



Center for
**TECHNOLOGY,
SCIENCE, AND ENERGY**

AI-Generated Regulation

NOT READY FOR PRIME TIME (YET)

Connor Raso

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Executive Summary

Generative AI has attracted great attention in the policymaking sphere, including for agency rulemaking. This report compares a final rule drafted by a generative AI model with the Department of Transportation's actual rule. The AI model's policy recommendations appear overly sensitive to the number of commenters supporting a position rather than the strength of their evidence and reasoning. Moreover,

the rule draft is relatively cursory and lacks the explanatory depth expected in agency rules. The results are more promising with respect to summarizing comments, which may save agency staff significant time and increase their responsiveness to comments. Future generations of generative AI will undoubtedly improve, meriting ongoing study of these issues.

AI-Generated Regulations

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Connor Raso

Generative AI is undoubtedly a hot topic in government. Federal judges have written opinions debating its use in deciding legal issues.¹ Researchers have used AI to draft Supreme Court opinions, with promising results (in which the AI models admittedly had access to polished briefs and lower court decisions prepared by capable lawyers).²

Last year, the Biden administration issued a wide-ranging executive order³ providing agencies a framework for regulating AI use, and it later highlighted subsequent implementation developments.⁴ The White House has also directed federal agencies to report on their use of AI.⁵ The incoming Trump administration seems likely to take further action on AI. Notably, the Republican Party's 2024 platform included plans to rescind President Joe Biden's Executive Order 14110 on AI, calling it a dangerous hindrance to the technology's development.

Use of generative AI in federal agency rulemaking has been less explored. Research in this area⁶ has focused largely on whether the public may use AI to write informative comments on proposed agency rules.⁷ (Such research has also analyzed whether agencies may, in turn, use AI to process comments.) This report analyzes a related but unexplored question: Are current generative AI models equipped to produce first drafts of final agency rules? I provided

a proposed rule from the Department of Transportation (DOT) and all comments submitted on that rule to the Claude 3.5 Sonnet AI model and requested it to draft a final rule. I then compared Claude's work to the DOT's actual final rule.⁸

The results were underwhelming. Generative AI models will undoubtedly improve, but Claude 3.5 did not produce a final rule draft that would save DOT staff significant time. Claude's draft did not engage adequately with the issues that commenters raised, instead providing conclusory responses or neglecting comments altogether.

Perhaps more seriously, Claude appeared overly responsive to the number of commenters supporting a position instead of attentive to the strength of their arguments. Some of Claude's policy recommendations therefore skewed toward input from industry commenters that was not reflected in the DOT's final rule. At this stage, Claude appears better suited to summarizing comments than to recommending policy and drafting final rules.

The DOT's Airline Fee Rule

In July 2021, the DOT proposed a rule that airlines must automatically and promptly refund passengers

for delayed checked baggage and other services.⁹ This report provides a study of the rule's portion on baggage refunds, focusing on five important provisions that drew comments. Under the DOT's proposal, airlines would owe passengers a refund for bags arriving more than 12 hours after a domestic flight's arrival and more than 25 hours after an international flight's arrival.¹⁰ The proposal declined to provide for tiered deadlines based on route frequency or flight length. It also touched on technical questions such as whether travel agents who collect baggage fees must provide refunds, whether passengers must file mishandled baggage reports to receive a refund, and how to calculate when late baggage is deemed to be delivered.

The DOT received approximately 29 comments on the 2021 proposal.¹¹ Numerically, airline commenters dominated, submitting 14 comments. Consumer groups submitted four comments, ticket agents submitted two, and individuals or other unaffiliated entities submitted the remainder.

Airlines generally argued they would face challenges to comply with the proposed baggage delivery deadlines and sought more time before a refund would be required. Consumers and ticket agents supported significantly shorter deadlines for baggage fee refunds. Several airlines argued that ticket agents should be responsible for issuing refunds if they collected baggage fees.

The DOT finalized the proposal as part of a wide-ranging final rule that also included elements of a proposed rule to require airlines to offer refunds (as opposed to airline credits) for canceled flights.¹² (That proposal drew greater public attention and roughly 5,300 comments).¹³ As proposed, the final rule required carriers to refund fees on domestic flights for checked bags delayed for 12 hours.

Unlike the proposal, the final rule created a two-tier deadline for international flights: (1) a 15-hour deadline for flights less than 12 hours long and (2) a 30-hour deadline for flights more than 12 hours long. In responding to commenters, the DOT argued that on infrequent flight routes, airlines could contract with couriers to meet the deadlines. However, it believed the shorter deadlines that consumer groups

suggested could disincentivize airlines from delivering bags as quickly as possible, because the refund would already be required.

The DOT also changed course on calculating when late baggage is deemed to be delivered. Unlike in the proposal, the DOT determined that the delivery time would be calculated from when the airline relinquished the bag to the passenger, not merely when the airline made the bag available for pickup. The DOT explained that it intended this change to incentivize airlines to provide the bag to the customer more quickly and conveniently, noting the burden for passengers of returning to the airport.

On the other two issues, the DOT did not depart from the proposal. Travel agents who collected baggage fees were not required to provide refunds, as the DOT decided that airlines were better positioned to determine refund eligibility and that travel agents collected the fees as agents of the airline. Passengers would be required to file mishandled baggage reports to receive a refund, as airlines might not know about the delay otherwise.

These changes are summarized in Table A1.

Using Generative AI to Draft a Final Rule

I used the Claude 3.5 professional plan to draft a final rule, providing the model all substantive comments and the DOT's proposed release. An agency considering a similar exercise should note that Claude requires the user to upload these materials manually, which presented several practical problems. First, Regulations.gov does not allow users to download comments on a particular rule docket in bulk. While this is not a significant burden for a rule with relatively few comments, it would be for a rule with many comments.

Second, even Claude's professional plan allows users to upload only five files. This means extracting the text of all comments and compiling them into a document that can be fed into Claude, which can be burdensome for a rule with many comments. These hurdles may of course be alleviated as generative AI software can take in more files.

Claude's full draft rule is in Appendix B.¹⁴ It fell well short of the DOT's actual final rule. While Claude's draft generally followed the format of a final agency rule, its responses to the comments and policy explanations were much too cursory. In some cases, it entirely neglected key issues. The draft read more like a brief summary of a final rule than a full draft.

This result is somewhat surprising, as Claude did much better with Supreme Court opinions.¹⁵ The difference may be because the DOT rule, while relatively straightforward by rulemaking standards, contains more issues than a typical Supreme Court case, which focuses on one issue. The difference may also be influenced by the extremely high quality of the Supreme Court briefs and lower court opinions that the researcher who prompted Claude loaded into the model.

Interestingly, Claude did not merely recommend adopting the DOT's proposal. Instead, it recommended several important changes in response to the comments. (See Table A1.) Each recommended change favored the airline commenters at the expense of the consumer groups.

Highlights included (1) not starting the clock for calculating the delay until the passenger files a mishandled baggage report (instead of the flight's arrival time), (2) allowing airlines to stop the clock for calculating a baggage delay when the airline notifies the passenger that the bag is available for pickup at the airport (rather than when the airline delivers the bag to the passenger), and (3) providing airlines delay periods for domestic and international flights before requiring a refund. As noted above, the DOT's final rule provided for greater baggage refund eligibility, started the clock when the passenger's plane arrived, required the airline to deliver the bag to stop the clock, and imposed shorter deadlines for refunds. Importantly, Claude's justification for its changes was insufficient.

When restricted to considering a subset of comments that largely captured the issues that commenters raised, Claude produced a recommendation closer to the DOT's final rule. (See Table A1.) To capture the commenters' issues but remove the numerical

imbalance favoring airline industry commenters, I restricted Claude to considering comments from Airlines for America, the National Air Carrier Association, Travelers United consumer advocates, and a coalition of traveler advocacy groups.¹⁶

Considering only these comments and the DOT's proposed rule, Claude's recommendation was less favorable to the airlines and closer to the rule that the DOT ultimately adopted. (See Table A1.) This difference suggests that the quantity of comments favoring a particular position may inordinately influence AI models. Agencies should be aware of this tendency and correct for it, since they must consider the comments' persuasiveness rather than the number of comments favoring a position.¹⁷

Conclusions

Generative AI models will surely improve and evolve over time, and their ability to automate rule writing will increase. But in this test, Claude 3.5 did not draft a satisfactory final rule. Claude's work was too conclusory and influenced by the comments' volume to produce a first draft that would save agency staff significant time.

At this stage, Claude appears better suited to summarizing comments for agency staff. While still requiring human review, Claude's comment summaries generally captured the major points. (See Appendix D.) Used properly, Claude could save agency staff significant time in reviewing comments and reduce their chance of overlooking points. This may be particularly true for rules with many comments.

Claude's apparent sensitivity to the volume of comments is troubling. If agencies use AI widely to draft final rules, interested parties may seek to influence these drafts with mass comment campaigns.¹⁸ While debates over the value of mass comments are beyond this report's scope, it is fair to worry that they would increase the volume of comments for agencies to process without necessarily adding information.

On the other hand, generative AI provides a tool to agencies. Future versions of AI may more easily group and summarize mass comments than current

tools do. And future versions of AI will likely improve at weighing the merits of comments and responding to them. This report thus captures only a snapshot of

AI technology, which will undoubtedly improve and likely be able to assume more of the rule writing that humans currently do.

Appendix A

Table A1. Comparing the DOT’s Proposed Rule, the DOT’s Final Rule, and Claude 3.5 Sonnet’s Drafted Rule

Issue	DOT’s Proposed Rule	DOT’s Final Rule	Claude’s Drafted Rule—All Comments	Claude’s Drafted Rule—Selected Comments
Trigger for Refund Requirement	The customer receives the baggage more than 12 hours after a domestic flight arrives or 25 hours after an international flight arrives.	The customer receives the baggage more than 12 hours after a domestic flight arrives, 15 hours after an international flight of less than 12 hours arrives, or 30 hours after an international flight of more than 12 hours arrives.	The customer receives the baggage more than 18 hours after a domestic flight arrives or 30 hours after an international flight arrives.	The customer receives the baggage more than 12 hours after a domestic flight arrives or 15 hours after an international flight arrives.
Start Time for Calculating a Baggage Delay	When the passenger arrives at his or her destination and can deplane from the last flight segment	When the passenger arrives at his or her destination and can deplane from the last flight segment	When the passenger files a mishandled baggage report with the carrier	When the passenger can deplane from the last flight segment
End Time for Calculating a Baggage Delay	Any of the following three options: (1) when the bag is transported to a location that the passenger and carrier agree on; (2) when the bag has arrived at the destination airport and is available for pickup, and the carrier has advised the passenger of the bag’s location and availability; or (3) if the carrier offers delivery and the passenger accepts it, when the bag has arrived at the destination airport, and the carrier has advised the passenger that the bag has arrived and will be delivered	When the airline relinquishes the bag to the passenger through (1) the carrier delivering it to a mutually agreed-upon location (e.g., a hotel or residence) or (2) the passenger or a designee picking up the bag at the airport	Similar to the proposed rule, when (1) the bag is physically handed to the passenger; (2) the bag has arrived at the destination airport and is available for pickup, and the carrier has notified the passenger; or (3) the bag has arrived at a location that the passenger has designated, and the carrier has notified the passenger that it is available	Similar to final rule, when (1) the bag has been physically handed to the passenger or (2) the bag has arrived at a location that the passenger has designated, and the carrier has notified the passenger that the bag is available for pickup or will be delivered to that location
Passenger Required to File a Mishandled Bag Report with the Airline to Qualify for a Refund?	Yes	Yes	Yes	Yes
Ticket Agent Required to Provide the Refund if it Collected the Baggage Fee?	No; the airline must provide this.	No; the airline must provide this.	No. “If a ticket agent collected the fee, the airline that operated the last flight segment is responsible for the refund.”	No. “If a ticket agent collected the fee, the carrier that operated the last flight segment is responsible for the refund.”

Source: Author.

Appendix B. Claude 3.5's Draft Final Rule Responding to All Substantive Comments

DEPARTMENT OF TRANSPORTATION

Office of the Secretary
14 CFR Parts 259 and 260
[Docket No. DOT-OST-2016-0208]
RIN 2105-AE53
Refunding Fees for Delayed Bags and Ancillary Services Not Provided

AGENCY:

Office of the Secretary (OST), Department of Transportation (DOT).

ACTION:

Final rule.

SUMMARY:

The U.S. Department of Transportation (Department or DOT) is issuing a final rule to mandate refunds for delayed checked baggage and ancillary fees for services related to air travel that passengers did not receive. This rule implements two statutory mandates: one requiring carriers to refund checked baggage fees when they fail to deliver bags in a timely manner, and another requiring prompt refunds for ancillary services paid for but not received by passengers.

DATES:

This rule is effective [INSERT DATE 365 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

Clereece Kroha, Kimberly Graber, or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington DC, 20590, 202-366-9342 (phone), 202-366-7152 (fax), clereece.kroha@dot.gov, kimberly.graber@dot.gov, or blane.workie@dot.gov (email).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Purpose

The purpose of this final rule is to ensure that travelers are treated fairly when requesting refunds for ancillary service fees by implementing two statutory aviation consumer protection provisions. The first statutory provision is 49 U.S.C. 41704, note, which requires the Department to promulgate a regulation that mandates that airlines refund checked baggage fees to passengers when they fail to deliver checked bags in a timely manner. The second statutory provision is 49 U.S.C. 42301, note prec., which requires the Department to promulgate a rule that mandates that airlines promptly provide a refund to a passenger of any ancillary fees paid for services related to air travel that the passenger does not receive.

B. Background

The Department's aviation consumer protection regulation, in 14 CFR 259.5(b)(3), requires carriers to provide refunds of baggage fees to passengers when their checked bags are lost. This final rule expands on that requirement to address delayed baggage and other ancillary services not provided.

II. Refunding Baggage Fees for Delayed Bags

A. Final Rule Provisions

1 Length of Delay Triggering Refund Requirement

After careful consideration of public comments, including those from airlines, consumer advocacy groups, and industry associations, the Department has determined that airlines must refund an ancillary fee paid by a passenger for a checked

bag if the airline fails to deliver the bag to the passenger within the following timeframes:

- For domestic flights: 18 hours after the passenger's arrival at their final destination
- For international flights: 30 hours after the passenger's arrival at their final destination

These timeframes take into account the operational challenges faced by airlines, particularly ultra-low-cost carriers (ULCCs) and international carriers that may have less frequent flights to certain destinations, while still ensuring that passengers receive timely delivery of their baggage or appropriate compensation. The Department acknowledges the concerns raised by various stakeholders regarding the unique challenges faced by different types of carriers and has adjusted the timeframes to the maximum allowed under the statute.

2 Methodology for Measuring Length of Delay

To calculate the length of delay that a passenger experiences in receiving a checked bag, the start of the delay will be based on the time that the passenger files a mishandled baggage report (MBR) with the carrier. This approach ensures that carriers have the necessary information to begin the recovery process.

A delayed bag will be considered delivered to a passenger when:

- The bag has been physically handed over to the passenger; or
- The bag has arrived at the destination airport, is available for pickup, and the carrier has provided notice to the passenger that the bag is available for pick up; or
- The bag has arrived at a location designated by the passenger and the carrier has provided notice to the passenger that the bag is available at that location.

3 Notification and Refund Process

Airlines are required to provide refunds for delayed bags within 7 business days of the refund being due for credit card payments and within 20 days for other forms of payment. To initiate the refund process, passengers must notify the airline about the delay in receiving their bag by filing a mishandled baggage report.

The Department will create a standardized form that passengers can use to notify both the airline and the DOT simultaneously about delayed baggage and request a refund. This form will help the DOT collect data on baggage delays and allow airlines to process refund requests more efficiently.

For flights involving multiple carriers or ticket agents:

- The carrier that collected the baggage fee is responsible for issuing the refund.
- If a ticket agent collected the fee, the carrier that operated the last flight segment is responsible for the refund.

4 Other Provisions

- **Oversized/overweight bag fees:** These are treated the same as standard sized bags for refund purposes, but the refund amount is limited to the standard baggage fee for the itinerary.
- **Multiple checked bags:** When carriers can identify which specific bag is delayed, only the fee for that bag should be refunded. If a dispute arises, the airline has the burden of providing evidence to identify the specific fee charged for the delayed bag.
- **Voluntary separation:** If a passenger voluntarily agrees to be separated from their

checked bag (e.g., for late check-in or standby situations) and signs a waiver, the baggage fee refund requirement does not apply if the bag does not arrive within the standard timeframe.

- Alternative transportation: When a carrier arranges alternative transportation for passengers, the baggage fee refund requirement still applies.
- Type of baggage: The refund requirement applies to all checked baggage, including gate-checked bags and valet bags if the passenger paid a fee to transport them.

III. Refunding Fees for Ancillary Services That Were Not Provided

A. Final Rule Provisions

1 Scope of Ancillary Services

For the purposes of this rule, “ancillary service” means any service related to air travel provided by a covered carrier, for a fee, beyond passenger air transportation. Such services include, but are not limited to, checked or carry-on baggage, advance seat selection, access to in-flight entertainment system, in-flight beverages, snacks and meals, pillows and blankets and seat upgrades.

2 Refund Eligibility

Covered carriers are required to promptly refund an ancillary service fee they charged a passenger if the passenger did not receive the ancillary service because: (1) The service was not made available to that passenger on the flight they took (either the original flight or an alternative flight due to schedule changes made by the airlines or due to an oversales situation); or (2) The passenger did not take any flight due to the airline not operating the flight or making a significant change to the flight.

For services like in-flight Wi-Fi, a brief interruption of service (e.g., less than 30 minutes on a flight over 3 hours) would not be considered a failure to provide the service.

3 Prompt Refund

A prompt refund must be provided within 7 days for credit card transactions and 20 days for transactions involving cash, checks, vouchers, or frequent flyer miles after the entity responsible for issuing a refund receives notification that a refund is due.

4 Entity Responsible for Refund

The carrier that collects the fee for ancillary service is responsible for issuing a refund when the carrier or another carrier fails to provide the ancillary service. For passengers who purchase airline tickets from ticket agents, if a passenger purchases an ancillary service from a ticket agent, the carrier is responsible for issuing the refund. With respect to multiple-carrier itineraries for which a ticket agent collects an ancillary service fee, the last carrier that operates the flight is responsible for issuing the refund if there are multiple airlines involved.

IV. Implementation and Compliance

Recognizing the need for airlines to adjust their systems and processes to comply with this rule, the effective date has been set to one year after the date of publication in the Federal Register. This extended implementation period addresses concerns raised by industry commenters about the time needed to build, test, and implement new payment and refund channels.

V. Enforcement and Penalties

To ensure compliance with the refund requirements, the Department will impose a fine of \$100 per day for each delayed refund that exceeds the

mandated refund timeframes. This penalty structure is designed to incentivize prompt refunds and discourage carriers from unnecessarily delaying refund payments.

VI. Consumer Education

The Department will require airlines to provide clear and conspicuous notices to passengers regarding their rights to refunds for delayed baggage and undelivered ancillary services. These notices must be provided at the time of ticket purchase, check-in, and baggage claim. Additionally, the Department will work with airports to post passenger rights information in prominent locations.

Regulatory Analyses and Notices

[Regulatory analyses and notices sections updated to reflect final rule status]

List of Subjects

14 CFR Part 259 Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 260 Air carriers, Consumer protection.

For the reasons set forth in the preamble, the Department amends 14 CFR chapter II as follows:

PART 259—ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS

- 1 The authority citation for 14 CFR part 259 continues to read as follows:

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, 41708, 41712, and 42301.

- 2 Amend § 259.5 by revising paragraphs (b)(3) and (5) to read as follows:

§ 259.5 Customer Service Plan.

(b) *** (3) Delivering baggage on time, including making every reasonable effort to return

mishandled baggage within 18 hours for domestic flights and within 30 hours for international flights, compensating passengers for reasonable expenses that result due to delay in delivery, as required by 14 CFR part 254 for domestic flights and as required by applicable international agreements for international flights, and refunding passengers for any fees charged to transport a checked bag that is delayed or lost, as required by 14 CFR part 260;

(5) Where ticket or ancillary service fee refunds are due, providing prompt refunds within 7 days, as required by 14 CFR 374.3 and 12 CFR part 226 for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, and other means of payment. Refunds must be in the original form of payment (such as credit card, debit card, cash or check, airline miles);

- 3 Add part 260 to read as follows:

PART 260—REFUNDS FOR AIRLINE ANCILLARY SERVICE FEES

Sec. 260.1 Purpose. 260.2 Definitions. 260.3 Applicability. 260.4 Refunding fees for ancillary services that passengers paid for but that were not provided. 260.5 Refunding fees for significantly delayed or lost bags. 260.6 Providing prompt refunds. 260.7 Consumer notification. 260.8 Enforcement and penalties.

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 41702, and 41712.

§ 260.1 Purpose. The purpose of this part is to ensure that carriers refund passengers for ancillary services related to air travel that passengers paid for but were not provided. This part is also intended to ensure that carriers refund passengers for fees to transport checked bags that are lost or significantly delayed.

§ 260.2 Definitions. As used in this part:

Air carrier means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

Ancillary service means any service related to air travel provided by a covered carrier, for a fee, beyond passenger air transportation. Such service includes, but is not limited to, checked or carry-on baggage, advance seat selection, access to in-flight entertainment program, in-flight beverages, snacks and meals, pillows and blankets, and seat upgrades.

Checked bag means a bag or an item other than a bag that was provided to a carrier by or on behalf of a passenger, for transportation in the cargo compartment of a scheduled passenger flight. A checked bag includes a gate-checked bag and a valet bag.

Covered carrier means an air carrier or a foreign air carrier operating to, from or within the United States, conducting scheduled passenger service.

Covered flight means a scheduled flight operated or marketed by a covered carrier to, from, or within the United States.

Foreign air carrier means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.

Significantly delayed checked bag means a checked bag that is not delivered to the passenger or the passenger's agent within 18 hours of the last flight segment's arrival for domestic itineraries and within 30 hours of the last flight segment's arrival for international itineraries, including itineraries that include both international flight segment(s) and domestic flight segment(s).

§ 260.3 Applicability. This part applies to all covered carriers that collect fees, including checked baggage fees, for ancillary services to be provided on or in relation to a covered flight.

§ 260.4 Refunding fees for ancillary services that passengers paid for but that were not provided. A covered carrier shall promptly provide a refund to a passenger for any fees it collected from the passenger for ancillary services related to air travel if the service was not provided, including fees for services on the passenger's scheduled flight, on a subsequent replacement flight if there has been a rescheduling by the carrier, or on a flight not taken by the passenger due to oversales or a flight that is not operated by the carrier. If a ticket agent collected the ancillary fee, the carrier that is scheduled to operate the flight or if multiple-carrier itineraries, the carrier that is scheduled to operate the last segment of the passenger's itinerary is responsible for providing a refund.

§ 260.5 Refunding fees for significantly delayed or lost bags. Upon receiving a notification from a passenger, a covered carrier that collected a checked baggage fee from the passenger or, if a ticket agent collected the checked baggage fee from the passenger, the covered carrier that is scheduled to operate the flight or the covered carrier that is scheduled to operate the last segment of the passenger's itinerary if multiple-carrier itineraries, shall promptly provide a refund to the passenger of any fee charged for transporting a significantly delayed checked bag.

(a) Determining the length of delay. (1) For the purpose of determining whether a refund of the baggage fee is due, the 18-hour deadline for domestic itineraries and the 30-hour deadline for international itineraries is calculated from the time when a passenger files a mishandled baggage report with the carrier.

(2) For the purpose of determining whether a refund of the baggage fee is due, a delayed bag is considered to have been delivered to a passenger when:

- (i) The bag has been physically handed over to the passenger; or
 - (ii) The bag has arrived at the destination airport, is available for pickup, and the carrier has provided notice to the passenger that the bag is available for pick up; or
 - (iii) The bag has arrived at a location designated by the passenger and the carrier has provided notice to the passenger that the bag is available at that location.
- (b) Notification of carrier by passenger about lost or significantly delayed bag. A covered carrier's obligation to provide a prompt refund for a lost bag or a significantly delayed bag does

not begin until passengers provide notification of the lost or significantly delayed bag. Passengers must inform the carrier that collected the baggage fee of the lost or delayed bag; or, if a ticket agent collected the bag fee, passengers must inform the carrier that operated the last flight segment about the lost or delayed bag for the purpose of receiving a refund for the baggage fee for a significantly delayed bag.

§ 260.6 Providing prompt refunds. When a refund of a fee for an ancillary service, including a fee for lost or significantly delayed checked baggage, is due pursuant to this part, the refund must be issued promptly consistent with the requirement of 14 CFR 259.5(b)(5).

§ 260.7 Consumer notification. Covered carriers must provide clear and conspicuous notice to passengers of their rights under this part at the time of ticket purchase, check

Appendix C. Claude 3.5's Draft Final Rule Responding to Comments Selected for Viewpoint Balance

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 259 and 260

[Docket No. DOT-OST-2016-0208]

RIN 2105-AE53

Refunding Fees for Delayed Bags and Ancillary Services Not Provided

AGENCY:

Office of the Secretary (OST), Department of Transportation (DOT).

ACTION:

Final rule.

SUMMARY:

The U.S. Department of Transportation (Department or DOT) is issuing a final rule to mandate refunds for delayed checked baggage and ancillary fees for services related to air travel that passengers did not receive. This rule implements two statutory mandates: one requiring carriers to refund checked baggage fees when they fail to deliver bags in a timely manner, and another requiring prompt refunds for ancillary services paid for but not received by passengers.

DATES:

This rule is effective [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

Clereece Kroha, Kimberly Graber, or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave.

SE, Washington DC, 20590, 202-366-9342 (phone), 202-366-7152 (fax), clereece.kroha@dot.gov, kimberly.graber@dot.gov, or blane.workie@dot.gov (email).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Purpose

The purpose of this final rule is to ensure that travelers are treated fairly when requesting refunds for ancillary service fees by implementing two statutory aviation consumer protection provisions. The first statutory provision is 49 U.S.C. 41704, note, which requires the Department to promulgate a regulation that mandates that airlines refund checked baggage fees to passengers when they fail to deliver checked bags in a timely manner. The second statutory provision is 49 U.S.C. 42301, note prec., which requires the Department to promulgate a rule that mandates that airlines promptly provide a refund to a passenger of any ancillary fees paid for services related to air travel that the passenger does not receive.

B. Background

The Department's aviation consumer protection regulation, in 14 CFR 259.5(b)(3), requires carriers to provide refunds of baggage fees to passengers when their checked bags are lost. This final rule expands on that requirement to address delayed baggage and other ancillary services not provided.

II. Refunding Baggage Fees for Delayed Bags

A. Final Rule Provisions

- 2 Length of Delay Triggering Refund Requirement
- After careful consideration of public comments, the Department has determined that airlines must refund an ancillary fee paid by a passenger for a checked bag if the airline fails to deliver the bag to the passenger within the following timeframes:
- For domestic flights: 12 hours after the passenger's arrival at their final destination
 - For international flights: 15 hours after the passenger's arrival at their final destination

These timeframes adhere to the minimum standards set forth in 49 U.S.C. 41704, note. The Department considered arguments for longer timeframes but concluded that these deadlines strike an appropriate balance between passenger convenience and operational feasibility for airlines.

- 3 Methodology for Measuring Length of Delay

To calculate the length of delay that a passenger experiences in receiving a checked bag, the start of the delay will be based on the time that the passenger was given the opportunity to deplane from the last flight segment.

A delayed bag will be considered delivered to a passenger when:

- (i) The bag has been physically handed over to the passenger; or
- (ii) The bag has arrived at a location designated by the passenger and the carrier has provided notice to the passenger that the bag is available for pickup or will be delivered to that location.

- 4 Notification and Refund Process

Airlines are required to provide refunds for delayed bags within 7 business days of the refund being due for credit card payments and within 20 days for other forms of payment. Passengers must notify the airline about the delay in receiving their bag to initiate the refund process.

For flights involving multiple carriers or ticket agents:

- The carrier that collected the baggage fee is responsible for issuing the refund.
- If a ticket agent collected the fee, the carrier that operated the last flight segment is responsible for the refund.

- 5 Other Provisions

- Oversized/overweight bag fees: These are treated the same as standard sized bags for refund purposes.
- Multiple checked bags: When carriers can identify which specific bag is delayed, only the fee for that bag should be refunded. If a dispute arises, the airline has the burden of providing evidence to identify the specific fee charged for the delayed bag.
- Voluntary separation: If a passenger voluntarily agrees to be separated from their checked bag (e.g., for late check-in or standby situations) and signs a waiver, the baggage fee refund requirement does not apply if the bag does not arrive within the standard timeframe.
- Alternative transportation: When a carrier arranges alternative transportation for passengers, the baggage fee refund requirement still applies.

- **Type of baggage:** The refund requirement applies to all checked baggage, including gate-checked bags and valet bags if the passenger paid a fee to transport them.

III. Refunding Fees for Ancillary Services That Were Not Provided

A. Final Rule Provisions

2 Scope of Ancillary Services

For the purposes of this rule, “ancillary service” means any service related to air travel provided by a covered carrier, for a fee, beyond passenger air transportation. Such services include, but are not limited to, checked or carry-on baggage, advance seat selection, access to in-flight entertainment system, in-flight beverages, snacks and meals, pillows and blankets and seat upgrades.

3 Refund Eligibility

Covered carriers are required to promptly refund an ancillary service fee they charged a passenger if the passenger did not receive the ancillary service because: (1) The service was not made available to that passenger on the flight they took (either the original flight or an alternative flight due to schedule changes made by the airlines or due to an oversales situation); or (2) The passenger did not take any flight due to the airline not operating the flight or making a significant change to the flight.

4 Prompt Refund

A prompt refund must be provided within 7 days for credit card transactions and 20 days for transactions involving cash, checks, vouchers, or frequent flyer miles after the entity responsible for issuing a refund receives notification that a refund is due.

5 Entity Responsible for Refund

The carrier that collects the fee for ancillary service is responsible for issuing a refund when the carrier or another carrier fails to provide the ancillary service. For passengers who purchase airline tickets from ticket agents, if a passenger purchases an ancillary service from a ticket agent, the carrier is responsible for issuing the refund. With respect to multiple-carrier itineraries for which a ticket agent collects an ancillary service fee, the last carrier that operates the flight is responsible for issuing the refund if there are multiple airlines involved.

Regulatory Analyses and Notices

[Regulatory analyses and notices sections updated to reflect final rule status]

List of Subjects

14 CFR Part 259 Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 260 Air carriers, Consumer protection.

For the reasons set forth in the preamble, the Department amends 14 CFR chapter II as follows:

PART 259—ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS

- 2 The authority citation for 14 CFR part 259 continues to read as follows:

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, 41708, 41712, and 42301.

- 3 Amend § 259.5 by revising paragraphs (b)(3) and (5) to read as follows:

§ 259.5 Customer Service Plan.

(b) *** (3) Delivering baggage on time, including making every reasonable effort to return mishandled baggage within 12 hours for domestic

flights and within 15 hours for international flights, compensating passengers for reasonable expenses that result due to delay in delivery, as required by 14 CFR part 254 for domestic flights and as required by applicable international agreements for international flights, and refunding passengers for any fees charged to transport a checked bag that is delayed or lost, as required by 14 CFR part 260;

(5) Where ticket or ancillary service fee refunds are due, providing prompt refunds within 7 days, as required by 14 CFR 374.3 and 12 CFR part 226 for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, and other means of payment. Refunds must be in the original form of payment (such as credit card, debit card, cash or check, airline miles);

- 4 Add part 260 to read as follows:

PART 260—REFUNDS FOR AIRLINE ANCILLARY SERVICES FEES

Sec. 260.1 Purpose. 260.2 Definitions. 260.3 Applicability. 260.4 Refunding fees for ancillary services that passengers paid for but that were not provided. 260.5 Refunding fees for significantly delayed or lost bags. 260.6 Providing prompt refunds.

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 41702, and 41712.

§ 260.1 Purpose. The purpose of this part is to ensure that carriers refund passengers for ancillary services related to air travel that passengers paid for but were not provided. This part is also intended to ensure that carriers refund passengers for fees to transport checked bags that are lost or significantly delayed.

§ 260.2 Definitions. As used in this part:

Air carrier means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

Ancillary service means any service related to air travel provided by a covered carrier, for a fee, beyond passenger air transportation. Such service includes, but is not limited to, checked or carry-on baggage, advance seat selection, access to in-flight entertainment program, in-flight beverages, snacks and meals, pillows and blankets, and seat upgrades.

Checked bag means a bag or an item other than a bag that was provided to a carrier by or on behalf of a passenger, for transportation in the cargo compartment of a scheduled passenger flight. A checked bag includes a gate-checked bag and a valet bag.

Covered carrier means an air carrier or a foreign air carrier operating to, from or within the United States, conducting scheduled passenger service.

Covered flight means a scheduled flight operated or marketed by a covered carrier to, from, or within the United States.

Foreign air carrier means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.

Significantly delayed checked bag means a checked bag that is not delivered to the passenger or the passenger's agent within 12 hours of the last flight segment's arrival for domestic itineraries and within 15 hours of the last flight segment's arrival for international itineraries, including itineraries that include both international flight segment(s) and domestic flight segment(s).

§ 260.3 Applicability. This part applies to all covered carriers that collect fees, including checked baggage fees, for ancillary services to be provided on or in relation to a covered flight.

§ 260.4 Refunding fees for ancillary services that passengers paid for but that were not provided. A covered carrier shall promptly provide a refund to a passenger for any fees it collected from the passenger for ancillary services related to air travel if the service was not provided, including fees for services on the passenger's scheduled flight, on a subsequent replacement flight if there has been a rescheduling by the carrier, or on a flight not taken by the passenger due to oversales or a flight that is not operated by the carrier. If a ticket agent collected the ancillary fee, the carrier that is scheduled to operate the flight or if multiple-carrier itineraries, the carrier that is scheduled to operate the last segment of the passenger's itinerary is responsible for providing a refund.

§ 260.5 Refunding fees for significantly delayed or lost bags. Upon receiving a notification from a passenger, a covered carrier that collected a checked baggage fee from the passenger or, if a ticket agent collected the checked baggage fee from the passenger, the covered carrier that is scheduled to operate the flight or the covered carrier that is scheduled to operate the last segment of the passenger's itinerary if multiple-carrier itineraries, shall promptly provide a refund to the passenger of any fee charged for transporting a significantly delayed checked bag.

(a) Determining the length of delay. (1) For the purpose of determining whether a refund of the baggage fee is due, the 12-hour deadline for domestic itineraries and the 15-hour deadline for international itineraries is calculated from the

time when a passenger was given the opportunity to deplane from the aircraft at the passenger's final destination; or, if the final travel segment was on alternate ground transportation, a comparable time when the passenger disembarks from the ground transportation.

(2) For the purpose of determining whether a refund of the baggage fee is due, a delayed bag is considered to have been delivered to a passenger when:

- (i) The bag has been physically handed over to the passenger; or
- (ii) The bag has arrived at a location designated by the passenger and the carrier has provided notice to the passenger that the bag is available for pickup or will be delivered to that location.

(b) Notification of carrier by passenger about lost or significantly delayed bag. A covered carrier's obligation to provide a prompt refund for a lost bag or a significantly delayed bag does not begin until passengers provide notification of the lost or significantly delayed bag. Passengers must inform the carrier that collected the baggage fee of the lost or delayed bag; or, if a ticket agent collected the bag fee, passengers must inform the carrier that operated the last flight segment about the lost or delayed bag for the purpose of receiving a refund for the baggage fee for a significantly delayed bag.

§ 260.6 Providing prompt refunds. When a refund of a fee for an ancillary service, including a fee for lost or significantly delayed checked baggage, is due pursuant to this part, the refund must be issued promptly consistent with the requirement of 14 CFR 259.5(b)(5).

Appendix D. Claude 3.5's Summary of Key Comments

Airlines for America

- Supports refunding fees for significantly delayed bags and ancillary services not provided, but wants flexibility in implementation.
- Recommends 18 hours for domestic and 30 hours for international flights before refunds are required.
- Argues shorter timeframes may disincentivize airlines from delivering bags quickly.
- Wants the “clock” to stop when bags are available for pickup, not just when delivered to passengers.
- Requests exceptions for passenger actions causing delays, specialty baggage, and subscription services.
- Suggests the collecting carrier should be responsible for refunds, not necessarily the last operating carrier.
- Asks for 30 days to process refunds.

National Air Carrier Association

- Represents ultra-low cost carriers (ULCCs).
- Supports the maximum 18/30 hour timeframes for domestic/international flights.
- Argues low-frequency flights and lack of inter-line agreements make shorter deadlines difficult for ULCCs to meet.

- Suggests shorter deadlines could lead to higher fares to offset more frequent refunds.
- Requests clarity on responsibility for refunds in charter flight situations.

Travelers United

- Believes checked bags should be considered “delayed” if not delivered within 60 minutes of flight arrival.
- Wants a simple system where bags are either on-time or delayed, with no complex calculation of delay times.
- Suggests an escalating charge for each additional day a bag is missing.
- Proposes a standardized form for passengers to request refunds, sent to both DOT and the airline.
- Argues the airline that collected the fee should be responsible for refunds.

Consumer Advocacy Groups

- Argue for automatic refunds whenever bags don't arrive with the passenger.
- Want a simpler system that doesn't put the burden on passengers to request refunds.
- Suggest airlines should be required to refund less than 1.2% of baggage fees collected.

- Propose airlines should automatically track and refund fees for ancillary services not provided.
- Recommend DOT require airlines to report on refunds issued.

About the Author

Connor Raso is a deputy general counsel at the Public Company Accounting Oversight Board. The views expressed here reflect only those of the author.

Notes

1. *Snell v. United Specialty Insurance Company*, No. 22-12581 (S. D. Ala. May 28, 2024).
2. Adam Unikowsky, “In AI We Trust, Part II,” *Adam’s Legal Newsletter*, June 16, 2024, <https://adamunikowsky.substack.com/p/in-ai-we-trust-part-ii>.
3. Exec. Order No. 14110, 3 C.F.R. 657 (2023).
4. White House, “Fact Sheet: Biden-Harris Administration Announces New AI Actions and Receives Additional Major Voluntary Commitment on AI,” press release, July 26, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/07/26/fact-sheet-biden-harris-administration-announces-new-ai-actions-and-receives-additional-major-voluntary-commitment-on-ai/>.
5. Shalanda D. Young, “Memorandum for the Heads of Executive Departments and Agencies,” Office of Management and Budget, March 28, 2024, <https://www.whitehouse.gov/wp-content/uploads/2024/03/M-24-10-Advancing-Governance-Innovation-and-Risk-Management-for-Agency-Use-of-Artificial-Intelligence.pdf>.
6. Administrative Conference of the United States, “Statement #20 Agency Use of Artificial Intelligence,” December 31, 2020, <https://www.acus.gov/document/statement-20-agency-use-artificial-intelligence>.
7. Bridget C. E. Dooling and Mark Febrizio, *Robotic Rulemaking*, Brookings Institution, April 4, 2023, <https://www.brookings.edu/articles/robotic-rulemaking/>.
8. US Department of Transportation, “Refunds and Other Consumer Protections,” *Federal Register* 89, no. 82 (April 26, 2024): 32760–839, <https://www.federalregister.gov/documents/2024/04/26/2024-07177/refunds-and-other-consumer-protections>.
9. US Department of Transportation, “Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided,” *Federal Register* 86, no. 137 (July 21, 2021): 38420–33, <https://www.transportation.gov/individuals/aviation-consumer-protection/notice-proposed-rulemaking-nprm-refunding-fees-delayed>.
10. This provision of the rule implemented a 2016 statutory rulemaking requirement. The DOT had previously requested comment on some of the issues, informing and focusing the proposed rulemaking. This report summarizes key aspects of the rule.
11. US Department of Transportation, “Rulemaking Docket: Refund Baggage Fee for Delayed Bags,” Regulations.gov, <https://www.regulations.gov/docket/DOT-OST-2016-0208/document>.
12. US Department of Transportation, “Refunds and Other Consumer Protections.”
13. US Department of Transportation, “Airline Ticket Refunds and Consumer Protections,” Regulations.gov, <https://www.regulations.gov/docket/DOT-OST-2022-0089>.
14. The output did not change in response to variations of the prompt requesting a draft final rule, such as (1) “Draft a final rule responding to the comments on the proposed rule”; (2) “Using the proposing rule and the comments, draft a final rule”; and (3) “Use the proposed rule together with the comments to craft a final rule.”
15. Unikowsky, “In AI We Trust, Part II.”
16. These organizations included Business Travel Coalition, Consumer Action, the Consumer Federation of America, Consumer Reports, Ed Perkins on Travel, FlyersRights.org, the National Consumers League, PIRG, and Travel Fairness Now.
17. Steve Balla et al., *Mass, Computer-Generated, and Fraudulent Comments*, Administrative Conference of the United States, June 1, 2021, https://www.acus.gov/sites/default/files/documents/Final%20Report%20on%20Mass%2C%20Computer-Generated%2C%20and%20Fraudulent%20Comments%20%28Final%2006-01-2021%29_o.pdf.
18. Administrative Conference of the United States, *Managing Mass, Computer-Generated, and Falsely Attributed Comments*, June 17, 2021, <https://www.acus.gov/research-projects/managing-mass-computer-generated-and-falsely-attributed-comments>.

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