DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 259, 260, 262, and 399

[Docket No. DOT–OST–2022–0089 and DOT–OST–2016–0208]

RIN 2105–AF04

Refunds and Other Consumer Protections

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is requiring automatic refunds to consumers when a U.S. air carrier or a foreign air carrier cancels or makes a significant change to a scheduled flight to, from, or within the United States and the consumer is not offered or rejects alternative transportation and travel credits, vouchers, or other compensation. These automatic refunds must be provided promptly, *i.e.,* within 7 business days for credit card payments and within 20 calendar days for other forms of payment. To ensure consumers know when they are entitled to a refund, the Department is requiring carriers and ticket agents to inform consumers of their right to a refund if that is the case before making an offer for alternative transportation, travel credits, vouchers, or other compensation in lieu of refunds. Also, the Department is defining, for the first time, the terms ''significant change'' and ''cancellation'' to provide clarity and consistency to consumers with respect to their right to a refund. The Department is also requiring refunds to consumers for fees for ancillary services that passengers paid for but did not receive and for checked baggage fees if the bag is significantly delayed. For consumers who are unable to or advised not to travel as scheduled on flights to, from, or within the United States because of a serious communicable disease, the Department is requiring that carriers provide travel vouchers or credits that are transferrable and valid for at least 5 years from the date of issuance. Carriers may require consumers to provide documentary evidence demonstrating that they are unable to travel or have been advised not to travel to support their request for a travel voucher or credit, unless the Department of Health and Human Services (HHS) publishes guidance declaring that requiring such documentary evidence is not in the public interest.

DATES: This rule is effective June 25, 2024. Upon OMB approval of the information collection established in this final rule, the Department will publish a separate notice announcing the effective date of the collection.

FOR FURTHER INFORMATION CONTACT: Clereece Kroha 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), *clereece.kroha@dot.gov* or *blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

Executive Summary

(1) Purpose of the Regulatory Action

The purpose of this final rule is to ensure that consumers are treated fairly when they do not receive service that they paid for or are unable or advised not to travel because of a serious communicable disease. This rule responds to Executive Order 14036 on Promoting Competition in the American Economy (E.O. 14036), which was issued on July 9, 2021.[1] The Executive Order launched a whole-of-government approach to strengthen competition and requires the Department to take various actions to promote the interests of American consumers, workers, and businesses.

Section 5, paragraph(m)(i)(C) of E.O. 14036 directs the Department to submit a report to the White House Competition Council on the progress of its investigatory and enforcement activities to address the failure of airlines to provide timely refunds for flights cancelled as a result of the COVID–19 pandemic. The Department submitted its report to the White House in September 2021.[2] In that report, the Department explained that the lack of definition regarding cancelled or significantly changed flights had resulted in inconsistency among carriers on when passengers are entitled to a refund. The Department also noted that approximately 20% of the refund complaints received during the first 18 months of the COVID–19 pandemic involved instances in which passengers with non-refundable tickets chose not to travel given the COVID–19 pandemic and stated that it planned to address protections for these consumers in a rulemaking.[3]

The Executive Order in Section 5, paragraph(m)(i)(D) further directs the Department to publish a notice of proposed rulemaking requiring airlines to refund baggage fees when a passenger's luggage is substantially delayed and to refund other ancillary fees when passengers pay for a service that is not provided.

(2) Background

The FAA Extension, Safety, and Security Act of 2016 (FAA Extension Act or Act) requires the Department to issue a rule mandating that airlines provide refunds to passengers for any fee charged to transport a checked bag if the bag is delayed as specified in the Act.[4] On October 31, 2016, the Department published an advance notice of proposed rulemaking (ANPRM) seeking comment on various issues related to the requirement for airlines to refund checked baggage fees when they fail to deliver the bags in a timely manner as provided by the FAA Extension Act.[5] On July 21, 2021, the Department published a notice of proposed rulemaking titled ''Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided'' (Ancillary Fee Refund NPRM).[6] Among other things, the Ancillary Fee Refund NPRM proposed that U.S. and foreign air carriers refund the baggage fee paid for a checked bag when they fail to deliver the bag to the passenger within 12 hours of the arrival of a domestic flight and within 25 hours of the arrival of an international flight. This NPRM further proposed ways to measure the length of the baggage delivery delay for the purpose of determining whether a refund is due. In addition, the Ancillary Fee Refund NPRM also proposed to implement a provision in the FAA Reauthorization Act of 2018 regarding refunding fees for ancillary services that are paid for but not provided.[7]

The Department received a total of 29 comments on the Ancillary Fee Refund NPRM—three comments from consumer rights advocacy groups,[8] 16 comments from U.S. and foreign airlines and airline trade associations,[9] three

[1] Exec. Order No. 14036, 86 FR 36987 (Jul. 9, 2021).

[2] Report to the White House Competition Council: U.S. Department of Transportation's Investigatory, Enforcement and Other Activities Addressing Lack of Timely Airline Ticket Refunds Associated with the COVID–19 Pandemic (Refund Report) (September 9, 2021) at *https://www.transportation.gov/individuals/aviation-consumer-protection/dot-report-airline-ticket-refunds.*

[3] Refund Report at pages 11–12.

[4] See FAA Extension, Safety, and Security Act of 2016, Pub. L. 114–190, July 15, 2016; 49 U.S.C. 41704 note.

[5] 81 FR 75347 (October 31, 2016).

[6] 86 FR 38420 (July 21, 2021).

[7] 49 U.S.C. 42301 note prec.

[8] Business Travel Coalition et. al., FlyersRights.org, and Travelers United.

[9] Airlines for America, International Air Transport Association, Arab Air Carriers'

comments from ticket agent trade associations,[10] five comments from individual consumers, one comment from the Colorado Attorney General, and one comment from an ancillary service provider.[11] Overall, the commenters provided various suggestions on how the Department should interpret and implement the statutory mandate. Airlines asserted they would face challenges to comply with certain aspects of the proposed baggage delivery deadlines and other requirements, while consumers and ticket agents supported a more stringent standard under which a refund of baggage fees is due.

In a separate effort to enhance air travel consumer protection, on August 22, 2022, the Department published in the **Federal Register** a notice of proposed rulemaking titled ''Airline Ticket Refunds and Consumer Protections'' (Ticket Refund NPRM) to propose measures to enhance protections for consumers when airlines cancel or make significant changes to the scheduled itineraries to, from, or within the United States.[12] Currently, the Department's regulations in 14 CFR part 259 require that airlines provide prompt refunds ''when ticket refunds are due.'' Further, the Department's regulations in 14 CFR part 399 require that ticket agents ''make proper refunds promptly when service cannot be performed as contracted.'' The Department's Office of Aviation Consumer Protection has interpreted these requirements and its statutory authority to prohibit unfair and deceptive practices as mandating airlines and ticket agents provide prompt refunds to passengers of both the airfare and fees for prepaid ancillary service fees if a flight is cancelled or significantly changed and the passenger does not continue his or her travel. The Ticket Refund NPRM proposed to codify the interpretation that when carriers cancel flights or make significant changes to flight itineraries and the contracted service is not provided, ticket refunds are due if consumers do not accept the alternative transportation offered by carriers or ticket agents. It also proposed to define ''significant change of flight itinerary'' and ''cancelled flight'' to protect consumers and ensure consistency among carries and ticket agents regarding when passengers are entitled to refunds.

The Ticket Refund NPRM also proposed to require airlines and ticket agents to issue non-expiring travel credits or vouchers, and under certain circumstances, refunds in lieu of the travel credits or vouchers, to consumers when they: (1) are restricted or prohibited from traveling by a governmental entity due to a serious communicable disease (*e.g.,* as a result of a stay at home order, entry restriction, or border closure); (2) are advised by a medical professional or determine consistent with public health guidance issued by the Centers for Disease Control and Prevention (CDC), comparable agencies in other countries, or the World Health Organization (WHO) not to travel during a public health emergency to protect themselves from a serious communicable disease; or (3) are advised by a medical professional or determine consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel, irrespective of any declaration of a public health emergency, because they have or may have contracted a serious communicable disease and their condition would pose a direct threat to the health of others. Under the Department's current regulations, there is no requirement for an airline or a ticket agent to issue a refund or travel credit to a passenger holding a non-refundable ticket when the airline operated the flight and the passenger does not travel, regardless of the reason that the passenger does not travel. The Ticket Refund NPRM's proposals were intended to protect consumers' financial interests when the disruptions to their travel plans were caused by public health concerns beyond their control, and also to promote safe and adequate air transportation by incentivizing individuals to postpone travel when they are advised by a medical professional or determine, consistent with public health guidance, not to travel to protect themselves from a serious communicable disease or because they have or may have a serious communicable disease that would pose a threat to others.

Between August 2022 and January 2023, the Aviation Consumer Protection Advisory Committee (ACPAC) [13] devoted substantial time in three separate meetings to discuss the Ticket Refund NPRM. At an all-day public meeting on August 22, 2022, the ACPAC heard the perspectives of consumer advocates, airline and ticket agent representatives, and members of the public. Then, on December 9, 2022, the ACPAC identified and deliberated on potential recommendations on the Ticket Refund NPRM. The ACPAC voted on these recommendations at a meeting held on January 12, 2023.

The Department initially provided a comment period of 90 days on the Ticket Refund NPRM (*i.e.,* until November 21, 2022). In September 2022, Airlines for America (A4A), the International Air Transport Association (IATA), the Travel Technology Association (Travel Tech), the American Society of Travel Advisors (ASTA), and the Travel Management Coalition requested an extension of the comment period.[14] The Department extended the comment period to December 16, 2022. In extending the comment period for an additional 25 days, the Department acknowledged that the NPRM raised important issues that required in-depth analysis and consideration by the stakeholders. The Department also noted that the ACPAC was expected to meet on December 9 to deliberate on what, if any, recommendations it would make to the Department regarding this rulemaking and its belief that extending the comment period of the NPRM for one week after the ACPAC meeting would provide the public an opportunity to consider and provide comment on any recommendations of the ACPAC.

On December 16, 2022, A4A and IATA filed a petition to request a public hearing on the NPRM pursuant to the Department's regulation on discretionary rulemaking relating to unfair and deceptive practices at 14 CFR 399.75. The Department granted the request and conducted a public hearing on March 21, 2023, to afford A4A, IATA, and other stakeholders an opportunity to present certain factual

Association, Association of Asian Pacific Airlines, National Air Carrier Association, Regional Airline Association, Allegiant Air, Air New Zealand, Condor Flugdienst GmbH, COPA Airlines, Emirates, Kuwait Airways, Qatar Airways, Spirit Airlines, United Airlines, and Virgin Atlantic.

[10] American Society of Travel Advisors and Travel Technology Association (Travel Technology Association submitted two comments).

[11] Panasonic Avionics Corporation.

[12] 87 FR 51550 (August 22, 2022). Prior to publication in the **Federal Register**, on August 3, 2022, the NPRM was publicly available at *https://www.transportation.gov/airconsumer/latest-news* and at *https://www.regulations.gov,* docket number DOT–OST–2022–0089.

[13] The ACPAC is a statutorily required Federal advisory committee that evaluates current aviation consumer protection programs. It also provides recommendations to the Secretary for improving and establishing additional consumer protection programs that may be needed. Information about ACPAC is available at *https://www.regulations.gov/docket/DOT-OST-2018-0190.*

[14] In the request for extension of comment period by the airline representatives, they included various questions arising from the NPRM for which they sought clarifications from the Department. The Department responded to these questions and placed the responses in the docket for this rulemaking at DOT–OST–2022–0089.

issues that they asserted are pertinent to the Department's decision on the rulemaking. At the hearing, the Department heard from various stakeholders and subject matter experts on three issues regarding the Ticket Refund NPRM: (1) whether consumers can make reasonable self-determinations regarding contracting a serious communicable disease; (2) whether the documentation requirement (medical attestation and/or public health guidance) is sufficient to prevent fraud; and (3) how to determine whether a downgrade of amenities or travel experiences qualifies as a ''significant change of flight itinerary.'' The Department reopened the comment period for seven days after the hearing to allow the public the opportunity to provide comments on issues discussed at the hearing.

The Department received over 5,300 comments on the Ticket Refund NPRM from consumer rights advocacy groups, airlines and airline trade associations, ticket agents and ticket agent trade associations, academic researchers, State attorneys general, and individual consumers. Of the 5,300 comments, approximately 4,600 comments are from individual consumers or consumer organizations, while approximately 24 comments are from airline representatives and 650 comments are from those representing ticket agents. Almost all consumer commenters expressed strong support of the Department's proposals to enhance aviation consumer protection. The industry commenters raised various concerns about the NPRM proposals, supporting some while urging the Department to reconsider or revise others.

The Department has carefully reviewed and considered the comments on the Ancillary Fee Refund NPRM and the Ticket Refund NPRM received in the rulemaking dockets, as well as comments received during the March 2023 hearing and the recommendations of the ACPAC. The Department is now issuing a combined final rule for the Ticket Refunds NPRM and the Ancillary Fee Refund NPRM to significantly strengthen protections for consumers seeking refunds of: (1) airline tickets when an airline cancels or significantly changes a flight, and the consumer rejects or is not offered alternative transportation; (2) checked bag fees when bags are significantly delayed; and (3) ancillary services fees when consumers pay for services, such as Wi-Fi, that are not provided. In addition, this final rule provides protections for consumers who are unable or advised not to travel because of a serious communicable disease by requiring that carriers provide these consumers travel vouchers or credits that are transferrable and valid for at least 5 years from the date of issuance.

(3) Summary of Major Provisions

Subject	Final rule
Definition of Cancelled Flight	Amend 14 CFR part 399 and add 14 CFR part 260 to define cancelled flight as a flight that was published in a carrier's Computer Reservation System (CRS) at the time of the ticket sale but not operated by the carrier.
Definition of Significant Change of Flight Itinerary.	Amend 14 CFR part 399 and add 14 CFR part 260 to define significant change of flight itinerary as a change to the itinerary made by a carrier where: (1) the passenger is scheduled to depart from the origination airport three hours or more (for domestic itineraries) or six hours or more (for international itineraries) earlier than the original scheduled departure time; (2) the passenger is scheduled to arrive at the destination airport three hours or more (for domestic itineraries) or six hours or more (for international itineraries) later than the original scheduled arrival time; (3) the passenger is scheduled to depart from a different origination airport or arrive at a different destination airport; (4) the passenger is scheduled to travel on an itinerary with more connection points than that of the original itinerary; (5) the passenger is downgraded to a lower class of service; (6) the passenger with a disability is scheduled to travel through one or more connecting airports that differ from the original itinerary; or (7) the passenger with a disability is scheduled to travel on a substitute aircraft that results in one or more accessibility features needed by the passenger being unavailable.
Entity Responsible for Refunding Airline Tickets	Add 14 CFR part 260 to require U.S. and foreign air carriers that are the merchants of record[15] of the ticket transactions to provide prompt refunds when they are due, including for codeshare and interline itineraries. Amend 14 CFR part 399 to require ticket agents that are merchants of record of the airline ticket transactions to provide prompt ticket refunds when they are due.[16]
Notification of Right to Refund	Amend 14 CFR parts 259 and 399 to require U.S. and foreign airlines and ticket agents inform consumers that they are entitled to a refund of the ticket if that is the case before making an offer for alternative transportation or travel credits, vouchers, or other compensation in lieu of refunds. Add 14 CFR part 260 to require U.S. and foreign airlines to provide prompt notifications to consumers affected by a cancelled or significantly changed flight of their right to a refund of the ticket and ancillary fees due to airline-initiated cancellations or significant changes, any offer of alternative transportation or travel credit, vouchers, or other compensation in lieu of a refund, and airline policies on refunds and rebooking when consumers do not respond to carriers' offers of alternative transportation or travel credit, vouchers, or other compensation in lieu of a refund.
''Prompt'' Ticket Refund	Amend 14 CFR parts 259 and 399 and add 14 CFR part 260 to specify ''prompt'' ticket refund means: (1) Airlines and ticket agents provide refunds for tickets purchased with credit cards within 7 business days of refunds becoming due; and (2) Airlines and ticket agents refund tickets purchased with payments other than credit cards within 20 calendar days of refunds becoming due. Define ''business days'' to mean Monday through Friday excluding Federal holidays in the United States.

Subject	Final rule
Automatic Refunds of Airline Tickets	Add 14 CFR part 260 to require carriers who are the merchants of record to provide automatic ticket refunds when: (1) a carrier cancels a flight and does not offer alternative transportation or travel credits, vouchers, or other compensation for the canceled flight in lieu of a refund; (2) a carrier significantly changes a flight and the consumer rejects the significantly changed flight itinerary and the carrier does not offer alternative transportation or offer travel credits, vouchers, or other compensation in lieu of a refund; (3) a consumer rejects the significantly changed flight or alternative transportation offered as well as travel credits, vouchers, or other compensation offered for a canceled flight or a significantly changed flight itinerary in lieu of a refund; (4) a carrier offers a significantly changed flight or alternative transportation for a significantly changed flight itinerary or a canceled flight, but the consumer does not respond to the transportation offered on or before a response deadline set by the carrier and does not accept any offer of travel credits, vouchers, or other compensation, and the carrier's policy is to treat a lack of a response as a rejection of the alternative transportation offered; (5) a carrier does not offer a significantly changed flight or alternative transportation for a significantly changed flight itinerary or a canceled flight but offers travel credits, vouchers, or other compensation in lieu of a refund, and the consumer does not respond to the alternative compensation offered on or before a reasonable response date in which case the lack of a response is deemed a rejection; or (6) a carrier offers a significantly changed flight or alternative transportation for a significantly changed flight itinerary or a canceled flight and offers travel credits, vouchers, or other compensation in lieu of a refund and the carrier has not set a deadline to respond, the consumer does not respond to the alternatives offered, and the consumer does not take the flight. Carriers may set a reasonable deadline for a consumer to accept or reject a significant change to a flight or an offer of alternative transportation following a significant change or a cancellation. Carriers that set a deadline must establish, publish, and adhere to a policy regarding whether consumers not responding to a significant change or an offer of alternative transportation following a significant change or cancellation before the carrier's deadline would: (1) have their reservations cancelled and receive a refund; or (2) maintain their reservations and forfeit the right to a refund.
Refunding Fees for Significantly Delayed Bags	Add 14 CFR part 260 to require U.S. and foreign airlines that are merchants of record for the checked bag fee or if a ticket agent is the merchant of record for the checked bag fee, the carrier that operated the last flight segment to provide automatic refunds of checked baggage fees when they fail to deliver checked bags in a timely manner: (1) For domestic itineraries, a refund of baggage fee is due when an airline fails to deliver the checked bag within 12 hours of the consumer's flight arriving at the gate and the consumer has filed a Mishandled Baggage Report. (2) For international itineraries where the flight duration of the segment between the United States and a point in a foreign country is 12 hours or less, a refund of baggage fee is due when the airline fails to deliver the checked bag within 15 hours of the consumer's flight arriving at the gate and the consumer has filed a Mishandled Baggage Report. (3) For international itineraries where the flight duration of the segment between the United States and a point in a foreign country is over 12 hours, a refund of baggage fee is due when the airline fails to deliver the checked bag within 30 hours of the consumer's flight arriving at the gate and the consumer has filed a Mishandled Baggage Report.
Refunding Ancillary Services Fees for Services Not Provided.	Add 14 CFR part 260 to require U.S. and foreign airlines that are merchants of record for the ancillary service or if a ticket agent is the merchant of record for the ancillary service, the carrier that failed to provide the ancillary service to provide automatic refunds of ancillary service fees when a passenger pays for an ancillary service that the airlines fail to provide.
Providing Travel Credits or Vouchers to Consumers Affected by a Serious Communicable Disease.	Add 14 CFR part 262 to require U.S. and foreign airlines that are merchants of record for the ticket transaction or if a ticket agent is the merchant of record, the carrier that operated the flight to issue travel credits or vouchers, valid for at least five years from the date of issuance and transferrable, when: (1) a consumer is advised by a licensed treating medical professional not to travel during a public health emergency to protect himself/herself from a serious communicable disease, the consumer purchased the airline ticket before a public health emergency was declared, and the consumer is scheduled to travel during the public health emergency to or from the area affected by the public health emergency; (2) a consumer is prohibited from travel or is required to quarantine for a substantial portion of the trip by a governmental entity in relation to a serious communicable disease and the consumer purchased the airline ticket before a public health emergency for that area was declared or, if there is no declaration of a public health emergency, before the government prohibition or restriction for travel to or from that area is imposed; or (3) a consumer is advised by a licensed treating medical professional not to travel, irrespective of a public health emergency, because the consumer has or is likely to have contracted a serious communicable disease and would pose a direct threat to the health of others.
Documentation Requirement for Receiving Credits or Vouchers.	Add 14 CFR part 262 to allow U.S. and foreign airlines to require consumers requesting a credit or voucher for a non-refundable ticket when the flight is still scheduled to be operated without significant change to provide, as appropriate:

Subject	Final rule
	(1) the applicable government order or other document relating to a serious communicable disease demonstrating how the passenger is prohibited from travel or is required to quarantine at the destination for a substantial portion of the trip; or (2) a written statement from a licensed treating medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge concerning a serious communicable disease such as guidance issued by CDC or WHO and the passenger's health condition, that the passenger should not travel to protect the passenger from a serious communicable disease or the passenger would pose a direct threat to the health of others if the passenger traveled. This medical statement may only be required in the absence of HHS guidance declaring that requiring such documentation is not in the public interest.
Service Fees by Ticket Agents for Issuing Tickets.	Amend 14 CFR part 399 to allow ticket agents to retain the service fee charged when issuing the original ticket if the service provided is for more than processing payment for a flight that the consumer found and so long as the fee is on a per-passenger basis and the existence, amount, and the non-refundable nature of the fee if this is the case, is clearly and prominently disclosed to consumers at the time they purchase the airfare.
Processing Fees for Issuing Refunds, Credits, or Vouchers.	*Retaining Processing Fee for Required Refunds:* Add 14 CFR part 260 to prohibit carriers from retaining a processing fee for issuing required refunds when the carrier cancels or significantly changes a flight. *Processing Fee for Issuing Required Credits or Vouchers:* Add 14 CFR part 262 to allow airlines to retain a processing fee from the value of a required travel credit or voucher provided to a passenger due to a serious communicable disease. Airlines (not ticket agents) are responsible for issuing travel credits or vouchers to eligible consumers whose travel is affected by a serious communicable disease.

(4) Costs and Benefits

The final rule will reduce inconsistencies in granting consumers airline ticket refunds that stem from the lack of universal definitions for cancellation and significant itinerary change. As such, the rule is expected to reduce the resources consumers need to expend to obtain the refunds they are owed. Consumer time savings are estimated to be about $3.8 million annually. The rule also implements 2016 and 2018 statutory mandates pertaining to refunds of fees for delayed baggage and ancillary services that a consumer does not receive. The expected economic impacts of the fee refund provisions consist of $16.0 million annually in increased refunds to consumers and $7.1 million annually in administrative costs for the airlines.

The rule also requires airlines to provide five-year transferable travel credits or vouchers to passengers who cancel travel for reasons related to a serious communicable disease. Expected societal benefits, which were not quantified, are from infected air passengers who cancel air travel due the option of receiving the five-year travel credit and the reduction in exposure of uninfected passengers to serious contagious disease. Estimated annual costs range from $3.4 million to $482.0 million.

[15] Merchants of records are the entities shown in the consumer's financial charge statements such as debit or credit card charge statements.

[16] Comments from ticket agents assert that ticket agents appear as merchants of records in less than 10 percent of transactions addressed in this final rule.

Statutory Authority

The Department is issuing this rulemaking under its authority to prohibit unfair or deceptive practices or unfair methods of competition in air transportation or the sale of air transportation pursuant to 49 U.S.C. 41712, its authority to require safe and adequate interstate transportation pursuant to 49 U.S.C. 41702, its authority to mandate that airlines refund checked baggage fees to passengers when they fail to deliver checked bags in a timely manner pursuant to 49 U.S.C. 41704 note, and its authority to mandate 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 pursuant to 49 U.S.C. 42301 note prec.

Under the Department's procedural rule regarding rulemakings relating to unfair and deceptive practices, 14 CFR 399.75, the Department is required to provide its reasoning for concluding that a certain practice is unfair or deceptive to consumers, as defined in 14 CFR 399.79, when issuing aviation consumer protection rulemakings that are not specifically required by statute and are based on the Department's general authority to prohibit unfair or deceptive practices under 49 U.S.C. 41712. 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.[17] Proof of intent is not necessary to establish unfairness.[18] The elements of unfairness are further elaborated by the Department in its guidance document. [19]

The Department has determined that it is an unfair business practice in violation of section 41712 for airlines or ticket agents to refuse to refund passengers when an airline cancels or significantly changes a flight and passengers do not accept the offered alternative transportation or compensation (*e.g.,* airline credits or vouchers) in lieu of a refund, regardless of whether the passenger purchased a non-refundable ticket. A practice by airlines or ticket agents of not providing refunds in such situations substantially harms consumers because consumers paid money for services that were not provided when the airline cancelled or significantly changed the flight. This harm is not reasonably avoidable by consumers as cancellations or significant changes to their flights are outside of their control. A reasonable consumer would not expect that he or she must pay more to purchase a refundable ticket to be able to recoup the ticket price when the airline fails to provide the service through no action or fault of the consumer. Also, the tangible and significant harm to consumers of not receiving a refund is not outweighed by benefits to consumers or competition. The Department acknowledges that consumers may benefit from the availability of lower cost nonrefundable tickets but does not expect that this requirement would result in airlines no longer offering

[17] 14 CFR 399.79(b)(1).

[18] 14 CFR 399.79(c).

[19] 87 FR 52677 (August 28, 2022).

nonrefundable tickets as the term nonrefundable has generally been understood not to apply in cases where airlines cancel or make a significant change in the service provided.

For airlines, this prohibited unfair practice includes a carrier's retention of a fee to process a required refund or of a booking fee (*i.e.,* a fee for processing payment for a flight that the consumer found) because it is the carrier's flight that is significantly changed or canceled; the Department is deferring decision on whether the same prohibition should apply to ticket agents because ticket agents do not operate the flight. Further, the Department has determined that it is an unfair and deceptive practice in violation of section 41712 for airlines and ticket agents to not inform consumers that they are entitled to a refund of the ticket and ancillary fees if that is the case before making an offer for travel credits, vouchers, or other compensation in lieu of refunds. Also, it is an unfair and deceptive practice to not provide proper disclosures and notifications to consumers with respect to: the limitations, restrictions, and conditions on any travel credits, vouchers, or other compensation offered in lieu of refunds; consumers' rights to automatic refunds under certain circumstances; and any airline-imposed requirements on accepting or rejecting alternative transportation. Additionally, to ensure that consumers who purchased their airline tickets from a ticket agent receive refunds that are due in a timely manner, the Department has determined that it is an unfair practice for airlines to not confirm a consumer's refund eligibility in a timely manner. The Department's analysis on why these actions by airlines or ticket agents violate section 41712 will be provided in each section that discusses these matters in substance.

Similarly, the Department considers it to be an unfair practice for an airline to not provide travel credits or vouchers when (1) a consumer is advised by a licensed treating medical professional not to travel to protect himself/herself from a serious communicable disease and the consumer purchased the airline ticket before a public health emergency affecting the origination or destination of the consumer's itinerary was declared and is scheduled to travel to or from that area during the public health emergency; (2) a consumer is prohibited from traveling or is required to quarantine for a substantial portion of the trip by a governmental entity due to a serious communicable disease (*e.g.,* as a result of a stay-at-home order, border closure) affecting the origination or destination of the consumer's itinerary and the consumer purchased the airline ticket before a public health emergency was declared or, if there is no declaration of a public health emergency, before the government prohibition or restriction for travel to the consumer's destination or from the consumer's origination; or (3) a consumer is advised by a licensed treating medical professional consistent with public health guidance (*e.g.,* CDC guidance) not to travel to protect others from a serious communicable disease. Consumers are substantially harmed when they pay for a service that they are unable to use because they were directed or advised by governmental entities or a medical professional not to travel to protect themselves or others from a serious communicable disease, and the airline does not provide a travel credit or voucher. More specifically, the loss of the value of their tickets is a substantial harm that is not reasonably avoidable when consumers purchased their tickets before the declaration of a public health emergency and the only way to avoid the loss of the ticket value is to disregard a medical professional's advice not to travel and risk inflicting serious health consequences on themselves. This loss is also not reasonably avoidable when consumers purchased their tickets before the declaration of a public health emergency that results in the issuance of communicable disease-related travel prohibition or restriction or, if there is no declaration of a public health emergency, before the government prohibition or restriction for travel due to a serious communicable disease and the only way to avoid the loss of the ticket value is to disregard direction from governmental entities. Finally, this loss of the value of their tickets is not reasonably avoidable when the only way to avoid the loss of the ticket value is to disregard medical professionals' advice not to travel and risk inflicting serious health consequences on others. The tangible and significant harm to consumers of losing the value of their ticket is not outweighed by potential benefits to consumers or competition because the requirement to provide travel credits or vouchers would have minimal, if any, impact on nonrefundable fares. A public health emergency affecting travel to, within, and from the United States in a large scale is infrequent, and this requirement applies only to consumers who have been advised or directed not to travel by a medical professional or governmental entity in relation to a serious communicable disease.

In addition, the Department considers it to be an unfair practice for airlines to not provide travel credits or vouchers to consumers who are advised by a medical professional not to travel because they have or are likely to have contracted a serious communicable disease, *regardless of whether there is a public health emergency.* Infected passengers who are unwilling to incur a financial loss for the airline tickets may choose to travel despite the infection, which is likely to cause substantial harm to other passengers on the flight by significantly increasing the likelihood of these passengers, especially those seated within close proximity of the infected passenger, being infected by the communicable disease. Such harm cannot be reasonably avoided by these passengers because they are assigned to sit close to the infected passenger and may have no knowledge about the infection by that passenger. The harm to these passengers' health is not outweighed by any benefits to consumers or competition. The Department believes there would not be any benefit to consumers or competition among airlines in infected or potentially infected travelers possibly choosing to travel by air and infecting other passengers.

Further, the Department relies on its authority in 49 U.S.C. 41702 to require U.S. air carriers to ''provide safe and adequate interstate air transportation'' to establish the requirement that an airline provide travel credits or vouchers to consumers who are unable or advised not travel due to a serious communicable disease. This final rule promotes safe and adequate air transportation by reducing incentives to travel for individuals who have been advised against traveling because they have or are likely to have contracted a serious communicable disease or individuals who are particularly vulnerable to a serious communicable disease by allowing them to retain the value of their tickets in travel credits and postpone travel.

The Department has received comments from the airlines, ticket agents, and their trade associations disputing the Department's authority to promulgate the regulation relating to providing travel credits or vouchers to passengers whose travel is impacted by a serious communicable disease. Those comments and the Department's responses are provided in Section IV.1 of this rule preamble.

The requirements in this final rule regarding airlines refunding baggage fees when significantly delayed and refunding ancillary service fees when

the paid for services are not provided are specifically required by statute. The requirement for airlines to refund fees for checked bags that are significantly delayed is issued pursuant to the Department's authority in 49 U.S.C. 41704 note, which was enacted as part of the FAA Extension Act (Pub. L. 114–90) and 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.[20] The requirement to refund ancillary fees for air travel related services that passengers paid for but did not receive is issued pursuant to the Department's authority in 49 U.S.C. 42301 note prec., which was enacted as part of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) and 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.[21]

Comments and Responses

I. Refunding Airline Tickets for Cancelled or Significantly Changed Flights

1. Covered Entities, Flights, and Consumers

The NPRM: The existing requirement under 14 CFR 259.5 for carriers to adopt and adhere to a customer service plan, which includes a commitment to provide prompt ticket refunds to passengers when a refund is due, applies to all scheduled flights of a certificated or commuter air carrier [22] if the carrier operates passenger service using any aircraft originally designed to have a passenger capacity of 30 or more seats, and to all scheduled flights to and from the United States of a foreign carrier if the carrier operates passenger service to and from the United States using any aircraft originally designed to have a passenger capacity of 30 or more seats. The Ticket Refund NPRM proposed to expand the applicability of the requirement to provide prompt refunds to a certificated or commuter air carrier that operates scheduled passenger service to, within, and from the United States using aircraft *of any size,* and to a foreign carrier that operates scheduled passenger service to or from the United States using aircraft *of any size*. The Department sought comments on whether the proposed expansion of the regulation in section 259.5 to include smaller carriers is reasonable, and what obstacles, if any, these smaller carriers may encounter to compliance.

As for ticket agents,[23] the Department's rule in 14 CFR 399.80(l) requires that ticket agents of any size ''make proper refunds promptly when service cannot be performed as contracted.'' The Ticket Refund NPRM proposed that, like the existing rule on ticket agents providing refunds, the proposed refund requirements would apply to ticket agents of any size but specified that it would only apply to ticket agents that sell directly to consumers for scheduled passenger service to, from, or within the United States.

In the NPRM, the Department also considered whether the applicability of DOT's proposed refund requirements should be limited to sellers of air transportation located in the United States and whether the beneficiaries should be limited to aviation consumers who are residents of the United States based on its review of Regulation Z of the Consumer Financial Protection Bureau (CFPB), as codified in 12 CFR part 1026, and the airline refund regulation in 14 CFR part 374, which implements the requirement of Regulation Z with respect to airlines. The Department recognized that the regulated entities covered by Regulation Z for airline ticket transactions with credit cards may be limited to sellers located in the United States and that the protection afforded by Regulation Z may be limited to consumers who are residents of the United States with credit card accounts located in the United States. The Department also noted its broad and independent authority to prohibit unfair or deceptive practices in air transportation or sale of air transportation,[24] which enables it to cover flights to, within, and from the United States, irrespective of whether the consumer holding reservations on those flights is a resident of the United States, whether the seller of the airline ticket is located in the United States, or whether the transaction takes place in the United States. The Department asked for comment on the applicability of the proposed requirement.

The Department also sought comments on applicability of the rule to certain flight segments between two foreign points if they are on the same itinerary or ticket with flights to, from, or within the United States. If adopting the same itinerary/ticket standard, the Ticket Refund NPRM asked whether the refund requirement should only apply when the entire itinerary/ticket is sold under a U.S. carrier's code or whether it should also apply to itineraries/tickets that combine flight segments sold under a U.S. carrier's code and flight segments sold under a foreign carrier code pursuant to an interline agreements.

Comments Received: The Department received one comment from an individual stating that including small carriers operating flights to, from, or within the United States solely using aircraft originally designed to have a passenger capacity of fewer than 30 seats in these regulatory proposals would place a considerable burden on these carriers, potentially drive many of the smaller carriers that provide access to more remote and distant parts of the country out of business. The Department received no comments on the proposed scope of covered ticket agents in the Ticket Refund NPRM, which incorporates the current scope of ticket agents refund rule in 14 CFR 399.80(l), and the definition for ''ticket agent'' in 49 U.S.C. 40102(a)(45).

For the covered tickets/itineraries/flights under the Ticket Refund NPRM, IATA and several foreign carriers raised two concerns. First, they suggested that applying the rule to all scheduled flights to, from, or within the United States is incompatible with regulations from other jurisdictions such as the European Union and Canada. They further argued that the rule should only apply to flight segments departing a U.S. airport. Air Canada argued that the scope of the refund regulation, as proposed, would cause confusion as refund rules in other jurisdictions typically apply to itineraries departing that jurisdiction to a foreign destination. Air Canada contended that the Department's proposal represents a misalignment with Canada's Air Passenger Protection Regulations (APPR) when both sets of rules apply to the same itinerary. Air Canada provides an example that in the

[20] See Section 2305 of the FAA Extension, Safety, and Security Act of 2016, Public Law 114–190 (July 15, 2016)).

[21] See Section 421 of the FAA Reauthorization Act of 2018, Public Law 115–254 (October 5, 2018).

[22] A certificated air carrier is an air carrier holding a certificate issued under 49 U.S.C. 41102. A commuter air carrier is an air carrier as established by 14 CFR 298.3(b) that carries passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule, using small aircraft—*i.e.,* aircraft originally designed with the capacity for up to 60 passenger seats. See 14 CFR 298.2. Commuter air carriers, along with air taxi operators, operating under 14 CFR part 298 are exempted from the certification requirements of 49 U.S.C. 41102.

[23] A ''ticket agent'' is defined in 49 U.S.C. 40102(a)(45) to mean a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation.

[24] Air transportation means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft. See 49 U.S.C. 40102 (a)(5).

case of uncontrollable event such as winter storm causing a cancellation, the APPR only requires a carrier to refund if the carrier is not able to rebook the passenger within 48 hours from the departure time, whereas the Department's proposed rule would require a refund offer upon flight cancellation. Second, IATA and several foreign carriers objected to applying the rule to certain flight segments between two foreign points, raising extraterritoriality concerns. Air Canada argued that the Department's attempt to apply its refund rule extraterritorially would violate the longstanding principles of comity and reciprocity of international aviation agreements and the bilateral air transport agreement [25] between the United States and Canada.

Consumers and their representatives are largely in support of a broad scope of the Ticket Refund NPRM. Travelers United stated that the European regulation, EU261, applies to the scheduled flights of all carriers departing the European Union to the United States but only applies to the scheduled flights of EU carriers departing the United States to the European Union. Travelers United pointed out that, as such, a consumer traveling from the United States to the European Union on a flight by a U.S. carrier, for example, would not be protected by EU 261. Some individual consumer commenters argued that the Department's refund rule should cover flights between two foreign points in the same itinerary to streamline the refund process for international travel.

Ticket agents also commented on the scope of itineraries/tickets covered by the Ticket Refund NPRM. Travel Management Coalition suggested that the refund rule should apply only to ticket transactions with a point of sale in the United States. Travel Technology Association (Travel Tech) echoed the ''point of sale'' approach and added that this approach is a bright-line and widely used industry standard as the Global Distribution Systems (GDSs) denote the point of sale on all their ticket transactions. Travel Tech suggested that this approach would make the implementation of any final rules easier for the regulated entities.

U.S. Travel Association stated that the refund requirement should be limited to flights to, from, or within the United States purchased by consumers residing in the United States. It argued that this approach is consistent with CFPB's interpretation of Regulation Z and the Department's proposed rule on Transparency of Ancillary Fees, which proposes that the consumer protection measures relating to disclosure apply to websites ''marketed to United States customers'' and ''tickets purchased by consumers in the United States.''

DOT Response: The Department has determined that it is appropriate to include within the scope of covered carriers with respect to the ticket refund requirements U.S. and foreign air carriers operating scheduled flights to, from, or within the United States solely using aircraft originally designed to have a passenger capacity of fewer than 30 seats. The Department notes that the new ticket refund regulations in part 260, which provide clarity on various issues related to refunds, do not add new burdens to these carriers as they are already covered under 14 CFR part 374 with respect to refunds for credit card purchases. The applicability provision in 14 CFR 374.2 states that ''this part is applicable to all air carriers and foreign air carriers engaging in consumer credit transactions.'' Also, the Department's Office of Aviation Consumer Protection has for many years interpreted 49 U.S.C. 41712 as requiring all carriers to provide prompt refunds when due irrespective of the form of ticket purchase payment.

The Department has carefully considered airlines' argument that the proposed scope of covered flights for airline ticket refunds (*i.e.,* scheduled flights to, from, or within the United States) would potentially result in some flights being subject to refund rules of multiple jurisdictions, causing complexity to carriers' compliance and potential consumer confusion. The Department is not convinced that any potential compliance complexity or consumer confusion arising from these situations cannot be addressed by carriers offering all the accommodations required by the applicable regulations so consumers can choose the option that best suits their needs. For instance, the Department does not see any conflict of law in the example provided by Air Canada. APPR, which applies to all flights to, from, and within Canada,[26] requires airlines to provide a passenger affected by a cancellation or a lengthy delay due to a situation outside the airline's control with a confirmed reservation on the next available flight that is operated by the carrier or a partner airline, leaving within 48 hours of the departure time indicated on the passenger's original ticket; if the airline cannot provide a confirmed reservation within this 48-hour period, it will be required to provide, at the passenger's choice, a refund or rebooking. Both the APPR requirement and the Department's refund requirement would apply to a flight between the United States and Canada. Under the regulation finalized here, the carrier would be required to refund the affected passenger if the flight is cancelled or delayed for more than six hours and the consumer rejects the alternative offered or an alternative is not offered. In this situation, the carrier would be expected to offer the passenger the choice of a refund and a choice of rebooking on a flight departing within 48 hours if such flight exists. Providing consumers such choices would satisfy the requirements of both U.S. and Canadian regulations.

The Department notes that airlines operating international air transportation are subject to rules from multiple jurisdictions in many other areas, such as oversales and disability. The Department does not believe there is a conflict of law in ticket refunds which makes it impossible for carriers to comply with laws of multiple jurisdictions. The Department expects that U.S. and foreign air carriers operating scheduled flights to, from, and within the United States will fully comply with the refund regulations to which they are subject, consistent with the bilateral agreements between the United States and other countries. Such compliance will result in consumers benefiting from having more choices when their flights are canceled or significantly changed by airlines.

We have also considered the comments on the scope of ''air transportation'' for tickets that include flight segments between two foreign points. The Department has determined that the refund requirements would cover these flight segments that are on a single ticket/itinerary to or from the United States without a break in the journey. Congress has authorized the Department to prevent unfair or deceptive practices or unfair methods of competition in ''air transportation,'' 49 U.S.C. 41712(a), and ''air transportation'' is defined to include ''foreign air transportation.'' [27] The

[25] As support for its position, Air Canada references Article 12.1 of the Air Transport Agreement Between the Government of Canada and the Government of the United States, which states ''While entering, within, or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.''

[26] *https://otc-cta.gc.ca/eng/publication/application-air-passenger-protection-regulations-a-guide.*

[27] Foreign air transportation ''means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.'' See 49 U.S.C. 40102(a)(23).

Department has concluded that ''foreign air transportation'' includes journeys to or from the United States with brief and incidental stopover(s) at a foreign point without breaking the journey. We believe this approach fully addresses the extraterritoriality concerns raised by some carriers and is consistent with the Department's general approach adopted in this final rule of considering domestic segments of international itineraries as a part of the international journey. While the Department is not providing an exhaustive list of what a stopover that would break the journey is, it is setting an outer limit by treating any deliberate interruption of a journey at a point between the origin and destination that is scheduled to exceed 24 hours on an international itinerary to be a break in the journey.[28]

Besides this bright-line outer limit, to determine whether a stopover under 24 hours at a foreign point breaks the journey between a point in the United States and a point in a foreign country, the Department would view factors including whether the whole itinerary was purchased in one single transaction, 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.

The Department has also determined that it is appropriate to apply the refund and other consumer protection regulations finalized here to all tickets/itineraries to, from, or within the United States regardless of the point of sales or the residency of the consumers. While recognizing that Regulation Z applies only to credit card transactions that take place in the United States involving residents of the United States, the Department's authority to prohibit unfair or deceptive practices in air transportation under 49 U.S.C. 41712 goes beyond this scope with respect to the type and location of the transactions and the residency of consumers. The Department has made the policy decision to exercise its broad authority under section 41712 to ensure that its ticket and ancillary service fee refunds requirements and the protections for passengers affected by a serious communicable disease provide the maximum protections to consumers as permitted by the law. The Department also believes that this broad scope would simplify and streamline the refund process by the regulated entities and reduce consumer frustration and confusion.

2. Need for a Rulemaking

The NPRM: The NPRM is intended to prevent unfair or deceptive practices by airlines and ticket agents when airlines cancel or make significant changes to flights. Under the Department's existing regulations, airlines have an obligation to provide prompt refunds when refunds are due, but a specific reference to refunding airfare due to a canceled or significantly changed flight is not codified in the regulations. Also, today, airlines are permitted to adopt their own standards for ''cancellation'' and ''significant change,'' which has resulted in lack of consistency from airline to airline and passenger confusion about their rights, particularly during periods of significant air travel disruptions such as the COVID–19 pandemic when refund requests overwhelmed the industry. As noted in the NPRM, the Department received a significant number of complaints against airlines and ticket agents for refusing to provide a refund or for delaying processing of refunds during the COVID–19 pandemic. In issuing the NPRM, the Department explained that its existing regulations on refunds made it difficult to monitor compliance and enforce refund requirements and described benefits of strengthening protections for consumers to obtain a prompt refund when airlines cancel or significantly change flight schedules.

Comments Received: Virtually all consumers and consumer rights advocacy groups that commented on the NPRM are in support of the Department exercising its legal authority under section 41712 to codify the Department's longstanding enforcement policy requiring airlines and ticket agents to provides refunds when airlines cancel or make a significant change to a flight itinerary. They also strongly support the proposal to define ''cancellation'' and ''significant change'' to eliminate the inconsistencies among airline policies that are the main sources of consumer frustration. FlyersRights commented that some airlines' behavior during the COVID–19 pandemic to retroactively extend the length of delay that would qualify affected consumers for a refund is strong evidence for the need of rulemaking. In addition to supporting the proposals in this area, approximately 500 individual consumers expressed their view that the NPRM does not go far enough in terms of consumer protection, with over 300 commenters explicitly suggesting that the Department adopt regulation mandating airlines to compensate consumers for incidental costs (*e.g.,* meals, hotels, ground transportation) associated with airline cancellations or significant changes, similar to the European Union Regulation EC261/2004 (EC261). National Consumers League noted that this additional consumer protection measure would mitigate consumer inconveniences and incentivize airlines to invest in maintaining operations according to the published schedules.

Among airline commenters, A4A expressed support for codifying the refund policy and adopting definitions for ''cancellation'' and ''significant change'' but disagreed with some components of the proposed definitions. The National Air Carrier Association (NACA) stated that the Department should simply codify the current policy without adopting definitions for ''cancellation'' and ''significant change.'' IATA and several airline commenters asserted that it is not necessary to promulgate a new rule because airlines were already providing refunds pre-COVID–19 pandemic, as evidenced by the relatively small numbers of complaints on refunds at that time. They contended that the Department should not rely on a once-in-a-lifetime event (*i.e.,* the COVID–19 pandemic) as the justification for a rulemaking. They pointed out that airlines have issued unprecedented amounts of refunds during the pandemic and in cases where they failed to do so, the Department's enforcement actions under the current rule have proven that rulemaking is unnecessary. IATA's comment recognized that standardizing definitions would provide consistency in passenger experiences and avoid consumer confusion, although it argued that allowing airlines to define these terms provides greater flexibility, fosters competition, and helps maximize value for consumers. The Association of Asian and Pacific Airlines (AAPA) expressed its view that the refund requirement should exempt situations where cancellations and significant changes are caused by safety or security-related reasons including pandemics and when large scale disruptions or ''*force majeure*'' such as unannounced border closures and restrictions by governments occur.

Ticket agents and their trade associations are generally in support of the proposals on codification of the refund enforcement policy and adopting

[28] See definitions for common terms in air travel at *https://www.transportation.gov/sites/dot.gov/files/docs/Common%20Terms%20in%20Air%20Travel.pdf.*

definitions for ''cancellation'' and ''significant change.'' Many ticket agent commenters share the Department's view that these proposals mitigate consumer confusion caused by different airline refund policies and enhance predictability regarding refund rights. However, U.S. Travel Association, an organization representing various components of the U.S. travel industry, including some ticket agents, opposed the proposals on refunds due to airline cancellation and significant change, arguing that the proposals do not address the root causes of flight delays and cancellations and would have unintended consequences of higher costs for travel and reduced options for consumers.

The Department also received a joint comment by 32 State Attorneys General supporting the Department's proposal but also urging, among other things, that the Department: (1) work on a partnership with States to enforce consumer protection rules, (2) require airlines to sell tickets only for flights they have adequate staff to operate, (3) impose significant penalties for airline cancellations or lengthy delays not caused by weather or other unavoidable reasons, and (4) require airlines to compensate consumers affected by cancellations or delays, including compensating for the cost of meals, hotels, flights on another airline, rental cars, and issuing partial refunds to consumers who took the alternative flight that is later, longer, or otherwise of less value.

The Department's Aviation Consumer Protection Advisory Committee, after discussing the Department's proposals on refunds related to airline cancellation and significant change during several meetings, unanimously recommended that the Department codify its longstanding policy to require airlines and ticket agents to provide prompt refunds to consumers when airlines cancel or make a significant change to flight itineraries and consumers do not accept alternative transportation offered by airlines or ticket agents. The member representing airlines noted that the airlines' support on this recommendation is limited to adopting a rule that codifies the Department's current policy.

DOT Response: The Department continues to be concerned about the lack of regulatory clarity regarding airlines' obligation to provide prompt refunds when airlines cancel or make significant changes to flights and the impact that this lack of regulatory clarity has on airlines' compliance and the ability of the Department's Office of Aviation Consumer Protection to take enforcement action despite the Department's statutory authority to prohibit unfair and deceptive practices. As described in the Statutory Authority section, the Department believes that an airline's or ticket agent's practice of not providing a prompt refund when an airline cancels or significantly changes a passenger's flight and the passenger does not accept the alternative offered causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. As such, the Department concludes that its existing regulatory structure on refunds should be enhanced to better protect consumers.

The Department also agrees with comments from ticket agent representatives and others that definitions for ''cancellation'' and ''significant change of flight itinerary'' mitigate consumer confusion caused by different airline refund policies and enhance predictability regarding refund rights. As the Department stated in the Ticket Refund NPRM, the consumer complaints received by the Department during the COVID–19 pandemic demonstrated that various airline definitions for these terms have caused a great level of consumer harm in terms of frustration and confusion. The Department agrees with FlyersRights that a lack of a uniform standard on the meaning of a cancellation and significant change has resulted in certain airlines improperly revising and applying less consumer-friendly refund policies during periods when flight cancellations and changes spike, which is strong evidence of the need of rulemaking. The Department notes, however, that the adoption of this final rule is not, as some airline commenters argue, solely based on issues arising from an unprecedented pandemic. As we have witnessed during the past two years while the air travel industry is recovering post-pandemic, disruptions in large scales continue to occur as the result of other factors such as weather, technological issues, and staffing shortages. The significant number of consumer complaints on refunds filed with the Department in recent years demonstrates the need to strengthen the current regulation on refunds.

Regarding the various comments by consumers, consumer right advocacy groups, and the State Attorneys General regarding promulgating regulations to require airlines to provide compensation to consumers when their flights are cancelled or significantly changed to cover the incidental costs such as meals, hotels, and ground transportation, the Department has initiated another consumer protection rulemaking to address these issues.[29] The Department fully recognizes that the measures finalized in this rule on airline ticket refunds are merely the first steps towards the Department's goal of strengthening overall protections to consumers affected by airline cancellations and changes.

3. Definition of a Cancelled Flight

The NPRM: The Ticket Refund NPRM proposed to define a cancelled flight to mean a covered flight that was listed in the carrier's CRS at the time the ticket was sold to a consumer but not operated by the carrier. Under this proposed definition, the reason that the flight was not operated (*e.g.,* mechanical, weather, air traffic control) would not matter. Also, the removal of a flight from a carrier's CRS would not negate the obligation to provide a refund when the alternative offered is not accepted.

Comments Received: A4A and IATA expressed support for the Department codifying a definition for ''cancelled flight'', as they believe it is necessary to provide clarity and transparency to the traveling public. They argued, however, that the definition should exclude situations that would technically qualify as a ''cancellation'' under the proposed definition but do not affect consumers, such as a simple flight number change or a flight that was delayed into the next calendar day but does not exceed the delay limits set forth in the definition for ''significant change of flight itinerary.'' They further argued that when a passenger from any cancelled flight was rebooked on a new flight that does not constitute a ''significant change of flight itinerary'' when compared to the original flight that was cancelled, consumers should not be entitled to a refund. The flight number change and overnight delay exemptions argument is supported by the Regional Airline Association (RAA) and some foreign airline commenters. The National Air Carrier Association (NACA) argued that the definition for ''cancelled flight'' should exclude cancellations due to situations outside of carriers' control. Qatar Airways argued that the definition should include only flight operations that are not operated but were listed in the carrier's CRS within seven calendar days of the scheduled departure. On a similar issue, A4A submitted that the Department should clarify that this definition is distinct from the Department's airline service quality

[29] See, *Rights of Airline Passengers When There Are Controllable Flight Delays or Cancellations, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=2105-AF20.*

reporting rule, 14 CFR part 234, and it does not change the definition for ''cancelled flight'' in that regulation.[30] Spirit Airlines stated that it accepts the Department's proposed definition for ''cancelled flight.''

Consumers and consumer rights advocacy groups fully support the Department's proposed definition for ''cancelled flight.'' National Consumers League commented that whether a flight was removed from a carrier's CRS one year or one day before its scheduled operation is irrelevant for consumers. U.S. Public Interest Research Group Education Fund filed comments supporting stronger consumer protections for air travelers. It specifically commented that by adopting the proposed definition for ''cancelled flight,'' airlines should no longer be allowed to categorize cancellations that occur more than seven days before the departure as ''discontinued'' flights therefore evading being held accountable for the true number of cancellations. It further stated that this would encourage airlines to produce more realistic flight schedules.

Ticket agent representatives' positions on this definition are split. The United States Tour Operators Association (USTOA) supported the airlines' position on exempting situations under which consumers are reaccommodated on flights that do not constitute a ''significant change of flight itinerary'' when compared to the cancelled flight. Global Business Travel Association, on the other hand, supported the Department's proposed definition.

U.S. Chamber of Commerce opposed the proposal based on its understanding that the definition would expand the current refund entitlement and hold carriers liable for cancellations due to situations beyond their control such as weather or air traffic control delays. It further argued that this definition would also entitle a passenger who is reaccommodated on another flight to a refund. It suggested that the Department reconsider the definition to exempt cancellations unforeseeable by carriers. On the other hand, the ACPAC recommended to the Department that it adopt the proposed definition for ''cancelled flight.'' [31]

DOT Responses: The Department has considered the comments suggesting the definition of ''cancelled flight'' not include a flight cancellation that has no significant impact on a consumer because the new flight offered to the consumer does not constitute a ''significant change of flight itinerary'' as compared to the original flight. The Department is concerned, however, that carving out such an exemption would lead to substantial consumer confusion as to whether a consumer is entitled to a refund after a flight cancellation, as entitlements to a refund would depend on the nature of the new flight offered to each affected consumer, a fact-specific and case-by-case analysis that is often time-consuming, and complex. For example, if two passengers from a cancelled flight were offered different alternative flights, one that would be considered a ''significant change'' compared to the cancelled flight and the other that would not be considered a ''significant change,'' the outcome is that one passenger would be entitled to rejecting the alternative flight and receiving a refund, and the other would not. The Department believes that the potential complexity and confusion associated with a case-by-case determination of when passengers are entitled to a refund of a cancelled flight outweighs its benefits. Further, the Department believes that consumers who are reaccommodated on a flight that is substantially comparable to the original flight generally would not typically refuse the re-accommodation and seek a refund. For these reasons, the Department is adopting the proposed definition of ''cancelled flight'' under which a consumer would be entitled to a refund with clarification. A cancelled flight means a flight with a specific flight number that was published in a carrier's Computer Reservation System to operate between a specific origin-destination city pair at the time of the ticket sale that was not operated. Under this definition, a flight that was operated under a different flight number would be considered a new flight and the original flight would be considered a canceled flight.

The Department further clarifies that the NPRM did not propose to amend, and this final rule does not amend, the existing definition of ''cancelled flight'' for airline reporting purposes in 14 CFR part 234. U.S. carriers will continue to apply the existing definitions for ''cancelled flight'' and ''discontinued flight'' in part 234 when reporting their on-time performance data to the Department. In response to the comment by U.S. Chamber of Commerce, the Department notes that its current policy requiring airlines to provide refunds due to flight cancellations applies irrespective of the reason for a cancellation, and this continues to be the case under this final rule. The Department further adds that the final rule adopted here does not require airlines or ticket agents to provide a refund to a passenger for a canceled flight if that passenger accepts the alternative transportation offered and is reaccommodated.

4. Definition of ''Significant Change of Flight Itinerary''

The NPRM proposed to ensure consistency on when passengers are entitled to a refund for a significantly changed flight by defining the term ''significant change of flight itinerary'' instead of relying on a case-by-case analysis on whether a flight change was significant to the consumer. The Department proposed that changes that affect departure and/or arrival times, departure or arrival airport, a change in the type of aircraft that causes a significant downgrade in the air travel experience or amenities available onboard the flight, as well as the number of connections in the itinerary, would be significant to consumers. The NPRM sought comments regarding whether this approach is reasonable and fair to passengers while not imposing undue burden on carriers and ticket agents, and whether there are any other changes to flight itineraries that airlines may make that should also be considered a ''significant change of flight itinerary.'' The NPRM also sought comments on whether there are any operational concerns from airlines and ticket agents when implementing these proposed definitions into their refund policies that should be taken into consideration.

A. Types of Significant Changes

(i) Early Departure and Late Arrival

The NPRM: The NPRM considered three options in defining the extent of early departure or delayed arrival that

[30] Under 14 CFR part 234, which sets forth the requirements that U.S. carriers must follow when submitting, among other things, on-time performance data to the Department, a ''cancelled flight'' is defined as a flight operation that was not operated, but was listed in a carrier's computer reservation system within seven calendar days of the scheduled departure.

[31] Three members representing consumer rights advocacy groups, State Attorneys General, and airports, respectively, voted for the recommendation, and the member representing A4A voted against the recommendation, stating that although A4A generally supports DOT defining the term, the proposed definition does not address several concerns that A4A mentioned in its comments to the rulemaking. According to the ACPAC Charter, a quorum must exist for any official action, including voting on a recommendation, to occur. A quorum exists whenever three of the appointed members are present, whether in person and/or virtually. In any situation involving voting, the majority vote of members will prevail, but the views of the minority will be reported as well.

would qualify as ''significant changes.'' The first option, which the NPRM proposed, is a set timeline of three hours applicable to domestic itineraries and another set timeline of six hours applicable to international itineraries that would constitute a significant departure and arrival time change. The NPRM emphasized that airlines and ticket agents would be free to apply a shorter timeframe that constitutes a significant departure or arrival change but would not be able to increase it beyond three hours for domestic flights and six hours for international flights. The NPRM described this approach to be the most straightforward, clearly defined standard that would be easily understood by airlines and consumers, making it easier to train airline and ticket agent personnel on how to respond to refund requests, and potentially streamlining and expediting the refund review and issuance process. In applying the proposed standard to a refund request, the NPRM explained that the proposal's focus is only on the departure time of the first flight segment and/or the arrival time of the final flight segment. In other words, an early departure of a connecting flight or a late arrival of a flight that is not the final flight segment, even if exceeding the proposed timeframe, may not necessarily result in a passenger being entitled to a refund. In addition, the NPRM clarified that the proposed standard for international itineraries would apply to the early departure or the late arrival of a domestic segment of those itineraries if the domestic segment is the first or the last segment and is on the same ticket as the international segment.

The second option the Department considered in the NPRM is the option of not defining the timeframes of early departure and late arrival. Under this approach, the Department would continue to use the word ''significant'' to describe the amount of time change that would justify a refund. The Department stated that it has concerns that this option of leaving the determination of refund-qualifying flight schedule time changes to individual airlines is not the best way to achieve the balance between considering all relevant factors impacting consumers on the one hand, and ensuring the efficiency, consistency, and certainty of its regulation on the other hand, and may not be in the public interest. The NPRM sought comments on whether continuing to provide airlines the flexibility to define significant flight schedule time change is a better option than the proposed approach (option 1) of defining a significant departure or arrival change to mean beyond three hours for domestic flights and six hours for international flights.

A third approach considered by the Department is to define significant departure and arrival time change through the adoption of a tiered structure based on objective factors such as the total travel time of an itinerary. The NPRM provided an example of a tiered standard using the illustration below.

Original scheduled total travel time (measured from the scheduled departure time of the first flight segment to the scheduled arrival time of the last flight segment)	Projected arrival delay or early departure as offered to passenger	Result
3 hours or less	2 hours or less	Refund Not Required.
	More than 2 hours	Refund Due.
3–6 hours	3 hours or less	Refund Not Required.
	More than 3 hours	Refund Due.
6–10 hours	4 hours or less	Refund Not Required.
	More than 4 hours	Refund Due.
More than 10 hours	5 hours or less	Refund Not Required.
	More than 5 hours	Refund Due.

The NPRM acknowledged that this approach would be more difficult for carriers to implement and for consumers to understand because a determination on whether a refund is due would be based on each individual itinerary. The NPRM asked whether the industry considers the adoption of this type of tiered standard to be practical and whether consumers believe this type of tiered standard would better reflect the inconvenience and disruption caused by a flight schedule change.

Comments Received: A4A expressed its support for adopting a set timeframe standard for determining whether a refund is due. A4A stated that, however, the standard should only include late arrivals (delays) and not early departures because it is consistent with the Department's reporting regulation for U.S. carriers. A4A further suggested that the standard should be four hours for domestic itineraries and eight hours for international itineraries. A4A also commented that a schedule change accepted by the passenger should reset the calculation for delays for the purpose of refund. RAA supported A4A's position that the standard should only cover delays but not early departures, arguing that including both would create potential conflict when the arrival time did not exceed the standard, but the departure time did. RAA also supported A4A's suggestion on calculation of delay being reset once a passenger accepts an alternative flight. RAA suggested that a flight diversion should not be treated as a significant change of flight itinerary as long as passengers are transported to their final destination because safety and security are usually the principal reason for diversions. NACA and its member Allegiant Air (Allegiant) commented that the three/six-hour standards unduly burden Ultra-Low-Cost-Carriers (ULCCs) because of their limited networks and the lack of interline agreements with the large U.S. airlines that have operated for many years. They believed that the proposal would increase operating costs and ultimately result in higher airfares. Allegiant further suggested that the Department should not require refunds when the reason for the cancellation or delay is outside of a carrier's control, as long as the carrier makes a good faith effort to rebook the passenger. Spirit Airlines, another NACA member, commented that it has a two-hour standard for both domestic and international itineraries, and it does not object to the proposed three/six-hour standards. IATA, AAPA, and Qatar Airways supported the second option, which is to allow carriers to set their own standards for flight schedule time change. IATA argued that a uniform standard harms consumers who travel with airlines that currently have a more generous policy. IATA suggested that if the Department adopts a set of uniform standards, it should be four hours for domestic itineraries and eight hours for international itineraries, with the international standard applying to all segments. Air Senegal and SATA

International—Azores Airlines, S.A. (SATA) also supported an eight-hour standard for international itineraries. AAPA stated that the proposal disregards many contributory factors impacting ultra-long-haul operations including weather, safety, security considerations, and government restrictions. Among consumer comments, National Consumers League supports the proposed three/six-hour standards. However, FlyersRights stated that the proposed standards are more lenient than many carriers' current policies. FlyersRights believes that the refund rule should count for delayed departures (as opposed to late arrivals) and the standard should be two hours for domestic and three hours for international itineraries. FlyersRights further commented that for early departures, the standard should be one hour for domestic and two hours for international itineraries. FlyersRights explained that it views early departures as being more harmful to consumers because for late departures, consumers are usually already waiting at the airports. Travelers United shared FlyersRights' view that the proposed standards are more generous to airlines than many airlines' policies and suggests that the standards should be 90 minutes. Among the over 4,500 individual consumer commenters, approximately 500 commented on the proposed three/six-hour standards, with 85% in support, and 15% suggesting shorter hours, such as two hours for domestic and four hours for international, or three hours for both.

Two ticket agent trade associations, the Destination Wedding & Honeymoon Specialists Association (DWHSA) and USTOA, expressed their support for the proposed three/six-hour standards on early departures and late arrivals. Similarly, the ACPAC recommended that the Department adopt the proposed three- and six-hour delay standard under which a refund is due.[32] The joint comment filed by 32 State Attorneys General also advocated for a three-hour delay benchmark being the floor for consumers' entitlement to refunds and stated that this floor will result in benefits for consumers on airlines with unclear or lengthier delay parameters for refunds. The comment further argued that because some airlines currently adopt a short timeframe, the Department should take steps to ensure that setting a floor does not cause these airlines to loosen their standards to the detriment of consumers. With respect to the third option proposed in the NPRM to adopt a standard with a tiered matrix based on objective factors such as the total travel time of an itinerary, several airline commenters as well as individual consumers expressed their opposition, arguing that this approach is not workable because there are too many variables.

DOT Responses: The Department appreciates the comments by stakeholders on the proposed standards for flight departure/arrival changes that would constitute ''significant changes of flight itinerary.'' The Department agrees with commenters that defining significant departure and arrival through the adoption of a tiered matrix based on an objective factor such as total travel time to determine significance is unworkable because of its complexity. Based on the support from the airline and ticket agent industries and consumers, the Department has determined that adopting a unified standard consisting of set timeframes to determine whether a flight schedule change constitutes a significant change is a preferred approach as compared to the current policy of allowing airlines to set their own timeframes. This approach provides much needed clarity and consistency to consumers with respect to their rights to refunds, no matter on which airline they travel.

The Department has further concluded that covering early departure of the initial flight segment and late arrival of the final flight segment is reasonable and workable for airlines and ticket agents, and beneficial to consumers. Commenters have varied perspectives on whether the definition of significant change should be based on early or late departure of the initial flight segment or the late arrival of the final flight segment. We have considered some airlines' comments that the timeframes should apply only to flight late arrivals (delays) but not early departures, as well as FlyersRights' comment that the timeframes should apply to change in flight departure time (early or late departures) regardless of whether consumers' arrival time is significantly changed. We disagree with these suggestions. The Department has concluded that it is important to ensure that the definition of significant change includes both early departure as consumers may not be available to take the flight significantly earlier than scheduled, and late arrivals, because arriving significantly later than scheduled may make the trip moot (*e.g.,* job interview) or severely disrupt travel plans (*e.g.,* miss embarkation of a cruise). In contrast, the Department does not believe that a late departure would cause as much disruption, so long as the consumer arrives at the final destination without substantial delay. As FlyersRights pointed out, consumers are already at the departure airport while waiting for a delayed departure flight, and the late departure alone does not add significant amount of additional time to the total time that the consumers already carved out for travel.

Regarding the timeline that would constitute a significant departure and arrival time change, the Department agrees with the comment provided by the State Attorneys General and others that the proposed three-hour timeframe for domestic itineraries and six-hour timeframe for international itineraries constitute a significant departure and arrival time change. The Department acknowledges that several airlines' current refund policies adopt shorter timeframes than the proposed three/six-hour standards, and the Department notes that these airlines are not only permitted under this final rule to continue these polices but are encouraged to do so. The Department establishes a baseline to set the minimum consumer protection requirement, and the Department expects that healthy competition in the marketplace will lead to airlines adopting consumer-friendly refund policies that go above and beyond the regulatory minimum. The Department will closely monitor airlines' implementation of this final rule and the impact on consumers to determine whether the three/six-hour timeframes are adequate to ensure that consumers who experience significant disruptions and inconveniences from airline flight schedule changes receive refunds if they so choose.

The Department is not persuaded by NACA's argument that ULCCs are unduly burdened by the three/six-hour standard and it would ultimately cause higher airfares. The fact that at least one ULCC has already implemented for some time a refund policy with a schedule delay threshold lower than the Department's minimum standard indicates that the three/six-hour standard can work well with ULCCs' unique business model and competition strategies, and it will not be detrimental to maintaining ULCCs' fare structure.

The Department is also not persuaded by comments that a schedule change accepted by the passenger should reset the calculation for delays for the purpose of refunds. Under the final rule,

[32] Three members representing consumer rights advocacy groups, State Attorneys General, and airports, respectively, voted for the recommendation, and the member representing A4A voted against the recommendation, stating that A4A supports defining ''significant delay'' but does not support the three- and six-hour timeframes.

a consumer's acceptance of the flight schedule time change when the original flight encounters expected early departure or late arrival or a consumer's acceptance of another flight when the original flight was cancelled does not reset the clock. The timeframes adopted here are measured from the *original* departure and arrival times offered to consumers when they purchased their tickets, and any deviation from those times represents a change to the product that they agreed to and paid for. By adopting these timeframes in the regulation, the Department has deemed that any change to these *original times* by three hours or more for domestic itineraries and six hours or more for international itineraries are *material and significant* to consumers and they are entitled to a refund if they do not accept the change, or any alternative transportation offered. Although the Department understands that flight schedule changes may occur multiple times before the flight's actual operation, we believe it is fundamentally unfair to consumers and it will defeat the purpose of this rule if we allow the clock to reset every time a consumer accepts the time change to a flight. In a typical rolling delay scenario, a domestic flight initially projected to arrive two hours late could actually be delayed for eight hours, with each new projection adding two more hours at a time, and if the clock resets each time, the consumer would never be entitled to a refund despite the lengthy delay.

Regarding RAA's comment that the refund requirement should exempt situations involving flight diversions due to safety or security concerns as long as passengers were ultimately transported to their destinations, the Department does not view the refund requirement as applying to these diversion situations. Typically, when a decision to divert a flight is made, the flight has already departed and from the passenger's perspective, the travel already took place. The passengers would not have the opportunity to refuse the flight. For those passengers, the issue of requesting compensation for their inconvenience caused by the diversions will be addressed in the Department's forthcoming rulemaking on Rights of Airline Passengers When There Are Controllable Flight Delays or Cancellations.[33]

[33] *See https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2105-AF20.*

(ii) Change of Origination, Connection, or Destination Airport

The NPRM: The Department proposed to define a significant change that would entitle a consumer to a refund to include a change of the origination or destination airports. The Department reasoned that most consumers are concerned about origin and destination airports when booking a flight itinerary because of convenience and stated that a carrier-initiated change in the origination or destination airport is likely to lead to additional time and cost for consumers. The NPRM did not propose to require refunds if a carrier changes the connecting airport(s) and instead invited comments on whether a change of connecting airports should also be considered a significant change that would entitle consumers to a refund. Further, the NPRM asked whether special consideration on refund eligibility should be given in situations where passengers choose to connect at a particular airport with extended layover time for specific purposes beyond connecting to the next flight, such as conducting business or visiting family, friends, or tourist sites at that location.

Comments Received: Airline commenters generally supported including the change of an origination or destination airport as a ''significant change of flight itinerary.'' They contended, however, that the definition should exclude a change of airport involving airports located in the same metropolitan area. A4A and AAPA suggested that a change between two ''co-terminal airports,'' as defined by the Transportation Security Administration's (TSA) regulation, should be exempted.[34] Airline commenters argued that these airports are sufficiently close in proximity to each other, indicating that a change of the airport would not necessarily significantly impact consumers' travel plans. Some carriers further argue that allowing this exemption would incentivize carriers to provide greater rebooking options. Air Senegal provided long-haul international carriers' perspective by arguing that these carriers' first and foremost goal is to provide transportation between two major metropolitan gateways and a change of airport within the same metropolitan area that is necessitated by circumstances beyond the carrier's control (*e.g.,* airport staffing shortage, government public health restriction) should not trigger the refund obligation. Airline commenters also supported the position that a change of connecting airport should not be considered a ''significant change of flight itinerary.'' IATA commented that if a passenger wishes to have a longer layover at a particular airport, airlines should accommodate by rebooking on another flight to that layover airport.

Consumers, consumer rights advocacy groups, and ticket agent representatives who commented on this issue were in support of the Department's proposal. Two disability rights advocacy groups, Paralyzed Veterans of America (PVA) and United Spinal Association, commented that, from passengers with disabilities' perspective, any change to the origination, connection, and destination airport should be considered a ''significant change of flight itinerary.'' They 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.

DOT Responses: There is a consensus from all the comments received that a change of the origination or destination airport in general would significantly impact a passenger's travel plan and should be considered a basis for a refund if the passenger no longer wishes to travel. The Department disagrees with airlines' suggestion that the regulation should exempt changes of airports located in the same metropolitan area. In the Department's view, a change in the origination or destination airport when located in the same metropolitan area could still significantly impact passengers depending on the passenger's specific circumstances including whether the new airport is sufficiently close to their residence or the hotel so they have the flexibility to navigate to or from the new airport without substantial additional cost, whether they have the additional time needed to travel to or from the alternative airport, and whether affordable ground transportation is available for them to get to or from the alternative airport. Given the potential impact, the Department believes that the best approach is to require refunds if passengers reject the change in origin or destination airport even if in the same metropolitan area. The Department also believes that this approach would not impose a substantial negative impact on long-haul international carriers, who

[34] Co-terminal [airport] means an airport serving a multi-airport city or metropolitan area that has been approved by TSA to be used as the same point for purposes of determining application of the security service fee imposed under [49 CFR 1510.5]. *See* 49 CFR 1510.3.

stated that the main goal of their operations is to transport passengers between two major metropolitan gateways. Passengers carried on long-haul international flights who are focused on arriving at the destination city as opposed to a specific airport can accept the alternative airport offered by the carrier. The Department further notes that in the case of flights being directed to a ''co-terminal'' airport due to government restrictions, such as a requirement to funnel flights for communicable disease screening purposes, it is likely that passengers would not have a choice to travel on an alternative flight that is destined to the original airport. The Department believes that passengers should have the choice of either traveling to the co-terminal airport, which is likely to be the choice of many passengers, and the option of receiving a refund.

With respect to a change of a connecting airport, the Department is defining such a change to be a ''significant change of flight itinerary'' only for consumers who are persons with a disability. The Department continues to believe that a change in a connecting airport would not impact most passengers because travelers' goal is to get to the destination, and they generally care less about the connecting airport. The Department is also not convinced that imposing a refund mandate is necessary for passengers who specifically arranged to have an extended layover at a connecting airport for other business or leisure purposes. Consumer comments were generally silent on this issue, and IATA has stated that airlines generally make such an accommodation on their own when requested.

The Department has decided to require a refund to a passenger with a disability [35] and other passengers on the same reservation who choose not to fly when the person with a disability does not accept a change in the origination, destination, and connection airport. The Department appreciates PVA and United Spinal Association sharing their view that not defining a change to the origination, connection, and destination airport as a ''significant change of flight itinerary'' would negatively impact persons with disabilities. The Department accepts that a change of the origination, connection, or destination airport may represent a significant change to a person with a disability as the layout, design, and the availability of accessibility features of these airports are a major consideration for persons with disabilities when they select travel itineraries. A change of any of these airports could cause great harm to passengers with disabilities if the new airports are not as accessible as the original airports. This change could affect, for example, a passenger traveling with a service animal who carefully selected an airport with a service animal relief area located near the passenger's connecting gate to accommodate a tight connection timeframe, or a passenger with visual impairment who chose a connection, origination, or destination airport that provides wayfinding/mapping technologies through a mobile app. Further, the Department is of the view that a change of airports, at a minimum, adds uncertainties to the person with a disability regarding the accessibility of the airport and that the passenger with a disability is in the best position to conduct a risk assessment and determine whether he or she still wants to travel from, to, or through a particular airport.

(iii) Increase in the Number of Connection Points

The NPRM: The NPRM proposed that adding to the number of connection points in an itinerary qualifies as significant change that entitles a consumer to a refund if the consumer no longer wishes to travel. The Department explained that the number of connection points in an itinerary would significantly affect the value of a ticket because the more connection points, the more likely passengers will experience flight irregularities, complications, and disruptions, as well as mishandled checked baggage. As evidence, the Department pointed out that airfares are generally higher for an itinerary with fewer connection points than an itinerary with more connection points.

Comments Received: Airline commenters unanimously opposed considering adding connection points as a ''significant change.'' Large U.S. airlines argued that connections are a fundamental part of carriers' network structure and carriers should be allowed the ability to consider all available options to reroute passengers, including through additional connecting points. ULCCs argued that because of their small networks and the lack of interline partners, they may have to rebook passengers with more connections, and this would penalize ULCCs and other small carriers despite their best effort to reaccommodate passengers. Carriers also argued that adding connections does not necessarily mean consumer inconveniences and, in some cases, passengers may even arrive earlier than the original schedule. These carriers asserted that additional connections without adding more travel time or significant delay should not be considered a ''significant change.'' IATA commented that this proposal directly conflicts with the APPR, the Canadian regulation protecting air travelers, which includes obligation to reroute passengers on a reasonable route, including connections.

U.S. Chamber of Commerce also opposed the proposal, stating that in cases of severe weather or major disruptions at a hub airport, it is necessary to rebook passengers on itineraries with more connections to ensure that they get to their destinations as swiftly as possible.

Unlike airlines, National Consumers League and FlyersRights supported the Department's proposal to define significant change to include additions in the number of connection points on a flight itinerary. PVA and United Spinal Association also expressed their support for the proposal, stating that adding connections is a significant change to passengers with disabilities because additional connections mean additional inconveniences, increased chance of passenger injury during transfer, boarding, deplaning, and increased chance of damage to assistive devices such as wheelchairs, which may further lead to passengers being forced to use loaner chairs while waiting for their wheelchairs to be repaired, causing other health and safety concerns. These disability organizations also commented that more harm may occur from extended overall travel time to passengers forced to dehydrate themselves during travel because they cannot use the lavatories, or passengers who need to minimize the time spent in an airport wheelchair. In this regard, PVA suggested that extending the layover time by more than one hour is a significant change.

DOT Responses: The Department has decided to include an increase in the number of connections in a flight itinerary in the definition of ''significant change of flight itinerary.'' The Department finds the comments by PVA and United Spinal Association about the substantial inconveniences, and in some

[35] A passenger with a disability means an individual with a disability who, as a passenger

(1) With respect to obtaining a ticket for air transportation on a carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(2) With respect to obtaining air transportation, or other services or accommodations required by this Part,

(i) Buys or otherwise validly obtains, or makes a good faith effort to obtain, a ticket for air transportation on a carrier and presents himself or herself at the airport for the purpose of traveling on the flight to which the ticket pertains; and

(ii) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers. *See* 14 CFR 382.3.

cases, potential harm and injury to passengers with disabilities from additional connections to be compelling. The Department further views that adding connections may also negatively affect passengers who do not have a disability in many ways. It is a common sense that when a non-stop itinerary becomes a one-stop itinerary, or a one-stop itinerary becomes two-stop itinerary, each added stop indicates increased chance of irregularities, including the potential of missed flights and/or delayed baggage due to short connecting times, flight delays due to weather or air traffic control issues at the additional connecting airport, and additional complications related to traveling with young children or the elderly.

The Department disagrees with IATA's comment that considering an additional connection as a ''significant change'' under which a refund is due conflicts with APPR. Under APPR, carriers are obligated to provide passengers the option of rerouting or refunds.[36] APPR does not prohibit carriers from providing a refund if a consumer does not wish to be rerouted or does not accept the rerouting offered by carriers. Also, this final rule does not require carriers to provide a refund if the passenger prefers a rerouting even if that rerouting includes additional connections. The Department believes that the APPR and this final rule, when working together, increase choices provided to consumers affected by cancellations and significant changes and empower consumers to choose the best options for themselves, either rerouting or receiving a refund.

The Department is also not convinced that allowing additional connections to be a basis for a refund would impede carriers' ability to offer alternative itineraries including itineraries with additional connections. As stated throughout this document, the goal of defining ''significant flight itinerary'' is to set a baseline for consumers' rights to refunds when they are affected by a qualified change by providing them an opportunity to evaluate any alternative transportation offered by carriers against the option of obtaining a refund. The fact that a consumer is eligible for a refund because of a significant change does not mean airlines cannot or should not offer alternative transportation. In addition, there is nothing in the Department's regulation that prevents carriers from fully utilizing their networks and offering options with different connecting points to passengers. For example, if a passenger's non-stop flight is cancelled and the carrier determines that traveling on a set of connecting flights would get the passenger to the destination sooner than waiting on the next non-stop flight, the carrier is free to make the offer, and the passenger will likely accept the offer if the additional connection is acceptable and arriving at the destination sooner is more important to that passenger than a non-stop flight.

(iv) Change of Aircraft Resulting in Significant Downgrade of Available Amenities and Travel Experiences

The NPRM: While acknowledging that substitution of aircraft is often required for operational reasons, and that most substitutions do not substantially affect consumers' travel experience, the Department proposed that a change of aircraft would be considered a significant change entitling the affected passengers to a refund only if it results in ''a significant downgrade of the available amenities and travel experiences.'' The NPRM recognized that aircraft substitution may impact passengers differently, noting that an aircraft change may impact a passenger traveling with a wheelchair when the wheelchair no longer fits in the cargo compartment of the new aircraft, but it may not impact another passenger, even one with a disability. The NPRM proposed that the lack of certain disability accommodation features as the result of aircraft change, such as onboard wheelchair storage spaces and moveable armrests, which negatively impacts the travel experiences of persons with a disability and their access to services onboard, would be considered a ''significant change'' that entitles the passenger to a refund upon request. The Department solicited comments on how to determine whether an aircraft downgrade is a significant change, whether it should be a case-by-case analysis, and whether there are certain types of changes in amenities or air travel experiences that should automatically be considered significant irrespective of the affected person.

Comments Received: Airlines and their representatives expressed strong concerns about the proposal and argued that the term ''significant downgrade of available amenities and travel experiences'' is too broad, vague, and subjective. U.S. Chamber of Commerce supported the airlines' argument that the proposal is too vague and broad. A4A suggested that in the absence of clear guidance on this term, passengers could assert seat configuration changes, the lack of Wi-Fi, a decrease in the number of available movies, and a reduction of seat reclining degrees as a significant downgrade. A4A commented that if the Department finalizes this category as a significant change, it should allow airlines to establish and publish their own criteria and adhere to the standard. IATA and Air Canada argued that this proposal would significantly impact carriers operating multiple types of aircraft, or airlines that are experiencing significant flight disruptions and needing the flexibility to fully utilize all available aircraft to mitigate total passenger inconveniences across the network. IATA pointed out that the proposal does not consider the situations where a substitute aircraft provides downgrades to certain amenities and upgrades to other amenities. Airline commenters agreed that a change of aircraft that impacts a carrier's ability to accommodate mobility aids should be considered a significant change.

National Consumers League and FlyersRights expressed their support of the Department's proposal to consider a significant downgrade of available amenities and travel experiences to be a significant change that would entitle consumers to a refund. FlyersRights added that changes in aircraft size, stowage space, or seat size that no longer allow passengers with disabilities to travel safely should be considered a significant change. Several individual consumer commenters also supported this proposal.

Among ticket agent representatives, USTOA opposed the proposal, asserting that it is too subjective and thus unworkable. It further commented that a change from a twin-aisle aircraft to a single-aisle aircraft, the loss of Wi-Fi, or a change to an older version of business class may have little impact on some consumers but more impact on others. It opined that to determine whether a passenger is eligible for a refund under the proposal may cause extensive and time-consuming disputes between consumers and airlines and it is counter to the Department's goal of achieving consistency across the industry. Global Business Travel Association agreed that aircraft change causing a lack of disability accommodation should be considered as a significant change. It further stated that a service downgrade such as the lack of Wi-Fi would materially impact the value of a flight to business travelers.

Disability rights advocacy groups voiced their strong opinion that aircraft changes affecting disability accommodations should be viewed as significant changes for passengers with

[36] *See* Air Passenger Protection Regulation (SOR/2019–150) (APPR), Sections 17–18. *https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-150/index.html.*

disabilities. PVA commented that if a substitute aircraft cannot accommodate a passenger's assistive device, carriers should accommodate the affected passenger and any caregivers, family members, and other companions on another flight of that carrier or other carriers, or other mode of transportation without additional cost. All Wheels Up commented that the Department should specify that refunds for the affected passenger and others in the travel party are required when the substitute aircraft cannot accommodate wheelchairs in the cargo compartment. United Spinal Association also supported the position that a significant change includes downgrade or change of aircraft without equal accessibility features. It urged the Department to require carriers to find accessible alternative transportation. PVA and United Spinal Association also commented on additional accessibility-related issues beyond the substitution of aircraft, which will be discussed in detail in the next section.

Public Hearing: In addition to considering the public comments filed in the rulemaking docket, at the request of A4A and IATA, the Department also conducted a public hearing pursuant to the Department's procedural regulation on rulemakings relating to unfair and deceptive practices at 14 CFR 399.75. Such hearings are intended to afford stakeholders an opportunity to present factual issues that they believe are pertinent to the Department's decision on the rulemaking. One of the subjects stakeholders raised during the hearing is how to determine whether a downgrade of amenities or travel experiences qualifies as a ''significant change of flight itinerary.'' In the Notice [37] announcing the hearing, the Department requested interested parties to provide information on whether there are certain types of amenity changes that should be considered ''significant'' changes that would entitle a consumer to a refund and if so, whether the determination should be made categorically or by airlines on a case-by-case basis. The Department also requested information on how different airline operational and pricing models affect onboard amenities and travel experiences, and subsequently affect consumer expectations.

During the public hearing, airline representatives reiterated the view they expressed in the written comments to the NPRM that the proposal undercuts the Department's goal of achieving consistency and predictability to consumers who are affected by itinerary changes. They pointed out that the proposal relies heavily on the subjective expectations of travelers and the vague concept of ''significant downgrade of available amenities and travel experiences'' creates problems for all parties involved, leading to time-consuming and unsatisfactory case-by-case adjudications by the airlines and the Department. They suggested that if the Department proceeds to finalize this proposal, it should explicitly limit qualifying downgrades to those identified in the airlines' customer service plans. They further indicated that airlines would support the concept of considering the inability to accommodate a passenger's mobility device to be a significant change. Representatives from FlyersRights and National Consumers League both expressed their support of the proposal to consider a change of aircraft that results in ''a significant downgrade of the available amenities and travel experiences'' to be a significant change that entitles consumers to a refund if they choose not to travel. The representative from FlyersRights commented that the guiding principle in determining what downgrades are significant should be whether a typical passenger would have booked the flight knowing that they would receive a downgrade of amenities or travel experiences. That representative further commented that allowing airlines the sole discretion to make the determination will lead to ever shifting standards. The representative from National Consumers League commented that if airlines were allowed to determine what downgrades are significant, it is highly likely that airlines would define it so narrowly as to make the consumers' rights under DOT regulation unusable by most consumers. He suggested that the Department should adopt a definition that covers as many services as possible to give consumers the flexibility to determine what is and is not a significant downgrade for them.

A representative from PVA spoke at the hearing regarding the broad impact of flight itinerary changes on passengers with disabilities. In addition to the impact of aircraft substitution on the transportation of passengers' mobility aids, she also commented on changes of other accessibility features that may lead to significant disruption to passengers' travel, such as the lack of accessible lavatories. She emphasized that passengers with disabilities should not be forced to accept flights that cause unnecessary inconveniences or undesirable circumstances because the negative impact of air travel extends not only to the passengers but also to those who assist them during the journey or at the destination. Therefore, she commented that any determinations regarding significant changes should be made categorically, considering the challenges faced by these passengers.

Representatives from Travel Tech and Travel Management Coalition spoke on behalf of ticket agents. While supporting the Department's proposal in principle, they emphasized the importance of designating airlines with the responsibility to determine whether a change of available amenities or travel experiences caused by aircraft substitution is a significant change. They commented that ticket agents rely on clear guidance from both the regulatory bodies and airlines to make these determinations.

A public participant provided her opinions as an expert on consumer law on this issue by suggesting that the Department should adopt a ''reasonable consumer'' standard. She commented that the determination should be a case-by-case analysis and encouraged the Department to provide guidance but not adopt a rigid definition.

Following the hearing, A4A, IATA, Spirit, USTOA, and PVA filed supplemental written comments on this issue. A4A and IATA's joint comment emphasizes their position to support a rule requiring refunds when aircraft downgrade prevents the transportation of a passenger's mobility aid, when an accessible lavatory is no longer available on the flight, when an on-board wheelchair requested by a passenger is no longer available, or when moveable armrests are not available on the aircraft. Spirit commented that a rule consistent with the Department's oversales regulation should be adopted to require a refund for the amenity not provided, but not a refund for the full fare. USTOA comments that, in addition to its written comment on the NPRM, it continues to strongly oppose the proposal as it believes that consistency and predictability are necessary and crucial elements in a final rule which would be lacking if the Department adopts the proposed standard. USTOA adds that public interest will not be served by adopting the proposal that introduces further confusion into the ticket refund process and leaves sellers of travel to grapple with case-by-case determinations. PVA's comment urges the Department to establish a clear definition to include downgrades of amenities and travel experiences for passengers using mobility devices. PVA further provided examples of downgrades that affect these passengers, including circumstances in which the

[37] 88 FR 13387, Mar. 3, 2023.

mobility aids will not fit in the cargo compartment or in-cabin stowage, loss of lavatory access and/or on-board wheelchair, and loss of movable armrests.

DOT Responses: After carefully considering all the comments, the Department has determined that adopting the proposal to include in the definition for ''significant change of flight itinerary'' any aircraft change that leads to ''significant downgrade of available amenities or travel experiences'' applicable to *all passengers* is not practical and workable, and as a result, we are modifying the proposal to cover specific passengers who are categorically protected and would be affected by this ''significant change.'' The Department recognizes the ambiguity and subjectivity of the proposed term ''significant downgrade of available amenities and travel experience'' and has determined that adopting this term and requiring airlines and ticket agents to conduct a case-by-case analysis will lead to tremendous confusion among consumers, airlines, and ticket agents, who would incur significant administrative costs when disputes arise. The Department also believes that outside of accessibility features, most discomfort and inconvenience caused by aircraft substitution-related changes can be addressed between airlines or ticket agents and their customers without a regulatory mandate on ticket refunds. In another part of this final rule, the Department is adopting the proposal to require airlines to provide refunds for any ancillary service fees when the services that consumers paid for are not provided. The Department believes that this strikes a good balance between ensuring that consumers receive a refund of the ancillary service fees for services that they did not receive, including due to aircraft substitution, and avoiding the major administrative complication related to determining what amenities or ancillary services are so significant to a passenger that their loss warrants a refund of the entire ticket.

On the other hand, the Department strongly agrees with the disability rights organizations that any change of aircraft that leads to the unavailability of an accessible feature needed by a passenger with a disability is a significant change and should entitle the passenger to a refund. We recognize that for persons with disabilities, a downgrade of onboard amenities or travel experiences from aircraft substitution may have serious negative implications on the passengers' health and safety and may fundamentally change these passengers' decision about travel. As such, the Department determines that aircraft substitution leading to an accessibility feature being unavailable to a passenger with a disability who needs the feature is categorically a ''significant change'' for that passenger. The Department notes that comments from airlines focus on a change involving the inability to transport a wheelchair in the cargo compartment, which is an example provided in the NPRM. The Department's final rule, however, is broader than that example. Under this final rule, airlines and ticket agents are required to refund to a passenger with a disability who no longer wishes to travel if an aircraft change leads to the loss of one or more accessibility feature needed by that passenger. Such features would include, but are not limited to, in-cabin stowage of assistive devices, a movable armrest, accessible lavatories, on-board wheelchairs, and cargo stowage of mobility aids. The Department is also requiring airlines and ticket agents to provide refunds to other individuals traveling with the passenger with a disability in the same reservation, if the passenger with a disability no longer wishes to travel due to a significant change impacting accessibility. Details of this requirement will be discussed in Section B below.

The Department also notes that although the rule does not specifically require airlines to provide refunds to passengers who are affected by aircraft substitution outside of the disability accommodation grounds, we expect that airlines will continue to assess the impact of aircraft substitution on each passenger based on the passenger's situation and consider providing refunds when appropriate.

(v) Downgrade in the Class of Service

The NPRM: The NPRM proposed that a carrier-initiated downgrade in the class of service is a ''significant change of flight itinerary'' and would entitle a passenger to a refund if the passenger decides not to continue travel. The NPRM noted that under the Department's oversales regulation, when a passenger on an oversold flight is offered accommodation or is seated in a section of the aircraft for which a lower fare is charged, the passenger is not entitled to be denied boarding compensation but is entitled to an appropriate refund for the fare difference, assuming the passenger traveled on the flight in the downgraded class of service.[38] Here, the NPRM proposed that when a passenger is downgraded to a lower class of service, either on the originally booked flight or on an alternative flight offered by the carrier, and the passenger declines to take the downgraded flight, a refund of the entire unused portion of the ticket must be offered. The NPRM explained that the Department views a downgrade in the class of service as significantly changing the passenger's ticket value and travel experience and entitling the consumer to a refund of the ticket price and any unused ancillary services if the consumer does not travel. The NPRM further clarified that the proposal is not limited to situations where the entire flight or the class of service the passenger was initially booked on was oversold. Downgrade of a passenger's class of service could occur for other reasons such as weight and balance or change of aircraft. The NPRM asked whether the Department should require airlines to provide a refund of only the ticket price difference, and not mandate a full refund if the passenger does not accept the downgrade, similar to the existing oversales regulation.

Comments Received: Airline representatives opposed the Department's proposal of considering a downgrade of the class of service a significant change, arguing that it would disincentivize carriers from rebooking affected passengers on the same aircraft but in a lower class of service. They expressed their belief that a downgrade to a lower class of service should only result in a refund of the fare differences because the passenger would be provided with the flight as scheduled. IATA stated that if this proposal is adopted, minors and companions traveling with the downgraded passenger should not be eligible for a refund if they were not downgraded as well. This position was supported by Qatar Airways. IATA further requested that the Department define a change in ''class of service'' as a change of cabin to avoid any confusion. Air Canada suggested that the proposal, if adopted, would conflict with certain provisions of EC 261/2004, which requires compensation as opposed to refunds for certain downgrades. SATA suggested that the Department should adopt a similar requirement as EC 261/2004 that requires a percentage of refund according to the amount of fare paid and the flight distance.

DOT Responses: The Department has carefully considered this issue and determined that although not all passengers view a downgrade to a lower class of service so significantly that they would prefer to not travel on the flight, there are a substantial number of passengers who would be impacted significantly by a downgrade and would

[38] *See* 14 CFR 250.6(c).

prefer a refund. The Department believes that affected passengers should be given the choice of either accepting the change and continuing to travel or receiving a refund. The Department notes that many passengers with disabilities select a certain class of service when booking tickets for reasons related to their disabilities. For example, a higher class of service may provide extra legroom needed by passengers with a mobility impairment or traveling with service animals. Besides passengers with disabilities, other passengers may find a downgrade not acceptable because it substantially affects their travel experiences. For instance, a passenger of size being downgraded to a lower class of service may no longer wish to travel because of the discomfort associated with the reduced seat pitch and width, and this is particularly a concern for these passengers on long flights.

The Department is not convinced that this requirement would disincentivize airlines and ticket agents from offering to rebook passengers in a lower class of service, either on the original flight or another flight. As in all the other scenarios involving significant changes, carriers and ticket agents are free to offer a variety of other options to affected consumers so long as they are informed about their right to a refund. Consumers can choose the option that best meets their needs, including traveling in a lower class of service. Carriers and ticket agents are incentivized to make these offers to passengers to fill vacant seats on aircraft.

The Department clarifies that this final rule requiring carriers and ticket agents to provide a refund to passengers who choose to not travel when being downgraded to a lower class of service does not negate carriers' and ticket agents' obligation to refund the fare differences when passengers choose to travel in a lower class of service. This will continue to be the requirement regardless of whether the downgrade was due to an oversales situation or any other situation.

The Department does not believe that requiring airlines and ticket agents to provide a refund to passengers who are downgraded to a lower class of service conflicts with the laws of other jurisdictions, including EC261. Like the Department's oversales rule that requires carriers to refund the fare differences to passengers who are continuing to travel on a lower class of service, EC261 requires that carriers refund between 30% to 75% of the ticket price, depending on the distance of the flight, to a downgraded passenger who is continuing the flight. In contrast, this final rule simply addresses the situation in which the passenger chooses not to travel on the original or rebooked flight in a lower class of service, a situation that is not directly addressed in EC261.

As suggested by IATA, the Department is also adopting a definition of class of service in the final rule to avoid any confusion. A class of service is defined as seating in the same cabin class such as First, Business, Premium Economy, or Economy class, based on seat location in the aircraft and seat characteristics such as width, seat recline angles, or pitch (including the amount of legroom). Premium Economy would be considered a different class of service from standard Economy, while Basic Economy would not. Basic Economy seats do not differ in pitch size or legroom from standard Economy.

In situations where a group of passengers are traveling under the same reservation, the Department generally is not requiring airlines to offer refunds to all passengers in the group if not all passengers are affected by a downgrade of class of service, except when the affected passenger is a qualified individual with a disability *and* the downgrade of class of service affects an accessibility feature needed by that passenger, in which case refunds must be offered to all passengers in the group upon notification by the passenger with a disability or someone authorized to act on behalf of the passenger with a disability that the person with a disability does not intend to continue travel on that flight.

B. Individuals Entitled to Refunds When a Significant Change Impacts Accessibility

The Department agrees with comments received from disability rights organizations and is requiring a refund to a passenger with a disability and other passengers on the same reservation who choose not to fly because the person with a disability does not accept a significant change of flight itinerary resulting from a change in aircraft or class of service that results in the unavailability of one or more accessibility features needed by the person with a disability. The Department is also requiring a refund to person with a disability and others on the same reservation who do not wish to continue to travel because the person with a disability does not accept a significant change in flight itinerary resulting from a change in connecting airport. The Department believes that a change in the flight itinerary that reduces the accessibility of the air travel to a person with a disability must entitle not only that individual to a refund but also all other individuals on the same reservation.

The Department notes that being a qualified individual with a disability alone may not necessarily entitle travel companions to refunds. This final rule requires carriers to provide passengers with a disability affected by a change in aircraft or downgrade of a class of service a refund if they do not continue travel. That refund is limited to the individual being downgraded, however, unless the downgrade results in the unavailability of one or more accessibility features needed by the person with a disability. In that case, individuals who are not directly affected by the downgrade of class of service are also entitled to a refund. For example, if a passenger with a hearing impairment was downgraded to a lower class of service and it is determined that the downgrade does not impact any accessibility feature needed by that passenger, that passenger is entitled to a refund if he or she does not accept the downgrade, but airlines and ticket agents are not required to extend the refund offer to other persons in the same reservation who are not downgraded. Conversely, if a passenger needing extra legroom to accommodate a disability was downgraded and the extra legroom is no longer available as a result, that passenger is entitled to a refund and so are any other persons in the same reservation. For an aircraft change to entitle travel companions of a person with a disability to a refund, the aircraft change must result in the unavailability of one or more accessibility features needed by the person with a disability and that person with a disability must reject the significant change.

The Department believes that extending refund eligibility to travel companions of passengers with disabilities whose ability to travel comfortably or safely is significantly impacted by a flight itinerary change that affects accessibility is appropriate because family members or other individuals with whom the person with a disability is traveling may not wish to continue travel without that person. Also, the person with a disability may be traveling with a personal care assistant. The requirement that refunds must be offered to all passengers in the same reservation is intended to provide flexibility for passengers to determine whether the group wants to travel together, decline travel and receive refunds together, or split up with some continuing to travel and some (including the passenger with a disability) canceling travel and receiving refunds. Airlines and ticket

agents may not mandate that all members of the group make the same decision about refunds but may refuse refunds if the only passengers requesting refunds are those who would not have qualified for a refund but for traveling with the passenger with a disability.

The Table below summarizes the rights to a refund by individuals with disabilities and their travel companions on the same reservations under certain significant changes that may impact accessibility.

TABLE 1—RIGHTS TO A REFUND BY INDIVIDUALS WITH DISABILITIES AND TRAVEL COMPANIONS

Significant change	Is an individual with a disability entitled to a refund?	Are travel companions on the same reservation entitled to a refund if an individual with a disability rejects change?
Aircraft Substitution:		
Impacts an accessibility feature needed by a passenger with a disability.	Yes	Yes.
Does NOT impact an accessibility feature needed by a passenger with a disability.	No	No.
Downgrade in Class of Service:		
Impacts an accessibility feature needed by a passenger with a disability.	Yes	Yes.
Does NOT impact an accessibility feature needed by a passenger with a disability.	Yes (NOTE: any passenger downgraded is entitled to refund irrespective of disability).	No. (NOTE: if travel companion is downgraded then that individual would be entitled to refund).
Change of Connecting Airport:		
Does not require analysis of impact on accessibility	Yes	Yes.

The Department acknowledges that the disability organizations also requested that the rule impose a requirement on airlines and ticket agents to rebook passengers with disabilities and their travel companions on another flight or ground transportation that would accommodate the disability without additional cost. The Department is examining the issue further in its rulemaking on Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs.[39] The Department is committed to continuing its efforts to protect the rights of air travelers with disabilities and is further exploring how to accommodate their needs during flight disruptions in this separate rulemaking.

The Department recognizes that the special considerations given to passengers with disabilities and their travel companions due to a significant change of flight itinerary impacting disability accommodations may lead to some passengers falsely claiming that they have a disability that was impacted by a change of connecting airport or an aircraft substitution, as well as to an entire travel group requesting refunds based on a false claim that one passenger in the group has a disability the accommodation of which was affected by a significant flight itinerary change. Consistent with the Department's Air Carrier Access Act regulation, when conducting inquiries regarding how a passenger's disability accommodation needs are impacted by a significant change, carriers should never ask about the nature or the extent of a passenger's disability. Carriers can ask questions about an individual's ability to perform specific air travel-related functions that may be impacted by the change. For example, carriers should not ask ''what is your disability?'' but may ask ''what is the accessibility feature that is needed that is no longer available because of the aircraft substitution or change in class of service?'' Also, the Department notes that an advance request for disability accommodation recorded in the passenger's reservation before the significant change occurred can serve as evidence that the passenger is a qualified individual with a disability and the significant change indeed impacts the accommodation for that disability. However, some individuals with disabilities may not request assistance in advance, but a significant change of flight itinerary may nonetheless impact an accessibility feature that they need, resulting in them no longer wishing to travel. As such, the Department cautions that lack of such a notation is not sufficient on its own as proof that the individual is not a person with a disability.

5. Entities Responsible for Refunds

The NPRM: The NPRM described the significant volume of refund complaints against ticket agents received by the Department during the COVID–19 pandemic and states that this is an indicator that strengthening protections for consumers purchasing air transportation from ticket agents is needed. These complaints also illustrated the difficulty that consumers sometimes encounter in obtaining a refund for a ticket purchased through a ticket agent when consumers do not have the means to determine whether the airline or ticket agent needs to take action to process the refunds and which entity is in possession of the consumers' money. To address this difficulty, the NPRM proposed that ticket agents who ''sold'' the tickets would be responsible for issuing refunds when they are due. It further explained that a ticket agent would be considered to have ''sold'' the ticket at issue if the ticket agent is the entity shown in the consumer's financial charge statements such as debit or credit card charge statements (commonly known as the ''merchant of record''). Under the proposal, a ticket agent obligated to provide a refund under this standard would be required to issue refunds promptly irrespective of which entity has possession of the funds. In the NPRM, the Department shared that it considered placing the obligation of providing the refund on the entity that is in the possession of the funds but did not propose this approach because which entity is in possession of the funds would not necessarily be clear to the consumer because multiple entities may be involved in the transaction process.

With respect to airlines' obligations to provide refunds in codeshare and interline situations, the NPRM proposed that the marketing carrier of an itinerary involving codeshare or interline flights

[39] *See* 89 FR 17766 (Mar. 12, 2024).

would be responsible for providing the refund, regardless of whether the marketing carrier is also the operating carrier of the flight(s) affected by a cancellation or a significant change or whether the marketing carrier is the carrier that cancelled or made a significant change to the flight itinerary. The NPRM explained that this approach benefits consumers by streamlining the process to obtain refunds and expects that carriers will be able to develop a system with their codeshare and interline partners to ensure that refunds are provided in a timely manner. The NPRM sought comments on the costs associated with establishing such a system for interline and codeshare partners to process refunds according to this proposal and whether there are technical obstacles that should be considered.

Comments Received: Airline commenters agreed that the refund requirement should apply to ticket agents when they are the merchants of record for the ticket sales or have otherwise paid for the ticket on behalf of the passenger. In supporting this position, airlines argued that they are incapable of issuing refunds for tickets purchased through ticket agents or other third parties because airlines may not be in possession of the passenger's payment information and/or personal contact information and airlines often do not have full visibility of the prices paid by consumers, especially in situations where ticket agents purchase bulk fares from airlines to resell to consumers. IATA commented that when consumer funds collected by ticket agents are processed through IATA's settlement system, the Billing and Settlement Plan (BSP), ticket agents are responsible for filing for reimbursement from airlines via the settlement system, and the airlines determine refund eligibility. A4A supported the proposed standard to hold ticket agents responsible for refunds when the ticket agents are the merchants of record, or the consumer has paid by cash or check to the ticket agent. A4A stated that it is the standard practice today and should be codified in the Department's regulation. Both A4A and IATA as well as several airline commenters supported applying the refund requirement to ticket agents globally who sell tickets for covered flights. Several consumer commenters expressed their support to hold ticket agents responsible for refunds, describing their frustrations in chasing refunds between the airline and the ticket agent.

Ticket agents and their trade representatives voiced strong opposition to the proposal that requires ticket agents who are the merchants of record to provide refunds irrespective of whether they are in possession of consumer funds. Many ticket agent commenters acknowledged that in the vast majority of transactions involving ticket agents, airlines are the merchants of record.[40] They argued, however, that although ticket agents have the technical ability to issue refunds when they are the merchants of record, they should not be required to do so because the consumer's funds were often remitted to airlines through the settlement systems immediately or shortly after ticket booking, and requiring ticket agents to refund before they receive the funds back from airlines would significantly impact the cashflow of ticket agents, especially ticket agents that qualify as small businesses.[41] Many commenters opined that such a requirement is fundamentally unfair because ticket agents have no control over airlines' cancellation or change of flights, nor do they have any control over the determination on whether a consumer is eligible for a refund. Ticket agents also argued that the process of returning funds from airlines to ticket agents through intermediary settlement systems such as the Airline Reporting Corporation (ARC) system typically takes much longer than seven days. Hundreds of small business ticket agent commenters further argue that the impact of such a requirement on ticket agents is so profound that many of them would consider stopping offering airline tickets booking services, which has the potential consequence of disrupting a major airline tickets distribution channel and causing consumers to lose the valuable travel advisory services offered by ticket agents.

Additionally, several ticket agents trade associations contended that ticket agents lack information regarding consumers' refund eligibility and any alternative transportation or compensation offered by airlines and accepted by consumers. They argued that airlines should have the sole responsibility to determine refund eligibility and timely communicate such information to ticket agents. Further, ASTA stated that to process a refund through settlement systems such as ARC, ticket agents must first receive an Electronic Authorization Code directly from airlines, confirming the flight coupon has been changed to a refund status, which minimizes duplicate refunds and prevents fraud. Ticket agent commenters suggested that the Department should revise its proposal and require ticket agents who are the merchants of record to issue refunds only when they receive confirmation of refund eligibility and funds from the airlines, and that the Department should not impose refund deadlines on ticket agents until all these conditions are met.

ASTA also expressed concerns about how to determine which entity is the merchant of record, commenting that consumers may not know which entity is the merchant of record by looking at the credit card statement. ASTA stated that some credit card issuers would identify both the airline and the ticket agent on the consumers' credit card statements to reduce the likelihood that consumers mistakenly dispute the charges because they did not recognize the transactions. ASTA also asked the Department to clarify that when a ticket agent appears on a consumer's credit card statement as the merchant of record for charging a service fee, it would not trigger the ticket refund requirement. ASTA further stated that more clarity is needed on how to determine which entity is the merchant of record when tickets are not paid by credit cards or debit cards.

The ACPAC also discussed the issue of ticket agents' responsibility to refund and heard from numerous ticket agent representatives about the potential impact on their businesses should the Department adopt the proposal. The ACPAC recommended that the Department adopt the proposed standard to hold ticket agents responsible for refunds when they ''sold'' the tickets. Further, in recognition of the potential financial impact on small businesses, the ACPAC recommended that the Department revise the proposal to provide some relief for ticket agents.[42] Specifically, the ACPAC recommended that the Department impose a requirement on airlines to return the consumer funds to ticket agents within seven days of receiving the refund requests, and that ticket agents that qualify as ''small businesses'' under the standard set forth

[40] For example, according to American Society of Travel Advisors (ASTA), it estimates that between five and eight percent of all airline ticket transactions by credit cards facilitated by its members have the ticket agents appear as the merchants of record, with the majority of which involving group bookings, air-inclusive tour packages, or resale of consolidated fares.

[41] ASTA states that its data indicates that 98% of travel agencies qualify as ''small businesses'' under the Small Business Administration (SBA) size standards.

[42] Among the four members of ACPAC, three members voted in support of this recommendation and the member representing airlines abstained, expressing concerns about whether the recommendation regarding refund timeline is consistent with other Federal regulations, *i.e.,* Regulation Z.

by the Small Business Administration (SBA) be given up to 14 days, instead of seven days, to issue refunds.

On entities responsible for refunds for codeshare or interline itineraries, IATA indicated that it supports the proposal to require the marketing carriers be responsible for issuing refunds for codeshare flights. IATA further commented that the Department should require the operating carriers to refund any portion of the fare or fees paid by the marketing carrier in the event a refund is due to passengers.

DOT Response: Sales by ticket agents constitute a major airline ticket distribution channel. According to anecdotal data from the Airline Reporting Corporation published in 2019, travel agencies generated 44% of air segment sales.[43] During the COVID–19 pandemic, the unprecedented number of consumer complaints on refunds included a significant number of complaints against ticket agents and tour operators. In those complaints, consumers expressed frustration at being sent back and forth between the ticket agent and the airline when trying to obtain their refunds. As many commenters from the industry have illustrated, in a typical airline ticket transaction involving ticket agents as the merchant of record, the consumer funds are transferred through various entities including intermediary settlement systems. It is the Department's understanding that for those ticket sales, the refund process reverses the flow of money among the entities involved. Thus, focusing on which entity is in possession of the funds when assigning a refund obligation is impractical and unworkable from a consumer's perspective because consumers do not know which entity is in possession of the funds at any given time. The Department continues to view such uncertainty as a main driving force leading to additional costs, delay, and confusion to consumers. Given this concern, the Department declines to adopt the suggestion to assign refund obligation based on which entity is in possession of consumer funds, and instead, adopts the proposed standard to hold retail ticket agents responsible for refunds when they ''sold'' the tickets to consumers as the merchants of record. This requirement would cover retail ticket agents of all sizes that conduct business online or via brick-and-mortar stores that *transact directly* with consumers. The Department believes that this bright line standard is the most effective way to address the potential consumer confusion and frustration when there is more than one entity involved in the selling of airline tickets. The Department also agrees with airline commenters that holding ticket agents who sold the tickets responsible for refunds addresses the issues that arise when airlines do not have the consumers' payment and/or contact information, or visibility of how much consumers paid for the tickets when tickets are sold as consolidated fare or bulk fare, all of which are necessary for processing refunds promptly and accurately.

The refund requirements for ticket agents apply to airfare or airfare-inclusive travel package transactions in which the ticket agents are the merchants of record for the transactions irrespective of whether the ticket agent is in possession of the consumer funds at the time when the refund is due. The Department defines ''merchant of record'' as an entity that processes consumer payments for airfare or airline ancillary service fees and whose name appears on the consumer's bank or similar transaction statement. Regarding ASTA's comment that some credit card statements will list both the airline and the ticket agent for the transaction, the Department understands that this is done by credit card issuers with the intention to ensure that consumers recognize the charges. As there is always one merchant processing the card payment, consumers can contact their credit card issuers and ask which entity is the merchant of record who imposed the charge. For transactions paid by a payment other than credit cards or debit cards, the transaction receipt provided to consumers should list the entity that is responsible. In that regard, if the consumer purchased the ticket with cash or check, the entity that issued the receipt should be responsible for refunds.

The Department appreciates the information from the industry regarding the flow of funds in ticket agent-involved airline ticket transactions. It is the Department's understanding that ticket agents' main concern is not about taking on the obligation to refund when they are the merchants of record. It seems that their concern, instead, is the obligation to refund according to the refund timelines even when the funds have not been returned to them by the airlines. Ticket agents emphasized that imposing this obligation regardless of whether they have possession of the funds will place a significant burden on their cashflow, particularly on ticket agents that are small businesses. Accordingly, many commenters asked that, should the Department adopt the merchant of record standard to hold ticket agents responsible for refunds, ticket agents should be required to provide refunds only when they receive the funds returned by airlines.

The Department disagrees with the approach proposed by ticket agents that they would not be required to refund consumers until they receive the funds from airlines because it would harm consumers should airlines, who are not directly responsible for refunds, not timely return the funds to ticket agents. The result of the ticket agents' proposed approach is that consumers would have no meaningful timeline within which they can expect to receive refunds. The Department has considered the ACPAC's recommendation that there be an affirmative obligation on airlines to return consumer funds back to ticket agents within seven days of receiving a refund request from a ticket agent when the airlines are not the merchants of record for the ticket sales. While the Department agrees that airlines should return consumer funds to ticket agents promptly in these situations, it is not persuaded that DOT intervention into airlines' and ticket agents' business and contractual arrangements is necessary at this time. The Department's authority to prohibit unfair or deceptive practices in 49 U.S.C. 41712 is intended to protect consumers. The Department expects that airlines and ticket agents both have the interest to negotiate, form, and adhere to a standard procedure in handling consumer funds to ensure that ticket transactions and refunds are processed smoothly to the benefit of consumers, as well as the businesses involved.

Although the Department does not believe that ticket agents' obligation to refund should be dependent upon receiving the return of the funds from airlines, we acknowledge that before issuing the refund, the ticket agent may need further information to verify whether a refund is due under the Department's regulation. The NPRM states that in most situations involving cancellations or significant changes, there would be sufficient information (*e.g.,* airlines' publications on cancellations or flight itinerary change notifications sent to consumers) to confirm refund eligibility without contacting airlines; however, after reviewing comments, we realize that even in those situations, ticket agents may need airlines' confirmation that the affected consumers did not accept alternative transportation or other compensation in lieu of refunds.

[43] *Phocuswright White Paper—Air Sales and the Travel Agency Distribution Channel,* Airline Reporting Corporation, April 2019. *https://www.phocuswright.com/Free-Travel-Research/Air-Sales-and-the-Travel-Agency-Distribution-Channel.*

Comments submitted by ticket agents also state that airline ticket settlement systems often incorporate a process under which airlines need to issue refund authorization codes to prevent duplicate refunds and fraud. To ensure that refunds to consumers are not unreasonably delayed because ticket agents are waiting on airlines' confirmation of refund eligibility, we are requiring airlines to determine whether consumers are eligible for refunds and if so, inform ticket agents of the refund eligibility without delay upon receiving the refund request from the ticket agent. The Department's Office of Aviation Consumer Protection will determine the timeliness of airlines' response based on the totality of the circumstances, including how quickly the airline took steps upon receiving the ticket agent's refund request to determine refund eligibility and whether the airline informed the ticket agent of the refund eligibility as soon as it has confirmed it. The Department expects airlines and ticket agents to work together to develop and enhance channels of communication to ensure that information regarding passengers' refund requests and eligibility are transmitted in an effective, accurate, and efficient manner.

This final rule makes it an unfair practice for airlines to fail to timely confirm refund eligibility and communicate that eligibility to ticket agents. Airlines not confirming refund eligibility in a timely manner slow the refund process and cause substantial harm to consumers. This harm is not reasonably avoidable by consumers, as they have no control over how soon airlines inform ticket agents that a refund is due so the ticket agents can begin to process the refund. The Department also sees no benefits to consumers and competition from this conduct. On the contrary, the Department views that not imposing this requirement on airlines would allow airlines or ticket agents to keep money that is due to consumers indefinitely, which in turn harms consumers and competition by penalizing good customer service and rewarding dilatory behavior.

For codeshare or interline itineraries sold by a carrier, the Department is requiring the carrier that ''sold'' the airline ticket (*i.e.,* the merchant of record for the ticket transaction) to provide the refunds, as this is the most straightforward standard from consumers' perspective. Consistent with the rationale for the ''merchant of record'' approach that we adopted in determining ticket agents' refund obligation, we believe the carriers who are the merchants of record for the ticket transactions are in the best position to process and issue refunds as they have direct visibility of the passengers' payment instruments information and the total amounts paid for the itineraries. The Department further notes that in most codeshare or interline itineraries, the marketing carriers are the merchants of record. The Department's focus is on making consumers whole when their flights are cancelled or significantly changed, and we decline to regulate how airlines manage the transfer and the return of funds among themselves in the event of ticket refunds, as we expect that airlines engaging in codeshare or interline arrangements will work together on contractual agreements to ensure that account settlements are conducted through the normal course of business dealing following refunds provided to consumers.

6. Timing of Refunds

The NPRM: As explained in the NPRM, the Department's current refund timeframes are based on the form of payment used for the ticket purchase, *i.e.,* seven days for credit card purchases and 20 days for cash and other forms of payment. 14 CFR part 374 is the Department's regulation implementing the Consumer Credit Protection Act and its regulations, including Regulation Z of the Consumer Financial Protection Bureau (CFPB) regulation, 12 CFR part 1026 (Regulation Z), with respect to airlines issuing refunds for credit card purchases. Regulation Z, in relevant provision under 12 CFR 1026.12(e)(1) provides that ''when a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumers' credit card account, that creditor shall, *within 7 business days* [emphasis added] from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuers' normal channels for credit statements.'' The Department's own regulation in 14 CFR 259.5(b)(5) imposes a refund timeline of 20 days on airlines for purchases made by cash or check. It also specifies that the refund timeline starts after airlines receive the complete refund request. With respect to ticket agents, the Department's regulation in 14 CFR 399.80 requires that they make ''proper refund promptly'' when services cannot be performed as contracted. Because Regulation Z impacts all consumer credit, ticket agents are also subject to the refund requirement of Regulation Z (12 CFR 1026.12(e)(1)) with respect to refunds of credit card purchases. Under its authority against unfair or deceptive practices, 49 U.S.C. 41712, the Department also requires that ticket agents provide refunds for purchases by payments other than credit cards within a reasonable time.

The NPRM's proposal on ''prompt'' refunds when they are due requires airlines to issue refunds ''within 7 days of a refund request as required by 14 CFR 374.3 for credit card purchases, and within 20 days after receiving a refund request for cash or check or other forms of purchases.'' [44] Similarly, the proposed rule on ticket agents defines ''a prompt refund'' as ''one that is made within 7 days of receiving a refund request as required by 12 CFR part 1026 for credit cards purchases, and within 20 days after receiving a refund request for cash or check or other forms of purchases.'' [45] The NPRM sought comments on whether these timeframes are appropriate when a carrier has cancelled or made a significant change to a scheduled flight to, from, or within the United States and consumers found the alternative transportation offered to be unacceptable.

Comments Received: IATA supported the 7/20-day refund timelines under normal circumstances but argued that during public health emergencies, airlines should have at least 30 days to process a refund request. IATA stated that due to spikes of refund requests, some airlines facing financial difficulties had to choose between delaying refunds or going out of business. Air Canada argued that carriers should have no less than 30 days to issue refunds in the original form of payment, and the refund timeline should be suspended during major crises. Air Canada stated that the proposed timelines are disconnected from the actual time needed for refund processing by various parties involved, and the situation can be more complex when the original ticket was sold through a ticket agent. Air Canada further argued that the refund timelines should consider situations that trigger the need for more time, such as the original form of payment no longer being valid, and the time needed to calculate the refund amount when the ticket is partially used. A4A commented that the Department should ensure that the 7/20-day refund timelines are consistent with longstanding DOT enforcement precedent and Regulation Z by clarifying that they are in reference to business days and not calendar days.

[44] See proposed rule text for 14 CFR 259.5(b)(5), 87 FR 51550, 51576.

[45] See proposed rule text for 14 CFR 399.80(l), 87 FR 51550, 51579.

USTOA representing tour operators commented that the 7/20-day timelines are reasonable so long as the sellers are in possession of the funds. It further elaborated that for ticket agents, counting of the timelines should not begin until the ticket agents are in possession of the funds and have received refund eligibility confirmation from airlines.

Ticket agent representatives also provided comments during the ACPAC meetings regarding the financial difficulties they face if they are required to issue refunds before receiving the funds back from airlines. In recognition of the potential financial impact on small businesses, the ACPAC recommended that the Department revise the proposal to provide some relief for ticket agents. Specifically, the ACPAC recommended that the Department impose a requirement on airlines to return the consumer funds to ticket agents within seven days of receiving the refund requests, and that ticket agents that qualify as ''small businesses'' under the standard set forth by the Small Business Administration (SBA) be given up to 14 days, instead of seven days, to issue refunds to consumers. [46] In a joint comment filed by A4A and IATA, the carrier representatives stated that this ACPAC recommendation conflicts with Federal Reserve regulation (12 CFR 1026.11) and the Department's rule (14 CFR 374.3). They further commented that the NPRM did not propose to change the Department's refund regulations or discuss a different refund standard and therefore adopting a different refund standard in a final rule would violate the notice and comment requirements of the Administrative Procedure Act.

Furthermore, airline commenters expressed concerns about passengers not informing carriers of their decisions to reject the alternative transportation offered until close to the flight's departure, therefore depriving airlines the opportunity to resell those seats. IATA and Air Canada argued that passengers should have the obligation to take positive steps to inform airlines within a reasonable time after the passenger is notified of a significant change and offered alternative transportation. During an ACPAC meeting, the member representing airlines also expressed similar concerns.

Some consumer commenters urged the Department to require airlines to issue ''automatic'' refunds. They argued that airlines have the incentive to adopt complex refund processes that make requesting refunds cumbersome and difficult for consumers, engineered to dissuade consumers from receiving their due compensation. Some commenters provided examples of inefficient and complex refund request procedures currently adopted by airlines, including hidden refund request links on their websites, excessive data input requirements from consumers, lengthy and confusing refund request forms, and excessive hold time for requesting refunds over the telephone. In addition, PVA and United Spinal Associates commented that when alternative transportation does not provide the same or similar accessibility features or seating arrangements, this deficiency should prompt an automatic refund offer.

DOT Responses: Based on the comments received, the Department is addressing—(i) the meaning of prompt refunds, including during public health emergencies; (ii) automatic refunds as a way to reduce cumbersome refund request processes for consumers and ensure consumers' rejection of the alternative transportation offered do not deprive airlines of the opportunity to resell those seats; (iii) commencement of refund deadlines; and (iv) the meaning of business day for purpose of providing refunds.

(i) Prompt Refunds

In this final rule, we are requiring that airlines and ticket agents provide prompt refunds when due. Prompt is defined to mean within 7 business days of refunds becoming due for credit card purchases, and within 20 calendar days of refunds becoming due for purchases by cash, check, or other forms of payment. To the extent the purchase is made by a debit card, the Department has reviewed the relevant definitions in CFPB's regulations, including Regulation Z, and has determined that a typical debit card does not fall under the 7-day refund timeline that only applies to ''credit card'' and therefore would be subject to the 20-day timeline.[47]

The Department has considered airlines' suggestion of additional time to provide refunds including one airline's request for no less than 30 days to issue refunds and to suspend the refund deadlines during major crisis. The Department believes that maintaining the 7/20-day refund timeline is reasonable as airlines and ticket agents have been required to comply with these timeframes for decades. The Department is also not convinced that extending or suspending the 7-day timeline for credit card purchases during large-scale air travel disruptions is either permissible under Regulation Z or warranted. Taking the COVID–19 pandemic as an example, although the Department recognizes the challenges airlines and ticket agents faced when dealing with a significant increase of refund requests, the Department also recognizes the financial difficulties average consumers faced during the pandemic, including the impact of not receiving timely refunds of airline tickets they paid for when the service is cancelled or significantly changed. During such an event, the Department considers consumers to be in need of the regulatory protection afforded by the prompt refund requirements specified in this final rule. As discussed earlier, the Department is adopting the proposal to hold ticket agents responsible for refunds when they are the merchants of record for the ticket transactions. We have considered comments by numerous small ticket agents and the ACPAC's recommendation to provide small ticket agents additional times to issue refunds by credit cards. After a careful review of Regulation Z and relevant interpretations by CFPB, we have determined that the Department does not have the discretion to *extend* the 7-day refund timeline for credit card purchases, which would contradict Regulation Z. The Department acknowledges the concerns of small ticket agents regarding the financial burden to issue refunds before receiving the funds back from airlines. We note that, as several ticket agent commenters point out, that less than 10% of ticket transactions involving air travel have ticket agents as the merchants of record, for which they will be obligated to issue refunds. The Department expects that outside of a massive disruption to air transportation on a national or global scale, ticket refund requests made to small ticket agents due to airline cancellation or significant change should be rare. In addition, the Department is mandating that airlines confirm refund eligibility before a

[46] Among the four members of ACPAC, three members voted in support of this recommendation and the member representing airlines abstained, stating that he is unclear about whether this recommendation is consistent with other Federal regulations, *i.e.,* Regulation Z.

[47] The CFPB regulation defines a ''credit card'' as any card, plate, or other single credit device that may be used from time to time to obtain credit. See 12 CFR 1026.2(a)(15)(i). The term ''credit'' is defined as the right to defer payment of debt or to incur debt and defer its payment. See 12 CFR 1026.2(a)(14). In contrast, ''debit card'' is defined as any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account. See 12 CFR 1026.2(a)(15)(iv).

refund is due by ticket agents.[48] We expect that this requirement, along with the tolling of the refund timeline discussed below, will alleviate the financial burden on small ticket agents.

(ii) Automatic Refunds

The NPRM proposed that the 7/20-day refund timelines start upon airlines or ticket agents ''receiving a complete refund request'' from consumers. After considering the comments from consumers and the industry, the Department has determined that under certain circumstances where consumers' rights to refunds and their intention to receive a refund are unequivocal, using consumers' explicit refund requests as the starting point for computing the refund timelines is an approach that imposes an unnecessary burden on consumers. Consumers in comments expressed their frustrations about the cumbersome process to request and receive a refund following a flight cancellation or significant change, at times waiting for hours on the phone, digging through cumbersome airline websites to find a link for requesting a refund, or having to navigate through extra ''digital paperwork'' to complete a refund request form. The Department is persuaded by consumers that in these circumstances automatic refunds are warranted. For example, if a flight is cancelled and no alternative transportation or compensation is offered to the passenger in lieu of a refund, the carrier must refund the consumer because the contracted service was not provided. Similarly, if a flight is significantly changed and the consumer rejects the significantly changed flight and no alternative transportation or compensation is offered to the passenger in lieu of a refund, the carrier must refund the consumer because the contracted service was not provided. It is inefficient and unreasonable for the carrier to wait to receive an explicit refund request from the consumer in such situations. Also, if alternative transportation or a travel credit, voucher, or other compensation is offered to a consumer for a canceled flight or a significantly changed flight and the consumer rejects the alternative transportation or compensation offered, then the carrier should refund the consumer without further delay because the contracted service was not provided and the consumer rejected the alternative offered. It should not be necessary for the consumer to separately request a refund because the rejection of the alternatives offered is tantamount to a request for a refund.

The Department acknowledges airlines' concerns about consumers not rejecting a significantly changed flight or a booked alternative flight itinerary after being notified of such an offer until closer to flight operation, thus depriving airlines the opportunity to sell the seats for revenue. Under this final rule, airlines may set a deadline that provides reasonable time for a consumer to decide whether to accept the existing itinerary with a significant change or an airline's offer of alternative transportation in lieu of a refund. To determine whether a carrier provided consumers reasonable time to consider the options and make a decision, the Department will look primarily at when the cancellation or significant change occurred, how soon after the carrier became aware of the flight cancellation or significant change that the carrier notified affected consumers of this event and made an offer of alternative transportation, and how close the consumer notification is to the scheduled departure date of the significantly changed flight or the alternative transportation offered.

The Department recognizes that some consumers may not respond to a carrier's offer of a significantly changed flight or an alternative flight by the deadline. To ensure that consumers understand the potential consequences of not responding by the deadline, the Department is also requiring airlines when notifying affected consumers of a significantly changed flight or offering alternative flight to inform consumers whether the carrier will treat the lack of response by the deadline as a rejection (*i.e.,* prompt refund to be provided but reservation is no longer held for passenger) or an acceptance (*i.e.,* reservation held for passenger but passenger forfeits right to a refund) of the offer. A carrier may determine whether it will treat the lack of response by the deadline as a rejection or an acceptance of the offers, but such determination must be adopted as a customer service policy applicable universally to all passengers of the carrier. Any change to the policy applies only to passengers who booked their tickets after the effective date of the change. If a carrier chooses not to set a deadline for the consumer to respond to the offer, the carrier is essentially giving the consumer the option to decide until the date of the significantly changed flight or the alternative flight as to whether to accept or decline the offer. Under these circumstances, the consumer taking the significantly changed flight or the alternative flight is an acceptance of the offer and the consumer not taking the flight is a rejection of the offer. Again, if the consumer has rejected an offer of alternative transportation (informed airline of rejection of alternative transportation, failed to respond within the timeframe provided by the carrier after carrier notified passenger that lack of a response to offer of alternative transportation would be deemed a rejection, or did not take the flight when the carrier did not set a deadline for a response to an offer of alternative transportation), there is no need for the consumer to send a separate request for a refund.

To ensure consumers have reasonable time to consider and respond to the options offered by a carrier, the Department is requiring carriers to notify consumers of the options available to them in a timely manner. It is an unfair practice for airlines to not timely notify consumers of their options yet impose a short deadline to respond. Such a practice harms consumers by depriving them of a reasonable time to consider their options. The failure to fully inform consumers of the consequence of not responding by the deadline (*i.e.,* losing their money paid for the ticket or losing their seats on the booked flights) is also an unfair practice. Such a practice harms consumers by omitting a material matter in the notification, and the omission would negatively affect consumers' conduct. Both harms are not reasonably avoidable by consumers because consumers would not have known about material matters unless they were informed. These practices do not benefit consumers or competition—rather these practices would hinder transparency and causes inefficiency in airlines' inventory management. As such, the Department is requiring carriers to provide timely notification to affected consumers about the options available to consumers when a flight is canceled or significantly changed, any responsive deadline, and the consequence of not responding by the deadline. For carriers that have in

[48] In an enforcement notice issued by the Department's Office of Aviation Consumer Protection (OACP) on March 12, 2020, the Department states that it interprets the requirement for ticket agents to provide refunds to include providing refunds in any instance when the following three conditions are met: (1) an airline cancels or significantly changes a flight, (2) an airline acknowledges that a consumer is entitled to a refund, and (3) passenger funds are possessed by a ticket agent. See, *https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.* The Department has reconsidered this issue and determined that the final rule appropriately ensures that consumers receive prompt refunds as required by the rule and are not caught in the middle between airlines and ticket agents, but also provides safeguards for ticket agents in the requirement for airlines to verify refund eligibility before the refund timeline starts.

place notification subscription services, this notification must be provided through media that the carriers offer and the subscribers choose, including emails, text messages, and push notices from mobile apps. As the content of the notification may be over the size limits of text messages or mobile app push notices, carriers may include in a text message or push notice a link to the consumer's reservation page on its website, where the full content of the notification is displayed.

In addition to notifying affected consumers, this final rule requires that carriers provide clear, conspicuous, and accurate information in their customer service plan regarding the carriers' policies and procedures on refunds and rebooking including when consumers are non-responsive to carriers' offers of significantly changed or alternative flights. More specifically, the Department is amending 14 CFR 259.5 to require carriers to incorporate into their Customer Service Plans a commitment to disclose relevant refund and cancellation policies as provided in 14 CFR part 260, including policies related to consumers' right to a refund due to airline-initiated cancellations or significant changes, consumers' right to ''automatic refunds'' under certain circumstances, consumers' right to refunds and rebooking when consumers are non-responsive to carriers' offers of significantly changed or alternative transportation. This information is intended to better inform consumers about their rights before purchasing tickets and whenever questions arise later. The Department considers any misrepresentation or omission of material matters regarding a consumer's rights when airlines and ticket agents publish their refund polices or notify consumers affected by a canceled or significantly changed flight to constitute an unfair practice in violation of 49 U.S.C. 41712. Consumers who are not provided complete and accurate information about their rights are not likely to choose the options that best suit their needs. For example, consumers who are offered alternative transportation but not notified of the need to respond before an airline-imposed deadline may lose their rights to a refund or lose the flight reservations that they intend to keep. This is a substantial harm that cannot be reasonably avoided by consumers because consumers have no way to fully understand their rights without being notified by airlines or ticket agents. Airlines or ticket agents not providing clear, accurate, and complete notifications to consumers harms competition because it hinders the development of open and fair competition that maximizes consumer choices based on information transparency. The Department further views such misrepresentation or omission as a deceptive practice because misrepresenting or omitting a material fact relating to a consumer's right to a refund or other options available in lieu of a refund in the carrier's customer service plan is likely to deprive that consumer of important information that could impact which carrier the consumer selects for the air transportation and similar misrepresentation or omission in notifications provided to consumers affected by significant change and cancellation could impact the choice that the consumer makes between a refund and another option.

(iii) Commencement of Refund Timelines

The Department's existing refund regulation requires that a refund must be provided within the required timelines after receiving a ''complete refund request.'' The Department did not use this language in the proposed rule but ''acknowledge[d] that for transactions in which a ticket agent would be responsible for issuing a refund if due, before issuing the refund, the ticket agent may need further information to verify whether a refund is due under the Department's regulation.'' [49] After carefully reviewing the comments received, the Department is of the view that the obligation of a ticket agent to provide refunds should begin when the ticket agent receives confirmation about the passengers' refund eligibility from airlines. Under this final rule, the 7/20-day refund timelines start at the time the ticket agent receives the eligibility confirmation from the airline. For example, if an airline confirms that the passenger is eligible for a refund on day 3, the 7 or 20-day refund timeline for the ticket agent starts on day 3. Airlines and ticket agents are encouraged to establish effective communication channels and airlines are expected to work expeditiously to confirm refund eligibility. The Department does not view tolling the refund timelines for lack of essential information needed for refunds to be contradictory to Regulation Z, as Regulations Z's 7-day refund timeline starts from the time a ''*creditor other than the card issuer*'' ''*accepting the return [of property] or forgiving the debt.*'' In the Department's view, an airline or ticket agent should not be expected to accept the return of property or forgive the debt until it can be confirmed that the consumer is eligible.

(iv) Business Days

In this final rule, the Department is requiring refunds be provided within seven business days of when it is due for credit card purchases and within 20 calendar days of when it is due for cash and other forms of payment. The Department agrees with A4A's comment that the 7-day refund timeline should be consistent with CFPB's Regulation Z. The CFPB regulation defines ''business days'' as a day on which *the creditor's offices are open to the public for carrying on substantially all of its business functions.*[50] CFPB's Official Interpretation of its definition explains that ''*[a]ctivities that indicate that the creditor is not open for substantially all of its business functions include a retailer's merely accepting credit cards for purchases. . . .*'' [51] CFPB also explains that ''*activities that indicate that the creditor is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries.*'' [52]

Based on CFPB's Official Interpretation of its definition, the Department has decided not to use the days that airlines and ticket agents accept credit cards for purchases of airline tickets and related services to determine business day. Instead, the Department is focusing on the days on which the offices of airlines and ticket agents are typically open to process refund requests and defining business day to be Monday through Friday, excluding Federal holidays in the United States. By defining business day in this simplified manner, the Department is providing regulatory clarity to airlines and ticket agents regarding their obligations to provide prompt refunds. Importantly, consumers can also easily understand their rights and advocate for themselves when regulations are defied or disregarded. The Department expects that this clarification regarding refund timeline for credit card payment refunds will enhance transparency and consistency in the airline ticket refund process but will revisit this issue in the future should it be necessary.

The Department notes that the CFPB regulation is not applicable to the DOT

[49] 87 FR 51550, 51563.

[50] 12 CFR 1026.2(a)(6).

[51] *https://www.consumerfinance.gov/rules-policy/regulations/1026/interp-2/#2-a-4-Interp-3.*

[52] *Id.*

requirement concerning providing refunds within 20 days for purchases paid by a payment other than a credit card. As is the case currently, the Department is continuing to require airlines and ticket agents to provide refunds for non-credit card purchases within 20 calendar days. The Department has amended the regulation text accordingly.

7. Amount and Form of Refunds

The NPRM: Under the NPRM, when ticket refunds are due because of a significantly changed or canceled flight, a passenger would be entitled to receive a full refund equal to the ticket purchase price including government-imposed taxes and fees and carrier-imposed fees and surcharges (such as fuel surcharges), minus the value of any air transportation that is already used by the passenger. To calculate the value of any used portion of the air transportation when determining the amount of refunds, the Department suggested that airlines rely on established industry practices and guidelines.

On the form of refunds, the NPRM explained that the Department intends to explore ways to provide consumers, carriers, and ticket agents more flexibility in issuing and receiving refunds. As such, the NPRM proposed to allow airlines and ticket agents to choose whether to refund passengers by returning the money in the original form of payment or by providing the refund in cash or a form of cash equivalent, including prepaid cards, electronic fund transfers to passengers' bank accounts, or digital payment methods such as PayPal or Venmo. The NPRM stated that a carrier- or ticket agent-issued travel credit or voucher or a store gift card is not considered a cash equivalent form of payment because these forms of compensation are not widely accepted in commerce. Further, the Department considered that when a carrier or ticket agent issues a prepaid card, any maintenance or usage related fees should be prepaid into the card by the issuer in addition to the full amount of refund that is due. The NPRM asked whether this proposal would be beneficial to consumers, carriers, and ticket agents as intended and whether there are any unintended negative impacts.

Comments Received: Airlines generally did not object to the proposal to require a refund of the full ticket price including taxes and fees. However, A4A and IATA commented that the refund amount should exclude any government taxes and fees that are non-refundable. This position was supported by the U.S. Chamber of Commerce.

FlyersRights argues that amount of refunds for cancelled or significantly changed flights should include a premium if the cancellation or significant change occurs close to the scheduled departure date as consumers will likely have to pay a much higher price for another ticket. Also, hundreds of consumer commenters stated that a refund of the ticket is inadequate to address the costs and inconvenience to passengers when a flight cancellation or significant change occurs mid-journey. PVA stated that a refund by itself is useless when a passenger with a disability is stranded.

On the form of refunds, most airlines commenters supported the proposal to allow carriers and ticket agents to choose between the original form of ticket payment and another form that is cash-equivalent, stating that this would provide flexibility to carriers, ticket agents, and consumers. Spirit Airlines argued that refunds should be in the original form of payment, expressing concerns about the privacy of cash equivalent payments that potentially expose consumers to scam and confusion. Qatar Airways also supported the position that the default refund form should be in the original form of payment and stated that only when the original form of payment service declines the refund should another form of payment be used. Travel Management Coalition also favored the refund being issued in the original form of payment and added that if the Department directs another form of refund, the refund timeframe should be extended. Global Business Travel Association commented that refunds should be directed back through the original form of payment for business travelers to ensure that the business, not the traveler, is refunded.

DOT Response: After carefully considering the comments, the Department is finalizing the proposal to require airlines and ticket agents to provide full refunds to eligible passengers of the ticket purchase price, minus the value of any portion of transportation already used. The refunds must include all government-imposed taxes and fees and airline-imposed fees, regardless of whether the taxes or fees are refundable to airlines. The Department disagrees with the airlines' position that consumers should bear the burden of any non-refundable government taxes and fees when consumers have not initiated, caused, or contributed to the cancellation or significant changes to their flight itineraries.

Regarding how best to calculate the value of any portion of transportation already used, the Department emphasizes that carriers are expected to adhere to established industry practice and treat consumers fairly. The Department will view any arbitrary deviation from industry practice in calculating the value of the unused portion to the detriment of the consumer to be indicative of an unfair practice. Further, any assigned value to a used or unused segment that is significantly disproportionate to the distance covered by that segment (*e.g.,* assigning 10% of the total ticket value to the unused segment that covers 50% of the total travel distance) will be viewed as a *prima facie* unfair practice unless carriers can justify the assignment with established and verifiable industry practice.

Although the final rule requires carriers to refund only unused portion of the ticket price if a passenger has used a part of the ticket, the Department acknowledges the comment from a consumer organization regarding consumers having to pay a premium to purchase a new ticket when their flights are cancelled or significantly changed close to the scheduled departure date, as well as comments that flight cancellations or significant changes impact consumers more significantly when they have already traveled a portion of the itineraries, particularly persons with disabilities. Consumers stranded at a connecting airport by a cancellation or significant change face not only the challenge of limited choices for continuing travel or returning to their origination airport, but also increased cost of food, lodging and other expenses. These comments reflect consumers' concern that simply refunding the ticket price may not adequately compensate the actual cost to consumers from airline cancellations or significant changes. The Department's rulemaking on Rights of Airline Passengers When There Are Controllable Flight Delays or Cancellations [53] intends to examine how best to ensure passengers' needs are addressed beyond refunds including essential services such as meals, rebooking, and hotel as well as compensation to mitigate passenger inconveniences when there is a controllable cancellation or delay.

To reduce the likelihood of consumers embarking on a journey without knowledge of a downstream cancellation or significant change, the Department reminds carriers of their obligation under 14 CFR 259.8 to

[53] *See* fn. 29, *supra.*

promptly provide to passengers who are ticketed or hold reservations, and to the public, information about a change in the status of the flight within 30 minutes after the carrier becomes aware of a change in the status of a flight. These notifications are important to ensure that consumers are aware of any known flight itinerary or schedule changes and cancellation that would affect their travel downstream before they begin the journey to avoid being stranded mid-travel and facing difficult choices. Also, the Department reminds carriers of their obligation under 14 CFR 259.8 to identify and adhere to the services that it promises to provide consumers in their customer service plan to mitigate passenger inconveniences resulting from flight disruptions. Beginning in September 2022, the large U.S. carriers have made significant changes to their customer service plans to improve services provided to passengers when their flights are canceled or delayed because of an airline issue (*i.e.,* controllable cancelations and delays). As a result, many U.S. customers impacted by controllable cancellations and delays are entitled today to receive reimbursements for expenses such as meals, hotels, and ground transportation.[54] On the form of refunds, the Department is convinced by commenters that the best approach is to require that refunds be in the original form of ticket purchase, and allow airlines and ticket agents to offer, in addition to the original form of payment, other cash-equivalent payments. The Department views that making the original form of payment the default refund form has several benefits. First, it ensures that all passengers, as a minimum, can receive their money back in the same way they paid for the tickets, therefore avoiding the situations where consumers are forced to accept an alternative payment form through which they have no way to access cash directly. Second, it expedites and streamlines the process of refunds in most situations by simply reversing the ticket purchasing process using the payment information already available to airlines or ticket agents. Thirdly, it avoids complications in business travel by ensuring that businesses, as opposed to travelers, receive the refunds. The Department notes that under this final rule, all airlines and ticket agents are required to provide refunds in the original form of payment, unless the passenger has agreed to a different form of payment. Airlines and ticket agents are permitted, but not required, to offer other forms of refunds that are equivalent to cash, but only if it is made clear to the customer that they have the right to receive a refund in the original form of payment. Having received no comments on the proposed definition for ''cash equivalent,'' the Department is adopting the definition as proposed, including the prohibition on requiring consumers to bear the burden for maintenance fees, usage fees, or transaction fees related to a cash equivalent payment method.

8. Offers of Travel Vouchers, Credits and Other Compensation and Notification to Consumers of Their Right to a Refund

The NPRM: The Department proposed to allow airlines and ticket agents to offer but not require other compensation choices such as travel credits or vouchers and store gift cards in lieu of refunds. The NPRM recognized that while a refund in the original form of payment or cash or a cash equivalent form of payment would be preferred by many passengers, some passengers may prefer receiving travel credits or vouchers or store gift cards. The proposal would allow airlines and ticket agents the flexibility, at their discretion, to work with passengers by offering more choices of compensation for interrupted travel plans.

To ensure consumers know their right to a refund, the Department also proposed to require carriers and ticket agents inform consumers that they are entitled to a refund if that is the case before making an offer for travel credits, vouchers, or other compensation in lieu of refunds. Further, under the Department's proposal, the option for carriers and ticket agents to offer compensation other than refund of cash or cash equivalent when a carrier cancels or makes a significant change to a flight itinerary must not be misleading with respect to the passengers' rights to receive a refund. Under the proposal, airlines and ticket agents must clearly disclose any material restrictions, conditions, and limitations on the compensation they offer, so consumers can make informed choices about which types of compensation and refunds would best suit their needs.

Comments Received: FlyersRights and several consumer commenters expressed their support for the proposal to require airlines to notify consumers of their rights to a refund before offering other compensation. Some commenters also stated that such disclosure should be in clear language, using terms that ordinary individuals would understand. All airline commenters who commented on non-cash equivalent compensation supported the proposal to allow airlines and ticket agents to offer these types of compensation to consumers who are eligible for refunds. IATA and SATA also commented that the Department should allow carriers to offer refunds when travel credits or vouchers are required by the regulation. National Consumers League supported the proposal to allow airlines and ticket agents to offer non-cash equivalent compensation but argues that any travel credits or vouchers offered should never expire.

DOT Response: This final rule is requiring airlines and ticket agents to inform passengers entitled to receive a refund of their right to a refund before making an offer for travel credits, vouchers, or other compensation in lieu of refunds. The Department is persuaded by comments of the importance of disclosing to consumers their rights to a refund up front in plain language. Passengers lacking this information may not be able to make an informed decision as to whether to obtain a refund or accept other compensation. For similar reasons, the Department is also requiring airlines and ticket agents to inform passengers of their rights to a refund, if this is the case, when offering a significantly changed flight or alternative transportation for a significantly changed or cancelled flight.

To provide more flexibilities and choices to consumers, the Department is allowing airlines and ticket agents to offer, in addition to refunds, other compensation to eligible consumers. The Department emphasizes the importance of carriers and ticket agents providing clear, prominent, and accurate disclosures to consumers of their rights to refunds when offering these options, and of any material restrictions, limitations, and conditions on any compensation offered as an alternative to refunds. The Department views any misrepresentation or omission of these matters to be unfair and deceptive practices in violation of 49 U.S.C. 41712. A consumer's entitlement to a refund and restrictions, limitations, and conditions on alternatives offered such as travel credits and vouchers in lieu of a refund are material matters that are likely to affect consumers' decisions with respect to whether they accept the offered voucher or credit. The Department views misrepresenting or omitting the consumer's right to a refund or the restrictions, limitations, and conditions that apply on the compensation offered

[54] See *https://www.transportation.gov/airconsumer/airline-customer-service-dashboard,* an easy-to-use dashboard that displays airlines' commitments.

as an alternative to refunds to be a deceptive practice because it deprives that consumer of important information that could impact the choice that the consumer makes between a refund and another option. During the COVID–19 pandemic, the Department became aware of many consumers who accepted travel credits and vouchers from airlines for canceled or significantly changed flights because they were not aware of their right to a refund or because they were not aware of the restrictions that applied on their travel credits and vouchers. This conduct is also an unfair practice because it causes substantial consumer harm by depriving consumers of the knowledge that they are entitled to a refund, which is not reasonably avoidable by consumers as they are unable to obtain this knowledge unless they are informed by the airlines or ticket agents. This conduct also harms competition because, by avoiding issuing refunds to consumer, entities engaging in this conduct gain unfair advantages over entities providing full disclosure to consumers about their right to a refund.

9. Service Charges

The NPRM: The NPRM proposed that airlines may not charge a fee when issuing a refund following a carrier-initiated cancellation or significant change and that the terms or conditions in airline contracts of carriage should be consistent with the proposed regulation. With respect to refunds issued by ticket agents, the NPRM proposed that ticket agents are permitted to retain the service fee they charged for ticket issuance at the time of purchase in recognition that ticket agents are providing a service apart from airfare purchase and that service has been completed regardless of whether the passenger took the flight. The NPRM further proposed that ticket agents may also charge a fee for issuing refunds, reasoning that, unlike airlines, ticket agents do not initiate the cancellation or significant changes that result in a refund being due, nor do the ticket agents have any control over the cancellation or significant changes to a flight itinerary. The NPRM emphasized that the amount of the ticket issuance service fee or refund processing fee that ticket agents may retain must be on a per-passenger basis and the existence of the fee must be clearly and prominently disclosed to consumers at the time they purchased the airfare.

Comments Received: The Department received comments from consumers, ticket agents, and airlines regarding service fees. Several consumers opposed allowing refund processing fees charged by airlines. One commenter noted that if airlines are allowed to charge such a fee, there is nothing to prevent them from charging $100 or more. The same commenter added that processing refunds is computerized and can be done with a few keystrokes. Qatar Airways asserted that airlines should be permitted to collect service fees, including fees for processing refunds. Ticket agent representatives supported the proposal to allow ticket agents to retain the ticket issuance service charge and refund service fee, agreeing with the Department's rationale that issuing tickets and processing refunds are separate services provided by ticket agents independent of the value of the ticket. Travel Management Coalition commented that when additional paperwork is involved to verify refund eligibility, ticket agents should be allowed to charge a service fee and it would be disclosed in a client agreement.

DOT Response: The Department reaffirms its belief that ticket agents offer valuable services to the traveling public apart from booking airfare, such as providing specialized knowledge of suitable travel options in accordance with consumers' wants and capabilities, offering access to limited availability fares or tools to comparison shop across various airlines to find the best value for consumers, and researching and booking activities at consumers' destinations (*e.g.,* sightseeing tours, events). The Department is of the view that, even in situations where the consumer did not travel because of a canceled or significantly changed flight, it is reasonable for ticket agents to retain service charges related to issuing the original tickets to the extent the service charge is not simply for processing payment for a flight that the consumer found. The Department views this service as being independent of the value of the ticket. Also, regardless of whether the passenger travels, the fee represents the cost of service already provided by ticket agents. Under this final rule, ticket agents may retain this type of service charge even if the passenger did not travel due to an airline cancellation or significant change so long as the nature and amount of these fees are clearly and prominently disclosed to consumers when they purchase the tickets, and they are assessed on a per-passenger basis.

The Department's Office of Aviation Consumer Protection would consider undisclosed fees to be a deceptive practice in violation of 49 U.S.C. 41712. Pursuant to 14 CFR 399.79, a practice is ''deceptive,'' within the meaning of 49 U.S.C. 41712, to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter. A matter is material if it is likely to have affected the consumer's conduct or decision with respect to a product or service. A ticket agent's failure to disclose that the service fee charged at the time of reservation is nonrefundable should a ticket refund be due would likely mislead a consumer to reasonably conclude that the entire amount paid for the ticket is refundable when a ticket refund is due. Similarly, a ticket agent's failure to disclose the existence and the amount of a fee for issuing a refund is likely to mislead a consumer to reasonably believe that no such fee would apply when a ticket refund is due. Failing to provide either disclosure would be an omission of material information that may affect the consumer's purchase decision because a consumer might choose not to purchase the ticket if the consumer was aware that if a refund is due the amount of the refund would be for less than the purchase price.

The Department does not address in this final rule whether a ticket agent can retain a booking fee (*i.e.,* a fee for processing payment for a flight that the consumer found) when processing a refund for an airline ticket because the passenger's flight was canceled or significantly changed and the passenger no longer wishes to travel. The Department notes that it is addressing the issue of whether carriers can charge a booking fee separately from the ticket price as part of another rulemaking.[55] While that rulemaking is pending, the Department's Office of Aviation Consumer Protection will focus on whether the nature and amount of the booking fee was clearly and prominently disclosed to a consumer at time of ticket purchase in determining if an airline or ticket agent engaged in an unfair or deceptive practice in violation of 49 U.S.C. 41712.[56]

Regarding the issue of whether airlines or ticket agents can retain a fee for processing refunds, the Department remains of the view that airlines must refund the entire ticket price and not be permitted to retain a fee for processing

[55] In that rulemaking, the Department is examining whether fees for basic airline services such as booking a ticket should be included in the advertised fare and prohibited as a separate charge. See *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2105-AF15.*

[56] The Department's full-fare advertising rule requires all mandatory fees to be paid by the customer to the carrier, or agent, for air transportation to be included in the advertised fare. See 14 CFR 399.84. To the extent that a booking fee is not avoidable and is a mandatory fee, it must be included in the advertised fare.

refunds when airlines cancel or significantly change a flight and the passenger no longer wishes to travel. The Department received consumer comments objecting to refund processing fees by airlines for flights that the airlines cancel or significantly change, and limited industry comment in support of allowing such fees. In the Department's view, airlines charging a service fee for processing refunds caused by an airline-initiated cancellation or significant change is an unfair practice in violation of section 41712. Consumers are substantially harmed by having to pay a fee to receive their money back after services they paid for were not provided. This harm is not reasonably avoidable by consumers because consumers have no control over the cancellation, significant change, or the issuance of the refund, with or without a fee. The Department further views that allowing airlines to charge a refund processing fee harms competition and consumers because it reduces the incentives for airlines to minimize cancellations and significant changes, based on which refunds are due to consumers.

As for ticket agents, the Department is concerned that permitting a ticket agent to charge a fee for processing refunds may be unfair to consumers. While the Department recognizes that ticket agents do not initiate the cancellation or significant changes that result in a refund being due, neither does a consumer. The Department plans to explore this issue further at a later time, including through its rulemaking [57] pursuant to a requirement by 49 U.S.C. 42301 note prec. to issue a rule requiring ticket agents with an annual revenue of at least $100 million to adopt minimum customer service standards. In the meantime, the Department's Office of Aviation Consumer Protection will focus on whether the nature and amount of the refund processing fee was clearly and prominently disclosed to a consumer in determining whether, when a refund is due, a ticket agent engaged in an unfair or deceptive practice by charging a refund processing fee that was not properly disclosed at the time of ticket purchase. Also, if the Department determines that ticket agents' processing fees appear to circumvent the intent behind the requirement for consumers to receive a meaningful refund, the Department will consider whether further action is appropriate.

The Table below summarizes whether airlines or ticket agents can retain certain fees when processing refunds.

TABLE 2—FEES CHARGED BY AIRLINES AND TICKET AGENTS WHEN PROCESSING REFUNDS

Types of service fees	Are airlines allowed to retain fee when processing refunds?	Are ticket agents allowed to retain fee when processing refunds?
Booking Fee (for processing payment for flight that the consumer found).	No	N/A (DOT is not aware of ticket agents that charge this type of booking fees).
Service Fee Related to Issuing Original Ticket (for services provided beyond processing payment for flight that the consumer found).	N/A (DOT is not aware of airlines that charge these types of service fees).	Yes, subject to required disclosures.
Processing Fee for Required Refunds	No	No determination in this final rule—DOT will continue to examine issue.

II. Refunding Fees for Significantly Delayed Bags

1. Covered Entities and Flights

The NPRM: In the NPRM, the Department proposed to mandate U.S. and foreign air carriers provide refunds to consumers for the fees charged to transport checked bags on scheduled flights to, from, or within the United States using aircraft of any size if the bags are significantly delayed. The Department explained that the proposed requirement is based on a mandate in 49 U.S.C. 41704 note for the Department to promulgate a regulation requiring U.S. and foreign air carriers refund bag fees to consumers when carriers fail to deliver checked bags to them within a specified time of their arrival on a domestic or international flight. In the NPRM, the Department acknowledged that the proposed requirement would apply to some small carriers but explained that it does not expect it to have a significant economic impact on a substantial number of small entities because many small carriers operate flights under codeshare arrangements with larger carriers, with the larger carriers responsible for collecting and refunding baggage fees.

With respect to ticket agents, the Department did not propose to apply the baggage refund requirements to ticket agents. The Department stated in the NPRM that the Department has independent authority under 49 U.S.C. 41712, which prohibits ticket agents from engaging in unfair or deceptive practices in air transportation, to include ticket agents in the regulation if deemed appropriate. The Department stated, however, that it is required by 49 U.S.C. 42301 note prec. to issue a rule requiring ticket agents with an annual revenue of at least $100 million to adopt minimum customer service standards, and the Department intends to address this requirement through that separate rulemaking. In addition, the Department noted that a ticket agent's failure or refusal to make proper refunds promptly when service cannot be performed as contracted or a ticket agent's representation that such refunds are obtainable only at some other point violates 14 CFR 399.80(l) and constitutes an unfair or deceptive practice. This requirement does not, however, directly address whether ticket agents that collect baggage fees from passengers must provide refunds of the fees when checked bags are significantly delayed. DOT sought comments on whether the proposed refund requirement for delayed checked bags should apply to ticket agents who engage in the transaction of baggage fees.

Comments Received: The Department received no comments regarding the proposed scope of carriers that would be required to refund fees to consumers for significantly delayed bags on their domestic or international flights. The Department did receive comments on whether, as a policy matter, the Department should require ticket agents to refund baggage fees that they collected when the bags were significantly delayed. A4A, IATA, RAA, and Qatar Airways all supported holding ticket agents responsible for

[57] Information on the rulemaking titled ''Air Transportation Consumer Protection Requirements for Ticket Agents'' (RIN 2015–AE57) is available in the Fall 2023 Unified Agenda of Regulatory and Deregulatory Action at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2105-AE57.*

refunds if they collected the baggage fees. Spirit also commented that ticket agents should be required to refund baggage fees, arguing that the Department has existing regulation requiring ticket agents to make ''proper'' ticket refunds when contracted services are not provided, and it is arbitrary, inconsistent, and unfair to not require ticket agents to refund baggage fees.

Travelers United commented that whether the ticket was purchased from airlines or ticket agents, airlines should ultimately be responsible for refunds of baggage fees and other ancillary fees. Similarly, ASTA and Travel Tech both argued that ticket agents should not be required to refund baggage fees. They pointed out that the statute directs the Department to issue a rule specifically requiring airlines to refund baggage fees. They argued that where ticket agents collect the fees, they are authorized by airlines to do so as agents of airlines. They noted that depending on the payment settlement system used, ticket agents can facilitate the issuance of baggage fee refunds, but each airline determines whether it would allow ticket agents to issue refunds. They further commented that any fees collected by ticket agents under airlines' authorization are promptly remitted to airlines.

DOT Response: In this final rule, the Department requires U.S. and foreign carriers that operate scheduled passenger service to, within, and from the U.S. to provide a refund to passengers of fees charged for transporting a significantly delayed checked bag. The Department is applying this requirement to carriers regardless of the aircraft size that the carriers operate. DOT continues to believe that it is important to not exclude aircraft designed to have a maximum passenger capacity of 60 seats or fewer, which are considered small aircraft,[58] because a significant number of passengers travel on such aircraft.[59]

With regard to applying the proposed baggage refund requirements to ticket agents, the Department does not adopt in this final rule a specific requirement for ticket agents to provide refunds of baggage fees for significantly delayed bags even if ticket agents collect the bag fees. The NPRM sought information on ticket agents' involvement in collecting baggage fees from passengers, either as a carrier's agent or as a principal. It is the Department's understanding, based on comments from both ASTA and Travel Tech, that ticket agents' involvement in collecting baggage fees is minimal and the collections are generally authorized by airlines as their agents. Also, the Department believes that tracing mishandled baggage and ensuring delivery as soon as possible is best handled by carriers through direct communication with passengers. The Department is concerned that placing the obligation to refund baggage fees for delayed bags on ticket agents may cause unnecessary delays by removing some of the incentives for airlines to recover the bags as quickly as possible. It would also necessarily require that ticket agents determine whether refunds for significantly delayed bags are due, which the ticket agents cannot determine on their own. Further, 49 U.S.C. 41704 note directs the Department to promulgate a regulation requiring *airlines* to provide refunds for baggage fees. For all these reasons, the Department is not requiring ticket agents to provide refunds of baggage fees for significantly delayed bags in this final rule. The Department will continue to monitor the transactions of baggage fees and other ancillary service fees conducted by ticket agents and intends to revisit the issue in its rulemaking requiring ticket agents with an annual revenue of at least $100 million to adopt minimum customer service standards, as required by 49 U.S.C. 42301 note prec.[60]

2. Length of Delay Triggering Baggage Fee Refund Requirement

The NPRM: The Department proposed to require an airline refund the fee paid by a passenger for a checked bag if the airline fails to deliver the bag to the passenger within 12 hours of arrival for domestic flights and within 25 hours of arrival for international flights. 49 U.S.C. 41704 note prescribes the minimum lengths of baggage delivery delay that would trigger the refund requirement as not later than 12 hours after arrival for domestic flights and not later than 15 hours after arrival for international flights. It also provides the Department the flexibility to modify these timeframes to up to 18 hours for domestic flights and up to 30 hours for international flights if the Department determines that the 12-hour or 15-hour standards are infeasible and would ''adversely affect consumers in certain cases.'' The Department explained that it proposed 12 hours for domestic flights because airlines have tracking systems in place to identify the location of bags and airlines should be able to place delayed bags on the next available flight, often resulting in bags being delivered within 12 hours for domestic flights. With respect to international flights, the Department proposed to allow carriers up to 25 hours (an extension of the statutory default standard of 15 hours) to deliver checked bags without having to issue a refund, reasoning that many international long-haul flights are scheduled once a day which makes recovery and delivery of a delayed checked bag within the minimum length delay of 15 hours prescribed in the statute extremely challenging for carriers. The Department stated that consumers may be negatively impacted if the Department were to impose a 15-hour deadline because carriers may have less incentive to deliver the delayed bag on the next flight when flights are scheduled once a day. The NPRM solicited comment on whether it has adequately considered the impact on consumers and airlines of the proposed 25-hour deadline for international flights and whether the proposed 12-hour deadline for domestic flights is reasonable, particularly for ULCCs that may operate scheduled flights in a lower frequency and lack interline agreements with other carriers.

Additionally, the NPRM discussed a tiered standard where the maximum number of delay hours that would trigger a refund would vary based on domestic versus international flights, the length or frequency of the flights, or other variables. The Department tentatively determined to not propose a tiered standard based on flights' frequency or length because carriers would have to implement a costly system of sorting and prioritizing delivery of delayed bags based on the length or frequency of each individual flight. It proposed instead a tiered standard based on domestic and international flights because it would be easier for carriers to implement and for consumers to understand. For international itineraries that include domestic segments, the NPRM proposed that the international standard for bag delay would apply.

Comments Received: Most airline commenters generally supported adopting the maximum length of timeframes permitted by the statute, *i.e.,* 18-hour delay for domestic itineraries

[58] An air carrier is a small business if it provides air transportation only with small aircraft (*i.e.,* aircraft with up to 60 seats/18,000-pound payload capacity). See 14 CFR 399.73.

[59] According to data from the Department's Bureau of Transportation Statistics (BTS), a total of 760,159,634 domestic passengers were transported in 2022. While most of these passengers (734,090,772 passengers or 96.6%) were on flights using aircraft of more than 60 seats, a significant number (26,068,862 passengers or 3.4%) were on flights using aircraft with 60 seats or fewer. See Bureau of Transportation Statistics ''T–100 Domestic Segment Data (World Area Code)'', *https://www.bts.gov/browse-statistical-products-and-data/bts-publications/data-bank-28ds-t-100-domestic-segment-data.*

[60] See fn. 55, *supra.*

and 30-hour delay for international itineraries, while AAPA opposed a blanket timeframe by regulation and Kuwait Airways suggested a 72-hour timeframe. A4A stated that carriers cannot meet the proposed 12 hours for domestic and 25 hours for international standards under certain circumstances, including itineraries involving routes for which airlines do not operate daily flights, passengers traveling on the last flight of the day out of a remotely located airport, and passengers continuing travel on cruise or ground transportation preventing timely delivery of bags. A4A, IATA, and multiple international carriers also commented that special considerations should be given to international operation complexities such as airport congestion preventing offloading bags, weather impact on ground operations, the impact of a positive bag match requirement, and customs and security inspections. RAA urged the Department to consider that many carriers serving remote markets under the Essential Air Service program or serving international markets may only operate one flight a day and not every day. NACA, Allegiant, and Spirit commented that from the ULCC perspective, operating low frequency and the lack of interline partners makes it difficult to meet the proposed timeframes. Some of these commenters believed that adopting the 18/30-hour maximum standards would at least incentivize ULCCs to seek other means (*e.g.,* overnight couriers) when transporting the bag on the next available flight would not meet the deadlines. Air New Zealand, Emirates, Kuwait Airways, and Qatar Airways indicated that the Department should give special consideration to ultra-long-haul international operations, arguing that the length of flight operations and the low frequency would prohibit their ability to meet the 25-hour deadline. Airline commenters supported the proposal to apply the international delay standard to domestic segments of international itineraries.

Among consumer rights advocacy groups, Travelers United, Business Travel Coalition *et al.,*[61] and FlyersRights commented that checked bags should be deemed late when they are not on the same flight as passengers. Business Travel Coalition *et al.* argued that the Department has its own authority under 49 U.S.C. 41712 to impose such a requirement without contradicting 49 U.S.C. 41704, note. Travelers United argued that refunds of bag fees should be issued automatically if the bags do not arrive within 60 minutes of the passengers' arrival. Business Travel Coalition *et al.* argued that the Department should require airlines to enter into interline agreements for baggage delivery. FlyersRights commented that by proposing a 25-hour standard for international flights, the Department has considered that international long-haul operations that operate one daily flight can still meet the deadline by placing the bag on the next flight. In that regard, FlyersRights questioned why the Department does not simply require that the bag be transported on the next flight. FlyersRights also stated that the 25-hour deadline would harm consumers on international flights that are operated more than once a day because bags that could have been transported within a shorter time now can be delayed for up to 25 hours.

ASTA, representing ticket agents, commented that the Department should adopt the 12/15-hour minimum standards set by the statute. It argued that while the proposed 25-hour standard acknowledges long-haul flights operated once a day, it does not recognize many international flights that are short in duration and operated multiple times a day. ASTA further stated that it disagrees with the Department's belief that imposing the 15-hour deadline for international flights would result in carriers having less incentive to recover the bags because the deadline has already passed. It argued that keeping the bag fees is not the airlines' sole or primary purpose when considering recovering delayed bags.

The Colorado Attorney General (Colorado AG) also provided comments in support of the Department's tentative decision to not adopt a tiered standard for the length of a delay triggering a refund based on flights' frequency, length, or other variables. The Colorado AG stated that a simplified system is certainly more accessible to all parties and is an example of the type of regulatory clarity that, in effect, protects consumers by enabling them to understand their own rights and advocate for themselves when regulations are defied or disregarded.

DOT Responses: After fully considering the comments, the Department is requiring carriers to refund the bag fee if a checked bag is delayed the minimum statutory standard of 12-hours for domestic flights as proposed, the minimum statutory standard of 15-hours for an international flight that is 12 hours or less, and the maximum statutory standard of 30-hours for an international flight that is more than 12 hours. The Department appreciates consumer rights advocacy groups' comments that urge the Department to adopt a ''zero hour'' standard for delayed bags. While we agree that the Department has broad authority under 49 U.S.C. 41712 to define unfair or deceptive practices, 49 U.S.C. 41704 note imposes a specific requirement on the Department with regard to airlines' refund of delayed baggage fees. Specifically, the Department is directed to require U.S. and foreign carriers to provide a refund for any fees paid by a passenger for checked baggage if the carriers fail to deliver the bag to passengers within 12 to 18 hours of their arrival from domestic flights and within 15 to 30 hours of their arrival from international flights. Although adopting a ''zero hour'' standard as suggested by a consumer organization would result in consumers receiving a refund of baggage fees in all instances where the bags did not arrive with the consumers, the Department is of the view that imposing a strict liability on airlines would not result in the maximum consumer benefit because this approach reduces the incentive for carriers to recover and return the delayed bags to consumers as soon as possible. As such, we are not setting a ''zero hour'' standard for delayed bags that would necessitate a refund of the bag fee.

The Department has carefully considered the comments received and is adopting the proposed 12-hour standard for domestic itineraries. Airline commenters did not provide convincing evidence demonstrating that the 12-hour standard for domestic itineraries is not feasible and would ''adversely affect consumers in certain cases,'' as set forth by the statute. Further, although the Department acknowledges the differences between the legacy carriers and ULCCs in terms of flight frequencies and the scope of networks, we continue to believe that these differences do not warrant adopting a standard for ULCCs different from that of the other carriers. Specifically, the Department notes that all carriers have the option to transport the delayed bags through overnight couriers and still meet the delay deadline, instead of waiting for the next available flight. Also, although compared to the legacy carriers, it is likely that ULCCs may have to use courier services more frequently to recover the delayed bags, this

[61] The joint comments by Business Travel Coalition *et al.* were signed by Business Travel Coalition, Consumer Action, the Consumer Federation of America, Consumer Reports, Ed Perkins of EdOnTravel.com, FlyersRights.org, National Consumers League, Travel Fairness Now, and U.S. PIRG.

disadvantage for the ULCCs is countered by the reduced likelihood of ULCCs having delayed bags compared to legacy carriers because of their point-to-point operations. Legacy carriers' hub-and-spoke networks means that many of the bags they transport will be traveling through connecting itineraries that statistically have a higher possibility of being delayed, in comparison to the ULCCs' point-to-point operations. According to a Société Internationale de Télécommunications Aéronautiques (SITA) Baggage IT Insights report,[62] transfer mishandling historically remains by far the leading cause of bag delays, which accounted for 42% of total bag delays in 2022.[63]

With respect to international itineraries, the Department has decided that a ''one-size-fit-all'' standard may not be in the best interest of consumers. We agree with comments suggesting that the proposed 25-hour standard to return a bag before the carrier has to refund the bag fee may be too long when consumers are traveling on international routes with shorter durations and/or more frequencies. At the same time, we agree with comments asserting that, in many cases, it may not be feasible for carriers to return bags within the proposed 25-hour standard for consumers traveling on ultra long-haul flights operated under low frequencies. This is not only because the carrier's next available flight could be 24 hours or more later, but also because there could be very limited choices to transport the bags on rerouted itineraries, on another carrier's flight, or through courier services. The flight segment duration data on major U.S. carriers collected by the Bureau of Transportation Statistics (BTS) shows that in 2022, the majority of non-stop flight segments operated by U.S. carriers to and from the U.S. have a flight duration of 12 hours or less, including all flights between the United States and Canada, Central/South America, and Europe, 65% of flights between the United States and Africa, 46% of the flights between the United States and Far East, 73% of flights between the United States and Middle East, and 14% of the flights between United States and Australia/Oceania.[64] The Department assumes the duration of flights operated by foreign carriers is similar, but BTS does not collect this data from foreign air carriers. For these reasons, the Department is adopting two standards for international itineraries. For international itineraries with a non-stop flight segment to or from the United States that is 12 hours or less, we are adopting the minimum statutory standard of 15 hours. For international itineraries with a non-stop flight segment to or from the United States that is more than 12 hours, we are allowing carriers to recover the delayed bags within 30 hours to avoid refunding the bag fees.

The Department notes that to qualify for the 30-hour standard, the itinerary must include an international segment (*i.e.* a flight segment between the United States and a foreign point) that is more than 12 hours in duration. If the itinerary includes a segment between two foreign points that is more than 12 hours and the segment between the United States and a foreign point is 12-hour or less in duration, the 15-hour delay standard would apply.

The Department disagrees with some commenters' suggestion that the rule should explicitly require that the delayed bags be transported on the next available flight. We intend to provide carriers the maximum flexibility to recover the delayed bags to the benefit of passengers, including transporting the bags on partner airlines' flights, on cargo flights, or through commercial couriers. In addition, the Department agrees with ASTA's comment that it is inappropriate to assume that retaining the baggage fees is carriers' sole or primary goal and that once the deadline has passed for delivering delayed bags, carriers will not have the incentive to recover the bag as quickly as possible. As ASTA pointed out in its comment, delivering a delayed bag as soon as possible is a way to gain custom satisfaction and goodwill, regardless of whether carriers must refund the bag fee. Further, carriers are under the obligation to compensate consumers for incidental expenses related to delayed bags, subject to maximum liability limits under 14 CFR 257 for domestic travel and under international treaties for international travel. The longer the bag is delayed, the more potential liability for incidental expenses carriers will face. The Department believes that all these factors provide incentives to carriers to recover the bags regardless of whether the refund deadline has passed.

Regarding international itineraries that include a domestic segment, we are adopting the proposal to apply the international deadline to such itineraries. The Department holds the view expressed in the NPRM that mishandled bag incidents occur more frequently on the international segments. This is also confirmed by the aforementioned SITA Baggage IT Insight report, which states that globally, mishandling rates on international routes is 19.3 per thousand passengers, compared to 2.4 for domestic routes.[65] The Department also received no objection to this proposal and believes that applying the international deadlines to such itineraries avoids consumer confusion and appropriately takes into account that many delayed bags traveling on an international itinerary were likely delayed on the international portion of the trip.

Also, the Department notes that it is making an editorial change to the rule text in 14 CFR 259.5(b)(3). The existing rule requires carriers to make every reasonable effort to return mishandled baggage within twenty-four hours. The Department is removing the reference to ''twenty-four hours'' and, instead, requiring carriers to make every reasonable effort to return mishandled baggage within the timeframes set forth in this final rule for purpose of avoiding refunding baggage fees.

3. Measuring the Length of Delay in Delivering a Checked Bag

The NPRM: To calculate the length of the delay for a carrier to deliver a checked bag, it is necessary to specify the start and end of the delay. The provision at 49 U.S.C. 41704 note states that the baggage delay clock starts at ''the arrival'' of a flight and ends when the carrier ''[delivers] the checked baggage to the passenger.'' However, that provision does not specify what it meant by the arrival of a flight or delivery of the checked baggage.

The Department proposed the start of the delay to be when the passenger arrives at his or her destination and is given the opportunity to deplane from the last flight segment. The Department reasoned that airlines already track this information for the purpose of ensuring compliance with the Department's tarmac delay rule in 14 CFR part 259. Another measure considered in the NPRM for the start of the delay is the published scheduled arrival time of a flight or the ''block-in time,'' *i.e.,* the time when a flight has parked at the arrival gate or another disembarkation location and blocks were placed in front of its wheels.

As to when a bag is considered to be delivered to the passenger for the

[62] *https://www.sita.aero/resources/surveys-reports/baggage-it-insights-2023/.*

[63] As noted in the NPRM, the SITA Baggage IT Insights report for 2019 states that transfer mishandling account for 46% of total bag delays in 2018. *https://www.sita.aero/resources/surveys-reports/baggage-it-insights-2019/.*

[64] Data is derived from the T–100 Segment report as filed monthly by major U.S. carriers with BTS. Flight duration is calculated by dividing minutes airborne with performed departures.

[65] The Report also noted that in 2022, there was a considerable surge in the international mishandling rate, which was at 8.7 during the previous year.

purpose of ending the delay in receiving a checked bag, the Department proposed that, at the carrier's discretion, the end of the delay is: (1) when the bag is transported to a location agreed to by the passenger and the carrier, regardless of whether the passenger is present to take possession of the bag; (2) when the bag has arrived at the destination airport, is available for pickup, and the carrier has provided notice to the passenger of the location and availability of the bag for pick-up; or (3) if the carrier offers delivery service and the passenger accepts such service, when the bag has arrived at the destination airport, and the carrier has provided notice to the passenger that the bag has arrived and will be delivered to the passenger. The Department shared in the NPRM that the three options to determine the end of the delay are intended to allow airlines, with less financial risk, to work with the passengers to transport the bags to the most convenient location in the most efficient manner to the passenger. The NPRM sought comment on whether this analysis accurately captures carriers' incentives to work with passengers and provide baggage delivery or if there are other factors that could cause carriers to engage in different behaviors in response to the proposed options. In addition, the NPRM sought comment on whether allowing carriers to choose among these three options is reasonable and effective to achieve the goal of providing carriers and passengers the maximum level of flexibility, promoting efficiency in delayed baggage recovery, and ensuring passengers are treated fairly when their bags are delayed in air transportation.

The Department also solicited specific comment on the second option, which stops the delay clock when the bag has arrived at the destination airport, is available for pickup, and the carrier has provided notice to the passenger of the location and availability of the bag for pick-up. The NPRM noted that carriers have the burden of proving that notices have been provided to passengers prior to the applicable deadline, invited comment on sufficient forms of notifications, and asked what evidence should a carrier be required to provide if notification is through a voice call or message and there is a dispute between a carrier and a passenger about whether such a notification was provided.

Comments Received: Regarding the start of baggage delivery delay, all airline commenters who commented on this issue suggested that the delay clock should start at the time a passenger files a Mishandled Baggage Report (MBR). They argue that airlines do not always know that a bag is delayed until a passenger notifies the carrier by filing an MBR. They further commented that this notification would allow carriers to collect necessary information for searching and delivering the bag, such as the passenger's contact information, the bag's tag number, and the bag's description. Qatar Airway asked if the Department would consider passengers using carriers' online reporting system to have started the clock.

An individual consumer objected to the airlines' approach and argued that airlines determine how and when an MBR may be filed and there is obvious conflict of interest on airlines' part. This commenter suggested that a passenger arriving at 10 p.m. may not file an MBR until 9 a.m. the next day. This commenter further indicated that airlines' rejections of MBRs would increase DOT complaint volume.

Regarding the end of the delay, airline commenters supported the Department's proposal to allow airlines to choose one of the three options, arguing that this approach would allow carriers the flexibility to recover bags and work with passengers for tailored solutions. A4A commented that for option 2 (bag has arrived at the destination airport, is available for pickup, and the carrier has provided notice to the passenger of the location and availability of the bag for pick-up), it is unreasonable to require carriers' baggage office to open 24/7 so the clock should stop at the time of notification even if the carrier's baggage office is closed. A4A, IATA, Spirit, and Virgin Atlantic further indicated that the Department should adopt a performance-based standard for notifications, taking into account any future innovations, and the notification requirement should focus on timeliness and not the form. A4A and IATA also stated that the Department should not prescribe how carriers keep records of the notifications as carriers use different systems to record communications with passengers. A4A further commented that recording the time of a voice call should be sufficient as evidence that a notification by phone call has been provided.

Travelers United and Business Travel Coalition *et al.* opposed the proposal. Business Travel Coalition *et al.* argue that allowing the three options would result in airlines selecting the option that is most likely to relieve them from the obligation of refund baggage fee (*i.e.,* option 2) and doing no more than the minimum necessary to avoid having to refund. One individual consumer expressed support for the proposal of three options and commented that the flexibility allows carriers to provide the service in reasonable time and cost effectively. Another consumer commented that the regulation should not indicate that carriers may use app push notices to provide notification because many passengers do not want to or have mobile apps for various reasons, including the lack of memory to download the app, the lack of cellular data, unwillingness to share location, or concerns about viruses. The commenter suggested that consumers should have the right to receive notifications through privacy-friendly means such as email or text message.

ASTA commented that the clock should stop when the bag is physically in the passenger's possession because passengers continuously experience inconveniences until reunited with the bags. ASTA further stated, however, that it recognizes that it is inequitable to keep the clock running when a passenger delays the reclaim of a bag, and as such, it suggests that the clock should stop when the bag is delivered to a location designated by the passenger and the passenger is notified.

DOT Responses: After carefully considering the comments provided, the Department is requiring that the length of the delay for a carrier to deliver a checked bag be calculated based on when the passenger arrives at his or her destination and is given the opportunity to deplane from the last flight segment (start of the delay) and when the carrier delivers the bag to a mutually agreed upon location such as a hotel or the passenger's home or when the passenger (or someone authorized to act on behalf of the passenger) picks up the bag at the airport (end of the delay). In determining the start of the delay, the Department focused on the fact that the delay started when the bag did not arrive with the passenger. In determining the end of the delay, the Department focused on when the carrier relinquishes its custody of the bag to the passenger, which is consistent with the Department's position on U.S. airlines reporting of mishandled baggage.[66]

Based on carriers' comments that in many circumstances carriers may not know when a bag is delayed until the passenger files an MBR, and consistent with the requirement of section 41704 note that passengers must notify carriers of the baggage delay, the Department is specifying that filing an MBR is

[66] The Technical Directive issued by the Department's Bureau of Transportation Statistics requires that reporting carriers must report the number of mishandled bags, as reported by or on behalf of passengers, that were mishandled *while in its custody. https://www.bts.gov/topics/airlines-and-airports/number-30a-technical-directive-mishandled-baggage-amended-effective-jan.*

necessary to obtain a refund of the fee for a significantly delayed checked bag. Typically, airlines obtain, through the filing of an MBR, information such as the passenger's contact information, the bag's tag number, and the bag's description which helps them search for and deliver a bag. The provision in this final rule that a refund of the bag fee for a significantly delayed checked bag is not due until the passenger files an MBR with the last operating carrier is consistent with the statute in 49 U.S.C. 41704 note that provides a refund shall be provided if a carrier fails to meet the baggage delivery deadline ''and . . . the passenger has notified the [carrier] of the lost or delayed checked baggage.'' The Department considers that a consumer filing an MBR to be notification to the carrier of the lost or delayed checked bag.

Regarding the end of the delay for a carrier to deliver a checked bag, the Department had proposed in the NPRM to allow carriers to consider as end of the delay, among other things, instances where the carrier offers delivery service of the bag and the passenger accepts such service and the carrier has provided notice to the passenger that the bag has arrived and will be delivered to the passenger. The Department has determined that this is not an appropriate end of the delay because the bag remains under the carrier's custody and the passenger is not reunited with the bag when the carrier provides notice to the passenger that the bag has arrived and ''will be'' delivered. 49 U.S.C. 41704 note states that the baggage delay clock ends when the carrier ''[delivers] the checked baggage to the passenger.'' Notifying passengers that the bag will be delivered is not a form of ''delivery.'' [67]

Similarly, the Department has determined that its proposal that the end of the delay includes instances when the bag arrives at the destination airport, is available for pickup, and the carrier has provided notice to the passenger is inconsistent with 49 U.S.C. 41704 note. Again, notifying the passenger that the bag is available for pickup is not a form of delivery. Further, the Department agrees with consumer representatives that this option provides the easiest option for airlines to stop the clock and may incentivize carriers to do the bare minimum to assist passengers in reuniting with their bags. The Department is also of the view that requiring passengers to return to the airport to pick up their delayed bags, after they have already experienced the inconvenience of leaving the airport without their checked bags upon arrival, adds a potentially significant burden to passengers in terms of their time, effort, and cost. As such, the Department is revising this option in the final rule so the delay clock stops at the time the passenger or someone authorized to act on behalf of the passenger are timely notified of the arrival of the bag and *actually picks* up the bag at the airport instead of when the carrier has provided notice to the passenger of the location and availability of the bag for pick-up.

The Department is adopting its proposal that the end of the delay include instances when the bag is transported to a location (*e.g.,* passenger's home, hotel) agreed to by the passenger and the carrier, regardless of whether the passenger is present to take possession of the bag. The Department agrees with comments that the clock should stop when the carrier delivers the bag to a location designated by the passenger and the passenger is notified. At this point, the bag is effectively no longer under the custody of the airline because the passenger agreed to delivery of the bag to the specified location. In this final rule, airlines have the option to choose as the end of the delay either (1) when the carrier delivers the bag to a mutually agreed upon location; or (2) when the passenger picks up the bag at the airport. The Department believes that these two options provide flexibility for airlines to work with passengers in finding the best solution to reunite them with their bags. If airlines determine that passengers could or are purposefully delaying arriving picking up their bags to receive a refund, carriers are free to choose option (1).

4. Entities Responsive for Refunds in Multiple Carrier Itineraries

The NPRM: The Department proposed that, in a multiple carrier itinerary where a carrier collected the bag fee, the carrier that collected the baggage fee be the entity responsible for refunding the fee to a passenger should the checked bag be significantly delayed. The Department tentatively rejected an ''at fault'' approach that assigns the refund obligation to the carrier that causes the baggage delay, reasoning that expecting consumers to track down which airline caused the bag to be delayed would be an unreasonable burden on consumers. The Department also noted that it would be costly for carriers to determine which carrier is at fault for causing each bag delay.

With respect to multiple-carrier itineraries for which a ticket agent collected the bag fee, the NPRM proposed to hold the carrier that operated the last flight segment, rather than the ticket agent, responsible for issuing the refund when a checked bag is significantly delayed. There was discussion in the NPRM of ticket agents being authorized by carriers to collect bag fees on the carriers' behalf. Also, while the Department acknowledged that the carrier that operates the last flight segment may be a fee-for-service carrier that normally does not handle baggage fee refunds since these carriers generally do not sell tickets or ancillary services, the Department added that carriers can prorate the cost of refunds among themselves. The Department solicited comment on whether, rather than requiring the carrier that operated the last flight segment to provide the refund, the Department should require the carrier that marketed the last flight segment to issue the refund when a ticket agent collects the bag fee.

Comments Received: Most airline commenters supported requiring the carrier that collected the baggage fees to provide refunds for delayed bags in multiple carrier itineraries. Emirates agreed that the collecting carrier should refund but notes that the collecting carrier may not be the marketing/ticketing carrier. Virgin Atlantic commented that the marketing carrier has the payment information but may not have the information on the status of the bag, and the last operating carrier has the status of the bag but may not have the payment information. It suggested that carriers need to investigate together, and that additional time is needed. RAA commented that fee-for-service carriers that operate the last segments do not conduct transactions with passengers and are unable to process refunds. NACA stated that ULCCs that operate non-scheduled services often operate on behalf of other ULCCs for scheduled services. It contended that these non-scheduled operating carriers do not collect baggage fees or take control of bags when passengers check in, and they should not be responsible for refunds. A4A suggested that the ticket agents collecting baggage fees for multiple carrier itineraries should refund and the passenger should be required to notify the last operating carrier about the bag delay. ASTA supported not requiring the carrier at fault of mishandling baggage to refund when multiple carriers are involved. It argued that this approach would result in passengers being sent back and forth among

[67] The Merriam-Webster Dictionary defines ''deliver'' to mean ''to take and hand over to or leave for another.''

carriers. ASTA also supported requiring the carrier collecting the fee be responsible for refunds.

DOT Responses: The Department is requiring that, in a multiple carrier itinerary, the carrier that collected the baggage fee is the entity responsible for refunding the fee to a passenger should the checked bag be significantly delayed. Based on the comments received, it appears that the carrier that markets the itinerary may not always be the carrier that collects the baggage fee. Regardless of which carrier is marketing the flight or which carrier is at fault for the mishandling, the Department concludes that the most simplified and straightforward approach, from the passengers' perspective, is to hold the carrier that collected the baggage fee responsible for the refund because the collecting carrier already has the passenger's payment information for the baggage fee. The Department considers the carrier whose name is shown in the consumer's financial statements for the baggage fee transaction such as the debit or credit card charge statements (commonly known as the merchant of record) to be the carrier that collected the bag fee. As pointed out by commenters, the Department recognizes that the carrier that collected payment may not have information on the status of the bag. The Department agrees with Virgin Atlantic's suggestion that those carriers need to work together. In situations where the carrier that collected the bag fee and the carrier operating the last flight segment are different entities, the Department is requiring that the last operating carrier, which is the carrier that accepts MBRs, to determine whether a bag was significantly delayed and if so, provide the baggage delay information to the collecting carrier without delay. The Department's Office of Aviation Consumer Protection will determine the timeliness of the information provided by the last operating carrier to the collecting carrier based on the totality of the circumstances, including the operating carrier's process and procedures for determining whether the checked bag is significantly delayed and whether the last operating carrier informed the collecting carrier of the refund eligibility soon after it determined the bag was significantly delayed. The collecting carrier remains responsible for providing the refund. Under this final rule, the 7/20-day refund timelines start at the time the collecting carrier receives information from the last operating carrier that the passenger's bag has been significantly delayed and the passenger has filed an MBR.

This final rule makes it an unfair practice for the last operating carrier to fail to timely determine if a bag has been significantly delayed and communicate that information to the collecting carrier. Airlines not providing such information in a timely manner pause the refund process and cause substantial harm to consumers by extending the timeline for consumers to receive the money to which they are entitled. This harm is not reasonably avoidable by consumers as they have no control over the airlines' actions. The Department also sees no benefits to consumers and competition from this conduct. Without this requirement, the money that is due to consumers could take however long an airline chooses, which in turn harms consumers and competition by penalizing good customer service and rewarding dilatory behavior. Regarding multiple-carrier itineraries for which a ticket agent collected the bag fee (*i.e.,* the ticket agent's name is in the consumer's financial statement), the Department is adopting the NPRM proposal to require the operating carrier for the last flight segment to refund the baggage fee to the passenger when a checked bag is significantly delayed. In these situations, neither the marketing nor the operating carrier may have the payment information because the ticket agent collected the fees, but the operating carrier for the last flight segment will have information about the status of the bag. By taking this approach in the final rule, the Department is recognizing that when no carrier has collected the baggage fee, requiring the last operating carrier to refund makes sense because the operating carrier is the one that accepts and handles the MBRs and has information about the status of the bag. In these situations, the operating carrier may decide to request that the consumer completing the MBR form identify the ticket agent that collected the bag fee and the consumer's payment information in case a refund of the baggage fee should be necessary. Also, based on comments from both ASTA and Travel Tech, it is the Department's understanding that these types of situations will be infrequent because ticket agents' involvement in collecting baggage fees is minimal.

With regard to RAA's comment that fee-for-service carriers do not transact with consumers and are unable to issue refunds, the Department's understanding of the industry practice is that the marketing carriers that contract and codeshare with fee-for-service carriers are usually the entities that handle most aspects of customer services for these flights, including accepting MBRs and compensating passengers for expenses that they may incur while their bags are delayed. Under this final rule, although a fee-for-service carrier operating the last flight segment is ultimately responsible for issuing refunds of baggage fees for ticket agent-transacted multi-carrier itineraries, it is permissible for the carrier to rely on other entities, such as their marketing codeshare partner, to process MBRs and issue refunds to consumers on its behalf.

5. Refund Mechanism and Passengers' Responsibility To Notify Carriers About Bag Delay

The NPRM: The Department proposed to require that airlines provide refunds for delayed bags within seven business days of a refund being due for credit cards and within 20 days of a refund being due for payments using cash, check, vouchers, frequent flyer miles, or other form of payment. Under the NPRM, for the refund process to start, passengers would need to notify the airline that collected the bag fee about the delay in receiving the bag. The Department proposed that, in situations in which the carrier accepting and handling an MBR from the passenger is the same carrier that collected the baggage fee, the filing of an MBR would constitute notification from the passenger to the carrier that the baggage was delayed for the purpose of receiving a checked baggage fee refund.

As proposed, if the carrier that received an MBR about a delayed bag and the carrier that charged the baggage fee are different entities, the Department proposed to require the passenger inform the carrier that collected the baggage fee of the lost or delayed bag. This would mean that the passenger would need to file an MBR with one carrier and then contact another carrier to state that his/her bag was lost or delayed. In situations in which a ticket agent collected the bag fee, the Department proposed that passengers would need to notify the carrier that operated the last flight segment about the delay in receiving the bag. The NPRM solicited comments on whether, instead of requiring passengers to notify the carrier that operated the last flight segment about the bag delays, the Department should require passengers to notify the carrier that marketed the last flight segment.

The NPRM proposed that baggage fee refunds would be issued in the same form of payment as the original baggage fee payment. Under this proposal, in addition to credit card, cash, and check

payments being refunded in their respective original forms of payment, baggage fees paid by airline credit/voucher or frequent flyer miles would be refunded in their original forms of payment as well.

Comments Received: Airlines were generally in support of requiring passengers to notify the last operating carrier and, if the last operating carrier is not the entity that collected the bag fee, also notify the entity (carrier or ticket agent) that collected the bag fee. They reasoned that notifying the last operating carrier is necessary to establish MBRs and provide the passenger's contact information, and that notifying the collecting entity is needed to more effectively determine liability among various entities. Contrary to this general position, COPA commented that notifying the last operating carrier alone is sufficient and the last operating carrier should be responsible for the refunds. Several airline commenters suggested that the Department should allow additional time (*e.g.,* 30 days) to issue refunds, especially when multiple parties are involved. A4A stated that the Department should allow carriers the maximum flexibility to provide refunds, with passengers' consent, in alternative electronic forms.

Although consumers and their advocacy groups did not specifically comment on this subject, ASTA disagreed with the Department's proposal that passengers should separately notify the collecting carrier if the last operating carrier is not the collecting carrier. ASTA commented that filing an MBR with the last operating carrier should be sufficient and requiring passengers to provide two notifications is unduly burdensome and may confuse passengers.

ASTA agreed with the proposed timelines to require the collecting carrier to issue refunds.

DOT Responses: After carefully considering the comments received, the Department has decided that in all situations, including when the carrier that received an MBR about a delayed bag and the carrier or ticket agent that collected the baggage fee are different entities, the filing of an MBR constitutes adequate notification from the passenger that the baggage was delayed for the purpose of receiving a checked baggage fee refund. The Department agrees with ASTA that requiring passengers to provide separate notifications to two entities to obtain a baggage fee refund is unduly burdensome and may confuse passengers. Further, 49 U.S.C. 41704 note requires carriers to provide ''prompt'' and ''automated'' baggage fee refund when the baggage delivery delay has exceeded the specified delivery deadline. In this final rule, the Department is defining an ''automated'' refund of the bag fee to mean a refund provided to a consumer for a checked bag that has been significantly delayed (*i.e.,* delayed 12 hours or more for domestic flights, delayed 15 hours or more for international flight that is 12 hours or less in duration, delayed 30 hours or more for an international flight that is more than 12 hours in duration) without action by the passenger beyond the filing of an MBR.

In situations where the carrier accepting and handling an MBR from the passenger is the same carrier that collected the baggage fee, it should be simple for the carrier to provide passengers automated refunds if the checked bag is significantly delayed because that carrier has the passenger's payment information and knows whether the checked bag has been significantly delayed. In situations where a carrier collected the baggage fee and a different carrier accepted the MBR, both carriers are expected to work together to ensure that a refund is issued promptly when due, with the carrier accepting the MBR timely notifying the collecting carrier of the baggage delay status and any other information collected from the passenger necessary for processing the refund, and the collecting carrier promptly issuing the automatic refund when it is notified that the delay has exceeded the deadline. As stated earlier, both carriers will be held responsible when a refund is not issued promptly. In situations where a ticket agent collected the bag fee, under this final rule, the carrier that operated the last flight segment is both the carrier accepting and handling an MBR and the carrier required to provide an automated refund. As the carrier accepting and handling the MBR, the carrier knows whether the consumer's checked bag has been significantly delayed entitling the consumer to a refund of the bag fee. While that carrier may not know the identity of the ticket agent that collected the bag fee or have the consumer's payment information should a refund be necessary, the carrier can obtain such information from the consumer as part of the MBR form that the consumer completes. The carrier may also choose to use the information that the consumer provided about the ticket agent that collected the bag fee to seek reimbursement.

In all the situations described above, the Department is requiring that the refund of the bag fee for a significantly delayed checked bag be prompt. The Department is defining a ''prompt'' refund of bag fees to mean a refund issued within 7 business days of the expiration of the baggage delivery deadline for tickets purchased with credit cards or 20 calendar days of the expiration of the baggage delivery deadline for tickets purchased with other payments, unless the consumer did not file an MBR before the expiration of the baggage delivery deadline, in which case the refund is due within 7 or 20 days of the date when the MBR was filed. The Department notes that its requirement for carriers to refund baggage fees within 7 business days for credit card purchases and 20 calendar days for purchases with other payments is consistent with the Department's existing refund regulation in 14 CFR 259.5 and 14 CFR part 374. The requirement in part 374, which implements Regulation Z's 7-day refund timeline for credit card payments applies to all airline transactions for which refunds are due, not just ticket refunds. The Department disagrees with airline commenters that investigations of refund eligibility involving multiple carriers warrant additional time beyond the 7- or 20-day timeframes. As stated in the NPRM, our understanding is that the vast majority of travel itineraries marketed to consumers in the United States are either itineraries involving only one carrier or itineraries involving fee-for-service codeshare operations for which the operating fee-for-service carrier works closely with the marketing carrier on baggage handling and resolving MBRs. For delayed baggage claims in those itineraries, investigations should be a straightforward process. In other cases, the Department expects that carriers engaging in marketing codeshare or interline arrangements will continue to improve inter-airline communication channels to increase the efficiency of information exchange relating to customer service, including delivering delayed bags to passengers as soon as possible and providing refunds for baggage fees when appropriate.

6. Other Issues

The NPRM: The NPRM raised a number of miscellaneous issues relating to refunding fees for significantly delayed bags and asked for public comments. These issues concern: (1) what types of bags are subject to the refund requirement, including whether fees for oversized/overweight bags should be exempt from refund requirement; (2) how to determine the amount of refund if a fee was charged for multiple bags under an escalated fee scale and one or some of multiple

checked bags are delayed, or if a passenger paid a fixed fee for a baggage fee subscription program that covers the passenger's checked bag fees for a specified period; (3) whether there are particular circumstances in which airlines should not be required to issue a refund for a significantly delayed bag; (4) whether a carrier can require waiver of fees and liability if a passenger voluntarily agrees to travel without the checked bag on the same flight; and (5) how the baggage fee refund requirement should apply when airlines arrange alternative transportation or when passengers choose not to travel on the scheduled or substituted flight.

With regard to the types of checked bags subject to the refund requirement, the Department noted that the statute requires the rule to cover ''checked baggage'' and the Department interpreted this to include not only bags checked with carriers at the ticket counters but also gate-checked bags and valet bags. The Department added that the statute makes no distinction or exception for special items that are transported as checked bags and interpreted the statute to also cover oversized and overweight bags.

As for the amount of baggage fee refund to be provided if a passenger paid a lump sum fee for multiple bags under an escalated fee scale and one or some of multiple checked bags are delayed, the Department indicated its intention to require a carrier to refund the highest baggage fee per bag if there is not a unique identifier for each checked bag that correlates to the fee. The Department stated that it would permit the specific fee paid for the significantly delayed bag to be refunded if a carrier can identify the specific fee paid for that delayed bag. For passengers who paid for a baggage fee subscription program, the Department stated that it would require airlines to provide refunds and solicited comment on how to determine the amount of refund to which these passengers should be entitled. The Department reasoned that a refund is appropriate because the subscribers are paying a fee to transport their bags even if it is not on a per bag basis.

Another issue that the Department examined in the NPRM is whether the mandate for baggage fee refunds should exempt certain situations. The Department provided examples of two instances in which a delay of a bag may be a result of passenger inaction. The first example was of a passenger who fails to comply with the requirement of U.S. Customs and Border Protection to pick up a checked bag at the first point of entry into the United States and recheck the bag, causing baggage delay. The second example was of a passenger who is traveling with two separate tickets and the passenger fails to collect the checked bag at the end of the first itinerary and check it with the carrier on the second itinerary. The Department also asked whether, instead of specifying particular circumstances in which airlines are not required to issue a refund for a lengthy delay in delivering the bag, a general exception for checked baggage delays that were a result of a passenger's negligence is preferable. The Department sought comment on what level of proof, if any, carriers should be required to provide to show that a bag delay was caused by the passenger's negligent action or inaction.

In addition, the Department analyzed and solicited comment on whether a carrier should be allowed to require a waiver of fee refunds for significantly delayed checked bags and a waiver of incidental expenses associated with the delay from a passenger who voluntarily agrees to be separated from his or her checked bags, usually due to late check-in or traveling as a standby passenger. The Department also asked whether it should require airlines to retain records of waivers for a specified time period if it were to allow such waivers. A related issue addressed in the NPRM was whether a baggage fee refund requirement should apply when passengers choose not to travel on the scheduled or substituted flight. In the NPRM, the Department noted that it has tentatively determined that when passengers *voluntarily* choose not to travel on the scheduled flight or a substitute flight offered by the carrier, either by taking ground transportation that the passengers arrange on their own, or by purchasing tickets on flights of another carrier, the baggage fee refund requirement should not apply. The Department stated, however, if it is the carrier that arranges the alternative transportation, the bag fee refund requirement would apply, and the baggage delay clock would start when the passenger arrives at his or her destination in the alternative transportation provided.

Lastly, the Department stated that baggage fees included in airfares, or baggage services provided as a complementary service due to frequent flyer status or credit card benefits should not be included in the refund requirement.

Comments Received: A4A and AAPA stated that the refund requirement should not cover oversized/overweight bags and other specialty checked bags such as pets. A4A asserted that transporting these bags involves additional special care and costs, higher injury risks to employees, and increased chance of delay due to weight and balance limits. Both commenters argued that requiring carriers to refund fees for these bags would disincentivize carriers from accepting them for transportation or cause carriers to increase the price for transporting these bags. IATA commented that it supports the proposal that airlines should assign a specific fee to each bag if using an escalated fee scale and the proposal that when no such assignment was made airlines should refund the highest fee per bag.

A4A commented that passenger negligence or failure to meet the conditions set forth by the carrier's contract of carriage that causes bags to be delayed should exempt carriers from the refund obligation. It specifically listed situations that it believes should qualify for exemptions, including when: passengers fail to pick up and recheck bags at the international entry points, passengers travel to ''hidden cities'' (*i.e.,* passengers book a through fare with intention to disembark mid-travel but the bags are checked all the way through to the final destination), passengers purchase two separate tickets and then fail to collect the bag and recheck with the second carrier, passengers do not meet the check-in and other contract of carriage requirements, or passengers pack prohibited items in bags. A4A also stated that the exemption should apply when passengers take an earlier flight as standby or arrange their own alternative transportation, in which case carriers should be allowed to request passengers sign a waiver. A4A further contended that third-party actions that cause the bag delay should also exempt carriers from refund liability and these situations include bags being mistakenly claimed by another passenger, bag delays due to government actions such as bags being held by customs or airport security, bag delays due to airport-operated system failure, negligence by third-party delivery services that is beyond carriers' control, or bag delays due to carriers' compliance with positive bag match requirements.

IATA, AAPA, Qatar Airways, and Spirit supported the proposal that carriers may request a waiver from passengers when passengers arrange their own alternative transportation or when passengers choose to voluntarily separate from their bags. IATA further supported the proposal that the refund requirement would apply when carriers arrange the alternative transportation but suggests that the clock should start at the time of MBR filing, as opposed to the arrival of the alternative transportation as proposed in the

NPRM. Spirit and Qatar Airways supported the proposal that carriers are not responsible for refunds when consumers arrange for alternative ground transportation or travel on anther carrier's flight.

On baggage subscription programs, A4A, IATA, and AAPA argued that baggage transportation services that are purchased as part of a baggage fee subscription service should not be subject to the refund requirement proposed in the NPRM. A4A argued that carriers should be exempted from the refund requirement because carriers cannot accurately calculate the cost of the bag transportation and the amount of refund due. It further argued that passengers purchasing the subscription program are receiving a bargain on baggage transportation and they understand the risk of not receiving a refund when a bag is delayed. A4A commented that not providing an exemption to the program will stifle innovation on dynamic pricing and comparison marketplaces.

A4A, IATA, and AAPA argued that baggage transportation services included as part of the fare or provided free of charge due to the passenger's frequent flyer status or because the passenger holds a branded credit card from the airline should not be subject to the refund requirement. Spirit, on the other hand, stated that carriers that do not separately charge a bag fee should be required to provide partial ticket refunds when bags are delayed because these carriers have incorporated the baggage fee into ticket prices.

Travelers United supported the proposal to treat oversized/overweight bags the same as regular checked bags for the purpose of baggage fee refunds. It also supported the rule covering gate-checked and valet bags to the extent that baggage fees are charged. Travelers United commented that if fees for all bags are paid in the same transaction, when one of the bags are delayed, carriers should refund the highest per bag fee. On carrier-arranged alternative transportation, Traveler United expressed its belief that passengers should be protected by the same rule regarding baggage fee refunds. It further emphasizes that when passengers waive their rights to baggage fee refunds, they are not waiving their rights to compensation related to lost or damaged baggage. One individual consumer expressed disagreement with airlines' suggestion that the rule should exempt oversized or overweight bags. The consumer commented that the suggestion introduces incentives for airlines to give these bags the lowest priority.

The Colorado AG suggested that instead of adopting a general category of ''passenger negligence'' that exempts carriers from the refund obligation, the Department should specify the particular circumstances in which carriers are exempted. The comment further contended that a vague concept of ''passenger negligence'' would likely post challenges to consumers, carriers, and the enforcement process, and it would also invite carriers to deny refunds more readily and place consumers in a challenging position. The comment recommended that the structure of the rule place the burden on the airline to establish any exception.

DOT Responses: After careful consideration of the comments, the Department is: (1) defining checked bags subject to the refund requirement to include gate-checked bags, valet bags, checked bags that exceed carriers' normal allowance, oversized/overweight checked bags, and specialty checked bags such as sporting equipment and pets; (2) requiring the highest amount per bag fee on an escalated fee scale be refunded if one or some of multiple checked bags are significantly delayed without a unique identifier for each checked bag that correlates to the fee; and (3) requiring the lowest amount of baggage fee the carrier charges another passenger of similar status without the subscription be refunded to a passenger who paid a fixed price for a baggage fee subscription program and a checked bag is significantly delayed. The Department is also exempting from the requirement to refund a fee for significantly delayed checked bag instances where the delay is a result of: (1) passengers failing to comply with the requirement of U.S. Customs and Border Protection to pick up a checked bag at the first point of entry into the United States and recheck the bag; (2) passengers agreeing to travel without their checked bag on the same flight because they checked in late for the flight or are flying as stand-by passengers; (3) a third-party delivery service that is not a contactor or an agent of the carrier and, instead, is contracting directly with the passenger failing to deliver the bag promptly; and (4) passengers not being present to pick up a bag that arrived on time at the passenger's ticketed final destination.

(i) Types of Bags Covered by the Refund Requirement

The requirement adopted in this final rule for airlines to refund baggage fees when airlines significantly delay delivery of checked bags does not distinguish between different types of checked bags. The Department is defining checked bags to include gate-checked bags, valet bags, checked bags that exceed carriers' normal allowances, oversized/overweight checked bags, and specialty checked bags such as sporting equipment and pets. This interpretation is consistent with the language of section 41704 note, which refers only to ''checked baggage'' and does not distinguish between different types of checked bags.

The Department acknowledges the need for special handling for oversized or overweight bags but notes that carriers are not required to accept these bags for transportation and those carriers that do generally charge a higher fee. The Department is not persuaded by the airlines' argument that including oversized/overweight bags in the refund requirement will disincentivize carriers from accepting these bags. We view competition the main incentive for carriers to continue to accept these bags for transportation, with the prices of baggage fees determined by the free market, based on consumer demands, carriers' costs and risk, and the likelihood of timely delivery.

(ii) Amount of Refund When Multiple Checked Bags Are Transported Under Escalated Fee Scale or Passenger Paid for Baggage Subscription Programs

Having received no objections in the comments, we are adopting the proposal that when one of the multiple bags checked by a passenger was significantly delayed by a carrier that adopts an escalated baggage fee scale, and there is no specific fee assigned to the delayed bag, the highest per bag fee should be refunded.

Regarding what the amount of the refund should be if a passenger paid for a checked bag through a baggage subscription program and the checked bag is significantly delayed, the Department is requiring that airlines refund the passenger the amount that is equal to the lowest amount the carrier charges another passenger of similar frequent flyer status without the subscription. The Department is not convinced by airlines' argument that delayed bags paid through a baggage subscription program should be exempted from the refund requirement. In support of this argument, airlines comment that passengers purchasing the subscription are receiving a bargain on baggage transportation and they understand the risk of not receiving a refund when a bag is delayed. We disagree. Although passengers choosing to purchase the subscription program receive a discount on the total cost of baggage transportation over the subscription period based on their

anticipated travel frequencies, they still paid a fee to airlines to transport their checked bags. The Department believes that these passengers should receive a refund if the bag delay exceeds the applicable timeline. Because it is difficult and impractical to determine the amount of refund due based on the actual per bag fee charged for the delayed bag, the Department is requiring a refund in the amount that is equal to the lowest amount the carrier charges another passenger of similar frequent flyer status without the subscription.

(iii) Exemptions From the Refund Requirement

The Department generally agrees with commenters that when passengers' own negligence is the cause of baggage delivery delay, carriers should be exempted from the refund requirement. The Department also shares the Colorado Attorney General's concerns that adopting a general category of ''passenger negligence'' that exempts carriers from the refund obligation may pose challenges to both consumers and carriers. As a result, the Department specifies in this final rule the particular circumstances in which carriers are exempted.

In the NPRM, the Department described situations where the baggage delivery delay was due to a passenger's failure to comply with the requirement of U.S. Customs and Border Protection to pick up a checked bag at the first point of entry into the United States and recheck the bag and a passenger failure to pick up the bag at the transition point and recheck the bag with the second carrier when traveling with two separate tickets.[68] Many other situations were also cited by the airline commenters as potentially qualifying for exemptions because the passengers' own action of negligence caused the baggage delivery delay. Of the various examples suggested by commenters as potentially qualifying for an exemption, the Department agrees that situations where passengers fail to pick up and recheck bags at international entry points into the United States qualify for an exemption from the refund bag fee requirement. The Department is also persuaded that an exemption is appropriate when passengers are not present to pick up a bag that arrived on time at the passenger's ticketed final destination whether that is because the passenger traveled to a ''hidden city,'' the passenger failed to pick up the bag before taking a flight on a separate ticket, or any other reason that is due to the fault of the passenger if documented by the carrier.

For different reasons, the Department has concluded that the other situations described do not qualify for an exemption. For example, carriers suggest that the Department should exempt carriers from the refund obligation when the baggage delay was because passengers packed prohibited items in their checked bags. However, based on the Department's understanding of the procedures of the Transportation Security Administration (TSA), in the vast majority of these cases, the prohibited items would be removed from the bags during the screening process, and the bags would be allowed to continue their travel. Based on this understanding, the Department does not believe it is appropriate to categorically exempt bags that are temporarily held by TSA due to prohibited items being found in the bags. In addition, a bag is not late when passengers purchase two separate tickets and fail to collect the bag and recheck the bag with the second carrier. The second carrier could not transport the bag on the same flight as the passenger when the bag was never checked by the passenger, and the first carrier is exempted for the delay because the passenger failed to pick up the bag that arrived on time at the passenger's ticketed final destination. Similarly, a bag is not late when a third-party that contracted directly with the passenger picks it up from the carrier before 12 hours for domestic flights, 15 hours for international flights of 12 hours or less in duration, and 30 hours for international flights of over 12 hours in duration. If the third-party then caused a delay in the bag reaching the passenger, the carrier does not owe a refund of the bag fee to the passenger.

As for the comment that the Department should exempt carriers from refund liability when the baggage delay was a result of third-party actions, the Department is of the view that an exemption is not appropriate when the third-party actions took place while the bag was in the custody of the airline before it has been delivered to the passenger. Airlines in their comments suggest that the Department should exempt a list of situations in which actions by a third-party cause the baggage deliver delay. The Department's view is that a third-party's action that directly causes significant bag delivery delays while the bag is under a carrier's custody should not be exempted from the requirement to refund the bag fee. Consistent with the Department's policy for reporting mishandled baggage by U.S. carriers, a bag is in the custody of a carrier beginning at the point in time which the passenger hands the bag to the carrier's representative or agent, or leaves the bag at a location as instructed by the carrier; a carrier's custody ends when the passenger, a party acting on the passenger's behalf, or another carrier takes possession of the bag.[69] Bag delays due to third-party actions (*e.g.,* security authority or Customs holding bags, airport baggage processing system failure, or recovery bag delays due to carriers' compliance with the positive passenger-bag match requirement) are not permissible grounds for exempting the carriers from the baggage fee refund obligation because the affected bags are under carriers' custody. Also, bag delays caused by another passenger picking up the bag by mistake before the passenger or a party acting on the passenger's behalf takes physical possession of the bag is not exempted because the passenger provided his or her bag to the carrier and the bag was not available to be picked up by that passenger at the passenger's final destination.[70]

Consistent with this approach, the Department considers baggage delays caused by a third-party delivery service to be a ground to exempt the carrier from refunding baggage fees only if the third-party is not a contactor or an agent of the carrier and, instead, is contracting directly with the passenger. For example, if a passenger arranges a third-party delivery service to pick up the bag at the passenger's final destination airport and transport it to a location designated by the passenger, the airline is exempted from refunding baggage fees if the baggage delivery is delayed by that third-party, who took possession of the bag from the carrier on behalf of the passenger.

(iv) Waiver of Fee Refunds and Incidental Expenses for Voluntary Separation

The Department is exempting airlines from the refund obligation when passengers voluntarily agree to travel without their checked bags on the same flight as a way to make the flight when they checked in late for the flight or are flying as stand-by passengers. We agree with commenters that carriers offering passengers different travel options that meet their needs, including the option of traveling without their bags on the same flight, benefits consumers. In those situations where carriers are willing to accommodate passengers but may not have adequate time to load the

[68] 86 FR 38423 (July 21, 2021).

[69] See, *Technical Reporting Directive #30A—Mishandled Baggage and Wheelchairs and Scooters (Amended),* Dec. 21, 2018.

[70] *Id.*

passengers' bags onto the same flights, we believe it is fair to exempt carriers from the baggage fee refund obligation provided that carriers clearly disclose to the passenger that the checked bag may not arrive promptly. In those circumstances, carriers are permitted to require passengers sign a document waiving their right to a refund of the baggage fees if the bag delivery is delayed beyond the regulatory timelines. The waiver that carriers seek from passengers in these situations must be limited to passengers relinquishing their right to refund of bag fees if delayed beyond the regulatory timelines. The waiver should also include an estimated delivery time and a delivery location that the carrier and the passenger agreed upon. The waiver must not include language suggesting that the passengers are relinquishing their right to refund of bag fees if the bag is lost, their right to compensation for damaged, lost, or pilfered bags, or their right to incidental expenses arising from delayed bags beyond the agreed upon delivery date/time consistent with the Department's regulation in 14 CFR part 254 and applicable international treaties.

(v) Alternative Transportation

The Department has considered the comments regarding whether the baggage fee refund requirements should apply to significantly delayed bags when passengers arrange for alternative transportation. Passengers choosing to arrange their own alternative transportation even after already having handed over their checked bags to carriers' custody often do so because their flight has been canceled or significantly delayed. As explained later in this document, if a flight is canceled or significantly changed and the passenger chooses not to fly with the carrier, the passenger is entitled to receive a refund of the ancillary service fee, including baggage fee, for a service that they paid for and did not receive. Unless the carrier delivers the checked bag to the passenger at an agreed-upon location, the checked bag fee must be refunded.

The Department is also not persuaded that it should exempt from the requirement to refund fees for significantly delayed bags when the carrier arranges alternative air travel for its passengers because of a flight cancellation or significant change by the carrier. The requirement to refund fees for significantly delayed bags still applies when the alternative transportation that the carrier arranges is a later flight operated by that carrier or a flight by another carrier. In those situations, the start of the delay when measuring the length of the delay for a carrier to deliver a checked bag is when the passenger arrives at his or her destination on the alternative air transportation, consistent with the Department's position on start of the baggage delay when passengers fly on their original scheduled flight. Because the statute applies to delays in transporting bags on flights and not on ground transportation, however, this rule requiring carriers to refund fees for significantly delayed bags does not apply to the alternative ground transportation.

As a final matter, the Department is providing clarification that the refund requirement of 49 U.S.C. 41704 note covers ''any *ancillary fees* paid by the passenger for checked baggage'' (emphasis added). It is irrelevant whether the consumer uses a credit card, frequent flyer miles/points, travel vouchers, or something else to pay the fee for the checked bag. An ancillary fee is a fee for an optional service that is not included as part of the fare and includes baggage fees charged separately from the ticket price. To the extent that there was no separate bag fee paid by any form of payment (*e.g.,* credit card, airline miles) because the transport of baggage was included as part of the fare or the baggage fee was waived due to the passenger's airline loyalty program status or as a benefit of using an airline-associated credit card, carriers are not required to provide a refund as the passenger did not pay an ''ancillary fee'' for the checked bag.

III. Refunding Ancillary Service Fees for Services Not Provided

1. Covered Entities and Flights

The NPRM: The Department proposed to mandate U.S. and foreign air carriers provide refunds to consumers of the fees a passenger pays for an ancillary service related to air travel on a flight to, from, or within the United States that the passenger does not receive, including retaining the existing regulatory requirement for such refunds due to oversales and flight cancellations [71] and other situations when the ancillary service is not available to the passenger. The Department is required by 49 U.S.C. 42301 note prec. to cover U.S. and foreign air carriers that offer ancillary services for a fee on their domestic and international flights.[72] With respect to ticket agents, similar to the requirement on refunding baggage fees for significantly delayed bags, although the Department is not required by statute to cover them, the NPRM stated that the Department has independent authority under 49 U.S.C. 41712, which prohibits ticket agents from engaging in unfair or deceptive practices in air transportation, to include them in the regulation if deemed appropriate. As such, in the NPRM, the Department sought a general overview of ticket agents' role in the transaction and collection ancillary service fees and the process of how fees collected by ticket agents are transferred to carriers. The NPRM stated that this information would assist the Department in determining whether its regulation on ancillary fee refund should address ticket agents' role and the role of other non-carrier entities involved in the sale of ancillary fees.

Comments Received: The Department received no comments regarding the scope of covered flights and covered carriers. With respect to ticket agents, IATA indicated that the entity that collected the ancillary fee should be responsible for the refund. Spirit also supported a requirement for ticket agents to issue refunds if they collected the fees. Ticket agent representatives' position on whether they should be required to refund ancillary service fees when the services are not provided is similar to their view on refunding baggage fees for significantly delayed bags, which was summarized in that section. In short, ticket agent representatives believe that based on the statutory language of 49 U.S.C. 42301 note prec., which referred only to air carriers, the infrequency of ticket agent-transacted ancillary fees, and the role of ticket agents in those transactions (*i.e.,* acting as the agents of airlines), ticket agents should not be required to refund ancillary service fees.

DOT Responses: The Department is requiring U.S. and foreign carriers that operate scheduled passenger service to, within, and from the U.S. to provide a refund to passengers of fees charged for an ancillary service that is paid for but

[71] 14 CFR 259.5(b)(5) requires carriers to provide prompt refunds where due, including refunding fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation.

[72] Section 421 of the FAA Reauthorization Act of 2018 (2018 FAA Act), which was codified under 49 U.S.C. 42301 note prec., directs the Department to promulgate regulations requiring ''each covered air carrier'' to provide refunds of ancillary service fees that a passenger paid for but did not receive. Section 401 of the 2018 FAA Act defines ''covered air carrier,'' as used in Section 421, to mean means an air carrier or a foreign air carrier as those terms are defined in section 40102 of title 49, United States Code. *https://www.congress.gov/bill/115th-congress/house-bill/302/text?q=%7B%22search%22%3A%5B%22FAA+Reauthorization%22%5D%7D.*

not provided. The Department is applying this requirement to carriers regardless of the aircraft size that the carriers operate. With regard to ticket agents, the Department is not adopting in this final rule a specific requirement for ticket agents to provide refunds of ancillary service fees even if ticket agents collect the fees. The Department believes that whether an ancillary service paid by a consumer was provided by an airline is a factual matter better handled directly by the airline through direct communication with passengers. The Department views that placing responsibility to provide such refunds on ticket agents may further complicate the matter and cause unnecessary delays for consumers to receive a refund. Further, 49 U.S.C. 42301 note prec. directs the Department to promulgate regulations requiring ''covered air carriers'' to provide refunds for ancillary service fees. For these reasons, in this final rule, the Department is placing the responsibility to provide refunds of ancillary service fees for services not provided on carriers rather than ticket agents. The Department will continue to monitor the transactions of ancillary service fees conducted by ticket agents and may revisit the issue in the future should it become necessary.

2. Need for Rulemaking

The NPRM: The Department proposed to require refunds of ancillary service fees for services paid for but not provided to implement a statutory provision of the FAA Reauthorization Act of 2018 (49 U.S.C. 42301 note prec.), and to codify the Department's longstanding enforcement practice of viewing any airline practice of not refunding fees for ancillary services that passengers paid for but are not provided as an unfair or deceptive practice in violation of 49 U.S.C. 41712. The statutory provision in 49 U.S.C. 42301 note prec., 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, including on the passenger's scheduled flight, on a subsequent replacement itinerary if there has been a rescheduling, or for a flight not taken by the passenger. Currently, the Department's regulation in 14 CFR part 259.5(b)(5) explicitly requires that airlines refund fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation. Under the statutory authority of 49 U.S.C. 41712, which authorizes the Department to investigate and, if necessary, take action to address unfair or deceptive practices or unfair methods of competition by air carriers, foreign air carriers, or ticket agents, the Department has a longstanding enforcement policy that considers any airline practice of not refunding fees for ancillary services that passengers paid for but are not provided to be an unfair or deceptive practice in violation of 49 U.S.C. 41712, which goes beyond the situations related to oversales or flight cancellations. In the NPRM, DOT proposed to retain the existing regulatory requirement regarding ancillary fee refunds arising from flight oversales or cancellations, and to further clarify that the refund requirement would apply to any other situation in which an airline fails to provide passengers the ancillary services that passengers have paid for (*e.g.,* passengers paid for using the in-flight entertainment (IFE) system on a scheduled flight but the IFE system was broken and could not be used by the passengers). DOT stated that the inclusion of regulatory text requiring that airlines must refund ancillary fees for services related to air travel that passengers did not receive, as provided in 49 U.S.C. 42301 note prec., would not impose additional requirements on airlines as airlines are already providing refunds of ancillary fees when they fail to provide services that passengers paid for, consistent with the Department's interpretation of section 41712.

Comments Received: Virtually all consumers and consumer rights advocacy groups who submitted comments expressed their general support for this rulemaking. The majority of airlines and airline trade associations that commented on the NPRM also supported the Department's rulemaking to implement the Congressional mandate. Among airline commenters, however, AAPA argued that it is not necessary to promulgate a new rule because airlines generally are already providing refunds for services not rendered on their initiative. AAPA also noted that mandating prescriptive rules such as compulsory refunds for ancillary services would stifle innovation and restrict consumers' freedom of choice as it limits airlines' ability to offer other methods of compensation, such as vouchers or airline miles, which could be more attractive to the customer. Qatar Airways commented that it already offers refunds of ancillary service fees when there is a flight cancellation. Qatar also states that the majority of ancillary products are transferred to the new itinerary when a schedule change has occurred.

DOT Responses: The Department has concluded that the promulgation of this regulation not only fulfills a statutory mandate, but also is necessary to provide consistency and clarity to the regulated industry. Although many airlines are already providing refunds of fees for various ancillary services that they did not provide, this final rule defines the scope of ancillary services that are subject to this refund requirement and ensures that all carriers comply with the mandatory requirements following a unified standard with respect to the method and timeliness of refunds. The Department rejects AAPA's argument that having a compulsory refunds requirement would stifle innovation as under the mandatory refund requirement, airlines continue to have the option to offer other compensation such as vouchers or airline miles to consumers who did not receive the ancillary services they paid for, as long as carriers clearly inform consumers that they are entitled to a refund for the fees at the same time or before offering vouchers or other non-cash compensation.

3. Definition of Ancillary Services

The NPRM: The provision in 49 U.S.C. 42301 note prec. requires that airlines refund ancillary fees paid for services ''related to air travel.'' As stated in the NPRM, the Department has not defined ''ancillary services'' in its aviation economic regulations and proposes to adopt a definition that is substantially identical to the definition for ''optional services'' in 14 CFR 399.85(d) [73] which requires U.S. and foreign air carriers to prominently disclose on their websites marketing air transportation to U.S. consumers information on fees for all optional services available to a passenger purchasing air transportation. Specifically, DOT proposed to define ''ancillary service'' to mean any service related to air travel provided by a covered carrier, for a fee, beyond passenger air transportation. DOT specified that such service includes, but is 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. DOT noted that the definition in section

[73] ''Optional services'' is defined as any service the airline provides, for a fee, beyond passenger air transportation. Such fees include, but are not limited to, charges for checked or carry-on baggage, advance seat selection, inflight beverages, snacks and meals, pillows and blankets and seat upgrades. 14 CFR 399.85(d).

399.85(d) does not include fees charged for services to be provided by entities other than airlines, such as hotel accommodations or rental cars, which are commonly offered by some airlines as a package during the airfare reservation process. DOT sought comments on whether adopting a definition for ''ancillary service'' that is similar to the definition of ''optional service'' in section 399.85(d) is appropriate in the context of ancillary service fee refunds.

Comments Received: Airline and consumer commenters supported the proposed definition for ''ancillary service.'' Spirit stated that it supports the Department's efforts to harmonize the definition of ''ancillary services'' with that of ''optional services.'' AAPA commented that an alignment of definitions is crucial to avoid confusion for all stakeholders concerned, including passengers, airlines, and service providers. A4A noted that Department should clarify, in the definition, that ancillary service fees are not costs included in a fare or as a prerequisite; and that ''ancillary services'' do not include services provided pursuant to an agreement directly between the passenger and a third-party service provider. Among consumer commenters, Travelers United expressed its support for the Department's proposed definition of ''ancillary services.''

Panasonic Avionics, a manufacturer of in-flight entertainment (''IFE'') and in-flight connectivity (''IFC'') systems and a service provider, commented that the proposed refund requirement should apply only to covered carriers when they enter into a contract directly with a passenger for the provision of an ancillary service and process that passengers' payment for that ancillary service. It further stated that the rule should not be construed to obligate covered carriers to issue refunds when a passenger has contracted with a third-party service provider for an ancillary service and made payment to that third-party provider because in that case, the passengers' right to a refund will be governed by the terms and conditions of sale between the third-party provider and the passenger, with the third-party provider being governed by the consumer protection regulations of its applicable industry. Panasonic suggested that the Department's final rule should clarify in the applicability section that the regulation ''is not intended to address services provided by third-party service providers that entered into a service contract and/or terms and conditions directly with the passenger.'' Panasonic also suggested that the definition of ''ancillary service'' should clarify that it does not include services provided by third-party service providers that entered into a service contract directly with the passenger.

The Department also received a comment from the Colorado Attorney General, who, among other things, recommended that the Department's final rule ensure that consumers paying additional fees for add-on services truly receive items of tangible value.

DOT Response: With minor modifications, the Department is adopting the NPRM's proposed scope and definition for ''ancillary services'' in this final rule. The Department has considered A4A's comment that ancillary services subject to the refund requirement should not include services the costs of which are included in the airfare. We agree and have modified the definition of ancillary service by adding the word ''optional'' to reflect that the ancillary services covered under this rule are services that consumers can purchase at their discretion, and they do not include services mandatorily included in airfares or complimentary services provided to passengers without a separate fee.[74]

The Department has also considered Panasonic's and A4A's comments regarding the need to expressly clarify that ''ancillary services'' in this rule do not include services provided pursuant to an agreement directly between the passenger and a third-party service provider. The Department's authority to prohibit unfair or deceptive practices under 49 U.S.C. 41712 is limited to practices by U.S. carriers, foreign air carriers, and ticket agents in air transportation or the sale of air transportation. Also, the Department's authority to mandate prompt refund to a passenger of any ancillary fees paid for services related to air travel that the passenger did not receive pursuant to 49 U.S.C. 42301 note prec. is limited to carriers. The Department does not have the authority to regulate the practices of other entities under these statutory provisions. Accordingly, while not adopting the suggested rule text amendments by Panasonic, we are clarifying that services provided to passengers in relation to air travel pursuant to a contract between passengers and an independent third-party provider that does not act as an agent or contractor of an airline are not covered by this refund requirement. The Department understands that some independent third-party service providers may rely on airlines to refer interested customers to them for service purchases. In circumstances where an airline facilitates the purchase of an ancillary service but is not a direct party in the service contract, the Department expects the airline to provide clear disclaimer regarding the nature of the service contract and inform consumers that they should communicate directly with the service providers for any issues related to the service.

4. Refund Eligibility and Promptness of the Refund

The NPRM: The provision at 49 U.S.C. 42301 note prec. requires covered carriers to refund ancillary service fees for services that ''a passenger does not receive, including on the passenger's scheduled flight, on a subsequent replacement itinerary if there has been a rescheduling, or for a flight not taken by the passenger.'' The Department interpreted the statute to mean that a passenger would be eligible for a refund if he or she did not receive the ancillary service paid for because (1) the service was not made available to the passenger on the flight he or she took (either the original flights or an alternative flight due to cancellation or schedule changes made by the airlines or due to an oversales situation); or (2) if the passenger did not take any flight due to the airline canceling the flight or making a significant change to the flight. The proposal was focused on whether a carrier failed to fulfill its obligation to provide the service, as opposed to whether the service was utilized by the passenger. If the service was available but a passenger did not use the service, the passenger would not be entitled to a refund. Also under this proposal, if the ancillary service is not available because a flight schedule change affirmatively made by the passenger or due to passenger action, carriers are not required to refund the service fee.

Regarding ''prompt'' refunds, the Department proposed to apply the same standards to ancillary service fees when refunds are due that is currently applicable to airline ticket refunds. In both situations, prompt refund would mean refunds within seven 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

[74] For passengers who did not receive an ancillary service because of an airline cancellation or a significant change of flight itinerary and the cost of the ancillary service is included in the airfare as a mandatory charge, carriers are required to refund the entire amount of airfare (all government taxes and fees and all mandatory carrier-imposed fees). See 14 CFR 260.6(a). To the extent that the cost of the ancillary service is not included in the airfare, carriers are required to refund the fee when the ancillary service was not provided because of a flight cancellation or significant change. See 14 CFR 260.4(a).

refund receives a request for a refund and the documentation necessary for processing the refund.

Comments Received: Virtually all airlines and airline trade organizations that provided comments supported the Department's proposal that a passenger would be entitled to a refund of the ancillary service fee if the passenger did not receive the ancillary service. Several airlines commented that the Department's rule should expressly state that a refund would not be required when the service was available but was not used by the passenger, when the passenger voluntarily changes or cancels their flight, or when the passenger violates the check-in requirements, the contract of carriage, or related policies. Spirit requested clarification on how to determine whether a service ''was not provided'' and whether a partial provision of the service would entitle a passenger to a refund. A4A stated that a refund should not be required for issues relating to partial provision of a service or the quality of the purchased ancillary service, as it would be impossible for a carrier to determine when refunds would be due or the proper amount of the refund. IATA and AAPA expressed their support for applying the same ''promptness'' standards to refunding ancillary service fees when refunds are due that is currently applicable to refunds for tickets, fees for optional services that could not be used due to an oversale or flight cancellation, and fees for lost bags.

A joint comment by Business Travel Coalition and multiple other consumer rights advocacy groups [75] stated that the Department should require carriers to automatically provide refunds for ancillary services not provided without consumers needing to complain. The consumer advocacy groups further stated that carriers should be required to proactively track when ancillary services paid for by passengers are not provided and to issue refunds automatically. They also expressed concerns that any regulation requiring passengers to seek out refunds will result in fewer refunds than consumers are entitled to receive. Travelers United stated its support of the Department's proposal and opines that passengers must request any refund of ancillary fees. Travelers United further suggested that the Department establish a form that can be used to notify both the airline and DOT at the same time regarding any refund request for ancillary service not provided.

In relation to its comments regarding the exclusion of third-party provided services from the definition of ''ancillary services,'' Panasonic stated that in the context of satellite services it provides, the discussion around refund eligibility must be left to the terms and conditions established between the customer and the service provider, not the covered carrier. However, Panasonic suggested that covered carriers be required to post information related to contacting the third-party service providers' support centers on carriers' websites or other locations.

DOT Response: After carefully considering the comments received, the Department has determined that, under certain circumstances where consumers' rights to refunds of ancillary services is undisputed, it is not necessary for carriers to wait to receive consumers' refund requests to provide refunds. More specifically, carriers are required to automatically refund fees for ancillary services in instances where the service was not available for any passenger who paid for the service, such as unavailable Wi-Fi for the entire flight. It should not be necessary for the consumer to separately request a refund under these circumstances because the carrier knows that no one on that flight received the service.

The Department does not believe an ''automatic'' refund approach in the same way is workable if the ancillary service is only unavailable to an individual passenger or passengers (*e.g.,* seatback entertainment equipment malfunction). In these situations, the operating carrier of the flight on which the paid ancillary service was not provided will need to be informed of the issue so they can conduct an investigation and verify refund eligibility. In our view, the affected consumer notifying the operating carrier when a paid-for service is not received is the most direct and efficient way to initiate the refund process. Notifying the operating carrier about the service not being provided is implicitly a request for refund by a consumer. The Department believes that notifying the operating carriers about the service issue should not be a significant burden to consumers. Carriers should make information available on their website on the different avenues available to customers to report such problems. Further, to the extent the operating carrier and the carrier that collected the ancillary service fee (merchant of record) are different carriers, the Department is requiring the operating carrier to, without delay, verify the passenger's claim about the ancillary service not being provided and notify the collecting carrier if this is the case as described more fully in the next section, so that the collecting carrier can provide an automatic refund. The collecting carrier is responsible for providing the refund. However, if a ticket agent collected the ancillary service fee, then the operating carrier that failed to provide the ancillary service is responsible for providing the automatic refund.

Regarding comments on how to determine whether a service ''was not provided'' and whether a partial provision of the service would entitle a passenger to a refund, the Department interprets the provision of section 42301 note prec. requiring refunds of fees for services that ''the passenger does not receive'' to mean a carrier has failed to fulfill its obligation to provide the service as opposed to the quality of the purchased ancillary service not being up to the expectation of the passengers. The Department does consider partial service such as providing Wi-Fi service for only a portion of the flight when a consumer paid for Wi-Fi service to entitle a consumer to a refund.

The Department generally agrees with airlines' comments that a refund should not be required when the service was available but was not used by the passenger. The Department further recognizes that actions by consumers may directly result in the pre-paid ancillary services not being available to passengers and in these situations, carriers are not required to provide refunds for the ancillary service fees. The actions by passengers that exempt carriers from the obligation to refund fees for ancillary services that a passenger does not receive include the passenger taking another flight due to non-compliance with minimum check-in time requirement or passengers being denied boarding on a flight due to non-compliance with carriers' contracts of carriage or governmental requirements. The Department notes that passenger-initiated cancellations or changes permitted by the terms of the tickets should not be a ground for carriers to refuse refunds of ancillary service fees that the passengers do not receive. For example, if a passenger holds a flexible ticket that allows the passenger to change flights without charge and the passenger changes to a new flight where the ancillary service that the passenger has paid for is not available, the passenger is entitled to a refund of the fee for that ancillary service.

With respect to Panasonic's comments on how to determine whether a refund

[75] Consumer Action, Consumer Federation of America, Consumer Reports, Edontravel.Com, Flyersrights.Org, National Consumers League, Travel Fairness Now, and U.S. PIRG.

is due for services provided by an independent third-party provider, as stated in the previous section, passengers not receiving a service they purchased directly from a third-party provider are not eligible to receive a refund under this rule as this rule applies to carriers and ticket agents. The passengers' refund eligibility will be governed by the terms and conditions of the service contract with the third-party provider and subject to applicable consumer protection laws. As suggested by Panasonic, the Department encourages carriers to provide consumers information on how to contact these third-party entities. The Department also reminds carriers that when promoting or facilitating the purchase of ancillary services or products provided by third-party entities, carriers may not provide information that is misleading to consumers as to which entity is responsible for providing the service or issuing refunds to dissatisfied consumers.

On the timeliness of refunds, the Department is adopting the same ''promptness'' standards for refunding ancillary service fees as proposed. A ''prompt'' refund of ancillary service fees means a refund issued within 7 business days for credit card payments or within 20 calendar days for non-credit card payments. For automatic refunds, the 7/20-day clock starts when a consumer's right to a refund of an ancillary service fee is clear. For circumstances where an ''automatic'' refund approach is not applicable, the 7/20-day clock starts when the passenger has notified the operating carrier about the unavailability of the service. The Department notes that adopting the 7- and 20-day refund timelines across the board on various refund issues provides consistency to consumers, carriers, and other stakeholder and streamlines carriers' customer service procedures, complaint resolutions, and training.

5. Entity Responsible for Refund

The NPRM: The Department recognized that for codeshare or interline itineraries or ticket agent-involved ancillary service fee transactions, the entity that collected the ancillary fee may not necessarily be the entity that is responsible for providing the ancillary service. Similar to the multiple-carrier scenario for refunding baggage fees for significantly delayed bags, the Department proposed to hold the carrier that collected the ancillary service fee responsible for issuing a refund when the ancillary service was not provided. When a ticket agent collected the ancillary service fee, the Department noted its understanding that the fee collected by a ticket agent is passed on to the carrier whose ticket stock is used for issuing the ticket and proposed to hold that carrier responsible for issuing the refund. The Department further noted that 49 U.S.C. 42301 note prec. requires airlines to refund ancillary fees paid for services related to air travel. For multiple-carrier itineraries for which a ticket agent collected the fee, the Department proposed that the last operating carrier issue the refunds, similar to the proposal for refunding baggage fees for delayed bags. The Department sought general information on ticket agents' role in the transaction and collection of ancillary service fees.

Comments Received: Comments on ticket agents' responsibility to refund were largely focused on refunding baggage fees for delayed bags. However, most comments also mentioned that their positions on ticket agents' responsibility to refund baggage fees should also apply to refunding ancillary fees for services not provided. In summary, airline commenters believed that ticket agents should be responsible for refunding ancillary service fees if they collected the fees, especially for multiple-carrier itineraries. One consumer rights advocacy group argued that airlines should ultimately be responsible for refunds, while two ticket agent representatives argued that airlines should be responsible. Details of these comments are provided in the comment summary section for refunding baggage fees for significantly delayed bags.

DOT Response: For multiple-carrier itineraries where one of the carriers collected the ancillary service fees, the Department is adopting the same approach as for refunding fees for delayed bags to require the carrier that collected the ancillary service fees (*i.e.,* merchant of record) to provide refunds when the services were not provided, regardless of whether the ancillary service at issue was not provided on a flight operated by the collecting carrier. In the Department's view, this approach is the most straightforward way to initiate and process a refund request from consumers' perspectives. The Department believes that the collecting carriers are in the best position to process and issue refunds as they have direct visibility of the passengers' selected ancillary services, the total amounts consumers were charged, and consumers' payment information. As noted in the prior section, automatic refunds are not required when the ancillary service is only unavailable to an individual passenger or passengers and under these circumstances passengers would need to notify the operating carrier that an ancillary service that they paid for was not available to them (*e.g.,* seat upgrade was not provided or seatback entertainment equipment malfunction), so carriers can conduct an investigation to verify refund eligibility.

In situations where the carrier that collected the ancillary service fee and the carrier(s) operating the flights are different entities, the Department is requiring the carrier(s) that failed to provide the passenger the ancillary service that the passenger paid for to provide that information to the collecting carrier without delay. Should the carrier that failed to provide the ancillary service not know which entity collected the ancillary service fee from the passenger, it can obtain that information from the passenger. The Department's Office of Aviation Consumer Protection will determine the timeliness of the information provided to the collecting carrier based on the totality of the circumstances, including how soon after becoming aware of the lack of service to the passenger did the carrier that failed to provide the ancillary service notify the collecting carrier.

The collecting carrier remains responsible for providing the refund. For example, a passenger purchased an itinerary that has two flight segments, with the first segment operated by Carrier A, and the second segment operated by Carrier B. Carrier A collected the ancillary service fee (merchant of record) for a seat upgrade on the second flight segment but the service was not provided. As this ancillary service was unavailable only to this passenger, automatic refund is not required. To obtain a refund, the passenger must inform Carrier B that the paid for seat upgrade was not provided on the second segment. Carrier A will be responsible for issuing the refund because it is the collecting carrier, and Carrier B is responsible for informing Carrier A that the paid for seat upgrade was not provided. The 7/20-day refund timeline starts for Carrier A at the time that it receives information from Carrier B that the paid for ancillary service was not provided.

For the same reasons articulated in the section on refunding baggage fees for significantly delayed bags, in cases where ancillary service fees are collected by a ticket agent for a single-carrier itinerary, the Department will hold that carrier responsible for issuing the refund. The Department notes that ticket agent representatives stated in

their comments that when ticket agents collect ancillary service fees including baggage fees, they do so primarily with the authorizations of airlines and act as airlines' agents. Airline commenters did not dispute this assertion. This approach is also consistent with 49 U.S.C. 42301 note prec., which requires ''each covered carrier'' to refund ancillary fees paid for services that are not provided. Ticket agents are encouraged to establish effective communication channels with airlines that authorize them to transact ancillary service fees and facilitate the refunds by providing necessary information to airlines.

Furthermore, when a ticket agent collects ancillary service fees for multiple-carrier itineraries, the Department is requiring the operating carrier of the flight on which the paid ancillary service was not provided to issue the refund. To the extent that the carrier that failed to provide the ancillary service does not know whether the entity that collected the ancillary service fee from the passenger is a ticket agent or a carrier, that information can be obtained from the consumer. The Department believes that when no carrier is the merchant of record, the operating carrier that failed to provide the service is in the best position to issue refunds to the affected consumers. That carrier would know if a service was not provided on the entire flight that it operated or if specific passengers on that flight did not receive the service. Because the operating carrier that failed to provide the service is the entity that knows or can verify whether the passenger received the ancillary service that the passenger paid for when the service was to be provided on its own flight, that carrier is the responsible party for providing a prompt refund when due. The Department notes that, to the extent that the carrier that failed to provide the ancillary service does not know whether the entity that collected the ancillary service fee from the passenger is a ticket agent or a carrier, that information can be obtained from the consumer. Although the operating carrier that failed to provide the passenger that ancillary service remains responsible for providing the refund when a ticket agent collected the fee, a fee-for-service carrier that fails to provide the ancillary service may choose to rely on other entities, such as their marketing codeshare partner, to issue refunds to consumers on its behalf. The Department expects the parties to work together and develop effective communication to ensure that information necessary to process passengers' refunds is transmitted in an accurate and efficient manner.

This final rule makes it an unfair practice for carriers that did not provide the paid for ancillary service to fail to timely inform the collecting carrier or, if a ticket agent collected the fee, the last operating carrier, that the service was not provided. The failure to provide in a timely manner information about ancillary services that have been paid for but not provided pauses the refund process and causes substantial harm to consumers by extending the timeline under which they are expected to receive the money they are entitled to. This harm is not reasonably avoidable by consumers as they have no control over how quickly this information is relayed which is what starts the refund process. The Department also sees no benefits to consumers and competition from this conduct. Without this requirement, money that is owed to consumers may be kept by others indefinitely, which in turn harms consumers and competition by penalizing good customer service and rewarding dilatory behavior.

IV. Providing Travel Vouchers or Credits to Passengers Due to Concerns Related to a Serious Communicable Disease

1. Statutory Authorities

The NPRM: The Department proposed this rulemaking pursuant to the authority set forth in 49 U.S.C. 41712 to take action to address unfair or deceptive practices or unfair methods of competition by air carriers, foreign air carriers, or ticket agents. The Department also relied on its authority in 49 U.S.C. 41702 to require air carriers to provide safe and adequate service in interstate air transportation. The Department noted that 49 U.S.C. 40101(a) directs the Department in carrying out aviation economic programs, including issuing regulations under 49 U.S.C. 41702 and 41712, to consider certain enumerated factors as being in the public interest and consistent with public convenience and necessity. These factors include ''the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices'' and ''preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation,'' as well as ''assigning and maintaining safety as the highest priority in air commerce.'' In issuing the NPRM, the Department also discussed the Airline Deregulation Act of 1978 (ADA) and noted that the ADA liberalized airlines' ability to freely price air travel products based on, among other things, consumer demand, and how airlines today offer a ''non-refundable'' ticket booking class that restricts passengers' ability to change or cancel the reserved flights in exchange for a lower price than tickets with more flexibilities for consumers.

Regarding the authority under 49 U.S.C. 41712, the Department stated its tentative position that it is an ''unfair practice'' [76] by an airline or a ticket agent to not provide non-expiring travel credits or vouchers to consumers who are restricted or prohibited from traveling by a governmental entity due to a serious communicable disease (*e.g.,* as a result of a stay at home order, entry restriction, or border closure) or are advised by a medical professional or determine consistent with public health guidance (*e.g.,* CDC guidance) not to travel to protect themselves or others from a serious communicable disease. The Department articulated that consumers are substantially harmed when they pay money for a service that they are unable to use because they were directed or advised by governmental entities or medical professionals or determine consistent with public health guidance not to travel to protect themselves or others from a serious communicable disease, and the airline or ticket agent does not provide a non-expiring credit or voucher or a refund. The Department pointed out that this substantial harm is not reasonably avoidable because the only way to avoid it is to disregard public health guidance or direction from governmental entities or medical professionals not to travel and risk inflicting serious health consequences on themselves or others. The Department added that the tangible and significant harm to consumers of losing the entire value of their ticket is not outweighed by potential benefits to consumers or competition. The Department expressed concern that, to avoid financial loss, consumers who have or may have contracted a serious communicable disease may choose to travel even when they have been advised not to travel, which is not in the public interest.

The Department further stated that aside from enhanced protection of consumers' financial interests, it believes that a regulation providing protection to non-refundable ticket holders who are unable to travel by air

[76] 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. Proof of intent is not necessary to establish unfairness. 14 CFR 399.79.

due to reasonable concerns related to a serious communicable disease is needed to promote and maintain a safe and adequate aviation transportation system. Citing 49 U.S.C. 41702, which requires U.S. carriers to provide safe and adequate interstate air transportation, and 49 U.S.C. 40101(a), which directs the Department to consider certain enumerated factors including ''assigning and maintaining safety as the highest priority in air commerce'' in carrying out aviation economic programs, the Department asserted that the proposals would encourage certain consumers to postpone travel and avoid potential harm to themselves and others in the aviation system. The Department sought comments on whether requiring airlines and ticket agents to issue travel credits or vouchers to non-refundable ticket holders in these situations and refunds when entities receive government assistance is an appropriate way for the Department to promote safe and adequate air transportation.

Comments Received: Airline commenters stated that the NPRM failed to establish legal justification for the proposals relating to communicable diseases. A4A, RAA, IATA, AAPA, and Air Canada argued that the proposals interfere with airlines' tiered fare structure and threaten ''the availability of a variety of adequate, economic, efficient, and low-priced service'' and therefore, are inconsistent with the ADA and section 40101. They added that the proposals will result in a smaller pricing gap between refundable fares and non-refundable fares, with tickets priced closer to the higher fare group, decreasing load factors, and impacting the commercial viability of marginal routes and remote markets. A4A and IATA commented that it is important to maintain non-refundable fares because they increase access to air travel by providing the least expensive form of travel with a trade-off that consumers who choose this option may not be able to change or cancel the tickets. Air Canada commented that the proposals violate the pricing freedom principle set forth in the U.S.—Canada bilateral agreement.

A4A argued that any consumer harm stated in the Department's analysis for ''unfair'' practice can be mitigated by readily available market solutions such as travel insurance, refundable tickets, or airlines waiving change fees during a public health emergency. Similarly, two ticket agent representatives, ABTA and ASTA, commented that they oppose the proposal because the harm that the proposal is intending to address can be prevented by purchasing insurance or refundable tickets and is therefore reasonably avoidable by consumers. Furthermore, on the analysis for ''unfair'' practice, A4A contended that any harm to consumers during a public health emergency is not caused by a ''practice'' by a carrier or a ticket agent. A4A also commented that the asserted authorities under sections 41712 and 41702 contradict the conclusion included in the Regulatory Impact Analysis (RIA) for the NPRM that states the proposals would not decrease the spread of a serious communicable disease by a measurable amount. Lastly, A4A commented that the proposal on travel credits or vouchers is inconsistent with the Federal Trade Commission (FTC) and agency practices of other modes of transportation and other industries.

FlyersRights commented that the Department has the clear authority and responsibility to promulgate the pandemic related provisions to ensure airlines ''provide safe and adequate interstate air transportation.'' It stated that the proposals would ensure any passenger who has a serious communicable disease, who is complying with government orders pertaining to pandemics, or who is following the advice of governmental health and safety agencies, is able to cancel or change their flight reservations through non-expiring travel credits, releasing airlines from their obligation to transport the passengers during a pandemic or when the passengers are contagious. FlyersRights further argued that the Department also has the clear authority to determine it is an unfair or deceptive practice for airlines to deny refunds or non-expiring credits to passengers who have COVID–19 or COVID–19 symptoms, who have had immediate exposure to someone with COVID–19, or who have health conditions or fears that made it unsafe to fly on planes or congregate at airports.

Regarding airlines' argument that the proposal will circumvent the ''non-refundable'' feature of the ticket booking class and result in price increases, FlyersRights argued that in their view non-refundable tickets do not provide a cheaper alternative for passengers. Regarding airlines' rationale that enforcing the ''non-refundable'' feature provides needed certainty that confirmed passengers will actually take the flights and reduces the risk of airlines being unable to sell empty seats closer to flight departure, which in turn allows airlines to keep price low, FlyersRights commented that the same rationale can be applied to passengers when their flights are cancelled or changed by airlines closer to departure date, at which point passengers are likely to pay a premium for alternative transportation. According to FlyersRights, the airlines' rationale will result in the conclusion that passengers having their flights cancelled or significantly changed by airlines should receive a premium of the ticket price in addition to refunds.

U.S. Travel Association commented that the proposals relating to serious communicable disease are problematic because they are overly broad, ambiguous, subjective, and outside of DOT authority. USTOA also opposed the proposals and argued that the circumstances triggering the proposed requirements are beyond airlines' control and the Department fails to explain why not complying with the proposed requirements is an unfair or deceptive practice. It also supported the airlines' argument that there are other solutions for consumers such as travel insurance or higher-priced fares with more flexibility. It stated that the RIA acknowledges that the proposals would not be likely to reduce the spread of disease, therefore weakening the argument for authority under section 41702. U.S. Chamber of Commerce stated that the proposals are overly broad and subject to abuse and the Department should require vouchers or credits to be issued only when there is a public health emergency that inhibits travel.

DOT Responses: The Department has carefully considered the comments by stakeholders regarding the Department's stated authorities for imposing requirements to protect consumers whose air travel plans are affected by a serious communicable disease. We have reached the conclusion that such protections are consistent with the Department's authority to prohibit unfair or deceptive practices in air transportation and are necessary to ensure consumers are treated fairly when unexpected interruptions arising from a serious communicable disease result in them being unable to travel by air or hesitant to travel by air because traveling would pose potential harm to themselves or others. The Department has further concluded that such protections will contribute to the Department's mission in ensuring safe and adequate interstate air transportation through economic regulations and will not interfere with airlines' freedom of pricing as provided by the ADA and bilateral agreements between the United States and other jurisdictions.

A. Unfair Practice

Airline commenters do not dispute that consumers suffer a harm if they do not receive travel credits or vouchers when they are unable to travel due to a serious communicable disease. Instead, airline commenters contended that the Department failed to demonstrate that not providing travel credits or vouchers to consumers is an ''unfair practice'' pursuant to 49 U.S.C. 41712 because: (1) the consumer harm articulated in the NPRM is the result of a communicable disease outbreak and is not caused by the ''practices'' of carriers; (2) the harm is avoidable by consumers through the purchase of travel insurance or refundable tickets; and (3) the harm is outweighed by countervailing benefits to consumers or competition. For the reasons described below, the Department disagrees with these assertions.

In the 2020 final rule [77] that codifies the definition of ''unfair'' in 14 CFR 399.79, the Department also discussed the meaning of the term ''practice.'' While that rule did not adopt a definition for ''practice,'' it discussed how the Department would determine if an act or omission was a practice. To be a ''practice'' in the aviation consumer protection context, the conduct must generally be more than a single incident, however, ''even a single incident may be indicative of a practice if it reflects company policy, practice, training, or lack of training.'' [78] A carrier policy of not providing travel credits or vouchers when consumers are unable to travel due to a serious communicable disease is a practice. The fact that the outbreak of a serious communicable disease is not the fault of a carrier does not make carriers' policies of not providing travel credits or vouchers any less of a practice.

The Department is not persuaded by the argument by airlines and ticket agents that the proposed requirements ignore readily available market solutions that could prevent the consumer harm. While refundable tickets and travel insurance are intended to address uncertainty in travel, the Department believes that it is unreasonable to expect consumers to purchase travel insurance or refundable tickets to protect their money *just in case* a pandemic occurs, or *just in case* a government imposes a restriction or prohibition in relation to a serious communicable disease when a pandemic has not been declared. Also, some travel insurance policies do not provide protection against cancellations related to a pandemic. The Department agrees that persons who purchase airline tickets after a pandemic has been declared should know the potential risks of purchasing a non-refundable ticket without travel insurance. These consumers have the option to purchase refundable tickets or appropriate travel insurance to avoid financial loss should they not be able to travel due to a pandemic-related reason. For consumers who are advised not to travel to protect themselves during a public health emergency or consumers who are prohibited or required to be quarantined for a substantial portion of their trip by a governmental entity, the Department in this final rule requires airlines to provide travel credits and vouchers to individuals who purchased tickets prior to a public health emergency being declared or, if there is no declaration of a public health emergency, before the government prohibition or restriction for travel to that region. In addition, the reason that the individuals are not traveling must be because they want to protect themselves from a serious communicable disease that led to the declaration of the public health emergency or their travel is affected by the government prohibition/restriction related to a serious communicable disease.

With respect to consumers who have or are likely to have contracted a serious communicable disease, the Department requires that airlines provide travel credits or vouchers to them regardless of whether their travel is during a public health emergency and regardless of when they purchased their tickets. It would not be reasonable to expect a consumer to purchase a refundable ticket or travel insurance to ensure that his or her financial interests are protected in case the consumer contracts a serious communicable disease when a public health emergency has not been declared. A consumer could not reasonably avoid the harm of financial loss under those circumstances because the consumer likely would not even think of conducting a risk assessment of contracting a serious communicable disease when a public health emergency has not been declared. For a consumer who purchased the ticket while a public health emergency is ongoing, the Department believes that this individual could have done a risk assessment and decided to purchase travel insurance or a refundable ticket if the individual wished to not risk financial harm. This individual traveling on a flight to avoid financial harm, however, will cause or is likely to cause substantial harm to the health of the other passengers on the flight. These other passengers are not reasonably able to avoid this harm as they have no control over this individual's actions and whether the airline seats them in close proximity to this individual. The Department believes that airlines not providing an incentive for the infected consumer to postpone travel is likely to cause significant harm to other passengers on the same flight by substantially increasing the likelihood of these passengers being exposed to the disease and infected during the flight and such harm cannot be reasonably avoided by these passengers as they are likely to have no knowledge about them being seated in a close proximity to an infected passenger. This harm is not outweighed by benefits to consumers or competition as suggested by airlines. The Department is of the view that the requirement to provide travel credits or vouchers would not result in the elimination of nonrefundable fares or in distorting the difference between a refundable and non-refundable fare as some commenters have suggested given that a public health emergency affecting travel to, within, and from the United States on a large scale is infrequent and this requirement only applies to consumers who purchased tickets prior to a public health emergency and are unable or advised not to travel during a public health emergency. Further, not providing vouchers and credits to consumers who are advised not to travel during a pandemic could result in some consumers risking their health or the health of others to avoid financial loss, which is not in the public interest. The Department doesn't believe there would be any benefit to consumers or competition among airlines in infected or potentially infected travelers possibly choosing to travel by air and infecting other passengers.

B. Assertion of Inconsistency With FTC Policies

Regarding A4A's comment that the proposals relating to serious communicable diseases are inconsistent with the policies of the FTC, the practices of other modes of transportation, other segments of the travel industry, or other industries, the Department notes that its unfair or deceptive practices regulations are modeled on FTC's regulations and policies. To the extent that there are differences between DOT and FTC regulations, the Department notes that when determining its own regulations and policies, it routinely considers, among other things, the unique characteristics of the aviation

[77] *Final Rule, Defining Unfair Or Deceptive Practices,* 85 FR 78707, December 7, 2020.

[78] See 85 FR 78707, 78710–78711 (Dec. 7, 2020).

environment and context as well as any problematic areas, as reflected by consumer complaints, for which a regulatory remedy should be considered. In this instance, the Department has considered the large number of consumer complaints it received during the COVID–19 pandemic regarding the hardships consumers experienced when requesting credits from airlines so they could postpone travel. These hardships include airlines' refusal to issue credits or imposing limitations on the credits that consumers view as unreasonable. In the Department's view, these complaints are clear evidence that a regulation pursuant to the Department's authority is needed. While the Department views consistency among Federal consumer protection regulations as likely to benefit consumers by reducing confusion, the Department also appreciates the importance of regulations tailored to each regulated industry.

C. Airline Deregulation Act

The Department disagrees with the comments that a requirement for airlines to provide travel credits or vouchers for passengers unable to travel due to a serious communicable disease is inconsistent with the Airline Deregulation Act of 1978 and 49 U.S.C. 40101(a). These commenters argue that the proposals interfere with airlines' freedom of pricing, including the freedom of offering tiered fare structure that incorporates different pricing reflecting the levels of flexibilities for consumers to cancel or change tickets. In essence, the commenters argue that the proposals will largely require more flexibility for non-refundable tickets, blurring the lines between refundable fares and non-refundable fares, resulting in higher prices for all consumers and reduced load factors that also, in some cases, impact the commercial viability of small and remote markets. IATA and A4A also note, in their substantive comments on the Regulatory Impact Analysis for the proposed rule, that the proposal to require travel credits and vouchers may result in airlines eliminating basic economy fares if airlines can't enforce basic economy change restrictions.

First and foremost, the proposals that we are finalizing here do not affect the restrictions applicable to non-refundable tickets in most cases outside of the context of a serious communicable disease outbreak, such as the COVID–19 pandemic. The requirements protecting consumers who are prohibited or restricted from travel by a government order or consumers who are advised not to travel during a public health emergency to protect themselves apply only to very specific cases in which non-refundable ticket holders are impacted by an unforeseeable event relating to a serious communicable disease and, as the result of the impact of the event, consumers are either unable or advised not to travel. Further, the Department is revising the proposal to enhance measures airlines and ticket agents may adopt to prevent fraud and abuse. For similar reasons, the Department disagrees with Air Canada's comment that the proposals violate the pricing freedom principle set forth in the bilateral aviation agreement between the United States and Canada. Airlines can fully comply with the consumer protection requirements finalized in this rule and continue to exercise freedom of pricing and offer a variety of air travel products, including non-refundable fares with lower prices and more restrictions, to meet the market demands for adequate, economic, and efficient air transportation services.

D. Safe and Adequate Interstate Air Transportation

With regard to the application of the legal authority under 49 U.S.C. 41702, which requires air carriers to provide safe and adequate interstate air transportation, airline and ticket agent commenters argue that the RIA prepared by the Department concludes that the proposals would not decrease the spread of a serious communicable disease by a measurable amount. The commenters state that the RIA conclusion contradicts the NPRM's stated purpose of ensuring safe and adequate interstate air transportation. We disagree. The Department acknowledges that the RIA accompanying the NPRM stated that the proposals would not have decreased the spread of serious communicable disease by a measurable amount. In the RIA accompanying this final rule, the Department estimates that 0.7% of COVID–19 infections were transmitted on aircraft.[79] The Department continues to believe that the requirement to provide travel credits or vouchers to consumers who have or are likely to have contracted a serious communicable disease and would pose a direct threat to the health of others will reduce the likelihood of passengers contracting communicable diseases in air travel. As stated in the NPRM, it is the Department's understanding that airlines in general would allow and prefer that a passenger with a serious communicable disease in the contagious stage not travel, and airlines would likely grant an exception from the tickets' non-refundability to allow the passenger to reschedule travel. The Department believes the low COVID–19 transmission rate was influenced by airlines' actions of allowing passengers to reschedule travel. By making the airlines' voluntary action mandatory, this rule would further ensure safe and adequate interstate air transportation as passengers would be assured that they can reschedule travel for when they are well without facing financial loss.

2. Need for Rulemaking

The NPRM: In the NPRM, the Department stated its view that a regulation is needed to ensure consumers are consistently treated fairly when they are unable or advised not to travel due to reasonable concerns related to a serious communicable disease. The Department further explained that the Department's existing regulation does not require airlines to issue refunds or travel credits to passengers holding non-refundable tickets when the airline operated the flight and the passengers do not travel, regardless of the reason that the passenger does not travel. The Department described its goal as protecting consumers' financial interests when the disruptions to their travel plans were caused by public health concerns beyond their control. The Department also shared that it expects that the financial protection would further incentivize individuals to postpone travel when they are advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have a serious communicable disease that would pose a threat to others. The Department described how the COVID–19 pandemic imposed unprecedented challenges on air travelers when numerous consumers were caught off guard by the sudden events of government travel restrictions or the widespread incidence of a serious communicable disease that impacted their travel plans. The Department expressed its view that the need for regulatory intervention arises when, despite airlines voluntarily offering travel credits or vouchers in situations where a passenger states that he or she was unable to travel or advised not to travel due to COVID–19 related reasons, consumers were frustrated by the short validity periods of the credits and vouchers, the strict conditions imposed

[79] See, *Barnett, A., Fleming, K. Covid-19 Infection Risk on US Domestic Airlines.* July 2, 2022, *https://link.springer.com/article/10.1007/s10729-022-09603-6#Sec3.*

on them, and the difficulties to obtain and redeem them.

The Department stated its view that consumers are acting reasonably when they decide to not travel because they have or may have contracted a serious communicable disease that may pose risks to others during air travel, or because their own health conditions are such that traveling during a public health emergency may put them at higher risk of harm to their health. Further, the Department pointed out that consumers may be unable to travel due to government travel restrictions related to the pandemic. In the NPRM, the Department stated its tentative position that a regulation is needed to ensure consumers are consistently treated fairly when they are unable or advised not to travel due to reasonable concerns related to a serious communicable disease. It further stated that a regulation defining the baseline of accommodations to non-refundable ticket holders and identifying the specific circumstances that would give rise to the need to accommodate passengers when they cancel or postpone their travel would greatly enhance consumer protection. The Department pointed out that without such requirements, airlines and ticket agents may have different interpretations of what types of events would be sufficient to justify a deviation from the non-refundable terms of a ticket, and such different application of interpretations may result in increased consumer confusion and frustration, as well as increased administrative cost to airlines and ticket agents for handling customer service requests and complaints from consumers with different perspectives.

Comments Received: Most ticket agent representatives argued that the proposals may create tremendous financial burden and disincentivize airlines from offering non-refundable fares. Global Business Travel Association argued that airlines should have the flexibility to deal with public health emergency related issues. It further added that the Department, airlines, and ticket agents lack public health expertise to navigate the proposals.

FlyersRights asserted that without the proposed protections, consumers would be forced to forfeit the money they paid for the tickets or to take a flight against the orders, recommendations, or medical advice of government health agencies or medical professionals, resulting in some passengers making the financial decisions to fly while sick, contagious, or immunocompromised, or with the strong suspicion of being sick.

National Consumers League expressed its view that the Department should require airlines and ticket agents to provide travel credits or vouchers to consumers who cannot fly due to health-related reasons, regardless of public health emergency declarations, public health agency guidance, or serious risk of communicable disease. It commented that developing a health condition that would make air travel dangerous to the passenger or others after purchasing the airline ticket is something beyond the passenger's control. It suggested that it is in the public interest for the passenger to be protected from losing the ticket investment. Travelers United also supported a broader ''airline sick passenger rule'' that would require airlines to allow passengers with legitimate illnesses to postpone flights without additional costs. Travelers United provided examples of inflight disease outbreaks and argues that airlines charging change fees for sick passengers to postpone travel could result in additional cost to airlines.

U.S. Travel Association asserted that the proposals affect passengers who have bought travel insurance policies because they would have to wait until the credits or vouchers expire before they can be reimbursed by the insurance carrier, and many passengers would not prefer vouchers. It further stated that the proposals introduce fraud risk because some consumers may attempt to file insurance claims and also receive credits or vouchers. Travel Tech supported a rulemaking to address consumer protection in the context of communicable disease but argued that the requirements should exempt ticket agents.

DOT Responses: The Department continues to be of the view that a regulation is needed to ensure consumers are consistently treated fairly when they are unable or advised not to travel due to reasonable concerns related to a serious communicable disease. Approximately 20% of the refund complaints that the Department received from January 1, 2020 to June 30, 2021, involved instances in which passengers with non-refundable tickets chose not to travel because of considerations related to the COVID–19 pandemic.[80] As for U.S. Travel Association's comment that insurance companies require consumers to wait until credits or vouchers expire before consumers can be reimbursed, the Department anticipates that insurance companies will offer a variety of products that meet consumers' different needs to stay competitive after the final rule takes effect. The Department also acknowledges the concerns by several consumer rights advocacy groups regarding the need for a broader regulation requiring airlines to allow passengers with any legitimate illness to postpone travel without additional cost. Because the NPRM's focus is on the three categories of consumers affected by a serious communicable disease, however, and the public did not have the opportunity to fully consider and comment on this broader issue, we decline to address it here.

[80] See Report to the White House Competition Council, p. 11.

3. Covered Entities

The NPRM: The Department proposed to require the entity that ''sold'' an airline ticket (*i.e.,* the entity identified in the consumer's financial statement, such as credit card statement), whether a carrier or a ticket agent, provide travel credits or vouchers to eligible consumers affected by a serious communicable disease. The Department noted, however, that it is open to suggestions on whether the entity obligated to issue credits or vouchers should be determined based on other criteria and solicited comment on whether airlines should solely be responsible for issuing credits or vouchers because they are the direct providers of the air transportation paid for by consumers and the ultimate recipients of the consumer funds. The Department asked how it can best ensure that credits and vouchers issued by an airline is prompt if a ticket agent is the entity that ''sold'' the ticket. The Department inquired about what role and responsibility it should place on ticket agents that sold airline tickets to facilitate the issuance of credits or vouchers by airlines when the ticket agents are the principals of the transactions.

Comments Received: A4A supported the proposal to require ticket agents to provide travel credits valid for use within the ticket agent's system, arguing that ticket agents cannot issue credits valid for use on a carrier. National Consumers League supported the Department's proposal as applicable to airlines and ticket agents. Ticket agent representatives expressed concerns about applying the proposals to ticket agents. USTOA stated that the Department did not consider the training and administrative costs for ticket agents to screen passenger documentation. It further stated that such a requirement has never been placed on ticket agents, only on airlines. Travel Management Coalition commented that airlines should issue

credits to eligible travelers, but that for business travelers, the corporate clients would not want the travelers to get credits that can be used for their personal travel. It suggested that ticket agents should be involved in those situations for the issuance and management of credits. Travel Tech provided the following reasons for which it believes that the proposals should not apply to ticket agents: (1) airlines should be the origination of the credits that are airline instruments designed for future travel on the airline on which the consumer originally scheduled to travel, even when the ticket agents are the merchants of record; (2) airline fare rules dictate the conditions of the credits; (3) ticket agents may have assisted the issuance of credits during the COVID–19 pandemic according to the instructions provided by airlines; requiring ticket agents to issue their own credits is administratively wasteful because ticket agents will have to work with each airline and create their own credits; and (4) requiring ticket agents to issue credits can be confusing to consumers because there could be situations in which the rule empowers both airlines and ticket agents to evaluate consumer documentation, which may create inconsistency.

DOT Responses: The Department is requiring that airlines are the sole entities responsible for issuing travel credits or vouchers to eligible consumers whose travel is affected by a serious communicable disease, even if the original tickets were purchased from a ticket agent who acted as the merchant of record. The comments from airlines and ticket agents noted that ticket agents cannot issue credits valid for future travel with a carrier. The Department also agrees with the comment that it is a significant burden to create and manage their own credits or voucher systems including coordinating with various airlines to ensure that the credits or vouchers are usable. The Department considers this burden to be particularly substantial for small ticket agents. In addition, like Travel Tech, the Department believes having both airlines and ticket agents issue travel credits and vouchers could further increase the likelihood of consumer confusion. Airlines that are the merchants of record for the ticket transactions will be responsible for issuing the travel credits or vouchers to eligible consumers. When a ticket agent is the merchant of record, each operating carrier is responsible for issuing a travel credit or voucher to the consumer. Under this final rule, although a fee-for-service carrier operating the flight is ultimately responsible for issuing travel credits or vouchers for ticket agent-transacted itineraries, it is permissible for the carrier to rely on other entities, such as their marketing codeshare partner, to process and issue travel credits or vouchers to consumers on its behalf.

This does not mean that ticket agents don't have a role to play in the issuance of travel credits or vouchers. The Department encourages ticket agents to assist airlines by providing information that airlines may need to complete the issuance of the travel credit or voucher, such as consumers' contact information or the price paid by consumers for the original tickets.

4. Definition of Serious Communicable Disease

The NPRM: The Department proposed to define a serious communicable disease to mean a communicable disease as defined in 42 CFR 70.1 [81] that has serious consequences and can be easily transmitted by casual contact in an aircraft cabin environment. The Department did not propose to include a list of communicable diseases under the definition. Instead, it stated that the analysis of whether a communicable disease is ''serious'' under the NPRM is similar to the analysis of ''direct threat'' under the Department's Air Carrier Access Act regulation,[82] which considers the significance of the consequences of a communicable disease and the degree to which it can be readily transmitted by casual contact in an aircraft cabin environment. The Department further provided examples of diseases that do and do not meet the two-prong analysis under the proposed definition—readily transmissible in the aircraft cabin and likely to result in significant health consequences. For example, the Department explained that the common cold is readily transmissible in an aircraft cabin environment but does not have severe health consequences. AIDS has serious health consequences but is not readily transmissible in an aircraft cabin environment. Both the common cold and AIDS would not be considered serious communicable diseases. SARS is readily transmissible in an aircraft cabin environment and has severe health consequences. SARS would be considered a serious communicable disease. The Department asked whether it is sufficiently clear to the regulated entities and the public as to which types of communicable diseases would and would not be considered serious.

Comments Received: Airline commenters were concerned about the proposed definition for ''serious communicable disease,'' stating it uses terms that are too vague. A4A asked for more clarity on the terms ''easily transmissible in the aircraft cabin'' and ''casual contact.'' IATA further commented that the term ''serious consequence'' in the analysis for serious communicable disease does not consider that the consequence of a disease could differ from person to person.

Airline commenters also disputed statements in the NPRM that COVID–19 is easily transmissible in aircraft cabins. In written comments, IATA and A4A separately asserted that the NPRM's claim that COVID–19 is easily transmissible in aircraft cabin is inconsistent with the research that shows it is not highly transmissible in aircraft cabin due to the filtration and air circulation system. During the March 21, 2023 public hearing, however, an IATA Medical Advisor suggested that the final rule should highlight only those diseases that medical consensus suggests is likely to be spread by aerosols or droplets in an aircraft environment as ''serious communicable diseases,'' which he stated is likely to include only respiratory infections that are highly contagious such as measles or COVID–19 and perhaps in unusual cases, gastrointestinal ones such as Norovirus. He opined that any medical assessment even by medical professionals needs to have the information on what is a ''serious communicable disease'' to adequately determine the risk onboard. The IATA Medical Advisor also pointed out that certain diseases that could be considered communicable in other locations may be less threatening in aircraft environment due to cabin conditioning flow rates, filtration systems, and other aircraft characteristics making transmission significantly less likely than in other public gathering locations.

DOT Responses: The Department is adopting the proposed definition for ''serious communicable disease,'' which means a communicable disease as defined in 42 CFR 70.1 that has serious health consequences and can be easily transmitted by casual contact in an aircraft cabin environment. The Department declines to adopt a definition with an exclusive list of

[81] 42 CFR 70.1 states ''Communicable diseases means illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.''

[82] See 14 CFR 382.21(b)(2).

communicable diseases or highlight only those communicable diseases that are spread by aerosols or droplets in an aircraft environment because the Department does not believe a list based on currently known diseases would serve its purpose in the long term. The definition of serious communicable disease continues to include the examples provided in the NPRM to demonstrate that a ''serious communicable disease'' must meet both prongs of the definition—''serious health consequence'' and ''can be easily transmitted by casual contact in an aircraft cabin environment.''

The Department acknowledges that the consequence of contracting a communicable disease on an individual may vary depending on the individual's health condition. ''Serious health consequence'' is referring to the health of an average person rather than health of each individual. For example, the average person would not have serious health consequences from a common cold, though it can be life threatening for people with weak immune systems, such as a cancer patient undergoing treatment.

As for the meaning of ''can be easily transmitted by casual contact in an aircraft cabin environment,'' the Department has reviewed public health guidance issued by CDC and WHO, which find that although modern aircraft ventilation and air filtration systems do play an important role in reducing the likelihood of disease transmissions, transmissions of infection may occur [83] between passengers who are seated in the same area of an aircraft, usually by contact with infectious droplets (as a result of the infected individual coughing or sneezing) or by touch (direct contact or touching communal surfaces that other passengers touch).[84] Accordingly, the Department determines that a communicable disease that ''can be easily transmitted by casual contact in the aircraft cabin environment'' to mean a disease that is easily spread to others in an aircraft cabin through general activities of passengers such as sitting next to someone, shaking hands, talking to someone, or touching communal surfaces.

[83] A study led by MIT scholars estimated that between June 2020 and February 2021, the probability of contracting COVID–19 onboard an average domestic flight was about 1 in 2000. *See* fn. 75, *supra.*

[84] See, *CDC Air Travel Yellow Book 2024, https://wwwnc.cdc.gov/travel/yellowbook/2024/air-land-sea/air-travel#inflight;* World Health Organization Air Travel Advice, *https://www.who.int/news-room/questions-and-answers/item/air-travel-advice.*

5. Passengers Who Are Advised by a Medical Professional Not To Travel To Protect Themselves During a Public Health Emergency

The NPRM: The Department proposed that, when there is a public health emergency, airlines and ticket agents must provide non-expiring travel credits or vouchers to non-refundable ticket holders who are advised by a medical professional or determine consistent with public health guidance issued by the CDC, comparable agencies, or WHO not to travel by air to protect themselves from a serious communicable disease. Under this NPRM, to be eligible for the travel credits or vouchers, the non-refundable ticket holder must have booked the ticket before the beginning of the public health emergency and the travel date must be during the public health emergency. The Department proposed to define ''public health emergency'' based on the U.S. Department of Health and Human Services (HHS) regulation addressing measures taken by CDC to quarantine or otherwise prevent the spread of communicable diseases, 42 CFR 70.1.[85] The Department sought comments regarding whether the proposal is reasonable with respect to the passengers protected, asking whether the protection should be extended to passengers who purchased their tickets after the public health emergency is declared but did not develop the underlying health condition until after the tickets are purchased. The Department also sought comments regarding whether it is reasonable to extend the proposed requirements to passengers who sought to defer travel because they are the caregivers of persons with a health condition and at a higher risk, and passengers who would have difficulty traveling alone when their travel companion qualifies for a voucher or refund. The Department also asked whether there are obstacles airlines and ticket agents faced when some of them voluntarily provided travel vouchers to consumers who decided not to travel during the COVID–19 pandemic. The Department also solicited comment on whether consumers experienced difficulties in redeeming credits and vouchers issued to them and what the Department should consider in the proposed regulation to address or resolve these difficulties.

Comments Received: Airline commenters stated that the proposal includes vague and unclear terms and subjective standards that will cause substantial consumer and carrier confusion. A4A commented that the proposed definition for ''public health emergency'' is too broad. It noted that there are over 100 events during the past five years that would qualify under the definition. It further argued that there needs to be a connection between a passenger's travel and the public health emergency, and that an event in another country should not be used to protect domestic passengers. IATA argued that governments around the world took different approaches towards COVID–19, from being very restrictive to extremely permissive, but the NPRM presupposes that all governments take a uniform approach. Both A4A and IATA also commented that more clarity is needed on what are ''comparable agencies in other countries'' that would be qualified to issue the public health guidance. AAPA opined that it is difficult for airlines to verify the authenticity of the documentation from various governments that passengers may provide airlines to prove their eligibility for travel credits or vouchers. Further, A4A and IATA commented that the term ''medical professional'' is a vague term that is not defined. A4A and IATA both opposed the proposal to allow passengers to ''determine'' whether they should travel. A4A argued that this is a subjective standard and IATA added that allowing passengers to self-determine whether they should travel based on public health guidance is inconsistent with the rule text that allows airlines to request medical documentation.

A4A suggested and IATA supported that: (1) the requirement cover only a public health emergency that occurs in the United States at a national level; (2) eligible passengers must have purchased their tickets before the public health

[85] The definition for public health emergency in 42 CFR 70.1 is: (1) Any communicable disease event as determined by the Director with either documented or significant potential for regional, national, or international communicable disease spread or that is highly likely to cause death or serious illness if not properly controlled; or (2) Any communicable disease event described in a declaration by the Secretary pursuant to 319(a) of the Public Health Service Act (42 U.S.C. 247d (a)); or (3) Any communicable disease event the occurrence of which is notified to the World Health Organization, in accordance with Articles 6 and 7 of the International Health Regulations, as one that may constitute a Public Health Emergency of International Concern; or (4) Any communicable disease event the occurrence of which is determined by the Director-General of the World Health Organization, in accordance with Article 12 of the International Health Regulations, to constitute a Public Health Emergency of International Concern; or (5) Any communicable disease event for which the Director-General of the World Health Organization, in accordance with Articles 15 or 16 of the International Health Regulations, has issued temporary or standing recommendations for purposes of preventing or promptly detecting the occurrence or reoccurrence of the communicable disease.

emergency declaration; (3) the travel must have been planned to occur during the public health emergency; and (4) the reason that an eligible passenger is not traveling must be because of the public health emergency. Similar to A4A, U.S. Chamber of Commerce also suggested that the Department should limit travel credits or vouchers to medical situations when there is a Public Health Emergency and to situations that inhibit travel (such as a prohibition by a government entity). U.S. Chamber of Commerce commented that the Department's proposal would be subject to abuse by bad actors. SATA opposed the proposal and stated that when passengers holding non-refundable tickets are not comfortable with traveling and the flight is operated, airlines offer higher fares with more flexibilities and airlines should not be obligated to issue refunds or credits.

Regarding the Department's inquiry in the NPRM on whether the credits or vouchers protection should be extended to passengers who are the caregivers of persons with a health condition and at a higher risk, and passengers who would have difficulty traveling alone when their travel companion qualifies for a voucher, A4A opposed the expansion of the proposal and argued that including flight credits to caregivers will exacerbate the potential for mistakes, misunderstandings, and fraud by introducing another undefined and unclear mandate. IATA also opposed the expansion of the credits to caregivers. It further argued that children should not be eligible for credits based on the provision of a credit to their adult companion because parents concerned about such a possibility can purchase travel insurance. AAPA opposed the idea of providing travel credits or vouchers to passengers who are caregivers of individuals with underlying health conditions, arguing that this is too broad a scope that would be open to fraud. USTOA also opposed requiring credits or voucher to be issued to caregivers of persons with health conditions, either though family relationship or employment.

Many individual consumers expressed their general support for the proposals relating to serious communicable diseases, including the proposal to provide travel credits and vouchers to passengers who do not travel during a public health emergency because of concerns about their health. Consumer rights groups commented that the proposals should be expanded to cover medical situations beyond public health emergency or communicable diseases. The ACPAC voted to support the Department's proposal to protect travelers affected by a serious communicable disease, including the proposal to require airlines and ticket agents to issue travel credits or vouchers to passengers who purchased the airline ticket before a public health emergency was declared, the consumer is scheduled to travel during the public health emergency, and the consumer is advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or the WHO not to travel by air to protect himself or herself from a serious communicable disease.[86] At least one individual commenter supported providing regulatory protections for caregivers.

DOT Responses: After reviewing and carefully considering the comments, the Department is requiring airlines to provide travel credits or vouchers to passengers who have been advised by licensed treating medical professionals not to travel during a public health emergency to protect themselves from a serious communicable disease. The Department is not expanding this requirement to provide travel credits and vouchers to cover situations beyond a public health emergency or serious communicable diseases as suggested by consumer groups. The Department agrees with A4A and U.S. Chamber of Commerce that the requirement for travel credits or vouchers should be limited to medical situations when there is a public health emergency. Under this rule, to be eligible for a travel credit or voucher, the passenger must have purchased the airline ticket before the public health emergency was declared, and the ticket must be for an itinerary to, from, or within the United States that involves traveling to or from a point affected by the public health emergency during the public health emergency.

The Department does not agree with the suggestion from airlines to limit the requirement to provide travel credits or vouchers to only public health emergencies that occur in the United States because an outbreak of a serious communicable disease in another country can affect passengers traveling between the United States and that country. However, the Department agrees that there needs to be a connection between a passenger's travel and the public health emergency. For example, a public health emergency relating to an outbreak of Ebola in another country would be grounds for a passenger to request a travel credit or voucher only if the passenger's planned travel, as reflected in a single itinerary, is between the United States and that country. In that regard, if the passenger booked two separate tickets, one from the United States to a connecting third country not subject to the public health emergency, and the other from the third country to the outbreak country, the Department would not require airlines to issue credits or vouchers based on the passenger's health-related concerns about traveling to the outbreak country.

The Department is persuaded by comments that its proposal to allow individuals to self-determine consistent with public health guidance whether to travel to protect themselves from a serious communicable disease is subjective. Unless otherwise directed by HHS, this rule allows airlines to require medical documentation from passengers who state that they do not wish to travel during a public health emergency for a medical reason to protect themselves. An airline may not require passengers to provide documentation from a medical professional if HHS issues public health guidance declaring that requiring such medical documentation is not in the public interest.

The Department further acknowledges comments from industry seeking clarity about the meaning of the terms ''medical professional'' and ''comparable agencies in other countries.'' In this final rule, the term ''medical professional,'' is defined in the regulation. The Department is adopting a definition for the term ''licensed treating medical professional'' to mean an individual, including a physician, a nurse practitioner, and a physician's assistant, who is licensed or authorized under the law of a State or territory in the United States or a comparable jurisdiction in another country to engage in the practice of medicine, to diagnose or treat a patient for a specific physical health condition that is the reason for the passenger to request a travel credit or voucher. The Department is providing further explanation of this definition in the section that discusses medical documentation. The Department no longer uses the term ''comparable agencies in other countries'' when referencing public health guidance that the consumers' licensed treating medical professionals may rely on or reference when providing professional opinions regarding whether the consumers should travel because that term is also subjective. In this final rule, the Department states ''consistent with

[86] Among the four members of ACPAC, three members voted in support of this recommendation and the member representing airlines abstained, stating that there are many terms in the proposal that are not clear and may cause more passenger confusion.

public health guidance issued by the Centers for Disease Control and Prevention (CDC) or the World Health Organization (WHO).''

Regarding whether caregivers of high-risk passengers should be protected, the Department is persuaded that extending the requirement to provide travel credits or vouchers to caregivers of people who have health conditions that place them at a higher risk of contracting a serious communicable disease may increase the risk of fraud. The Department also agrees that the complexity of appropriately defining this expanded group and verifying their eligibility can be burdensome for airlines. While not expanding the scope of the rule to these consumers, the Department encourages carriers to provide good customer service by offering maximum flexibilities to consumers who request to postpone their travel due to a genuine concern about the health of their families and others who are dependent upon them for care.

6. Passengers Who Are Prohibited From Travel or Required To Quarantine for a Substantial Portion of Trip by Government Entity

The NPRM: The Department proposed to require airlines and ticket agents to provide travel credits or vouchers to ticket holders who are unable to travel because of a U.S. (Federal, State, or local) or foreign government restriction or prohibition related to a serious communicable disease regardless of whether there is a public health emergency. Examples of such government restrictions or prohibitions include government issued ''stay at home'' orders, ''shelter in place'' orders, or government-instituted border closure or entry restrictions because of a serious communicable disease for certain types of passengers. The Department further explained that under the proposal, the requirement would cover passengers who can travel under the government order, but the restriction has rendered the passenger's travel ''meaningless.'' Passengers would not be entitled to a travel credit or voucher if they simply failed to exercise due diligence to ensure that all conditions for travel imposed by the governments of the departure, transit, or arrival locations are met (*e.g.,* negative test result for a communicable disease). The Department solicited comments on whether the proposed requirement for a non-expiring voucher or credit strikes the right balance given that the travel restrictions are out of the airlines' and ticket agents' control and the differential economic impact of a refund mandate versus a travel credit or voucher on airlines and ticket agents in these circumstances.

Comments Received: Airlines in general were concerned about the scope of the proposal which, in their view, is too broad and subjective, making it difficult to determine whether a passenger is eligible for a travel credit or voucher. Spirit opposed the proposal, stating that it shifts the risk of whether a consumer can fly entirely to airlines when the restriction is not the fault of airlines or consumers. It commented that there should be a reasonable balance of risks between airlines and passengers. A4A commented that the proposal does not explicitly require that a government order prevent the passenger from traveling, instead, by using the term ''restriction'' it implies that passengers could be eligible for credits even if they have partial discretion to travel. Several airline commenters argued that determining whether a passenger is ''unable to travel'' or the restriction renders travel ''meaningless'' requires a case-by-case analysis looking into the purpose of each passenger's travel, subject to different interpretations. They were also concerned about significant resources needed for airlines to determine whether a passenger has exercised ''due diligence'' to comply with each jurisdiction's travel requirements. Also, airlines were concerned about the proposal's language that does not limit the eligible travel to ''air travel.'' In that regard, they argued that the Department is burdening carries with obligations to provide travel credits when the non-air portion of the travel, not under the carrier's control, may be prohibited by a government order.

A4A provided several suggestions on how the proposal should be revised. First, A4A suggested that the term ''unable to travel'' should be replaced by the term ''prohibited from travel by air.'' Second, A4A recommended that the Department should remove the ''rendering travel meaningless'' standard from the regulation. Third, A4A asked the Department to include an explicit list of all scenarios that would disqualify a passenger for receiving travel credits. Fourth, A4A suggested that carriers should be required to issue travel credits only when the government order directly and substantially impacts the origination or destination of the passenger's itinerary. Over 1,500 individual consumers expressed their general support for the proposed protections for consumers affected by a serious communicable disease. Consumer rights advocacy groups did not specifically comment on the proposal of requiring airlines and ticket agents to issue travel credits or vouchers to passengers who are unable to travel due to a government restriction or prohibition relating to a serious communicable disease.

Among ticket agent's representatives, ASTA, DWHSA, Travel Tech, and ABTA supported this proposal. ASTA commented that consumers should be provided credits or a voucher because they are prevented from travel by government actions and failing to so do meets the standard for unfair practice. USTOA stated that modifications of the proposal are needed because ''unable to travel'' is too broad and vague and the term ''prohibited from travel'' should be used instead. It also opposed the inclusion of situations in which travel is rendered ''meaningless'' because this term is too subjective. GBTA commented that the proposal is enormously burdensome to airlines and ticket agents because it would require them to consider foreign government orders and public health guidance when determining passenger's eligibility to travel credits or vouchers, and also consider the timing of these documents' issuance relative to the ticket purchase date and the travel date. The ACPAC voted to support the Department's proposal to, regardless of whether there is a public health emergency, require airlines and ticket agents to provide travel credits or vouchers to consumers who are unable to travel because of a U.S. (Federal, State or local) or foreign government restriction or prohibition (*e.g.,* stay at home order, entry restriction, or border closure) in relation to a serious communicable disease that is issued after the ticket purchase.[87]

DOT Responses: Having fully considered the comments, the Department has decided to adopt a final rule largely along the lines set forth in the NPRM, with a few changes to address comments received from airlines about the difficulty and cost in determining which government restrictions would render travel ''meaningless'' and whether a passenger exercised ''due diligence'' to comply with each jurisdiction's travel requirements. These changes also further ensure the Department's actions are within its statutory authority. In this final rule, the Department is requiring airlines to provide travel credit or vouchers to non-refundable ticket holders who are prohibited from travel or required to quarantine for a

[87] Among the four members of ACPAC, three members voted in support of this recommendation and the member representing A4A voted against the recommendation, stating that there are many terms in the proposal that are not clear, and it will cause more passenger confusion.

substantial portion of the planned trip by the U.S. or foreign government in relation to a serious communicable disease. The Department has decided to replace the term ''unable to travel'' by the term ''prohibited from travel'' and to remove the ''rendering travel meaningless'' standard as suggested by airline commenters. In place of ''rendering travel meaningless,'' the Department is specifying that the travel restriction that would entitle a consumer to a travel credit or voucher is a mandatory quarantine for more than 50% of the length of the passenger's scheduled trip at the destination (excluding travel dates) as shown on the passenger's itinerary. In addition, the Department is limiting the requirement for airlines to provide travel credits and vouchers to consumers who purchased the airline ticket before a public health emergency affecting the passenger's origination or destination was declared or, if there is no declaration of a public health emergency, before the government prohibition or restriction for travel to or from the affected region is imposed. Passengers cannot reasonably avoid the harm of financial loss under these circumstances because they would have no reason to think there would be a government prohibition from travel or mandatory quarantine requirement at the passenger's origination or destination in relation to a serious communicable disease when a public health emergency has not been declared.

Beginning in January 2020, governments all over the world began taking various measures to try to curb the spread of COVID–19, including government-issued stay-at-home orders, business closure orders, border entry limits or quotas, quarantine requirements for arrivals, and restrictions or bans for commercial flights from certain originations. Many of these government orders impacted air travelers directly by making travel impossible through prohibitions from travel or indirectly by severely limiting the activities that travelers intended to engage in at the destinations through mandatory quarantines. Based on the comments, it appears that all stakeholders agree that passengers who are banned or prohibited from travel by air should be protected by the proposed requirement. The Department does not agree, however, that the scope of the consumer protection requirement should be limited to these passengers. The proposal's goal is to mitigate the financial losses suffered by air travelers during a communicable disease outbreak so severe that it triggers drastic actions by governments to restrict the movements of people. It is the Department's view that consumers who bought their airline tickets before the issuance of a public health emergency or, if there is no declaration of a public health emergency, before a government order prohibiting travel or restricting movement through mandatory quarantines should have the ability to retain the value they paid into the airline tickets.

The Department acknowledges the concerns about certain language used in the NPRM that could be construed as vague and subjective. As such, in finalizing this proposal, we are amending the rule text to provide more clarity. Specifically, the term ''unable to travel'' is replaced by ''prohibited from travel.'' The Department notes that the government order does not have to prohibit *air* travel. A passenger is entitled to a travel voucher or credit if the passenger is prohibited from travel by a government order (*i.e.,* an order prohibiting the passenger from traveling to or from the airport at the origination or destination) from entering the destination country/city as show in the passenger's itinerary or from boarding the flight(s). As proof of eligibility, airlines may require these passengers to provide the relevant government order and any appropriate supporting documentation to show the nexus between the government order and their inability to travel. For example, if a passenger states that he or she is prohibited from entering the destination country by a government order because of the passenger's nationality, carriers may require proof of the passenger's nationality in addition to the relevant government order prohibiting passengers of certain nationalities from entering.

With respect to government orders that do not prohibit travel but substantially restrict travel, the Department has considered airline comments that ''the restriction that renders travel meaningless'' standard is subjective and requires a case-by-case analysis into the purpose of each passenger's travel. As a result, the Department has removed the ''rendering travel meaningless'' standard. In the NPRM, the Department had explained what it meant by renders travel meaningless through an example of a passenger who plans to spend a week at the vacation destination and the local government imposes a seven-day quarantine requirement for all arriving passengers, which eliminates the purpose of the travel. Allegiant Air criticized the Department for picking the ''low-hanging fruit'' by providing this example and asked that the Department also opine on whether a passenger would be eligible for the proposed protection if only a part of the time at the destination is lost. The Department agrees that more clarity is needed in this respect so that airlines have more certainty on their obligation and consumes are treated consistently from airline to airline.

In place of the ''rendering travel meaningless'' standard, the Department specifies in this final rule that the travel restriction that would entitle a consumer to a travel credit or voucher is a mandatory quarantine at the passenger's destination for more than 50% of the length of the passenger's planned trip. As proof of eligibility, airlines may require passengers to provide the relevant government order mandating a quarantine which includes information about the length of the quarantine and documentation to show the length of the passenger's planned time at the destination, excluding the travel dates. This amendment should address carriers' concern about fraud and abuse.

7. Passengers Who Are Advised by a Medical Professional Not To Travel To Protect the Health of Others

The NPRM: Beyond widespread infections of a communicable disease that lead to a ''public health emergency'' declaration or government orders restricting or prohibiting travel, the Department also proposed to require airlines and ticket agents to issue travel credits or vouchers to passengers who are advised or determine not to travel to protect the health of others because they have or may have contracted a serious communicable disease, regardless of whether there is a public health emergency. The Department stated that it believes that airlines in general would allow and prefer that a passenger with a serious communicable disease in the contagious stage not travel, and airlines would likely grant an exception from the tickets' non-refundability to allow the passenger to reschedule travel. The Department described airlines' current practices in assessing whether a passenger with a communicable disease would pose a direct threat to the health of others such as requesting medical documentation and in minimizing risk to other passengers such as taking precautions to prevent the transmission of the disease in the cabin while transporting the passenger, or if appropriate, denying boarding and allowing the passenger to reschedule travel. The Department expressed its belief that it would be in the interest of carriers, passengers, and the public at

large for the travel to be postponed. The Department noted that this proposal would cover only passengers who have or may have contracted a serious communicable disease and the consumer's condition is such that traveling on a commercial flight would pose a direct threat to the health of others based on advice from a medical professional or the consumer's determination consistent with public health authorities issued by CDC, comparable agencies in other countries, or WHO.

The Department noted that using economic tools as incentives to discourage passengers who would pose a risk to the health of others from traveling is consistent with its mission to ensure that the air transportation system is safe and adequate for the public. It also noted its expectation that requests for credits or vouchers under this circumstance should be infrequent and will likely place minimal burden on the airlines outside of the context of public health emergencies. The Department solicited comment on the potential for abuse and whether a documentation requirement is sufficient to prevent abuse. Further, the Department asked for suggestions on alternative methods to protect consumers who are advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have a serious communicable disease.

Comments Received: A4A expressed its concern about this proposal not being tied to either a public health emergency or a government-issued order. It argued that the proposal allowing passengers to subjectively determine that they should not travel ''consistent with'' public health guidance will cause tremendous confusion and impose significant costs to carriers. Like A4A, several other airline commenters expressed their concerns about the broad scope of the proposal that protects not only passengers advised by a medical professional not to travel due to contracting a serious communicable disease, but also passengers who rely on public health guidance issued by governments around the world to determine that they should not travel. Airline commenters were generally concerned about allowing consumers who ''may have'' a serious communicable disease to receive travel credits or vouchers. Commenters asserted that this broad scope will would lead to bad faith actors engaging in fraud and abuse and good faith consumers cancelling travel based on misinformation, creating a huge workload for carriers and the Department to resolve complaints. A4A also asked the Department to clarify whether the ''comparable agencies in other countries'' whose guidance may be relied on by consumers include third-party non-government entities if these entities' guidance is relied on by state or local level governments.

IATA and AAPA stated that airlines already have policies in place to accommodate passengers who are not able to travel due to a communicable disease, including requiring medical documentation. They argued that the Department has offered no evidence to show that these policies do not work. NACA stated that it is too broad to impose the proposal irrespective of a public health emergency. A4A also commented that the proposal does not require that passengers must have purchased their tickets before contracting the disease, which could result in passengers who purchased tickets while knowing they have a serious communicable disease to be eligible for the protection.

Travelers United stated that an airline ''sick-passenger rule'' would help stop disease spread and should be enforced all the time, not just during public health emergencies. It commented that airlines' current ''sick passenger rule,'' which allows postponing travel but with a fee, has resulted in sick passengers deciding to continue travel. On the other hand, according to Travelers United, airlines that allow sick passengers to postpone travel without charge have reported no problems of fraud.

Similar to airlines, ticket agent representatives raised concerns about the scope and ambiguity of certain terms used in the proposal. USTOA commented that requiring credits or vouchers be issued to passengers who ''may have'' contracted a serious communicable disease will invite abuse and fraud. It stated that the protection should be tied to a public health emergency. GBTA asserted that the NPRM does not define ''serious communicable disease'' in an actionable way and the Department, airlines, and ticket agents lack the public health expertise to navigate the requirements of the proposed definition. It further commented that the proposal leaves it open on who would need to verify a passenger's health status and what mechanism would be used to settle disputes. ABTA suggested that if the Department moves forward with this proposal, airlines and ticket agents should be allowed to require clear evidential documentations issued by certificated and qualified medical professionals. Travel Tech opined that instead of the proposed requirement, airlines should be required to rebook without charge to accommodate passengers who have or may have contracted a serious communicable disease. The ACPAC discussed this proposal and recommended to the Department to adopt a rule that requires airlines and ticket agents to provide travel credits or vouchers when a consumer is advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air because the consumer has or may have contracted a serious communicable disease, and the consumer's condition is such that traveling on a commercial flight would pose a direct threat to the health of others. The ACPAC recommended that the requirement apply regardless of whether there is a public health emergency.[88]

Public Hearing: The March 21, 2023, public hearing held under the requirement of 14 CFR 399.75 discussed the subject of whether a consumer can make reasonable self-determination regarding contracting a serious communicable disease. In the Notice announcing the hearing, the Department requested interested parties to provide information on airlines' and ticket agents' current practice in handling consumers' requests to cancel or postpone travel due to contracting a serious communicable disease. The Department further asked for data on the volume of such requests, the volume of requests that were considered fraudulent, and the volume of requests that were not considered fraudulent but were rejected because they were deemed ''unreasonable self-determination.'' The Department also requested information on the costs to airlines and ticket agents to verify consumers' claims regarding contracting a serious communicable disease and the type of diseases being claimed as a reason to postpone or cancel travel.

During the March 21 public hearing, a representative of FlyersRights commented that consumers can make reasonable self-determinations regarding contracting a serious communicable disease. He specifically mentioned that during the COVID–19 pandemic, many passengers avoided flying when they self-determined that they were COVID-positive. A representative from National

[88] Among the four members of ACPAC, three members voted in support of this recommendation and the member representing airlines abstained, stating that there are many terms in the proposal that are not clear and may cause more passenger confusion.

Consumers League stated that the Department should not accept the assumption that consumers cannot make reasonable self-determinations and that consumers will abuse this proposed right. He further argued that the proposal is consistent with the CDC's longstanding approach that advises people to stay home while they are sick. On the subject of abuse, he stated that should an airline determine that a passenger is serially abusing this right, nothing would prevent the airline from refusing service to such a passenger in the future. On the cost of the proposal, he commented that the Department should not accept the assertion that consumers exercising this right will significantly increase cost to airlines. In that regard, he pointed out that airlines are required to issue credits, not refunds, which means they can continue to earn interest from the money consumers used to purchase the tickets, until the credits are used. He further commented that airlines can also sell the vacated seats, likely for a higher price because it would be closer to travel dates.

Several airline representatives provided comments during the public hearing. One A4A representative commented that nearly all the data sought by the Department in the public hearing notice does not answer the question that is the subject of the hearing because there is no current standard applied for seeking credits or refunds for a ''serious communicable disease'' and that the information sought by the Department would have nothing to do with the reasonableness of consumers' self-determinations. Two representatives from MedAire spoke at the hearing at the request of A4A and IATA. One speaker commented that from his experiences as a medical doctor for MedAire, he strongly believes that self-determining a medical condition regarding communicable disease is not a simple matter. He opined that properly trained medical professionals are the only ones who can ultimately make these determinations. He concluded that if the practice of self-determination is to be entertained, strict and specific criteria need to be applied, and such criteria should be subject to changes according to prevailing public health guidance issued by central health authorities. The other speaker from MedAire commented that the Department should analyze the topic from an operational perspective. He stated that MedAire trains crew members on how to handle medical conditions and how to comply with the Air Carrier Access Act regulation, 14 CFR part 382. He stated that there could be confusion among crew members and customer service agents regarding the requirement of this NPRM and the requirement of Part 382. He expressed his concern that the terminology associated with Part 382 and the terminology proposed in this NPRM, such as ''direct threat'' and ''serious communicable disease,'' is not aligned and that the Department should look into achieving some alignment to avoid confusion. A doctor from Harvard medical school also spoke at the request of A4A and IATA. As an expert in airborne transmission of disease during transportation and a lung physician, he stated that his perspective is to try to assess the potential for individuals to judge whether they have a serious transmissible infection. He indicated that for diseases such as COVID that can be tested at home, there is consensus that an individual who tested positive should not travel. He commented that, however, there are a variety of viral respiratory infections for which there are no tests. He opined that even erring on the side of assuming there was a respiratory infection, particularly when accompanied by a fever, during a pandemic or endemic, it is still difficult for an individual to be sure that they have a disease that is communicable. He expressed his concerns about the accuracy of self-determination as well as the potential for a reasonable public health precaution being used by individuals who change travel plan for reasons not related to health. He concluded that it is very difficult to self-determine that one has a serious communicable disease in a way that is operationally honest and fair to both sides.

Next, an IATA medical advisor specializing in occupational and air space medicine provided comments. He pointed out that airlines today already regularly accommodate passengers by offering travel credits or vouchers to passengers who have been diagnosed by a medical doctor as having a communicable disease that could threaten the health of other passengers on an aircraft, and airlines normally make the determination on the validity of the passenger's claim through reviews of the medical documentation provided by airline medical advisers, either in house or contracted by external organizations such as MedAire. He stated that he believes a final rule in this area must provide greater guidance as to what should or should not be considered a threat to other passengers in an aircraft environment. He stated that the medical system is based on the premise that trained medical professionals are best positioned to diagnosis diseases, weigh medical risks, and prescribe appropriate management. He concluded that any final rule in this area must require passengers seeking a refund or voucher to present documentation verifying that a medical professional has seen the passenger and assessed them for a particular serious communicable disease and that the presence of that passenger in the aircraft threatens the safety of other passengers. In that regard, he urged the Department to eliminate the self-diagnose option from any final rule, to provide a short list of likely conditions of concern, to require that any definition of communicable disease recognize the unique nature of aircraft environment, and to provide that the airline's medical service be given the final determination in any case of doubt.

Following the March 21 public hearing, A4A and IATA filed supplemental comments to reiterate their positions that consumers cannot reasonably self-diagnose and medical professionals are best positioned to diagnose and proscribe appropriate treatments. This position is supported by Spirit. USTOA also supported the airlines' position and added that, if the Department moves forward with this proposal, it should be limited to consumers who present a medical attestation completed by a licensed physician who is actually treating the individual.

DOT Responses: After considering all the comments, the Department is requiring airlines to provide travel credits or vouchers to consumers who are advised by a medical professional not to travel, irrespective of a public health emergency, because the consumers have or are likely to have contracted a serious communicable disease and would pose a direct threat to the health of others. An airline may require documentation from a passenger under these circumstances absent a public health directive or order issued by HHS stating that requiring medical documentation is not in the public interest.

This final rule differs from the proposal in that it allows airlines to require documentation from a licensed medical professional that the passenger has or is likely to have a serious communicable disease and the consumer's condition is such that traveling on a commercial flight would pose a direct threat to the health of others. Under this final rule, unless directed otherwise by HHS, airlines are not required to accept consumers' self-diagnosis as evidence that they

contracted a serious communicable disease ''consistent with'' public health guidance as proposed. The Department has determined that a documentation requirement is in the public interest as it would prevent consumer confusion on whether they should or shouldn't take a flight and minimize likelihood of fraud or abuse.

In addition to allowing airlines to require medical documentation, the Department has made other smaller changes in response to the comments received in the docket and at the public hearing. Regarding covered passengers, we agree with airline and ticket agent commenters that the phrase the consumer ''may have contracted a serious communicable disease'' could potentially be misunderstood should individuals self-diagnose whether they have a communicable disease. As stated in the prior paragraph, under this final rule, airlines are not required to accept the assertion by consumers, based on self-diagnosis, that they contracted or may have contracted a serious communicable disease as evidence of their eligibility for credits or vouchers. However, the Department disagrees with some airlines' suggestion that the Department eliminate the term ''may have'' entirely and only include passengers who have been clinically confirmed to have a serious communicable disease. As medical professionals indicated during the public hearing, some communicable disease cannot be diagnosed with a simple test that can be administered at home or at a clinic. Instead, diagnosing certain serious communicable diseases would require much more comprehensive medical procedures. Also, at the public hearing, a medical expert stated that during a pandemic or epidemic when a communicable disease is known to be widespread, public health experts may tend to be in favor of erring on the side of assuming infection when an individual displays typical symptoms of a communicable disease and there is no confirmation of infection available. Further, requiring a confirmed diagnosis for a disease, particularly when readily available testing is not an option, does not serve the public interest. Accordingly, instead of a passenger who ''may have'' contracted a serious communicable disease, the final rule uses the term ''is likely to have'' contracted a serious communicable disease and, in absence of HHS stating that requiring medical documentation is not in the public interest, an assertion that a passenger ''has or is likely to have'' a serious communicable disease must be supported by credible medical documentation. The Department believes that this amendment to the NPRM proposal enhances clarity and will reduce fraud and abuse, while ensuring that the rule appropriately includes passengers who don't have a confirmed diagnosis but were considered likely to have an infection by a treating medical professional so they are incentivized to postpone travel while medically considered to be potentially contagious.

Also, on the scope of protected passengers, the final rule clarifies that when a passenger who has or is likely to have a serious communicable disease purchased a ticket is irrelevant to the passenger's eligibility for a travel credit or voucher. As stated in the legal authority section, the Department believes that it is unreasonable to expect a passenger to purchase a refundable ticket or travel insurance for the purpose of gaining more flexibility to postpone travel due to contracting a serious communicable disease when a public health emergency has not been declared. Passengers who purchased their tickets during a public health emergency, however, could reasonably have imagined contracting a serious communicable disease and could have purchased a refundable ticket or travel insurance to avoid risk of financial loss. Nevertheless, an airline's practice of not providing travel credits or vouchers to those passengers is an unfair practice because it is likely to cause harm to the health of other passengers, which they cannot reasonably avoid if the potentially infected passengers choose to continue travel to avoid financial loss as set forth in section IV.1(i).

Regarding comments to align the definition of ''direct threat'' and ''serious communicable disease'' in this proposed rule to the definition of those terms in the Department's disability regulation, the Department views that these terms as used in this final rule to be consistent with the terms as used in the disability regulation. The Department's regulation implementing the Air Carrier Access Act, 14 CFR part 382, provides that a ''direct threat'' is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.[89] We note that the context for the ''direct threat'' assessment under Part 382 is different from the context here. In Part 382, the regulatory goal of requiring carriers to conduct a ''direct threat'' assessment is to ensure that carriers apply reasonable standards to determine that the carriage of a passenger would pose a direct threat to others before imposing travel restrictions on or denying boarding of the passenger who wishes to travel despite having contracted a communicable disease. Here, however, the goal of the regulation is to ensure that carriers apply a reasonableness standard to determine whether the assertion by the passenger's treating medical professional of posing a direct threat is sufficiently valid to warrant the issuance of travel credits or vouchers to a passenger who wishes to postpone travel. Nonetheless, in both regulations, the determination of ''direct threat'' is based on the same set of objective, factual, and science-based standards that looks into the nature of the communicable disease, the consequence of the disease, the likelihood of disease transmission in the aircraft cabin by casual contact. With respect to the term ''serious communicable disease,'' as explained earlier in this document, the definition of this term as adopted in this final rule is consistent with that of Part 382.

8. Supporting Documentation

The NPRM: The Department proposed to allow carriers and ticket agents, as a condition for issuing travel credits or vouchers, to require certain documentation dated within 30 days of the initial departure date of the affected flight. For consumers stating an inability to travel due to a government restriction or prohibition in relation to a serious communicable disease, the Department proposed to allow carriers to require the government order or other document demonstrating how the consumer's ability to travel is restricted. The Department explained that a quarantine isolation order or a border closure notice or entry restriction issued by a government would all be acceptable documents. The Department added that even a local stay at home order that restricts local travel would be reasonable if it impacts the passenger's entry or exit of the local vicinity through air travel. For consumers stating that they are not traveling because they have been advised by a medical professional or have self-determined consistent with public health guidance not to travel by air to protect themselves from a serious communicable disease, the Department proposed to allow carriers to require the applicable guidance or a written statement from a licensed medical professional attesting that it is the medical professional's opinion that the consumers should not travel by commercial air transportation to protect themselves. The Department

[89] 14 CFR 382.3.

made clear that a general fear about traveling when there is a public health emergency declared would not be sufficient to entitle that passenger to a travel credit or voucher. For consumers stating that they have been advised by a medical professional or self-determined consistent with public health guidance not to travel because they have or may have contracted a serious communicable disease that poses a direct threat to the health of others, the Department proposed to allow carriers to require the applicable guidance or a written statement from a licensed medical professional attesting that it is the medical professional's opinion that the consumer should not travel by commercial air transportation to protect the health of others. Under the proposal, the type of document that a carrier could require of consumers seeking not to travel to protect themselves or others would be dependent on whether the consumer was advised by a medical professional or making a self-determination based on public health guidance. To the extent that a passenger is providing a written statement from a medical professional, the Department proposed to permit airlines and ticket agents to request that the documentation be current.

The Department asked whether the types of information that the Department would allow airlines and ticket agents to seek from passengers is adequate; whether there are ways to reduce or prevent passengers from falsely claiming that they have a serious communicable disease without airlines and ticket agents requesting documentation from passengers about their health; whether the Department should specify that the medical documentation explain the reason that the passenger is more susceptible than others to contracting a serious communicable disease during air travel and whether there are any implications on privacy concerns; and whether the proposal that medical documentation be dated within 30 days of the initial departure date is reasonable and appropriate.

Comments Received: Several airline commenters were concerned about the term ''medical professional,'' asserting that the term is too broad and potentially invites fraud. Commenters stated that this issue is analogous to the emotional support animal (ESA) situation under the Department's Air Carrier Access Act rule prior to its revision in 2020, which required carriers to accept ESAs as service animals provided that passengers present medical documentation from a licensed mental health professional. They further asserted that like the ESA regulation, the proposed rule here allows unscrupulous passengers to take advantage of the undefined term by seeking documentations from a broad range of medical professionals who may have no knowledge about the relevant information sought, or even purchasing documentations from online sources without actual medical treatment or evaluation.

A4A commented that a more robust documentation scheme will reduce the likelihood of travel credits being sought by ineligible passengers. A4A suggested that similar to the 2020 service animal final rule,[90] the Department should prescribe a government form that includes a warning of the potential Federal criminal penalty under 18 U.S.C. 1001 for any person to knowingly or willfully make materially false or fraudulent statements to obtain travel credits. A4A further suggested that the form should be dated within 15 days of the departure and should require certain information including the passenger's name, date of birth, diagnosis, method of diagnosis, test result, information regarding the medical professional (name, license information, location, signature), a clear statement that the passenger should not travel, a statement regarding when the passenger can travel again. IATA supported A4A's suggestion that the medical documentation should include a criminal penalty warning and that the documentation should be dated within 15 days of departure. IATA further commented that it does not see any privacy concerns on requiring medical attestation from passengers because passengers are choosing to waive their rights to privacy to avoid losing the money invested in the tickets. Allegiant commented that the proposed documentation requirement creates opportunities for abuse when passengers only need to present a doctor's note stating that they may have a serious communicable disease. Allegiant opined that this will become a refuge for passengers who want to avoid paying ticket change fees.

Air Canada expressed its concerns about the burden of carriers' manually reviewing and assessing documentations, arguing that different public health policies adopted by different countries and subjective interpretations will create a complex and ever-changing set of rules that would greatly interfere with carriers' ability to sell seats with predictability. It further suggested that the Department should remove all documentary evidence that requires a subjective assessment of a passenger's condition or reason not to travel to avoid the burden and costs to carriers associated with a manual review process.

A number of individual commenters also provided their views on the proposed documentation requirement. One individual commenter recommended that medical documentation should be required only when the communicable disease is not demonstrable via a test result. Another commenter stated that the ''medical professionals'' issuing the documentation should include not only physicians, but also other primary care providers such as nurse practitioners or physician's assistants. In contrast, another individual opined that the proposal failed to provide guidance regarding the types of medical professionals who are qualified to issue the documentation, resulting in a broad scope of the type of medical professionals that is untenable to airlines. One individual commented that the scope of the types, formats, and language of the proposed documentation requirement is enormous, and verifying their authenticity will be burdensome, with a high possibility of fraud. This commenter suggested that the Department consider imposing stricter requirements to prevent abuse. Another individual commenter expressed concerns about fraud and abuse and argued that consumers should be required to provide a certification from a registered medical professional or positive test result from a professional third party (as opposed to a home test kit).

The Department also received comments from ticket agent representatives on the issue of documentation. USTOA agreed with airline commenters and argued that the Department should define the scope of qualifying public health guidance and medical professionals to ensure clarity on the required documentation. It further echoed airlines' comments that the Department should prescribe the medical form that includes a warning of Federal crime for false statements. USTOA further commented that ticket agents should be able to require that documentation be in English or in any other language of their choice to avoid the cost of translation. Travel Management Coalition stated that it should be entirely airlines' responsibility to require health-related evidentiary documents and that ticket agents should not be involved in determining whether passengers are

[90] *Final Rule, Traveling by Air With Service Animals,* 85 FR 79742, Dec. 10, 2020.

entitled to travel credits. In that regard, it offered that, to limit the number of parties involved and to protect passenger privacy, passengers should provide documentation directly to airlines even if ticket agents are the merchants of record for the ticket sales.

The ACPAC discussed the issue of defining ''medical professional'' and recommended to the Department to replace the term ''medical professional'' with the term ''treating physician,'' and adopt the definition for ''treating physician'' as the following:

A ''treating physician'' means an individual who is licensed or authorized under state law to engage in the practice of medicine or the practice of osteopathic medicine and surgery, who furnishes a consultation or treats a patient for a specific physical or mental health condition, and who may use the results of a diagnostic test in the management of the patient's specific physical or mental health condition. For purposes of this rule alone, the term ''treating physician'' includes physicians, osteopaths, nurse practitioners, social workers, licensed professional counselors, psychiatrists, physician's assistants, and other medical providers who are licensed in the state in which the treatment is or has been provided and who are allowed, pursuant to state and federal licensing regulations, to provide individualized care to the patient without medical supervision by another medical provider.[91]

Public Hearing: DOT also addressed the topic of whether the proposed documentation requirements (medical attestation and/or public health guidance) are sufficient to prevent fraud in the notice announcing the March 21, 2023, public hearing. In the notice, DOT asked participants to provide information on whether medical attestations currently provided to airlines from consumers seeking to cancel or postpone travel are primarily based on consumers' self-assessments, medical professionals' assessments, or a combination of both; the types of medical professionals currently providing the attestations accepted by airlines and ticket agents; the types of public health authority-issued guidance currently affecting air travel; and airlines' validation of medical attestations, including the procedures, the volume, and the costs associated with the validation.

During the hearing, the representative from FlyersRights and the representative from National Consumers League both spoke against airlines' argument that the situation of passengers fraudulently claiming a communicable disease is analogous to the situation where a small percentage of passengers fraudulently obtain paperwork that allows them to bring a pet animal onboard as an ESA. They stated that in the matter regarding ESAs, airlines faced potential injury of losing revenue for transporting the animals as a pet as well as potential safety and health concerns. They pointed out that in contrast, there is little incentive for consumers to engage in fraud here because the appeal of fraud is to net a monetary gain and there is no monetary gain in this instance when a consumer simply avoids a loss of the money that they already paid by obtaining a travel credit or a voucher. They view DOT's proposed requirement as sufficient and well-conceived and urge the Department to disregard the industry petitioners' concerns, which they believe rest on a flawed assumption that consumers will have such an incentive to obtain travel credits under the proposal and that the cost will outweigh public health and consumer protection benefits. The consumer advocates argued that no rule will completely prevent fraud, and instances of fraud should be investigated and punished.

A representative from A4A commented that the hearing request initiated by the airline industry on this issue is broader than the questions posed by the Department in the hearing notice. He commented that the data sought by the Department in the hearing notice will not answer the questions at hand. Specifically, he stated that both the basis of current medical attestations provided to airlines by consumers, and the types of medical professionals currently providing such attestations have no bearing on the actual adequacy of the documentation to prevent fraud under the proposed standards for credits or refunds, especially when airlines' current standards differ from those proposed. He further stated that U.S. airlines typically don't provide credits or refunds when the passenger only *may have* a communicable disease or when the consumer wants to protect him or herself from a communicable disease. He noted that Part 382 requires the medical professional to be, at least, the passenger's physician, and even with that, the airline can require the passenger to undergo specific review under certain circumstances. He also commented that the types of guidance ''affecting air travel'' issued by public health authorities currently has no bearing on whether providing such information is adequate to prevent fraudulent claims. He opined that what matters is the guidance related to communicable diseases and whether, with no other information presented to the airline, simply providing such guidance would allow the airline to determine whether the consumer is making a fraudulent claim. He concluded that the proposed documentation standard will only confuse consumers into believing that they can submit unsubstantiated attestations or public health guidance to support their claims.

A representative from MedAire, which provides medical advisory services to airlines, stated that he was commenting strictly from a medical standpoint and without considering the economic aspects around the question. From that perspective, the MedAire medical expert stated that a public health authority-issued criteria and guidelines in concert with a properly trained medical professional to diagnosis and to attest the presence of a transmissible disease is the ideal and the best practice possible to minimize fraud and abuse to a manageable level.

A representative from A4A commented that A4A's concerns regarding the proposals go beyond fraud and asserted A4A's belief that the proposal is impractical and unworkable and an example of regulatory overreach by a transportation regulatory agency lacking expertise in the area of public health. He offered that A4A members that currently accept medical documentation in connection with passenger-initiated itinerary changes typically require the documentation to be in the form of a medical professional document issued by a treating physician, and in cases where documentation from a non-treating physician is allowed, the airlines would require the documentation to be on official letterhead. He stated that the current level of fraud is low because most airlines' policies would not contemplate allowing passengers to self-certify their conditions or produce public health guidance without accompanying statement by a treating physician.

On the Department's request for information regarding the types of public health authorities that issue guidance affecting air travel, the A4A representative stated that many airline

[91] This definition, based on Michigan law and regulation of Centers for Medicare & Medicaid Services, is provided by the State Attorney General of Michigan, who is a member and chair of the ACPAC. Two additional members representing consumer rights advocacy groups and airports, respectively, support this recommendation. The member representing A4A is against the recommendation, stating that it includes practitioners such as social workers and psychiatrists who would not be treating an infectious or communicable disease. The member further reiterated that A4A's belief that ''treating physician'' should be treating the person for the infectious disease or serious communicable disease based on which the consumers are seeking flight credit.

members do not routinely track this information because, in the current environment, change and cancellation fees for most fare types have been eliminated. He further identified various aspects of the NPRM that A4A believes depend on factual issues that are genuinely in dispute. First, he stated that DOT assumes in the NPRM that the medical professional completing the attestation possesses sufficient knowledge of not only the communicable disease but also the passenger's current condition. He asserted that if this medical professional is not the passenger's treating physician and has not examined the passenger, the reliability of the documentation becomes highly questionable and the possibility of fraud is heightened. Second, he stated that DOT's finding that the required production of relevant public health guidance will reduce fraud assumes such guidance will be given due to the person's condition. He asserted that, for example, guidance recommending an individual having been exposed to serious disease refrain from travel for a set number of days would not prevent unscrupulous individuals who have not had any exposure from misusing the guidance. Third, he stated that the NPRM assumes that the guidance produced by the passenger will be authentic, yet there's no provision in the draft rule text addressing validation by airlines. Fourth, he commented that DOT's implicit assumption is that airlines have the ability, if they so choose, to confirm the authenticity of the documentation through reasonable inquiry without external efforts. He offered that this is not the case, for example, with public health guidance not widely posted on a governmental website. Lastly, he disputed two claims made in the NPRM. Regarding DOT's claim that the proposal will promote public health by discouraging travel by persons who have contracted or been exposed to a communicable disease, he commented that this is highly questionable given that there's little to no correlation between the non-expiring travel credit proposal and slowing communicable disease spread, a point that A4A asserts the Department's own regulatory impact analysis concedes. Regarding DOT's claim that it will benefit consumers by protecting their financial interests and expenditures made on tickets, he commented that any such benefit may be eliminated by the proposal's longer-term impact on ticket pricing. He elaborated that airlines will not be able to resell seats suddenly returned to inventory because of passengers who have availed themselves of the non-expiring travel option. He stated that to recoup their losses and account for the longer-term liability of non-expiring travel credit, airlines may have to increase fares, and, in some cases, that means routes may be rendered uneconomical, potentially leading to service cuts.

An economist from A4A spoke on data aggregated by A4A on significant fraud associated with customers who claim that their pets were ESAs, arguing that the topic of ESA is relevant to this hearing because it demonstrates why carriers are concerned about the potential fraud that will result from this rulemaking. He commented that the ESA issue also demonstrated that fraud occurs when a regulation fails to define or loosely defines terms and allows passengers to make suggestive interpretations that carriers are prevented from disputing, questioning, or validating. He stated that the ESA data clearly demonstrates that fraud was extensive and substantial. According to the speaker, from 2016 to 2019, the number of ESAs traveled had more than doubled, skyrocketing from 540,000 in 2016 to 1.13 million in 2019. He stated that DOT ultimately changed the definition of a service animal to exclude ESAs. He commented that this rulemaking similarly creates new, ambiguous, and inconsistent standards, including medical related standards unknown to Federal health agencies regarding ''serious communicable disease.'' Next, he commented that U.S. airlines have been and remain responsive to refund requests and frequently exceed DOT recommendations regarding consumer protections. He provided that the annual cash refunds in 2021 and 2022 exceeded pre-pandemic 2019 level and in 2022, the 11 largest U.S. carriers issued $11.2 billion in refunds. He noted that DOT received less than one complaint about refunds for every 100,000 passengers. He concluded his presentation by stating that there is no evidence of a market failure or unfair or deceptive practice in this area.

DOT Responses: The Department is continuing to allow airlines, as a condition for issuing travel credits or vouchers, to require certain documentation. This final rule differs from the proposal in that it allows airlines to require current medical documentation from consumers as evidence that they are not traveling to protect themselves or others from a serious communicable disease. Airlines are not required to accept consumers' self-diagnoses that they contracted or may have contracted a serious communicable disease ''consistent with'' public health guidance and providing the applicable guidance as proposed. An airline's ability to require medical documentation from a passenger under these circumstances is conditioned on the absence of a public health directive or order issued by HHS stating that requiring medical documentation is not in the public interest. For consumers stating an inability to travel due to a government restriction or prohibition in relation to a serious communicable disease, the Department has not changed the documentation allowed from what was proposed at the NPRM stage but specifies that the documentation must be current. This final rule permits carriers to require passengers provide a *current* government order or other document demonstrating how the consumer's ability to travel is restricted. A government order is current if it is valid for the planned travel date.

After carefully reviewing the comments provided, as well as the ACPAC recommendation, the Department has decided to specify that the medical documentation must be from a licensed *treating* medical professional and define that term. The Department is adopting a definition for ''licensed treating medical professional,'' to mean an individual, including a physician, a nurse practitioner, a physician's assistant, or other medical provider, who is licensed or authorized under the law of a State or territory in the United States or a comparable jurisdiction in another country to engage in the practice of medicine, to diagnose or treat a patient for a specific physical health condition that is the reason for the passenger to request a travel credit or voucher. The Department believes that limiting the medical professionals to those who provide or have recently provided diagnoses or treatment to passengers for the specific health condition that is the reason for requesting the travel credits or vouchers will better ensure passengers do not rely on persons who have no medical knowledge about their health conditions. The Department notes that the licensed treating medical professional may provide in-person medical diagnosis and treatment as well as virtual diagnosis and treatment, as deemed appropriate by common medical practice. The Department also notes that treating medical professionals may include a primary care provider or a specialist that treats the passenger on a regular basis, as well as medical professionals that the passenger sees on an ad hoc basis, such as care providers

from a walk-in clinic, an emergency care facility, or a medical facility that the passenger visits while away from home.

Regarding the treating medical professional's license, the definition requires that the medical professional be licensed in a State or territory of the United States or a comparable jurisdiction in another country. In that regard, the rule allows carriers to require that the documentation be on the medical professional's letterhead and include information on the type and date of the medical professional's license, the license number, and the state or other jurisdiction in which it was issued. The Department interprets ''comparable jurisdiction in another country'' to mean the appropriate governing body in a foreign country that oversees the issuance of medical licenses, either at a national or state level.

For medical documentation provided by passengers who seek travel credits or vouchers due to an underlying health condition, the rule allows carriers to require that the medical documentation be current, specify that the passenger has an underlying health condition that is being treated or has recently been treated by the medical professional, and that based on the licensed treating medical professional's opinion, including references to relevant public health guidance if available and applicable, the passenger should not travel on a commercial flight during a public health emergency to protect his or her own health. To protect passengers' privacy, carriers may not insist that the documentation specify what the underlying health condition is. Further, because this medical documentation specifically concerns the passenger's planned travel during a public health emergency, to ensure that the medical documentation is ''current'' with respect to the passenger's medical condition, carriers may require that it be dated after the declaration of the public health emergency but be within one year of the scheduled travel date.

For medical documentation provided by passengers seeking travel credits or vouchers because the passenger has contracted or is likely to have contracted a serious communicable disease, the rule allows carriers to require that the documentation be current, specify that the medical professional has recently diagnosed and/or provided medical care to the passenger with regard to a serious communicable disease, and be based on the licensed treating medical professional's opinion, including reference to relevant public health guidance if available and applicable, that the passenger has contracted or is likely to have contracted a serious communicable disease and should not travel on commercial flights to protect the health of others on the flights. The carriers may further require the medical documentation provide a medically reasonable timeframe during which the passenger is advised against travel. The purpose of the medical documentation under this rule is to attest that it is the medical professional's opinion, based on current medical knowledge about the serious communicable disease at issue and the passenger's current health condition, that the passenger should not travel to protect others from that serious communicable disease. This rule allows carriers to apply a reasonable standard to determine whether medical documentation is current. For example, if according to public health guidance on a particular communicable disease, an individual would normally remain contagious for 15 days from the date of diagnose or onset symptom, it would be reasonable for carriers to interpret that ''current'' medical documentation means the documentation is dated within 15 days of the scheduled departure. The Department believes that this flexibility serves the public interest by allowing carriers to tailor the medical documentation's validity period based on objective and scientific information, *i.e.,* the common contagious period of a particular communicable disease, therefore screening out passengers who would generally have passed the contagious period on the travel date while ensuring that passengers who are likely to pose a direct threat during travel will not be unduly burdened to seek medical documentation very close to the travel date.

In addition to addressing the date of the supporting documentations that must be ''current,'' the Department has considered the timing of passengers providing the current documentation to airlines when requesting a travel credit or vouchers. Although it is conceivable that passengers requesting travel credits or vouchers based on a government travel restriction would have the ability to provide the documentation right away because the government orders are readily available to the public, passengers requesting travel credits or vouchers based on a health condition may need additional time to schedule a visit with a medical professional and obtain the documentation. The Department is concerned that the rule would not effectively protect consumers as intended if airlines are permitted to require that the medical documentation must be provided before the planned travel date. For example, if a public health emergency was declared right before a passenger's travel date, and the passenger has an underlying health condition that would put the passenger at risk during travel, the passenger would be deprived the required credit or voucher because there is no time to obtain a medical documentation before the travel date. Further, passengers could be infected with a serious communicable disease very close to the travel date but there is not enough time to seek an appointment with a treating medical professional and obtain a medical documentation before the scheduled travel date. In such situations, the final rule requires that carriers allow a reasonable time for the passenger to provide relevant medical documentation after the scheduled travel date as long as the passenger notifies the carrier before the flight's departure about the illness. The carrier may wait to issue the travel credit or voucher until receiving current medical documentation within that time period. The Department notes that, although the medical documentation may be dated after the scheduled travel date, carriers may require that the documentation specify that based on the licensed treating medical professional's opinion, including reference to relevant public health guidance if available and applicable, the passenger has contracted or is likely to have contracted a serious communicable disease and should not travel by air on the scheduled travel date to protect the health of others on the flight. The Department believes that requiring airlines to provide a reasonable time for passengers who suffer acute illness close to travel dates to submit medical documentation allows passengers to seek medical diagnoses and obtain written documentation to prove their eligibility for travel credits or vouchers and avoid the situation that passengers choose to travel while feeling ill for fear of losing the money paid for the tickets, potentially endangering others on the flight.

The Department has also decided against creating a Federal medical form that includes a criminal penalty warning for false statements, as some carriers and ticket agents have suggested. We do not agree that a DOT form is the best format to incorporate all the information permitted by the rule. Each passenger's health condition (including the underlying heath condition increasing their risk level while traveling during a public health emergency or their personal medical history of a serious communicable

disease infection) may be different, which warrants more flexibilities for medical professionals to customize content in the medical documentations that they prepare. The Department has also taken into account consumer rights advocacy groups' view that consumers in situations discussed here may be less likely to commit fraud or abuse the regulatory protection in comparison to situations related to ESAs as suggested by carriers because consumers requesting travel credits or vouchers due to a serious communicable disease have already paid airlines for their travel and the potential net gain of abusing the consumer protection requirement is simply avoiding paying a ticket change fee. The Department also agrees with consumer rights advocacy groups that airlines have effective tools to investigate and pursue punitive actions against serial offenders who repeatedly engage in fraudulent actions to receive travel credits or vouchers, including banning the individual from traveling on their flights. In conclusion, the Department is confident that the criteria for the documentations listed in the rule that carriers may request and carriers' own deterrence tools would place adequate safeguards against fraud and abuse.

9. Travel Credits or Voucher

The NPRM: In the NPRM, the Department addressed various issues regarding the travel credits and vouchers to be provided to passengers due to government restrictions or health concerns related to a serious communicable disease. These issues concern: (1) the appropriate validity period of the credits or vouchers provided to consumers, including whether an indefinite validity period for credits or vouchers issued under this proposal is reasonable (2) the transferability of the travel credits or vouchers to others; (3) the value of the travel credits or vouchers, including establishing a minimum value of equal to or greater than the airfare and allowing a deduction from the credit or voucher for service charges by ticket agents when issuing the original ticket and credit/voucher processing fees by airlines and ticket agents; and (4) the disclosure of any material restrictions, limitations, or conditions on the use of the credits and vouchers. More specifically, the Department proposed to require airlines and ticket agents provide covered passengers non-expiring credits or vouchers for future travel and invited comment on requiring that the travel credits or vouchers be transferrable at the consumers' discretion. The Department also proposed that the travel credits or vouchers issued to these consumers be ''a value equal to or greater than the fare (including government-imposed taxes and fees and carrier-imposed fees and surcharges).'' Further, the Department proposed to allow airlines and ticket agents to charge a processing fee for the issuance of credits or vouchers and sought comment on whether allowing ticket agents to retain the service fees charged when issuing the original ticket is reasonable and appropriate.

(1) Validity Period and Transferability

The Department proposed to require that airlines and ticket agents provide non-expiring credits or vouchers for future travel to qualifying consumers. The Department sought comments on whether an indefinite validity period for credits or vouchers issued under this proposal is reasonable, and if not, why and what a reasonable minimum validity period should be. Commenters were encouraged to provide information on what challenges airlines and ticket agents may face when accommodating the redemptions of travel credits and vouchers that have no expiration dates. Also, the Department sought comments on whether it should require that the travel credit or voucher be transferrable at the consumers' discretion. The Department explained that transferability would ensure that eligible consumers who spent money on tickets that they no longer need wouldn't completely lose the value of the tickets.

(2) Value of Tickets and Processing Fees To Issue Travel Credits and Vouchers

The Department proposed that the travel credits or vouchers issued to qualified consumers be ''a value equal to or greater than the fare (including government-imposed taxes and fees and carrier-imposed fees and surcharges).'' The Department also proposed that the credits or vouchers include any prepayment of unused ancillary services such as baggage fees or seat selection fees as those services have not been provided by the carrier.[92] The Department asked whether airlines should be required to offer an option to consumers in which consumers may choose to receive the travel credit or voucher redeemable for the same itinerary as the original ticket, regardless of what the ticket cost is at the time of redemption, noting that as airfare fluctuates, some consumers may benefit from and prefer this option if they plan to travel on the same itinerary in the future without worrying about price increases, while airlines may benefit when the redeemed tickets are priced less than the original purchase price of the ticket.

Based on the Department's view that neither the airline or ticket agent initiated the communicable disease-related change that is resulting in the need for a credit or voucher, we proposed to allow airlines and ticket agents to charge a processing fee for the issuance of credits or vouchers to non-refundable ticket holders when consumers' travel plans are affected by concerns related to a serious communicable disease, provided that the fee is on a per passenger basis and appropriate disclosures were made to the consumer prior to the consumer purchasing the airline tickets. The Department sought comments on whether it is reasonable to permit airlines and ticket agents to charge a processing fee for the issuance of travel credits or vouchers, and if so, what type and manner of disclosure would be sufficient to avoid consumer confusion for fees applicable for these specific circumstances.

(3) Restrictions and Disclosures

The Department proposed to prohibit conditions, limitations, and restrictions imposed on the credits and vouchers that are unreasonable and would materially reduce the value of the credits and vouchers to consumers as compared to the original purchase prices of the airline tickets. The Department provided a list of examples that would be deemed unreasonable under the proposal. These examples included a credit or voucher that: would severely restrict bookings with respect to travel date, time, or routes; can only be used on one booking and voids any residual value; or would impose a booking fee for a new ticket that reduces the value of the voucher or credit available to be used on the new ticket. With regard to material restrictions, limitation, and conditions on the use of the credits and vouchers that are not deemed unreasonable, the Department proposed to require airlines and ticket agents provide full disclosure. The Department sought comments on whether regulating the terms and conditions of the credits or voucher in this specific context is reasonable and what other steps the Department should consider ensuring that passengers

[92] The Department's rulemaking on *Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided* proposes that airlines must refund any ancillary service fees when a passenger traveled on the scheduled or an alternative flight and the service was not provided. *See* 81 FR 75347. That proposal is discussed and finalized in Section III of this rule.

receiving credits and vouchers for future travel are adequately protected.

Comments Received: The Department received comments on these issues from airlines, ticket agents, and consumer rights advocates with the validity period for the travel credits and vouchers being the most controversial.

(1) Validity Period and Transferability

A4A expressed strong concerns about the proposal requiring that the credits or vouchers be non-expiring, arguing that such requirement would lead to rampant fraud and abuse, exposing carriers to significant financial and accounting liabilities. A4A commented that the requirement would (1) impose financial hardship on carriers by building up significant liability on their accounting books that materially harm credit ratings; (2) impose administrative costs to carriers by requiring permanent record retention and data access on ticket and voucher records; (3) cause technical issues to distribution systems as those systems need an expiration date populated to function; (4) raise tax issues because airlines have to absorb taxes remitted to governments that cannot be refunded and repurposed if consumers elect to not travel within a reasonably short timeframe; and (5) raise legal compliance issues under State escheat laws, if they are not preempted by the Department's authority. For these reasons, A4A recommended that the Department should not mandate the validity period of credits or vouchers longer than one year, and if the credits or vouchers are issued during a public health emergency and that emergency lasts beyond one year, the Department would require that the airlines extend the validity period by one year at a time. A4A's position was supported by IATA, RAA, Spirit, Qatar Airways, and SATA. These commenters also were against requiring the travel credits or vouchers be transferable, arguing that it would create a second-hand market that could lead to fraud.

The ACPAC discussed this issue and voted to recommend that the final rule require the travel credits or vouchers be non-expiring and transferrable.[93] Travelers United also supported the proposal to require the credits or vouchers to be non-expiring, stating that they should be treated as a store credit with no restrictions on booking and transferability. It further argued that the current airline credit rules are different from airline to airline and the Department should adopt a uniform and clear rule for credits and vouchers.

Most ticket agent representatives, including Travel Management Coalition, ABTA, USTOA, and Travel Tech, opposed requiring credits or vouchers be non-expiring. They argued that the non-expiring requirement creates uncertainties and long-term liability for airlines and ticket agents and unreasonable administrative and reporting burdens to them. DWHSA, on the other hand, supported the proposal to require credits or vouchers be non-expiring, arguing that if some airlines are currently offering non-expiring credits, all airlines should be able to do so.

(2) Value of Tickets and Processing Fees To Issue Travel Credits and Vouchers

On the value of the credits or vouchers, A4A commented that the Department should allow airlines to adjust the amount to reflect non-refundable foreign taxes. Several airline commenters expressed their support for the proposal to allow airlines and ticket agents to charge a service fee for the issuance of the credits or vouchers, and some commenters also support the disclosure requirement in relation to the service charge. On booking restrictions, A4A opined that DOT should not regulate specific terms and conditions of the credits or vouchers. Qatar Airways suggested that clarity is needed on the term ''severe restriction.'' A4A and IATA commented that the Department should let the market determine whether the credits or vouchers can be used for booking with one carrier or others. Qatar Airways, on the other hand, stated that the credits or vouchers should only be redeemed with the issuing airline.

Travelers United commented that all credits or vouchers issued under the proposals should be uniform and clear to passengers and the Department should ensure that any residual values after one booking be available to consumers. It further stated that the only limitation on the credits or vouchers should be that they must be used on the issuing airline. Travelers United also provided examples of existing restrictions that it believes to be unreasonable, including the requirement that the credits or vouchers cannot be used to pay ancillary service fees and the requirement that the credits or vouchers issued for a business class ticket can only be used to book another business class ticket.

As for processing fees, IATA, Spirit, AAPA, and Qatar Airways supported the proposal to allow airlines and ticket agents to charge a processing fee for issuing credits or vouchers. Several ticket agent representatives also supported the proposal. Two individual consumers commented that if airlines are allowed to charge a processing fee, there should be a cap or clearly defined limit to these fees. This individual opined that if airlines are given too much leeway to determine the amount of the fee, consumers may end up paying the fee that is the majority of the cost. Another individual commented that allowing airlines to charge a processing fee for vouchers would result in airlines charging a high fee, removing the consumer protection provided by the rule. Another individual commented that it is inconsistent for the Department to propose that the credits or vouchers be ''a value equal to or greater than the fare'' yet allow airlines to charge a processing fee.

(3) Restrictions and Disclosures

On booking restrictions, A4A opined that DOT should not regulate specific terms and conditions of the credits or vouchers. Qatar Airways suggested that clarity is needed on the term ''severe restriction.'' A4A and IATA commented that the Department should let the market determine whether the credits or vouchers can be used for booking with one carrier or others. Qatar Airways, on the other hand, stated that the credits or vouchers should only be redeemed with the issuing airline.

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ABTA opposed imposing a blanket requirement on what restrictions are permissible for the credits or vouchers, stating that these decisions should be made by each business on a case-by-case basis. USTOA also commented that the Department should not dictate the contractual terms of credits or vouchers.

DOT Responses:

[93] Three members representing consumer rights advocacy groups, State Attorneys General, and airports, respectively, voted for the recommendation. The member representing A4A voted against the recommendation, stating that the issue of transferability has not been analyzed and that requiring transferrable credits may result in fraud and abuse.

(1) Validity Period and Transferability

The Department has considered airlines' arguments against requiring non-expiring travel credits and vouchers and is convinced that although the non-expiring feature would provide consumers the maximum flexibility to use the credits or vouchers, the difficulty for airlines to manage and track these technically perpetual liabilities is not trivial. The Department, however, disagrees with airlines' suggestion that a one-year validity period is adequate to ensure that consumers have sufficient time to use the credits and vouchers. Although airlines suggest that the one-year period can be extended if a public health emergency extends beyond a year, the Department believes that the extension of travel credits or vouchers imposes administrative burdens to airlines and potential confusion and uncertainty to consumers. As such, we are adopting a final rule requiring that the travel credits or vouchers issued under the conditions related to a serious communicable disease be valid for at least five years from the date of the issuance. The Department views a five-year validity period to be a sufficient timeframe to ensure passengers who are affected by a serious communicable disease can use the credits or vouchers for future travel while not imposing undue burdens on airlines. The Department also notes that the five-year validity period is consistent with the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) [94] and the CFPB regulation implementing the CARD Act, 12 CFR 1005.20, which require that the expiration date of a store gift card or gift certificate cannot be earlier than 5 years after the date on which the gift certificate was issued. Although the travel credits or vouchers issued pursuant to this final rule are not ''gift certificates'' or ''store gift cards'' that are subject to the CARD Act and the CFPB rule,[95] the Department views that adopting a similar restriction on the validity period as the CARD Act and its implementing rule benefits consumers by avoiding potential confusions arising from different regulatory entities' regulations on electronic financial documents issued by businesses.

Further, the Department is requiring that the credits or vouchers issued under this final rule be transferrable to address concerns from numerous consumers regarding the situations relating to a serious communicable disease that make them unable able to use the travel credit or voucher due to their age, health condition, or other reasons. For example, in complaints received by the Department during the COVID–19 pandemic, some elderly passengers with a severe underlying health condition expressed that given their ages and the medical conditions they have, air travel will not be an activity that they would consider in the future even with the COVID–19 public health emergency coming to an end. Also, infrequent travelers who booked travel for a specific event that was canceled due to a serious communicable disease expressed concerns that they have no use for the credits or vouchers because they are not likely to have the need to travel in the foreseeable future. The Department views these concerns as reasonable grounds for requiring the travel credits or vouchers be transferrable so the air transportation that these consumers invested their money in can be utilized by others of their choosing before expiring.

The Department is not convinced by the airlines' arguments that transferability will invite and increase fraud. The initial issuance of the credits and vouchers under this rule are subject to conditions airlines are permitted to impose, including documentation proof for eligibility. Once they are issued to eligible consumers, whether the eligible consumers choose to redeem the credits or vouchers on their own or transfer to another individual would not make a difference to the airlines financially. We are also not troubled by a secondary market made possible by the transferability feature of the credits or vouchers in which consumers who obtained the credits or vouchers on legitimate grounds can trade them with other consumers in order to recoup the value, or the partial value, they paid into the airline tickets. To comply with the transferability requirement, airlines may simply eliminate the requirement that only the passengers in the original bookings may use the credits or vouchers, similar to a store gift card that can be redeemed by anyone.

(2) Value of Credits and Vouchers and Service Fee for Processing Credits and Vouchers

The Department is adopting the proposal to require airlines to issue credits or vouchers in a value equal to or greater than the fare, including carrier-imposed fees and surcharges and government-imposed taxes and fees that are not refunded to consumers. To the extent other Federal agencies require airlines to refund certain government-imposed fees to consumers when the air transportation is not used by consumers,[96] carriers may deduct the amounts of those fees that have been refunded to consumers from the value of the travel credits or vouchers. With regard to prepaid ancillary service fees, the Department notes that the situation discussed here is distinguishable from the situations in which airlines are required to refund ancillary service fees for services that are not provided. In the situations here, the passenger chooses not to travel, and as a result, the pre-paid ancillary services are not used. As such, the Department is not requiring airlines to refund the ancillary service fees in the form of the original payment, and instead, we are requiring that the value of the ancillary service fees be included in the value of travel credits or vouchers issued.

Based on the comments received, the Department is adopting the proposal to allow airlines to impose a processing fee for issuing travel credits or vouchers to eligible passengers, provided that the fee is assessed on a per-passenger basis and appropriate disclosures regarding the existence and amount of the fee were made to the consumer prior to the consumer purchasing the airline ticket. Given that the airline is not initiating the change that is resulting in the need for a credit or voucher, the Department believes that this strikes the right balance between ensuring that consumers receive travel credits and vouchers when they do not travel because of government restrictions or health concerns related to a serious communicable disease and avoiding having airlines bear all the cost for something that was also outside their control. If the Department determines that airlines' processing fees appear to circumvent the intent behind the requirement for consumers to obtain credits or vouchers in equal or greater value as the fare, the Department will consider whether further action is appropriate.

(3) Restrictions and Disclosures

With respect to limitations, restrictions, and conditions on the

[94] Public Law 111–24, May 22, 2009.

[95] The CARD Act and the CFPB implementing rule definitions for ''gift certificate'' and ''store gift card'' require that the instruments must be purchased or issued ''on a prepaid basis'' ''in exchange for payment.'' As the travel credits or vouchers under this final rule are not purchased or issued on a prepaid basis in exchange for payment, they are not considered ''gift certificate'' or ''store gift card'' that are subject to the CARD Act and the CFPB rule in 12 CFR 1005.20.

[96] See, *e.g.,* the Transportation Security Administration's regulation provides that any changes by the passenger to the itinerary are subject to additional collection or refund of the September 11th Security service fee by the direct air carrier or foreign air carrier, as appropriate. 49 CFR 1510.9(b).

credits or vouchers issued under this section, the Department is adopting the proposed prohibition on unreasonable terms that would materially reduce the value of the credits and vouchers to consumers as compared to the original purchase prices of the airline tickets. The Department confirms its tentative view stated in the NPRM that unreasonable terms include severe restrictions on travel date, time, or routes, a requirement that a voucher can only be used on one booking and that any residual value would be void afterwards, a restriction that the voucher can only be used to cover the base fare of a new booking and not taxes and fees or ancillary service fees, a requirement that redeeming the credits or vouchers would be subject to a rebooking fee or a change fee [97] that reduces the value of the voucher or credit applicable to the new ticket, or a restriction limiting the rebooking to certain class(es) of fares such as business class or first class. A restriction on the travel date, time, or routes is severe when the restriction eliminates a substantial number of choices passenger may have for rebooking and is a case-by-case analysis. A restriction on what airline(s) the credit or voucher can be used to book with, on the other hand, would not be viewed as unreasonable as long as the credit or voucher allows, at a minimum, rebooking on the airline for the original ticket. Further, for material restrictions, limitation, and conditions on the use of the credits and vouchers that are not deemed unreasonable, the final rule require airlines provide clear disclosure to consumers at the time of issuing credits or vouchers.

10. Consumer Rights After Acceptance of Travel Vouchers and Credits

The NPRM: The Department described its tentative view that if an airline cancels or makes a significant change to a flight after a passenger has already requested to cancel his or her flight due to government restrictions or health concerns and received a credit or voucher, then the airline or ticket agent should not be required to replace that voucher with a refund. The Department stated that it is overly burdensome and costly for airlines to apply refund eligibility to itineraries that have already been cancelled pursuant to passengers' requests prior to the airline's decision to cancel or significantly change the flight. The Department cautioned that its Office of Aviation Consumer Protection has the authority to investigate whether an airline or a ticket agent has engaged in an unfair or deceptive practice when it fails to inform a passenger making a request to cancel the itinerary that the passenger is eligible for a refund, if the airline or ticket agents knows or should have known at the time that a flight has been cancelled or significantly changed.

Comments Received: IATA supported the Department's view that if an airline cancels or makes a significant change to a flight after a passenger has already requested to cancel his or her a travel itinerary and received a credit or voucher, then the airline or ticket agent should not be required to replace that voucher with a refund.

DOT Response: The Department maintains its view that an airline or ticket agent should not be required to replace a voucher with a refund when an airline cancels or makes a significant change to a flight after a passenger has already requested to cancel his or her flight due to government restrictions or health concerns and received a credit or voucher.

V. Contract of Carriage Provisions Must Not Contradict Requirements of This Final Rule

The Ticket Refund NPRM proposed to include in the new 14 CFR part 260 a provision that would require airlines to ensure that the terms or conditions in their contracts of carriage are consistent with the proposed regulation, including the proposals pertaining to airline ticket refunds due to airline-initiated cancellation or significant change, and the proposals pertaining to refunds of baggage fees for significantly delayed bags and refunds of ancillary service fees for services that are not provided. In response to this proposal, Travelers United urged the Department to require airlines to incorporate their customer service plans in their contract of carriage. Several individual commenters noted that the language that airlines use in their contract of carriage restrict the rights of passengers. In this final rule, the Department makes clear that carriers' inclusion of terms and conditions in their contract of carriage that are inconsistent with the carriers' obligations to provide refunds as specified in this rule will be considered an unfair and deceptive practice. In addition, the Department prohibits carriers' inclusion of terms and conditions in their contract of carriage that are inconsistent with the carriers' obligations to provide travel credits or vouchers to travelers affected by a serious communicable disease as required by this final rule. Reasonable consumers would be misled with inaccurate information in airlines' contract of carriage regarding their right to a refund, travel credits, vouchers, or other compensation. This information is material to consumers as it could result in significant financial loss because consumers would incorrectly believe that they cannot obtain refunds, travel credits, or vouchers that they are entitled to receive under DOT rules. The Department has long considered airlines with terms and conditions in their contract of carriage that are inconsistent with requirements imposed on them to be engaging in an unfair and deceptive practice. The Department is not requiring carriers to include their customer service plans in their contracts of carriage as suggested by Traveler's United but will monitor consumer complaints in this area and determine if we need to revisit this issue in the future.

VI. Refunding Airline Tickets to Passengers Affected by a Serious Communicable Disease Due to Airlines or Ticket Agents Receiving Significant Government Financial Assistance

To address the concerns by consumers, consumer advocacy groups,[98] and members of Congress [99] that it is fundamentally unfair for airlines receiving government financial assistances during the COVID–19 to refuse to provide refunds to consumers who were not able to travel due to the COVID–19 pandemic, the Department proposed that if a covered airline or ticket agent receives significant government financial assistance during a public health emergency, the airline or ticket agent would be required to provide refunds to consumers who are otherwise eligible for travel credits or vouchers under the NPRM. The Department further proposed a set of procedures to determine whether a covered entity has received ''significant government financial assistance,'' which

[97] The NPRM's proposed rule text suggests that carriers may charge an ''administrative fee'' for rebooking tickets using the credits or vouchers. After further consideration, especially considering that the rule allows carriers to charge a processing fee for issuing the credits or vouchers, the Department believes that it is unreasonable for consumers to be charged again when redeeming the credits or vouchers. Therefore, the final rule determines that charging an administrative fee at the time of rebooking is an unreasonable condition.

[98] See, *e.g., Airlines: Give Us Refunds, Not Vouchers,* petition by Consumer Reports, *https://action.consumerreports.org/20200420_finance_airlinerefundpetition. Consumer Reports, Letter to Sect. Buttigieg, https://advocacy.consumerreports.org/wp-content/uploads/2021/11/CR-letter-to-Sec-Buttigieg-consumer-complaints-11-18-21-FINAL-2.pdf.*

[99] See, *e.g.,* Senator Edward J, Markey and Richard Blumenthal press release, *https://www.markey.senate.gov/news/press-releases/senators-markey-and-blumenthal-blast-airlines-inadequate-response-to-their-request-to-eliminate-expiration-dates-for-all-pandemic-related-flight-credits.*

includes: applying relevant factors such as the size of the entity, revenue, the amount of government financial assistance accepted, and total enplanements to the entities; issuing tentative determinations on which entities have received significant government assistance; and finalizing the determinations based on public comments.

The Department received numerous comments from airline and ticket agent representatives, expressing their concerns about the Department's authorities for this proposal as well the practicality of the proposed procedure to determine which entity has received ''significant government financial assistance.'' Consumers and their representatives supported this requirement but did not articulate the reason(s) for their support of this proposal. Although the Department continues to view that airlines and ticket agents receiving significant financial assistance from governments during a public health emergency should do more to assist airline passengers who are impacted by the public health emergency, we have concluded that more time is needed to consider the information provided to the Department and to determine whether additional information is needed for a final rule that is beneficial to consumers. As such, we are deferring whether to finalize this proposal to another rulemaking action.

VII. Effective Date and Compliance Periods

The NPRM: The Ticket Refund NPRM proposed that any final rule adopted would take effect 90 days after the publication in the **Federal Register**. The Department invited comments on whether 90 days is the appropriate interval for implementation of the proposed requirements if adopted. The Ancillary Fee Refund NPRM did not propose an effective date for provisions finalized under that NPRM.

Comments Received: On the Ticket Refund NPRM, a number of airline commenters asserted that the proposed 90-day implementation timeframe is inadequate, reasoning that airlines need additional time to revise refund policies regarding when a passenger is entitled to a refund and to train their staff. They also commented that additional time is needed to adjust IT systems to reflect how vouchers should be granted. Some airlines suggested that a 180-day implementation period is warranted while others argued that an implementation period of no shorter than one year should be granted. ASTA also asserted that ticket agents will need additional time to assess how a final rule would impact them and decide whether they want to continue to sell airline tickets as merchants of record and make necessary adjustments accordingly. ASTA further requested that the Department clarify how it interprets the application of the rule's effective date with respect to ticket sale date, travel date, and the date a refund request is submitted.

On the Ancillary Fee Refund NPRM, the NPRM did not propose an implementation period. A4A and IATA in their comments requested that the Department provide one-year for airlines to implement the requirements relating to refunding baggage fees for delayed bags and ancillary service fees for services not provided. A4A specified that if the Department requires ''automatic'' refunds for baggage fees, carriers will need significant amount of time to work with distribution channel stakeholders to build, test, and implement new payment and refund channels beyond airfare. IATA also commented that additional time is needed due to the complexity of airline systems and procedure and the potential involvement of multiple airlines and distribution channels. The ACPAC recommended that all final provisions of the final rule be effective after 90 days of its publication in the **Federal Register**.[100]

DOT Responses: The Department has considered the comments and determined that an extended implementation period for certain provisions is warranted. First and foremost, although this final rule will become effective 60 days after its publication in the **Federal Register**, carriers and ticket agents will have different implementation periods for different provisions. For provisions regarding ticket refunds due to airline cancellation or significant change, refunds of baggage fees for significantly delayed bags, and refunds of ancillary service fees when services are not provided, regulated entities will have six months from the date of publication of the final rule, or October 28, 2024, to implement the relevant requirements. The Department views the six-month implementation period as appropriate for airlines and ticket agents to modify their policies, procedures and IT systems and to train staff on the relevant requirements on ticket and ancillary fee refunds (including refunding fees for significantly delayed checked bags). The Department considers the six months compliance period to be necessary for carriers and ticket agents to establish or enhance processes and procedures to communicate with one another to comply with these requirements.

For the provision regarding issuing travel credits or vouchers to passengers who are affected by a serious communicable disease, carriers will have 12 months from the date of the final rule's **Federal Register** publication, or April 28, 2025, to fully implement the requirements. The Department believes that this implementation period is sufficient for carriers to revise IT systems for the issuance, tracking, and redemption of travel credits or vouchers meeting the regulatory requirements, to establish procedures with respect to requesting and reviewing supporting medical documentations from passengers, and to train staff with regard to providing customer service on related matters.

VIII. Severability

This final rule includes four major components that enhance protections of airline passengers (ticket refunds due to airline cancellation or significant change, baggage fee refunds for significantly delayed bags, ancillary service fee refunds for services not provided, and consumer protections for airline passengers affected by a serious communicable disease), each of which is issued pursuant to separate and independent legal authorities and operates independently on its own. Were any component of this final rule stayed or invalidated by a reviewing court, the components that remained in effect would continue to provide vital protections to airline passengers. The implementation of each component and the consumer protection provided by each component do not hinge on other components of the rule. Therefore, each of the four components of the final rule are severable. In the event of a stay or invalidation of any part of any rule, or of any rule as it applies to certain regulated entities, the Department's intent is to otherwise preserve the rule to the fullest possible extent.

Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures and Executive Order 13653 (Improving Regulation and Regulatory Review)

The final rule meets the threshold for a significant regulatory action as defined

[100] The three members representing consumer rights advocacy groups, State Attorneys General, and airports support this recommendation. The member representing A4A opposes this recommendation, stating that some of the provisions, if finalized, will require airlines to make significant changes and the 90-day implementation period is not adequate to implement those changes.

in section (3)(f)(1) of Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' as amended by E.O. 14094, ''Modernizing Regulatory Review,'' because it is likely to have an annual effect on the economy of $200 million or more, as adjusted by OMB pursuant to section 3(f)(1). Table X summarizes the expected economic impacts of the final rule.

The lack of universal definitions for ''cancellation'' and ''significant itinerary change'' has created inconsistency among carriers in granting consumers airline ticket refunds. The final rule will reduce these inconsistencies by defining these terms and will reduce the resources consumers need to expend to obtain the refunds they are owed. Consumer time savings are estimated to be about $3.8 million annually.

This rule implements a 2016 statutory mandate and requires that airlines refund baggage fees when a bag is delivered to a consumer with a delay of 12 hours or more for domestic flights, 15 hours for international flights with a duration of 12 hours or less, and 30 hours for international flights with a duration of over 12 hours. The final rule also implements a 2018 mandate and requires airlines to refund fees collected for ancillary services they fail to provide. The expected economic impacts of these provisions consist of $16.0 million annually in increased refunds to consumers and $7.1 million annually in administrative costs for the airlines.

The final rule requires airlines to provide transferable travel credits or vouchers, valid for at least five years, to passengers who cancel travel for reasons related to a serious communicable disease. The impacts of this requirement depend upon many factors, including the presence and nature of a pandemic, whether airlines can enforce basic economy change restrictions though collecting documentation from consumers regarding whether they have or may have a serious communicable disease, and the value assigned to a case of avoided disease. Expected societal benefits are from infected air passengers canceling planned air travel due the option of receiving the five-year travel credit and the reduction in exposure of uninfected passengers to serious contagious disease. Estimated annual costs would be $3.4 million outside of a pandemic or $482.0 million during a pandemic. While data to quantify benefits are insufficient, a break-even analysis illustrates the thresholds for the monetized value for a case of avoided disease and the travel credit effectiveness rates that could yield benefits that exceed costs.

TABLE 3—SUMMARY OF ANNUAL ECONOMIC IMPACTS

[Millions of 2022 dollars]

Cancelled flight and significant change of flight itinerary	
Benefits (+):	
Consumer time savings	$3.8
Costs (−)	*de minimis*
Net benefits (costs)	$3.8
Transfers:	
Increased airline ticket refunds (airlines to consumers)	Unquantified.
Refunds of fees for significantly delayed bags and ancillary fees not provided	
Benefits (+)	n/a
Costs (−):	
Administrative	$7.1
Net benefits (costs)	($7.1)
Transfers:	
Baggage fee refunds (airlines to consumers)	$16.0
Vouchers or travel credits for passengers affected by a serious communicable disease	
Benefits (+):	
Reduction in cases of serious communicable disease	Unquantified.
Costs (−):	
Documentation	$3.4 (non-pandemic) or $482.0 (pandemic).
Net benefits (costs)	Unquantified.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*) requires Federal agencies to review regulations and assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. This final rule would have some impact on air carriers and ticket agents that qualify as small entities. To assess the impact of this final rule, the Department has prepared a final regulatory flexibility analysis (FRFA), as set forth in this section.

As required by the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.,* the FRFA includes:

- A statement of the need for and objectives of the rule;
- A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA Advocacy) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
- A description and estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of

professional skills necessary for preparation of the report or record; and

• A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A statement of the need for and objectives of the rule is provided elsewhere in the preamble to this final rule and not repeated here. Similarly, the Department provides in the COMMENTS AND RESPONSES section a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis or the economic impacts of the rule and explains how DOT assessed these issues and made changes, if any, to the final rule as a result. DOT did not receive any comments from the Chief Counsel for Advocacy of the Small Business Administration (SBA Advocacy) in response to the proposed rule, the initial regulatory flexibility analysis, or the economic impacts of the rule.

Small Entities Affected

The proposed rule would affect air carriers and ticket agents that qualify as small entities. For air carriers, the Department defines small entities based on the standard published in 14 CFR 399.73. An air carrier is a small entity if it provides air transportation exclusively with small aircraft, defined as any 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. In 2022, 24 air carriers meeting these criteria reported passenger traffic data to the Bureau of Transportation Statistics.[101] These carriers reported operating revenues in 2018 ranging from $1 million to $84 million.

TABLE 4—AFFECTED SMALL AIRLINES

40-Mile Air.
Air Excursions LLC.
Alaska Central Express.
Bering Air Inc.
Empire Airlines Inc.
FOX AIRCRAFT, LLC.
Grant Aviation.
Iliamna Air Taxi.
Island Air Service.
J&M Alaska Air Tours, Inc. (Alaska Air Transit).
Junipogo, LLC (70 North Air).
Kalinin Aviation LLC (Alaska Seaplanes).
Katmai Air.
Maritime Helicopters, Inc.
New Pacific Airlines (Ravn Alaska).
Paklook Air, Inc (Airlift Alaska, Yute Commuter).
PM Air, LLC.
Ryan Air.
Scott Air LLC (Island Air Express).
Smokey Bay Air Inc.
Spernak Airways Inc.
Venture Travel LLC (Taquan Air Service).
Warbelow.
Wright Air Service

Source: *BTS Air Carrier Summary Data (Form 41 and 298C Summary Data). ''T1: U.S. Air Carrier Traffic and Capacity Summary by Service Class.'' BTS Air Carrier Report (Form 298C–F1).*

For ticket agents, the Department defines small entities based on the size standards published by the Small Business Administration in 13 CFR 121.201. These size standards use the North American Industry Classification System (NAICS), which does not have a category specifically for ticket agents. Instead, the closest corresponding industry is travel agencies (NAICS code 561510). Establishments in this industry primarily act as agents in selling travel, tour, and accommodation services to the public and commercial clients. An establishment in this industry is a small entity if it has total annual revenues below $22 million. This amount excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions, but includes commissions received.

Data from the 2017 Economic Census provide an estimate of the number of small-entity ticket agents in the United States.[102] This survey, conducted every five years by the US Census Bureau, is the official national measure of businesses and includes information on employment and revenue by industry. The survey groups firms by NAICS code and by revenue size, with $25 million being the closest threshold amount to the small-entity standard of $22 million. In 2017, 7,827 travel agency establishments had annual revenues of less than $25 million (Table 5). Not all travel agencies serve as ticket agents, however, making the number an over-estimate of affected small entities. The number is also an over-estimate because some of the firms may have annual revenues greater than $22 million.

TABLE 5—TRAVEL AGENCY ESTABLISHMENTS BY REVENUE, 2017

Annual revenue	Firms
Less than $100,000	1,470
$100,000 to $249,999	1,774
$250,000 to $499,999	1,441
$500,000 to $999,999	1,290
$1,000,000 to $2,499,999	1,069
$2,500,000 to $4,999,999	462
$5,000,000 to $9,999,999	221
$10,000,000 to $24,999,999	100
Total	7,827

Notes: NAICS code 561510.
Source: U.S. Census Bureau, 2017 Economic Census.

Compliance Requirements and Costs

As described in more detail elsewhere in the preamble of this final rule, the Department provides definitions and refund requirements for cancelled flight and significant change of flight itinerary. The Department also specifies requirements for significantly delayed bags and ancillary fees that passengers pay for that are not provided. The Department also establishes requirements for airlines to provide vouchers or travel credits to passengers whose travel plans are disrupted by circumstances beyond their control related to a serious communicable disease.

As described in the Regulatory Impact Analysis for the final rule, the primary costs for the final rule that would be incurred by business are administrative costs from baggage and ancillary fee refund requirements and those related to the collection of documentation of serious contagious disease from passengers. Some small carriers that qualify as small businesses operate flights as part of a code-share arrangement with a larger carrier. In these cases, the larger carrier collects the baggage fees and other ancillary service fees and would be responsible for the refunds under the proposal. Therefore, overall costs to small businesses are likely lower than if small carriers collected the fees in all cases, though the Department acknowledges that some small carriers still collect the fees and would therefore be responsible for any refunds due as a result of the rule. As described in the baggage fee refund analysis, estimated annual refund payments and administrative costs for carriers ($9.3 million + $3.9 million) would account for about 0.2

[101] Bureau of Transportation Statistics. ''T1: U.S. Air Carrier Traffic and Capacity Summary by Service Class.'' *https://www.transtats.bts.gov/Fields.asp?gnoyr_VQ=FJH.* Small entities have a ''CarrierGroupNew'' code of 5. Accessed Nov. 15, 2023.

[102] U.S. Census Bureau. 2022. ''Economic Census.'' *https://www.census.gov/programs-surveys/economic-census.html.*

percent of airlines' annual baggage fee revenues ($6.8 billion in 2022, the year used in the analysis). The Department acknowledges that the annual bag fee revenues for small carriers are likely lower than those of large carriers, but their estimated annual refund payments and administrative costs are also likely lower than those of large carriers. As baggage handling and tracking technologies improve, we expect that the percentage of delayed bags affected by the rule and resulting economic effects will decrease further.

The number of passengers who would submit documentation to small carriers is difficult to predict, but a hypothetical example illustrates the potential economic costs associated with the documentation for small air carriers. In 2022, small air carriers in the United States made over 1.02 million passenger trips.[103] If passengers needed to restrict travel for 5% of the trips and provide airlines with documentation, passengers would submit approximately 51,000 forms. We assume that a customer service representative working for an airline or ticket agent would need an average of 5 minutes (0.083 hours) to review documentation and request additional documentation if needed, for a total of approximately 4,236 hours.

To estimate the value of the time air carriers would spend reviewing documentation, we use median wage data from the Bureau of Labor Statistics. For customer service representatives, the fully loaded wage rate is $25.68, using a $18.16 median hourly wage for customer services representatives in May 2022,[104] multiplied by 1.41 to account for employer benefit costs. The total estimated annual cost of the forms would be approximately $109,000, or about $4,500 per small carrier on average. This amounts to about 0.1 percent of total operating revenue per small carrier on average. Some of these costs, or additional costs, could be borne by small ticket agents.

Regulatory Alternatives and Minimization of Impacts on Small Entities

As described in the following paragraphs, several alternatives considered by the Department have had would different impacts on small businesses. The Department considered these alternatives and describes in the paragraphs that follow the steps the Department has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the reasons for selecting the alternative adopted in the final rule and why the Department rejected other significant alternatives that affect the impact on small entities.

One alternative considered as part of the proposed rule was to require cash refunds to consumers as a condition of accepting significant government assistance. After considering the comments received, the Department concluded that more time is needed to consider the information provided and determine whether additional information is needed for a final rule that benefits consumers. Therefore, the Department did not adopt this alternative, and the final rule will therefore have a smaller impact on small businesses.

The Department also considered an alternative to limit the scope of the rule to specifying definitions for ''significant change in itinerary'' and ''cancellation.'' The Department rejected this alternative, however, based on its conclusion that removing the portion of the rule related to serious communicable diseases would undermine the Department's goal to protect consumers' financial interests when the disruptions to their travel plans were caused by public health concerns beyond their control. The Department also believes that protecting consumers' financial interests would further incentivize persons not to travel if they have or may have a serious communicable disease. Nonetheless, in adopting the final rule to protect consumers affected by a serious communicable disease, the Department imposes the requirements only on airlines but not ticket agents, including ticket agents that qualify as small businesses, thereby decreasing the impact on these small entities. For airlines that qualify as small businesses, although they are required to provide travel credits or vouchers to consumers who choose not to travel to protect themselves or others from a serious communicable disease, they are not required to accept a consumer's self-diagnosis of a medical condition consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO. The Department views this change as a way to reduce fraud and abuse and decrease the impact on small airlines.

In determining what constitutes a significant itinerary change, the Department evaluated three alternative timeframes for early departures or delayed arrivals that would constitute a significant itinerary change. The first alternative reflects the timeframes set forth in the proposed rule: three hours for domestic itineraries and six hours for international itineraries as the times that would be considered significant. A second alternative left the timeframes for early departure and late arrival undefined, essentially maintaining the status quo. A third alternative considered was to adopt a tiered structure based upon such factors as total travel time. The final rule adopts the three- and six-hour timeframes from the proposed rule. The Department rejected the alternative of leaving the timeframes undefined. While leaving the timeframes undefined grants the most flexibility to the airlines, it would not achieve the same consistency as a uniform standard, which is an objective sought by this rulemaking. The Department rejected a tiered approach because of its complexity and potential difficulties in implementation for airlines as well comprehension on the part of consumers.

With regard to the significant change in flight itinerary because of a downgrade in available amenities, the proposed rule included aircraft changes that lead to a significant downgrade of available amenities or travel experiences for all passengers. For the final rule, except for a downgrade in the class of service, the downgrade of available amenities applies to passengers with disabilities. The final rule clarifies that it refers to travel on a substitute aircraft that results in one or more accessibility features needed by the passenger being unavailable and changes in connecting airport for persons with disabilities. The Department altered the scope of passengers covered because of the ambiguity and subjectivity of what constitutes significant downgrade in amenities and travel experience. By retaining applicability to persons with disabilities, the final rule recognizes that aircraft substitutions can result in discomfort and inconveniences when an accessible feature needed by a passenger with a disability is unavailable.

Another alternative considered by the Department and adopted in the final rule is to extend the length of baggage delivery delay for long-haul international flights (flights with a duration of more than 12 hours) under which a refund of baggage is required, from the 25-hour standard proposed in the NPRM to the 30-hour standard adopted in the final rule. This final rule, however, also shortened the length of baggage delivery delay for other

[103] Bureau of Transportation Statistics. *Air Carrier Statistics (Form 41 Traffic)—All Carriers: T–100 Segment (All Carriers).* United States Department of Transportation. *https://www.transtats.bts.gov/Fields.asp?gnoyr_VQ=FMG.* Accessed 10 Jan 2024.

[104] Bureau of Labor Statistics. ''Occupational Employment and Wage Estimates, May 2022: National estimates for customer service representatives.'' *https://www.bls.gov/oes/current/oes434051.htm.*

international flights (flights with a duration of 12 hours or less) under which a refund of baggage fee is required, from the 25-hour standard proposed in the NPRM to the 15-hour standard adopted in the final rule. The final rule decreases the impact on small carriers operating long-haul international flights and increases the impact on small carriers operating shorter international flights. The Department made the changes based on its view that setting a different standard for long-haul international flights incentivizes carriers to deliver the delayed bags as soon as possible to avoid refunding baggage fee, which benefits consumers and airlines. The Department further views that a shorter timeframe for delivering delayed bags on shorter international flights is beneficial to consumers and ensures that the baggage delivery delay standard is appropriate considering the ability of carriers to transport the delayed bags on its next available flight, other carriers' flights, or through courier services.

The Department also considered whether to finalize the proposed requirement that airlines and ticket agents give non-expiring travel credits or vouchers to passengers who do not travel due to government restrictions or advice from a medical professional related to a serious communicable disease. Although the non-expiring feature would provide consumers the maximum flexibility to use the credits or vouchers, the Department recognizes the difficulty in managing and tracking them indefinitely. Thus, the Department adopted a final rule requiring that the travel credits be valid for at least five years from the date of the issuance. The Department views a five-year validity period a sufficient timeframe to ensure passengers who are affected by a serious communicable disease can use the credits while reducing burdens on airlines.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This notice does not propose any provision 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.

D. Executive Order 13175

This final rule 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 provisions finalized in this rule 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.

E. Paperwork Reduction Act

This final rule imposes a new collection of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 49 U.S.C. 3501 *et seq.* The Department has sought approval from OMB for the collection of information established in this final rule. The Department will publish a separate notice in the **Federal Register** announcing OMB approval of the new collection and advising the public of the OMB control number associated with the new collection.

The new collection of information established in this final rule relates to allowing airlines to require passengers requesting travel credits or vouchers because their travel is affected by a serious communicable disease to provide documentation. Specifically, the Department allows airlines to require passengers wishing to cancel a flight itinerary that is still operated to provide documentation demonstrating that that they are prohibited from travel or are required to quarantine for a substantial portion of the trip by a governmental entity in relation to a serious communicable disease, or that they are advised by a licensed treating medical professional not to travel to protect themselves or others from a serious communicable disease. For this information collection, a description of the respondents and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

Requirement to Prepare and Submit to Airlines Documentations Demonstrating a Passenger is Eligible for Travel Credits or Vouchers Due to a Reason Related to A Serious Communicable Disease.

Respondents: Passengers prohibited or required to quarantine for a substantial portion of the trip by a governmental entity in relation to a serious communicable disease, passengers advised by a licensed treating medical professional not to travel by air because they have or may have contracted a serious communicable disease such that their travel would pose a threat to the health of others, and passengers advised by a licensed treating medical professional not to travel to protect themselves from a serious communicable disease during a public health emergency.

Number of Respondents: The number of respondents would vary greatly depending on whether there is a public health emergency and the magnitude of that public health emergency. When there is a public health emergency with a similar magnitude of the COVID–19 pandemic, the number of respondents could potentially be very high. According to data provided by A4A, the airlines provided exchanges of tickets to about 180 million passengers between March 2020 and February 2021. Industry further suggests in comments on the proposed rule that about 15 percent of consumers who need to make ticket changes might opt for a travel credit instead of an immediate ticket change. Thus, we estimate that of the 180 million consumers provided ticket changes in the baseline, 27 million would be the number of respondents who need to submit the documentation to receive the five-year travel credit under the final rule.[105] For purposes of this PRA burden analysis, we assume that the number of medical assistants developing the documentation and airline customer service representatives reviewing the documentation equal the number of customers providing responses.[106]

Estimated Annual Burden on Respondents: We estimate that each respondent would need 30 minutes (0.5 hours) to obtain a documentation from a medical professional per response, per year. We also estimate that a medical assistant would need 15 minutes (0.25 hours) to provide consultation to the passenger or to prepare the documentation. We further estimate that a customer service representative working for an airline would need an

[105] In the NPRM, we estimated 5.58 million respondents based on the Department's data showing that in 2020, U.S. airlines enplaned 558 million fewer passengers in domestic air transportation than in 2019. We estimated that if 1% of this reduction was due to passengers unable or are advised to not travel for a qualifying reason and required by airlines and ticket agents to submit documentation, there would be 5.58 million respondents. For the final rule, we increased this number based on the data provided by A4A as a reasonable upper bound, because not all of the 15% of passengers who seek a travel credit or voucher would be entitled to one under this final rule.

[106] This number may be an overestimate because the same airline customer service representatives likely review multiple documentation submissions.

average of 5 minutes (0.083 hours) to review the documentation and request additional documentation if needed. Passengers would spend a total of approximately 13.5 million hours per year (0.5 hours × 27 million passengers) to obtain the documentation. Medical assistants would spend a total of 6.75 million hours per year (0.25 hours × 27 million forms) to prepare the forms. Airline customer service representatives would spend approximately 2,241,000 hours (0.083 hours × 27 million forms) per year to review the documentation.

To calculate the hourly value of time spent on the documentation, we used median wage data from the Bureau of Labor Statistics as of May 2022. Respondents would obtain, present, and submit the documentation on their own time without pay and we estimate the value of this uncompensated activity using a post-tax wage estimate of $18.48 per hour ($22.26 median hourly wage for all occupations minus a 17% estimated tax rate). For medical assistants, we used a fully loaded wage of $25.94 ($18.40 hourly wage multiplied by 1.41 to account for employer benefit costs.) For customer service representatives, we use an estimate of $25.61 per hour ($18.16 median hourly wage times a wage multiplier of 1.41). In the scenario that there is a public health emergency, the total annual estimated documentation costs of the forms would be approximately $482 million (Table 6).[107]

TABLE 6—EXAMPLE ANNUAL COST ESTIMATE FOR DOCUMENTATION

Group	Forms	Hours per form	Total hours	Hourly time value	Estimated costs (millions)
People restricting travel	27,000,000	0.5	13,500,000	$18.48	$249,480,000
Medical assistants	27,000,000	0.25	6,750,000	25.94	175,095,000
Customer service representatives	27,000,000	0.083	2,241,000	25.61	57,392,010

The Department has identified a number of disclosure requirements in this final rule subject to approval by the Office of Management and Budget under the PRA. These requirements are: (1) as specified in 14 CFR 259.5(b)(6), carriers must disclose to consumers in their customer service plans that consumers are entitled to a refund if this is the case when offering travel credits, vouchers, or other compensation in lieu of refunds, and to disclose any material restrictions, conditions, or limitations on travel credits, vouchers, or other compensation offered, regardless of whether consumers are entitled to a refund; (2) as specified in 14 CFR 259.5(b)(7), carriers must include in their customer service plans a statement regarding compliance with the requirements of part 262 regarding vouchers for consumers in circumstances relating to serious communicable diseases; (3) as specified in 14 CFR 260.4(d), carriers that failed to provide ancillary services paid for by a passenger must notify another carrier that is responsible for refunding the ancillary service fee about the service failure; (4) as specified in 14 CFR 260.5(c), carriers that receive MBRs must notify another carrier that is responsible for refunding baggage fees about the baggage delay; (5) as specified in 14 CFR 260.6(d), carriers that set a deadline for consumers to respond to alternative transportation offers must adopt and post on their websites their policies regarding how to treat consumers not responding by the deadlines; (6) as specified in 14 CFR 260.6(e), carriers must notify affected consumers about cancellation or significant changes, rights to refunds, offers of alternatives, and any deadline to respond; (7) as specified in 14 CFR 260.6(f), carriers must notify ticket agents that are the merchants of record for the ticket sales whether a consumer is eligible for a refund; (8) as specified in 14 CFR 262.8, carriers must disclose material restrictions, conditions, or limitations on vouchers provided to consumers in relation to a serious communicable disease; (9) as specified in 14 CFR 399.80(l), ticket agents must disclose to consumers that they are entitled to a refund if this is the case when offering travel credits, vouchers, or other compensation in lieu of refunds, and must also disclose any material restrictions, conditions, or limitations on travel credits, vouchers, or other compensation offered, regardless of whether consumers are entitled to a refund; and (10) as specified in 14 CFR 399.80(l), ticket agents must disclose at the time of ticket purchase any service fees that are not refundable. DOT will request comment on and seek approval from OMB for these disclosure requirements and publish separate notice in the **Federal Register** advising of the OMB Control Number(s) when OMB approves the information collection(s).

Notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. As described elsewhere in the preamble, this final rule may have an effect on the private sector that exceeds this threshold. The UMRA permits agencies to provide the assessment required by UMRA as part of any other assessment prepared in support of the rule, and the Department has provided the assessment required by UMRA within the RIA prepared in support of the final rule.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (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, October 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

[107] The estimated costs calculated here assume that there is a public health emergency. The Regulatory Impact Analysis accompanying this rule estimated the cost to be about $3.4 million when there is not a public health emergency.

environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. Paragraph 4.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer protection, including regulations.'' This final rule relates to consumer protection. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Signed this 1st day of April, 2024, in Washington DC.

Peter Paul Montgomery Buttigieg,

Secretary of Transportation.

List of Subjects

14 CFR Part 259

Air Carriers, Consumer Protection, Reporting and Recordkeeping Requirements.

14 CFR Part 260

Air carriers, Consumer protection.

14 CFR Part 262

Air carriers, Consumer protection.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

For the reasons set forth in the preamble, the Department amends title 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 § 259.3 by adding the definitions for ''Business days,'' ''Prompt refunds,'' and ''Serious communicable disease,'' in alphabetical order to read as follows:

§ 259.3 Definitions.

Business days means Monday through Friday excluding Federal holidays in the United States.

* * * * *

Prompt refunds means refunds made within 7 business days of a refund becoming due as required by 14 CFR 374.3 for credit card purchases, and within 20 calendar days of a refund becoming due for cash, check, debit card, or other forms of purchases.

Serious communicable disease means a communicable disease as defined in 42 CFR 70.1 that can cause serious health consequences (*e.g.,* breathing problems, organ damage, neurological difficulties, death) and can be easily transmitted by casual contact in an aircraft cabin environment (*i.e.,* easily spread to others in an aircraft cabin through general activities of passengers such as sitting next to someone, shaking hands, talking to someone, or touching communal surfaces). For example, the common cold is readily transmissible in an aircraft cabin environment but does not have severe health consequences. AIDS has serious health consequences but is not readily transmissible in an aircraft cabin environment. Both the common cold and AIDS would not be considered serious communicable diseases for purposes of this part. SARS is readily transmissible in an aircraft cabin environment and has severe health consequences. SARS would be considered a serious communicable disease for purposes of this part.

* * * * *

■ 3. Amend § 259.5 by revising paragraphs (a), (b)(3), and (b)(5); redesignating paragraphs (b)(6) through (b)(12) as paragraphs (b)(8) through (b)(14), and adding new paragraphs (b)(6) and (b)(7); and revising the newly designated paragraphs (b)(8) and (b)(11) to read as follows:

§ 259.5 Customer Service Plan.

(a) *Adoption of Plan.* Each covered carrier must adopt a Customer Service Plan applicable to its scheduled flights as specified in paragraphs (b)(1) through (14) of this section and adhere to the plan's terms.

(b) * * *

* * * * *

(3) Delivering baggage on time, including making every reasonable effort to return mishandled baggage within 12 hours for domestic flights and within 15 or 30 hours for international flights consistent with the requirement of 14 CFR 260.5, 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 treaties for international flights, and reimbursing passengers for any fee charged to transport a bag if that bag is significantly delayed or lost as required by 14 CFR 260.5;

* * * * *

(5) Providing prompt refunds in the original form of payment (*i.e.,* money is returned to an individual using whatever payment method the individual used to make the original payment, such as a check, credit card, debit card, cash, or airline miles) when ticket or ancillary service fee refunds, including checked bag fee refunds, are due pursuant to 14 CFR part 260 unless the consumer agrees to receive the refunds in a different form of payment that is a cash equivalent payment as defined in 14 CFR 260.2. Carriers may not retain a processing fee for issuing refunds that are due;

(6) Disclosing that consumers are entitled to a refund if that is the case when offering alternative transportation, travel credits, vouchers, or other compensation in lieu of refunds consistent with the requirement in 14 CFR 260.7. Disclosing any material restrictions, conditions, or limitations on travel credits, vouchers, or other compensation offered, regardless of whether consumers are entitled to a refund as described in 14 CFR 260.8 and 14 CFR 262.8.

(7) Providing, upon request, travel credits or vouchers that are transferrable and do not expire for at least five years from the date of issuance to a consumer due to a serious communicable disease impacting travel as described in 14 CFR part 262.

(8) Properly accommodating passengers with disabilities as required by part 382 of this chapter and as set forth in the carrier's policies and procedures and properly refunding passengers with disabilities and individuals in the same reservation as the individual with a disability who do not want to continue travel without the individual with a disability as required by 14 CFR 260.6(c);

* * * * *

(11) Disclosing refund policies as required by 14 CFR part 260, cancellations policies, frequent flyer rules, aircraft seating configuration, and lavatory availability on the selling carrier's website, and upon request, from the selling carrier's telephone reservations staff;

* * * * *

■ 4. Add part 260 to read as follows:

PART 260—REFUNDS FOR AIRLINE FARE AND ANCILLARY SERVICE FEES

Sec.

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

§ 260.1 Purpose.

The purpose of this part is to ensure that carriers promptly refund consumers for: (1) fees for ancillary services related to air travel that consumers paid for but were not provided; (2) fees to transport checked bags that are lost or significantly delayed; and (3) airfare for a flight that is cancelled or had a significant change of flight itinerary where the consumer does not accept the change to the flight itinerary, alternative transportation, airline voucher or credit, or other compensation offered by the carrier.

§ 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 optional service related to air travel that a covered carrier provides for a fee, beyond passenger air transportation. Such services may include, but are not limited to, transport of checked or carry-on baggage, advance seat selection, access to in-flight entertainment programs or Wi-Fi, in-flight beverages, snacks, meals, pillows and blankets, seat upgrades, and lounge access.

Automatic refund means issuing a refund to a consumer without waiting to receive an explicit refund request, when the consumer's right to a refund is undisputed because the contracted service was not provided and either the consumer rejected the alternative offered or no alternative was offered.

Break in journey means 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 scheduled to exceed 24 hours. If the stopover is 24 hours or less, whether it is a break in journey depends 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.

Business days means Monday through Friday, excluding Federal holidays in the United States.

Cancelled flight or *flight cancellation* means a covered flight with a specific flight number scheduled to be operated between a specific origin-destination city pair that was published in the carrier's Computer Reservation System at the time of the ticket sale but not operated by the carrier.

Cash equivalent means a form of payment that can be used like cash, including but not limited to a check, a prepaid card, funds transferred to a consumer's bank account, funds provided through digital payment methods (*e.g.,* PayPal, Venmo), or a gift card that is widely accepted in commerce. It is not cash equivalent if consumers bear the burden for transaction, maintenance, or usage fees related to the payment.

Checked bag means a bag, special item (*e.g.,* musical instrument or a pet), or sports equipment (*e.g.,* golf clubs) that was provided to a covered 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.

Class of service means seating in the same cabin class such as First, Business, Premium Economy, or Economy class, which is defined based on seat location in the aircraft and seat characteristics such as width, seat recline angles, or pitch (including the amount of legroom).

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, including itineraries with brief and incidental stopover(s) at a foreign point without a break in journey.

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.

Individual with a disability has the same meaning as defined in 14 CFR 382.3.

Merchant of record means the entity (carrier or ticket agent) responsible for processing payments by consumers for airfare or ancillary services or products (including the transport of checked bags), as shown in the consumer's financial charge statements, such as debit or credit card charge statements.

Prompt refunds means refunds made within 7 business days of a refund becoming due as required by 14 CFR 374.3 for credit card purchases and within 20 calendar days of a refund becoming due for cash, check, debit card, or other forms of purchases.

Significant change of flight itinerary or *significantly changed flight* means a change to a covered flight itinerary made by a covered carrier where as the result of the change:

(1) The consumer is scheduled to depart from the origination airport three hours or more for domestic itineraries and six hours or more for international itineraries earlier than the original scheduled departure time;

(2) The consumer is scheduled to arrive at the destination airport three hours or more for domestic itineraries or six hours or more for international itineraries later than the original scheduled arrival time;

(3) The consumer is scheduled to depart from a different origination airport or arrive at a different destination airport;

(4) The consumer is scheduled to travel on an itinerary with more connection points than that of the original itinerary;

(5) The consumer is downgraded to a lower class of service;

(6) The consumer who is an individual with a disability is scheduled to travel through one or more connecting airports different from the original itinerary; or

(7) The consumer who is an individual with a disability is scheduled to travel on substitute aircraft on which one or more accessibility features needed by the customer are unavailable.

Significantly delayed checked bag means a checked bag not delivered to or picked up by the consumer or another person authorized to act on behalf of the consumer within 12 hours of the last flight segment's arrival for domestic itineraries, within 15 hours of the last flight segment's arrival for international itineraries with a non-stop flight segment between the United States and a foreign point that is 12 hours or less in duration, and within 30 hours of the last flight segment's arrival for international itineraries with a non-stop flight segment between the United States and a foreign point that is more than 12 hours in duration. The 15-hour and 30-hour standards apply to domestic segments of international itineraries.

§ 260.3 Applicability.

This part applies to: covered carriers that are the merchants of record; covered carriers that operate the flight or, for multiple-carrier itineraries, covered carriers that operate the last segment of a flight where a ticket agent is the merchant of record for a checked bag fee; and covered carriers that fail to provide an ancillary service (other than checked bag service) for which the consumer paid where a ticket agent is the merchant of record for an ancillary service fee other than checked bag fee.

§ 260.4 Refunding fees for ancillary services that consumers paid for but that were not provided.

(a) A covered carrier that is the merchant of record shall provide a prompt and automatic refund to a consumer for any fees it collected from the consumer for ancillary services if the service was not provided through no fault of the consumer (*e.g.,* prepaid ancillary service not utilized by the consumer because of flight cancellation, significant change, or oversale situation; service not provided because of aircraft substitution, equipment malfunction, etc.). If a ticket agent is the merchant of record for a checked bag fee and the checked bag service was not provided (or was significantly delayed) through no fault of the consumer, the carrier that operated the flight, or for multiple-carrier itineraries, the carrier that operated the last segment of the consumer's itinerary is responsible for providing a prompt and automatic refund of the checked bag fee, consistent with § 260.5. If a ticket agent is the merchant of record for fees for all other ancillary services, the carrier that operated the flight and failed to provide the service through no fault of the consumer is responsible for providing a prompt and automatic refund.

(b) In situations where the ancillary service the consumer paid for (other than the service of transporting a checked bag) is not available for all the passengers who paid for that service (*e.g.,* Wi-Fi not available for all passengers on a flight, lounge access not available for all passengers on a certain date), a carrier's obligation under paragraph (a) of this section to provide a prompt and automatic refund begins when the information about the unavailability of the service is known by the carrier that failed to provide the service, and, if applicable, relayed as provided in paragraph (d) of this section to the carrier responsible for providing a prompt refund as specified in paragraph (a) of this section.

(c) In situations where the ancillary service the consumer paid for (other than the service of transporting a checked bag) is not available to an individual or several individuals, rather than to all the passengers who paid for that service, a carrier's obligation under paragraph (a) of this section to provide a prompt and automatic refund begins when the consumer affected by the service failure notifies the operating carrier that failed to provide the ancillary service about the unavailability of the service and that information has been confirmed and, if applicable, relayed as provided in paragraph (d) of this section to the carrier responsible for providing a prompt refund as specified in paragraph (a) of this section. Notification of the unavailability of the ancillary service by a consumer is considered a request for a refund.

(d) In situations where a carrier is the merchant of record for a fee for an ancillary service and the carrier that operates the flight where the ancillary service was not provided are different entities, the operating carrier that failed to provide the ancillary service must timely notify the carrier that is the merchant of record about the unavailability of the ancillary service. Notification by the operating carrier as set forth in this paragraph is necessary for the obligation to provide a prompt refund of ancillary service fees in paragraphs (b) and (c) of this section to apply. The obligation set forth in this paragraph for the operating carrier to timely notify the carrier that is the merchant of record does not apply when the failure to provide service relates to transporting checked bags. Timely notification requirements pertaining to refunds for fees charged to transport checked bags are set forth in § 260.5(c).

§ 260.5 Refunding fees for significantly delayed or lost bags.

A covered carrier that is the merchant of record or, if a ticket agent is the merchant of record, the covered carrier that operated the flight or the last flight segment in a multiple-carrier itinerary, must provide a prompt refund to a consumer of any fee charged for transporting a lost bag or a significantly delayed checked bag, as defined in § 260.2 of this part and determined according to paragraph (a) of this section, subject to the conditions in paragraphs (b) and (c) of this section.

(a) *Determining the length of delay for the bag.* For the purpose of determining whether a checked bag is significantly delayed as defined in § 260.2, the length of delay is calculated from the time the passenger is given the opportunity to deplane from a flight at the passenger's final destination airport (the beginning of the delay) to the time that the carrier has delivered the bag to a location agreed upon by the passenger and carrier (*e.g.,* passenger's home or hotel) or the time that the bag has been picked up by the passenger or another person acting on behalf of the passenger at the passenger's final destination airport (the end of the delay).

(b) *Notification by passenger about lost or significantly delayed bag.* A covered carrier does not have an obligation to provide a refund of the fee for a lost or significantly delayed checked bag unless a passenger files a Mishandled Baggage Report (MBR) for the lost or delayed bag with the carrier that operated the flight, or for multiple-carrier itineraries, the carrier that operated the last segment of the consumer's itinerary.

(c) *Notification by carrier that received an MBR about lost or significantly delayed checked bag.* Except when the carrier responsible for providing a prompt refund for a baggage fee as specified in this section is the same carrier that received the MBR, a covered carrier that received the MBR must timely notify the carrier responsible for providing a prompt refund that the bag has been lost or significantly delayed when this is the case. A covered carrier's obligation to provide a prompt refund of a baggage fee for a lost bag or a significantly delayed checked bag as defined in § 260.2 is conditioned upon the carrier that received the MBR notifying the carrier responsible for providing a prompt refund that the bag has been lost or significantly delayed.

(d) *Automatic refunds.* An automatic refund of a bag fee is due when a checked bag is significantly delayed as determined according to paragraph (a) of this section, the passenger has filed an MBR as provided in paragraph (b) of this section, and, if applicable, notification has been provided by the carrier that received the MBR as set forth in paragraph (c) of this section.

(e) *Amount of the refund.* The amount of the refund issued to a consumer must be a value equal to or greater than the fee that the consumer paid to transport his/her checked bag.

(1) For carriers that adopt an escalated baggage fee scale for multiple bags checked by one passenger, the amount of baggage fee refund issued to the passenger can be determined based on the unique identifier assigned to the significantly delayed or lost bag that correlates to the baggage fee charged for that bag at the time of checking. If there is no such unique identifier assigned, carriers must refund the highest per bag fee or fees charged for the multiple bags.

(2) For a carrier that offers a baggage fee subscription program where consumers can pay a subscription fee that covers fees for checked bags for a specified period, the carrier must refund the lowest amount of the baggage fee the carrier charges another passenger of similar frequent flyer status and in the same class of service without the subscription when a passenger subscribing to the program has a significantly delayed or lost bag.

(f) *Exemptions from the refund obligation.* A covered carrier is exempted from the obligation to refund the fee for a significantly delayed bag in situations where the delay resulted from:

(1) A passenger's failure to pick up and recheck a bag at the first international entry point into the United States as required by U.S. Customs and Border Protection;

(2) A passenger's failure to pick up a checked bag that arrived on time at the passenger's ticketed final destination due to the fault of the passenger if documented by the carrier (*e.g.,* passenger ended the travel before reaching the final destination on the itinerary—''hidden city'' itinerary, or the passenger failed to pick up the bag before taking a flight on a separate itinerary); and

(3) A passenger's voluntary agreement to travel without the checked bag on the same flight as described in paragraph (g) of this section.

(g) *Voluntary separation from bag.* A carrier may require a passenger who fails to meet the minimum check-in time requirement for a flight or is a standby passenger for a flight (*i.e.,* a passenger who lacks a reservation on that flight and is waiting at the gate for a seat to be available on the flight) to agree to a new baggage delivery date and location in situations where the carrier is unable to place the passenger's checked bag on that flight because of the limited time available. The carrier must not require the passenger to waive the right to a refund of bag fees if the bag is lost, the right to compensation for damaged, lost, or pilfered bags, or the right to incidental expenses reimbursement arising from delayed bags beyond the agreed upon delivery date, consistent with the Department's regulation in 14 CFR part 254 and applicable international treaties.

§ 260.6 Refunding fare for flights cancelled or significantly changed by carriers.

(a) *Carriers' obligation to provide prompt refunds.* A covered carrier that is the merchant of record must provide a prompt and automatic refund of the airfare (including all government-imposed taxes and fees and all mandatory carrier-imposed charges) to a consumer for a cancelled flight or a significantly changed flight as set forth in paragraph (b) of this section.

(b) *Automatic refunds.* Automatic refunds of the airfare are due to a consumer when the consumer's right to a refund is undisputed because a carrier cancels a flight or makes a significant change of flight itinerary as described in paragraphs (b)(1) through (b)(6) of this section:

(1) A carrier does not offer alternative transportation for a canceled flight or travel credits, vouchers, or other compensation in lieu of a refund to a consumer (the date the flight was canceled is considered the date the consumer requested a refund).

(2) A carrier does not offer alternative transportation for the significantly changed flight or travel credits, vouchers, or other compensation in lieu of a refund to the consumer who rejected a significantly changed flight (the date the consumer rejects the significantly changed flight itinerary is considered the date the consumer requested a refund);

(3) A carrier offers a significantly changed flight or alternative transportation for a significantly changed or a canceled flight, or offers travel credits, vouchers, or other compensation in lieu of a refund to the consumer, but the consumer rejects the alternative transportation and compensation offered (the date the passenger rejects the offers is considered the date the passenger requested a refund);

(4) A carrier offers a significantly changed flight or alternative transportation for a significantly changed or a canceled flight, but the consumer does not respond to the offers on or before a response deadline set by the carrier as described in paragraph (d) of this section and the consumer has not accepted any offer for travel credits, vouchers, or other compensation in lieu of a refund, and the carrier's policy is to treat a lack of a response as a rejection of the alternative transportation offered (the date the carrier-imposed deadline expired is considered the date the consumer requested a refund);

(5) A carrier does not offer the consumer the options of traveling on a significantly changed flight or traveling on an alternative flight, but offers travel credits, vouchers, or other compensation in lieu of a refund to the consumer, and the consumer does not respond to the alternative compensation offered within a reasonable time, in which case the lack of a response is deemed a rejection (the date the reasonable time has passed as determined by the carrier is considered the date the consumer requested a refund); or

(6) A carrier offers a significantly changed flight or alternative transportation for a significantly changed or a canceled flight and offers travel credits, vouchers, or other compensation in lieu of a refund and the carrier has not set a deadline to respond, the consumer does not respond to the alternatives offered, and the consumer does not take the flight (the date the alternative flight was operated without the passenger on board is considered the date the passenger requested a refund).

(c) *Individuals with a Disability.* A carrier that is the merchant of record must provide a prompt refund to an individual with a disability upon notification by the individual with a disability that he/she does not want to continue travel because of the significant changes described in paragraphs (c)(1) through (c)(3) of this section. The carrier must also provide a prompt refund to any individuals in the same reservation as the individual with a disability who do not want to continue travel without the individual with a disability in situations described in § 260(c)(1) through (c)(3).

(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 individual with a disability is scheduled to travel through one or more connecting airports that are different from the original itinerary.

(3) The individual with a disability is scheduled to travel on a substitute aircraft on which one or more accessibility features available on the original aircraft needed by the individual are unavailable.

(d) *Carrier-imposed response deadline for alternative transportation.* A carrier may establish a reasonable deadline for a consumer to accept or reject an offer of a significantly changed flight or alternative transportation following a canceled flight or a significantly changed flight itinerary. Carrier refund obligations when a deadline is established are as described in paragraphs (d)(1) through (d)(3) of this section.

(1) For a consumer who rejected the offer of a significantly changed flight or alternative transportation for a significantly changed or a canceled flight by the deadline established by the carrier and has rejected any offer of travel credit, voucher, or other

compensation in lieu of a refund, the carrier must provide a refund within 7 business days of the rejection date for tickets purchased with credit cards and within 20 calendar days of the rejection date for tickets purchased with other payments.

(2) A refund is not due to the consumer if the offer of a significantly changed flight or alternative transportation for a significantly changed or a canceled flight is accepted by the deadline established by the carrier, or if an offer of travel credit, vouchers, or compensation in lieu of a refund is accepted.

(3) A carrier that sets a deadline must adopt and post on its website its policy specifying whether, upon receiving no response from the consumer at the expiration of the deadline of the offer of a significantly changed flight or offer of an alternative transportation, the carrier will deem that the offer of significantly changed flight or alternative transportation has been rejected by the consumer and issue an automatic refund for the airfare or will deem that the offer of significantly changed flight or alternative transportation has been accepted by the consumer. A carrier must not deem an offer for travel credits, vouchers, or other compensation in lieu of a refund to be an acceptance when the consumer does not respond to the offer. Carriers must adhere to their published policies.

(e) *Notification to consumers.* (1) Upon the occurrence of a flight cancellation or a significant change, a covered carrier must timely notify affected consumers about the cancellation or significant change, consumers' rights to a refund if this is the case, any offer of alternative transportation and other options such as travel credits, vouchers, or other compensation in lieu of a refund, any deadline that the carrier imposes for consumers to reject the offer of significantly changed flight or alternative transportation, and the policy that the carrier has adopted regarding consumers' not responding by any deadline established by the carrier, as provided in paragraph (d) of this section.

(2) For carriers that provide notification subscription services to passengers, notification under paragraph (e)(1) of this section must be provided through media that the carriers offer and the subscribers choose, including emails, text messages, and push notices from mobile apps.

(f) Carriers' obligation to notify ticket agents. In situations where a ticket agent is the merchant of record for the transaction, after receiving a refund request by a consumer through the ticket agent, the carrier that canceled or significantly changed the flight must inform the ticket agent without delay whether the consumer is eligible for a refund under this section (*i.e.,* whether the consumer has accepted the significantly changed flight, the alternative transportation, or other compensation offered in lieu of refunds). A ticket agent's obligation to provide a refund starts when the ticket agent receives such notification from the carrier.

§ 260.7 Notifying consumers of right to refund when offering alternative transportation or travel credit or voucher.

If a carrier offers alternative transportation or alternative forms of compensation such as travel credits, vouchers, or other compensation in lieu of the refund, the carrier must first disclose to consumers that they are entitled to a refund if that is the case. A carrier must not deem a consumer to have accepted an offer for travel credits, vouchers, or other compensation in lieu of a refund unless the consumer affirmatively agrees to the alternative form of compensation.

§ 260.8 Disclosing material restrictions, conditions, or limitations.

A carrier must clearly disclose, no later than at the time of voucher or credit offer, any material restrictions, limitations, or conditions on travel credits, vouchers, or other compensation, including but not limited to validity period, advance purchase requirement, capacity restrictions, and blackout dates, regardless of whether consumers are entitled to a refund.

§ 260.9 Providing prompt refunds.

When a refund of a fare or 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 in the original form of payment (*i.e.,* money is returned to an individual using whatever payment method the individual used to make the original payment, such as a check, credit card, debit card, cash, or airline miles) unless the consumer agrees to receive the refunds in a different form of payment that is a cash equivalent as defined in § 260.2. Carriers may not retain a processing fee for issuing refunds that are due.

§ 260.10 Contract of Carriage provisions related to refunds.

A carrier must not include terms or conditions in its contract of carriage inconsistent with the carriers' obligations as specified by this part. Any such action will be considered an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

■ 5. Add Part 262 to read as follows:

PART 262—TRAVEL CREDITS OR VOUCHERS DUE TO A SERIOUS COMMUNICABLE DISEASE

Sec.

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

§ 262.1 Purpose.

The purpose of this part is to ensure that carriers provide travel credits or vouchers, upon request, to consumers who are restricted or prohibited from traveling by a governmental entity due to a serious communicable disease (*e.g.,* as a result of a stay at home order, entry restriction, or border closure) or are advised by a licensed treating medical professional consistent with public health guidance issued by the U.S. Centers for Disease Control and Prevention (CDC) or the World Health Organization (WHO) not to travel to protect themselves or others from a serious communicable disease.

§ 262.2 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.

Break in journey means 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 scheduled to exceed 24 hours. If the stopover is 24 hours or less, whether it is a break in journey depends 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.

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, including itineraries with brief and incidental stopover(s) at a foreign point without a break in journey.

Licensed treating medical professional means an individual, including a physician, a nurse practitioner, a physician's assistant, or other medical provider, who is licensed or authorized under the law of a State or territory in the United States or a comparable jurisdiction in another country to engage in the practice of medicine to diagnose or treat a patient for a health condition that is the reason for the passenger to request a travel credit or voucher under § 262.4(b) and (c).

Merchant of record means the entity (carrier or ticket agent) responsible for processing payment by the consumer for airfare or ancillary services or products, as shown in the consumer's financial charge statements such as debit or credit card charge statements.

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.

Public health emergency has the same meaning as defined in 42 CFR 70.1.

Serious communicable disease means a communicable disease as defined in 42 CFR 70.1 that can cause serious health consequences (*e.g.,* breathing problems, organ damage, neurological difficulties, death) and can be easily transmitted by casual contact in an aircraft cabin environment (*i.e.,* easily spread to others in an aircraft cabin through general activities of passengers such as sitting next to someone, shaking hands, talking to someone, or touching communal surfaces). For example, the common cold is readily transmissible in an aircraft cabin environment but does not have severe health consequences. AIDS has serious health consequences but is not readily transmissible in an aircraft cabin environment. Both the common cold and AIDS would not be considered serious communicable diseases for purposes of this part. SARS is readily transmissible in an aircraft cabin environment and has severe health consequences. SARS would be considered a serious communicable disease for purposes of this part.

§ 262.3 Applicability.

This part applies to all covered carriers that are the merchant of record for a covered flight or the operating carrier of a covered flight when a ticket agent is the merchant of record.

§ 262.4 Passengers entitled to receive travel credits or vouchers.

A covered carrier as identified in § 262.3 must provide a transferrable travel credit or voucher that does not expire for at least five years from the date of issuance to consumers described in paragraphs (a) to (c) of this section.

(a) The consumer is prohibited from travel to, from, or within the United States or is required to quarantine at the destination as shown on the consumer's itinerary for more than 50% of the length of the trip (excluding travel dates) because of a U.S. (Federal, State, or local) or foreign government restriction or prohibition (*e.g.,* stay at home order, entry restriction, border closure, or quarantine notice) in relation to a serious communicable disease. The consumer must have purchased the airline ticket before a public health emergency was declared for the origination or destination of the consumer's scheduled travel or, if there is no declaration of a public health emergency, before the government prohibition or restriction applicable to the origination or the destination of the consumer's scheduled travel was imposed.

(b) There is a public health emergency applicable to the origination or destination of the consumer's itinerary, the consumer purchased the airline ticket before the public health emergency was declared, the consumer is scheduled to travel during the public health emergency, and the consumer is advised by a licensed treating medical professional not to travel by air to protect himself or herself from a serious communicable disease.

(c) Regardless of whether there is a public health emergency, the consumer is advised by a licensed treating medical professional not to travel by air because the consumer has or is likely to have contracted a serious communicable disease, and the consumer's condition is such that traveling on a commercial flight would pose a direct threat to the health of others.

§ 262.5 Documentation.

In the absence of an applicable determination issued by the Department of Health and Human Services that requiring the documentation specified in paragraphs (b) or (c) of this section is not in the public interest, as a condition for issuing the travel credits or vouchers in § 262.4, carriers may require, as appropriate, documentation specified in paragraphs (a) to (c) of this section.

(a) For any consumer requesting a travel credit or voucher because of a government restriction or prohibition pursuant to § 262.4(a), carriers may require the consumer to provide the applicable current government order or other document demonstrating how the government order prohibits the consumer from travel to, from, or within the United States as scheduled or requires the consumer to quarantine for more than 50% of the length of the consumer's scheduled trip at the destination (excluding travel dates) as shown on the passenger's itinerary.

(b) For any consumer requesting a travel credit or voucher to protect his or her health pursuant to § 262.4(b), carriers may require the consumer to provide a valid medical certificate as set forth in paragraphs (b)(1) and (b)(2) of this section.

(1) For purposes of paragraph (b) of this section, a medical certificate means a written statement from a licensed treating medical professional stating that it is his/her professional opinion, based on the medical condition of the individual and current medical knowledge on the relevant serious communicable disease, including public health guidance issued by CDC or WHO, if available, that the individual should not travel during the current public health emergency by commercial air transportation to protect his or her health from a serious communicable disease.

(2) To be valid, a medical certificate under paragraph (b) of this section must be dated after the declaration of the relevant public health emergency and no earlier than one year before the scheduled travel date and include information regarding the licensed treating medical professional's license (the date of issuance, type of the license, State or other jurisdiction in which the license was issued).

(c) For any consumer requesting a travel credit or a voucher to protect the health of others pursuant to § 262.4(c), carriers may require the consumer to provide a valid medical certificate as set forth in paragraphs (c)(1) through (c)(3) of this section. For any consumer who informed carriers that there is not adequate time to obtain and submit a valid medical certificate as set forth in paragraphs (c)(1) through (c)(3) of this section before the scheduled travel date, carriers must allow submission of the medical certificate within a reasonable time after the scheduled travel date.

(1) For purposes of paragraph (c) of this section, a medical certificate means

a written statement from a licensed treating medical professional stating that it is his/her professional opinion, based on the medical condition of the individual and current medical knowledge of the relevant serious communicable disease, including public health guidance issued by CDC or WHO, if available, that the individual should not travel by commercial air transportation on the date of the scheduled travel to protect the health of others from a serious communicable disease because the individual has or is likely to have contracted a serious communicable disease .

(2) To be valid, a medical certificate under paragraph (c) of this section must include information regarding the licensed treating medical professional's license (the date of issuance, type of the license, State or other jurisdiction in which license was issued).

(3) For a medical certificate under paragraph (c) of this section, carriers may require that it be dated close to the travel date, as determined based on the current medical knowledge and applicable public health guidance issued by CDC or WHO regarding the contagious period of the relevant serious communicable disease.

§ 262.6 Value of travel credits or vouchers.

Upon confirming a consumer's eligibility for a travel credit or voucher pursuant to this paragraph, a carrier must promptly issue the travel credit or voucher with a value equal to or greater than the fare (including government-imposed taxes and fees and carrier-imposed charges and prepaid ancillary service fees for services not utilized by the consumer). If a consumer has obtained a refund of the September 11th Security Fee or other government-imposed taxes and fees, then those fee amounts may be deducted from the consumer's travel credit or voucher. Nothing in this section relieves the carrier of its obligation to comply with the requirements of other Federal agencies relating to the refund of government-imposed taxes and fees.

§ 262.7 Processing fee.

A carrier may retain a processing fee for issuing the travel voucher or credit, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare.

§ 262.8 Disclosure of restrictions, conditions or limitations.

A carrier shall not impose unreasonable restrictions, conditions or limitations on the travel credits or vouchers, including a validity period that is shorter than five years from the date of issuance, a restriction on the transferability of the credits or vouchers to another individual, conditions that severely restrict booking with respect to travel date, time, route, or class of service; a limitation that allows redemption only in one booking and renders any residual value void; or a limitation that only allows the value of the credits or vouchers to apply to the base fare of a new booking but not government-imposed taxes or fees, carrier imposed fees, or ancillary service fees. A carrier must clearly disclose, no later than at the time of voucher or credit issuance, any material restrictions, limitations, or conditions on the use of the credits and vouchers that are not deemed unreasonable, including but not limited to advance purchase requirement or capacity restrictions and blackout dates.

§ 262.9 Contract of carriage.

A carrier shall not include terms or conditions in its contract of carriage inconsistent with the carriers' obligations as specified by this part. Any such action will be considered an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

PART 399—STATEMENTS OF GENERAL POLICY [AMENDED]

■ 6. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. 40113(a), 41712, 46106, and 46107.

■ 7. Amend § 399.80 by revising paragraph (l) to read as follows:

§ 399.80 Unfair and deceptive practices of ticket agents.

* * * * *

(l) Failing to make a prompt refund of airfare (including all government-imposed taxes and fees and all mandatory carrier-imposed charges) to a consumer, upon request, for a cancelled flight or a significantly changed flight itinerary if the consumer chooses not to travel or accept compensation in lieu of a refund in situations described in 14 CFR 260.6(b)(1) through (6) and 14 CFR 260.6(c)(1) through (3) when the ticket agent is the merchant of record. Failing to provide a prompt refund of airfare (including all government-imposed taxes and fees and all mandatory carrier imposed charges), upon request, for a significantly changed flight itinerary to consumers on the same reservation as an individual with a disability who does not want to continue travel because of a significant change described in paragraph (l)(1)(vii)(E) of this section related to downgrades or paragraph (l)(1)(vii)(G) of this section related to aircraft substitution which result in one or more accessibility features needed by the individual with a disability becoming unavailable or because of the significant change described in paragraph (l)(1)(vii)(F) of this section related to change in connecting airports. A prompt refund is one that is made within 7 business days of the ticket agent receiving information from a carrier as specified in 14 CFR 260.6(f), as required by 12 CFR part 1026 for credit card purchases, and within 20 calendar days of refund becoming due for cash, check, debit card, or other forms of purchases. Ticket agents must provide the refunds in the original form of payment (*i.e.,* money is returned to individual using whatever payment method the individual used to make the original payment, such as a check, a credit card, a debit card, cash, or airline miles), unless the consumer agrees to receive the refund in another form of payment that is cash equivalent. A ticket agent may retain a service fee charged when issuing the original ticket to the extent that service is for more than processing payment for a flight that the consumer found. That fee must be on a per-passenger basis and its existence, amount, and the non-refundable nature if that is the case must be clearly and prominently disclosed to consumers at the time they purchase the airfare. Ticket agents may offer alternative transportation, travel credits, vouchers, or other compensation in lieu of refunds, but must first inform consumers that they are entitled to a refund if that is the case. Ticket agents must clearly disclose any material restrictions, conditions, and limitations on travel credits, vouchers, or other compensation they offer.

(1) For purposes of paragraph (l) of this section, the following definitions apply:

(i) *Business days* means Monday through Friday, excluding Federal holidays in the United States.

(ii) *Cancelled flight* or *cancellation means* a flight with a specific flight number scheduled to be operated between a specific origin-destination city pair that was published in a carrier's Computer Reservation System at the time of the ticket sale but was not operated by the carrier.

(iii) *Cash equivalent* means 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. It is not cash equivalent if consumers bear the burden for maintenance or usage fees related to the payment.

(iv) *Class of service* means seating in the same cabin class such as First, Business, Premium Economy, or Economy class, which is defined based on seat location in the aircraft and seat characteristics such as width, seat recline angles, or pitch (including the amount of legroom).

(v) *Covered flight* means a scheduled flight to, from, or within the United States.

(vi) *Merchant of record* means the entity responsible for processing payments by consumers for airfare, as shown in the consumer's financial charge statements such as debit or credit card charge statements.

(vii) *Significant change of flight itinerary* or *significantly changed flight* means a change to a flight itinerary consisting of covered flight(s) made by a U.S. or foreign carrier where:

(A) The consumer is scheduled to depart from the origination airport three hours or more for domestic itineraries and six hours or more for international itineraries earlier than the original scheduled departure time;

(B) The consumer is scheduled to arrive at the destination airport three hours or more for domestic itineraries or six hours or more for international itineraries later than the original scheduled arrival time;

(C) The consumer is scheduled to depart from a different origination airport or arrive at a different destination airport;

(D) The consumer is scheduled to travel on an itinerary with more connection points than that of the original itinerary;

(E) The consumer is downgraded to a lower class of service;

(F) The consumer with a disability is scheduled to travel through one or more connecting airports that are different from the original itinerary; or

(G) The consumer with a disability is scheduled to travel on substitute aircraft on which one or more accessibility features needed by the passenger are unavailable.

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