

Southwest Airlines Disruptions and Airline Consumer Protection Rules

January 11, 2023

Southwest Airlines' extensive flight cancellations and significant delays over the December 2022 holiday period disrupted holiday travel and stranded numerous passengers, many of whom had to find alternative ways to reach their destinations. On December 29, 2022, Transportation Secretary Pete Buttigieg sent a [letter](#) to Southwest Airlines urging the carrier to prioritize its customer service responsibilities, such as getting passengers to their destinations; providing meals, hotel rooms, and ground transportation; fulfilling refund obligations; and reuniting passengers with their luggage.

Southwest's meltdown, initially caused by winter storms, was compounded by an internal breakdown of its crew-scheduling system. The airline disclosed in its regulatory [filing](#) on January 6, 2023, that it had cancelled more than 16,700 flights from December 21 through December 31 and was expecting significant negative impact to its fourth quarter financial performance. The severe disruptions and passenger frustration has drawn attention to existing federal [aviation consumer protection rules](#).

The rights of domestic airline passengers are set forth at three different levels: in federal statute, in regulation, and in the airlines' own policies known as "contract of carriage."

The 1978 deregulation of the airline industry in the United States eliminated federal control over many airline business practices, including pricing and domestic route selection. However, the federal government continues to legislate and enforce certain consumer protections for airline passengers. The House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation are the primary congressional committees of jurisdiction over airline passenger rights. Congress can authorize the U.S. Department of Transportation (DOT) to establish and enforce rules on certain issues, and it can enact requirements for airlines through direct legislation. In specific cases, DOT can take enforcement actions against air carriers that violate consumer protection rules.

Most of DOT's consumer protection rules are authorized by 49 U.S.C. §41712, which directs the agency to "protect consumers from unfair or deceptive practices." Some are also empowered by DOT's authority to require air carriers in interstate transportation to provide "safe and adequate service" (49 U.S.C. §41702). The definition and interpretation of "unfair or deceptive" can significantly affect the scope of DOT rulemaking and enforcement authority.

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DOT's current aviation consumer protection rules ([14 C.F.R. Part 259 Enhanced Protections for Airline Passengers](#)) represent the agency's longstanding position with respect to compensation for flight cancellations:

- Airlines have an obligation to provide a full refund when the carrier cancels or significantly changes a passenger's flight and the passenger chooses not to accept an alternative (such as being rebooked on another flight) if it is offered by the carrier. In this case, a full refund is due, along with any optional service fees already paid—such as for baggage—regardless of whether the purchased ticket is refundable or not.
- When a passenger cancels a flight, that person is entitled to a refund for a refundable ticket. Customers who purchase nonrefundable tickets are not entitled to a refund unless the airline promises otherwise.

In August 2022, DOT issued a notice of proposed rulemaking ([DOT-OST-2022-0089](#)) on airline ticket refunds aiming mostly to address airline ticket refund issues associated with flight changes and cancellations related to the Coronavirus Disease 2019 (COVID-19). Specifically, DOT added the definitions of “cancelled flight” and “significant change” to the proposed regulations to codify that it is an unfair business practice to refuse to provide timely refunds when a carrier has cancelled or made a significant change to a scheduled flight and consumers found the alternative transportation offered, if any, to be unacceptable. The proposed rules also included a requirement that non-expiring travel vouchers or credits be provided to consumers holding nonrefundable tickets for scheduled flights who are unable to travel in certain circumstances related to a serious communicable disease.

There are no federal laws requiring airlines to provide passengers with monetary or other forms of compensation when their flights are delayed; nor are airlines required to reimburse customers for incidental expenses, such as a rental car, hotel room, or meal, due to a significantly delayed or cancelled flight. These decisions are up to individual airlines, and each airline has its own policies about what it will do for delayed passengers.

In November 2022, the chair of the Senate Committee on Commerce, Science, and Transportation and two other committee members filed a comment on the aforementioned DOT proposed refund rule. The lawmakers urged DOT to strengthen and expeditiously finalize the proposed rule to ensure that consumers are compensated fairly when airlines cancel or significantly delay their flights—including secondary costs incurred from hotels, meals, and transportation in the event of a cancellation or significant delay due to a problem within the airline's control. The committee announced on January 4, 2023, that it intends to hold hearings on the Southwest flight cancellations.

On January 5, 2023, House Transportation & Infrastructure Committee ranking member Rick Larsen and 25 committee members sent a letter to the Transportation Secretary expressing their concern and urging DOT to exercise its consumer protection authorities to hold airlines accountable and to issue rules and standards that could limit or prevent future disruptions.

Although it is yet to be determined whether DOT will adopt new measures in its proposed rule on airline ticket refunds, lawmakers may wish to consider potential options for consumer protection provisions as they work on reauthorization of the Federal Aviation Administration (FAA). The current authorization is set to expire on September 30, 2023.

Author Information

Rachel Y. Tang
Analyst in Transportation and Industry

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