



McBreen & Kopko

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Aviation Group Client Update

Shelley A. Ewalt, Partner | sewalt@mklawny.com | +1 703 399 6078

DOT ISSUES ADVANCED NOTICE OF PROPOSED RULEMAKING (ANPRM) ON REFUNDING BAGGAGE FEES FOR DELAYED CHECKED BAGS

On October 31, 2016, the DOT issued an ANPRM on [Refunding Baggage Fees for Delayed Checked Bags](#). The DOT is soliciting public comment and feedback 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, Safety, and Security Act of 2016. All comments should be received by **November 30, 2016**.

Purpose. The DOT seeks comment on the appropriate means to implement a requirement in recent legislation for airlines to refund checked baggage fees when they fail to deliver the bags in a timely manner; more specifically, on how to define a baggage delay, and the appropriate method for providing the refund for delayed baggage.

Background. This ANPRM follows from the DOT's second Enhancing Airline Passenger Protections final rule that was issued on April 25, 2011, that required U.S. and foreign air carriers adopt and adhere to a customer service plan that addresses various consumer issues. Among those issues were (1) whether carriers should reimburse passengers the fee charged to transport a bag if that bag is lost or not timely delivered, and (2) the time when a bag should be considered not to have been timely delivered. After reviewing comments on the issue, the DOT adopted in the final rule a customer service standard that requires carriers to reimburse passengers for any fee charged to transport a bag if the bag is lost but did not require carriers reimburse passengers for any fee charged to transport a bag that is not timely delivered.

This ANPRM follows due to the attention that the issue of refunding baggage fees has received in recent years. The DOT states that baggage fees have become an increasingly important part of the revenue generated by the airline industry - over \$3.8 billion was generated in revenue in 2015 from baggage fees alone. In addition, the DOT is aware that the issue of baggage delays continues to affect consumers - in 2015, the 13 largest U.S. carriers received close to 2 million mishandled baggage reports from passengers for their domestic scheduled flights - and many consumers and consumer rights advocacy groups have voiced their opinion that airlines should be required to refund checked baggage fees if they fail to deliver bags on time. Congress' FAA reauthorization bills requiring that the DOT mandates refunds for baggage fees has also played a significant part in bringing about this ANPRM.

Currently, the FAA Extension Act requires automated refunds of baggage fees if carriers have been notified about delayed or lost baggage by the passenger and fail to deliver the bag to passengers within 12 hours of arrival for domestic flights and within 15 hours of arrival for international flights. The Act also allows the Department to extend these timeframes to up to 18 hours for domestic flights and up to 30 hours for international flights, if the DOT determines that the 12-hour or 15-hour standards are not feasible and would adversely affect consumers in certain cases.

Comments. The DOT seeks comments on various aspects of this issue including determining the appropriate length of delay that would trigger the refund requirement, how the rule should deal with a passenger itinerary that consists of an international flight connecting to a domestic flight, determining when the clock stops running for purposes of measuring the delay, and the appropriate method for providing a refund for delayed baggage.

For further information on this ANPRM, visit <https://www.federalregister.gov/documents/2016/10/31/2016-26199/refunding-baggage-fees-for-delayed-checked-bags#footnote-1-p75347>.

If you have any questions or would like further information, please contact Shelley Ewalt.

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McBreen & Kopko's Aviation Group represents air carriers, fixed base operators (FBOs), airport managers, aviation service providers, and business aircraft owners and operators on a wide range of aviation issues including regulatory matters, commercial transactions, aircraft finance matters, and bankruptcy and creditors' rights.

