Secretary of Transportation

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<sup>130</sup> See 40 CFR 1508.4.

<sup>131</sup> *Id.*