



## Coalition for an Airline Passengers

### Bill of Rights

Fighting for Passengers' Health, Safety and Other Rights

DEPT. OF TRANSPORTATION  
DOCKETS

November 26, 2008

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Honorable Mary Peters  
Secretary of Transportation  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Re: **Docket No.:** DOT-OST-2007-0180 - National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Delays  
-- **NY Times Editorial on Final Task Force Report**

Dear Secretary Peters:

Please find enclosed an editorial by the New York Times (November 21, 2008). This editorial reinforces the content of our earlier letter (CAPBOR letter; November 6, 2008) that you override the final Tarmac Delays Task Force report and set a maximum tarmac delay. We favor and ask you to consider provisions similar to that found in S1300 which was not completed in the 110<sup>th</sup> Congress.

#### **Sec. 41781. AIRLINE CONTINGENCY SERVICE REQUIREMENTS.**

(a) IN GENERAL- Not later than 60 days after the date of the enactment of the Aviation Investment and Modernization Act of 2007, each air carrier shall institute the following practices:

(1) PROVISION OF FOOD AND WATER- In any case in which departure of a flight of an air carrier is substantially delayed, such air carrier shall provide--

(A) adequate food and potable water to passengers on such flight during such delay; and

(B) adequate restroom facilities to passengers on such flight during such delay.

(2) Right to deplane-

(A) IN GENERAL- An air carrier shall develop a plan, that incorporates medical considerations, to ensure that passengers are provided a clear timeframe under which they will be permitted to deplane a delayed aircraft. The air carrier shall provide a copy of the plan to the Secretary of Transportation, who shall make the plan available to the public. In the absence of such a plan, except as provided in subparagraph (B), if more than 3 hours after passengers have boarded an air carrier and the air carrier doors are closed, the air carrier has not departed, the air carrier shall provide passengers with the option to deplane safely before the departure of such air carrier. Such option shall be provided to passengers not less often than once during each 3-hour period that the plane remains on the ground.

(B) EXCEPTIONS- Subparagraph (A) shall not apply--

(i) if the pilot of such flight reasonably determines that such flight will depart not later than 30 minutes after the 3 hour delay; or  
(ii) if the pilot of such flight reasonably determines that permitting a passenger to deplane would jeopardize passenger safety or security.

*(C) APPLICATION TO DIVERTED FLIGHTS- This section applies to aircraft without regard to whether they have been diverted to an airport other than the original destination.*

*(b) POSTING CONSUMER RIGHTS ON WEBSITE- An air carrier holding a certificate issued under section 41102 that conducts scheduled passenger air transportation shall publish conspicuously and update monthly on the Internet website of the air carrier a statement of the air carrier's customer service policy and of air carrier customers' consumer rights under Federal and State law.*

*(c) AIR CARRIER- In this section the term 'air carrier' means an air carrier holding a certificate issued under section 41102 that conducts scheduled passenger air transportation.'*

*(b) REGULATIONS- Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall promulgate such regulations as the Secretary determines necessary to carry out the amendment made by subsection (a).*

Once again, CAPBOR is highly appreciative of your allowing it to be represented on the Task Force to present the views of its members and constituencies. Please contact me if you need any additional information on this letter or any other matter.

Sincerely,



Kate Hanni  
Founder-Spokesperson  
Coalition for an Airline Passengers' Bill of Rights  
[www.flyersrights.org](http://www.flyersrights.org)

cc: Samuel Podberesky, Task Force Chair  
Office of DOT General Counsel

## **SEC. 406. AIR PASSENGER SERVICE IMPROVEMENTS.**

(a) In General- Subtitle VII is amended by inserting after chapter 421 the following:

### **CHAPTER 423--AIR PASSENGER SERVICE IMPROVEMENTS**

Sec.

42301. Emergency contingency plans.

42302. Consumer complaints.

42303. Use of insecticides in passenger aircraft.

#### **Sec. 42301. Emergency contingency plans**

(a) Submission of Air Carrier and Airport Plans- Not later than 90 days after the date of enactment of this section, each air carrier providing covered air transportation at a large hub airport or medium hub airport and each operator of a large hub airport or medium hub airport shall submit to the Secretary of Transportation for review and approval an emergency contingency plan in accordance with the requirements of this section.

(b) Covered Air Transportation Defined- In this section, the term 'covered air transportation' means scheduled passenger air transportation provided by an air carrier using aircraft with more than 60 seats.

(c) Air Carrier Plans-

(1) RIGHT TO DEPLANE-

(A) IN GENERAL- An air carrier shall develop a plan, that incorporates medical considerations, to ensure that passengers are provided a clear timeframe under which they will be permitted to deplane a delayed aircraft. The air carrier shall provide a copy of the plan to the Secretary of Transportation, who shall make the plan available to the public. Except as provided in subparagraph (B), if more than 3 hours after passengers have boarded a flight, the aircraft doors are closed and the aircraft has not departed, the air carrier shall provide passengers with the option to deplane safely before the departure of such aircraft. Such option shall be provided to passengers not less often than once during each 3-hour period that the plane remains on the ground.

(B) EXCEPTIONS- Subparagraph (A) shall not apply--

(i) if the pilot of such flight reasonably determines that such flight will depart not later than 30 minutes after the 3 hour delay; or

(ii) if the pilot of such flight reasonably determines that permitting a passenger to deplane would jeopardize passenger safety or security.

(C) APPLICATION TO DIVERTED FLIGHTS- This section applies to aircraft without regard to whether they have been diverted to an airport other than the original destination.

(2) PROVISION OF FOOD AND WATER- If the departure of a flight or disembarkation of passengers on an arriving flight is substantially delayed beyond the timeframe provided in subparagraph (A), but passengers cannot be deplaned

for exceptions provided in subparagraph (B), the air carrier shall provide food, water that meets the standards of the Safe Drinking Water Act (42 U.S.C. 300f et seq.), restroom facilities, cabin ventilation, and access to medical treatment for passengers onboard an aircraft at the airport that is on the ground for an extended period of time without access to the terminal as follows --

`(A) a minimum of 300 calories of non-allergenic food and a minimum of 12 ounces of potable water to passengers on such flight during such delay; with such provisions provided to passengers not less often than once during each 3-hour period that the plane remains on the ground.

`(B) adequate restroom facilities to passengers on such flight during such delay.

`(3) PLANS FOR INDIVIDUAL AIRPORTS- An air carrier shall submit an emergency contingency plan under subsection (a) for--

`(A) each large hub airport and medium hub airport at which the carrier provides covered air transportation; and

`(B) each large hub airport and medium hub airport at which the carrier has flights for which it has primary responsibility for inventory control.

`(C) sharing facilities and make gates available at the airport in an emergency.

`(d) Airport Plans- An emergency contingency plan submitted by an airport operator under subsection (a) shall contain a description of how the airport operator, to the maximum extent practicable, will provide for the deplanement of passengers following excessive delays and will provide for the sharing of facilities and make gates available at the airport in an emergency.

`(e) Updates-

`(1) AIR CARRIERS- An air carrier shall update the emergency contingency plan submitted by the air carrier under subsection (a) every 3 years and submit the update to the Secretary for review and approval.

`(2) AIRPORTS- An airport operator shall update the emergency contingency plan submitted by the airport operator under subsection (a) every 5 years and submit the update to the Secretary for review and approval.

`(f) Approval-

`(1) IN GENERAL- Not later than 9 months after the date of enactment of this section, the Secretary shall review and approve or require modifications to emergency contingency plans submitted under subsection (a) and updates submitted under subsection (e) to ensure that the plans and updates will effectively address emergencies and provide for the health and safety of passengers.

`(2) CIVIL PENALTIES- The Secretary may assess a civil penalty under section 46301 against an air carrier or airport that does not adhere to an emergency contingency plan approved under this subsection.

`(g) Minimum Standards- The Secretary may establish, as necessary or desirable, minimum standards for elements in an emergency contingency plan required to be submitted under this section.

`(h) Public Access- An air carrier or airport required to submit emergency contingency plans under this section shall ensure public access to such plan after its approval under

this section on the Internet Web site of the carrier or airport or by such other means as determined by the Secretary.

**Sec. 42302. Consumer complaints**

(a) Consumer Complaints Hotline Telephone Number- The Secretary of Transportation shall establish a consumer complaints hotline telephone number for the use of passengers in air transportation.

(b) Public Notice- The Secretary shall notify the public of the telephone number established under subsection (a).

(c) Authorization of Appropriations- There are authorized to be appropriated such sums as may be necessary to carry out this section. Such sums shall remain available until expended.

**Sec. 42303. Use of insecticides in passenger aircraft**

No air carrier, foreign air carrier, or ticket agent may sell in the United States a ticket for air transportation for a flight on which an insecticide has been applied in the aircraft within the last 60 days or on which an insecticide is planned to be used in the aircraft while passengers are on board the aircraft unless the air carrier, foreign air carrier, or ticket agent selling the ticket first informs the person purchasing the ticket of the application, application, or planned use of the insecticide, including the name of the insecticide.'

(b) Clerical Amendment- The analysis for subtitle VII is amended by inserting after the item relating to chapter 421 the following:

42301'.

(c) Penalties- Section 46301 is amended in subsections (a)(1)(A) and (c)(1)(A) by inserting 'chapter 423,' after 'chapter 421,'.

(d) Applicability of Requirements- Except as otherwise specifically provided, the requirements of chapter 423 of title 49, United States Code, as added by this section, shall begin to apply 60 days after the date of enactment of this Act.

**SEC. 402. PUBLICATION OF CUSTOMER SERVICE DATA AND FLIGHT DELAY HISTORY.**

Section 41722 is amended by adding at the end the following:

(f) Chronically Delayed Flights-

(1) PUBLICATION OF LIST OF FLIGHTS- An air carrier holding a certificate issued under section 41102 that conducts scheduled passenger air transportation shall publish and update monthly on the Internet website of the air carrier, or provide on request, a list of chronically delayed flights operated by the air carrier.

(2) DISCLOSURE TO CUSTOMERS WHEN PURCHASING TICKETS- An air carrier shall disclose the following information prominently to an individual before that individual books transportation on the air carrier's Internet website for any flight for which data is reported to the Department of Transportation under

part 234 of title 14, Code of Federal Regulations, and for which the air carrier has primary responsibility for inventory control:

`(A) The on-time performance for the flight if it is a chronically delayed flight.

`(B) The cancellation rate for the flight if it is a chronically canceled flight.

`(3) CHRONICALLY DELAYED; CHRONICALLY CANCELED- The Secretary of Transportation shall define the terms `chronically delayed flight' and `chronically canceled flight' for purposes of this subsection.'

## **SEC. 418. REVIEW OF AIR CARRIER FLIGHT DELAYS, CANCELLATIONS, AND ASSOCIATED CAUSES.**

(a) Review- The Inspector General of the Department of Transportation shall conduct a review regarding air carrier flight delays, cancellations, and associated causes to update its 2000 report numbered CR-2000-112 and entitled `Audit of Air Carrier Flight Delays and Cancellations'.

(b) Assessments- In conducting the review under subsection (a), the Inspector General shall assess--

(1) the need for an update on delay and cancellation statistics, such as number of chronically delayed flights and taxi-in and taxi-out times;

(2) air carriers' scheduling practices;

(3) the need for a re-examination of capacity benchmarks at the Nation's busiest airports; and

(4) the impact of flight delays and cancellations on air travelers, including recommendations for programs that could be implemented to address the impact of flight delays on air travelers.

(c) Report- Not later than one year after the date of enactment of this Act, the Inspector General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review conducted under this section, including the assessments described in subsection (b).

## **SEC. 419. EUROPEAN UNION RULES FOR PASSENGER RIGHTS.**

(a) In General- The Comptroller General shall conduct a study to evaluate and compare the regulations of the European Union and the United States on compensation and other consideration offered to passengers who are denied boarding or whose flights are cancelled or delayed.

(b) Specific Study Requirements- The study shall include an evaluation and comparison of the regulations based on costs to the air carriers, preferences of passengers for compensation or other consideration, and forms of compensation. In conducting the study, the Comptroller General shall also take into account the differences in structure and size of the aviation systems of the European Union and the United States.

(c) Report- Not later than one year after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the results of the study.

## **SEC. 420. ESTABLISHMENT OF ADVISORY COMMITTEE FOR AVIATION CONSUMER PROTECTION.**

(a) In General- The Secretary of Transportation shall establish an advisory committee for aviation consumer protection (in this section referred to as the 'advisory committee') to advise the Secretary in carrying out air passenger service improvements, including those required by chapter 423 of title 49, United States Code.

(b) Membership- The Secretary shall appoint 8 members to the advisory committee as follows:

(1) Two representatives of air carriers required to submit emergency contingency plans pursuant to section 42301 of title 49, United States Code.

(2) Two representatives of the airport operators required to submit emergency contingency plans pursuant to section 42301 of such title.

(3) Two representatives of State and local governments who have expertise in aviation consumer protection matters.

(4) Two representatives of nonprofit public interest groups who have expertise in aviation consumer protection matters.

(c) Vacancies- A vacancy in the advisory committee shall be filled in the manner in which the original appointment was made.

(d) Travel Expenses- Members of the advisory committee shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(e) Chairperson- The Secretary shall designate, from among the individuals appointed under subsection (b), an individual to serve as chairperson of the advisory committee.

(f) Duties- The duties of the advisory committee shall include the following:

(1) Evaluating existing aviation consumer protection programs and providing recommendations for the improvement of such programs, if needed.

(2) Providing recommendations to establish additional aviation consumer protection programs, if needed.

(g) Report- Not later than February 1 of each of the first 2 calendar years beginning after the date of enactment of this Act, the Secretary shall transmit to Congress a report containing--

(1) each recommendation made by the advisory committee during the preceding calendar year; and

(2) an explanation of how the Secretary has implemented each recommendation and, for each recommendation not implemented, the Secretary's reason for not implementing the recommendation.

## **SEC. 421. DENIED BOARDING COMPENSATION.**

(a) In General- Not later than one year after the date of enactment of this Act, the Secretary of Transportation shall issue a final regulation to modify section 250 of title 14.

Code of Federal Regulations, regarding denied boarding compensation, to appropriately adjust the amount of such compensation for an aircraft with 30 or more seats.

(b) Evaluation- Not later than 2 years after the date of issuance of the final regulation under this section and every 2 years thereafter, the Secretary shall evaluate the amount provided for denied boarding compensation and issue a regulation to adjust such compensation as necessary.

## **SEC. 422. SCHEDULE REDUCTION.**

(a) In General- If the Administrator of the Federal Aviation Administration determines that: (1) the aircraft operations of air carriers during any hour at an airport exceeds the hourly maximum departure and arrival rate established by the Administrator for such operations; and (2) the operations in excess of the maximum departure and arrival rate for such hour at such airport are likely to have a significant adverse effect on the national or regional airspace system, the Administrator shall convene a conference of such carriers to reduce pursuant to section 41722, on a voluntary basis, the number of such operations to less than such maximum departure and arrival rate.

(b) No Agreement- If the air carriers participating in a conference with respect to an airport under subsection (a) are not able to agree to a reduction in the number of flights to and from the airport to less than the maximum departure and arrival rate, the Administrator shall take such action as is necessary to ensure such reduction is implemented.

(c) Quarterly Reports- Beginning 3 months after the date of enactment of this Act and every 3 months thereafter, the Administrator shall submit to Congress a report regarding scheduling at the 35 airports that have the greatest number of passenger enplanements, including each occurrence in which hourly scheduled aircraft operations of air carriers at such an airport exceed the hourly maximum departure and arrival rate at any such airport.

## **SEC. 423. EXPANSION OF DOT AIRLINE CONSUMER COMPLAINT INVESTIGATIONS.**

(a) In General- Subject to the availability of appropriations, the Secretary of Transportation shall investigate consumer complaints regarding--

- (1) flight cancellations;
- (2) compliance with Federal regulations concerning overbooking seats flights;
- (3) lost, damaged, or delayed baggage, and difficulties with related airline claims procedures;
- (4) problems in obtaining refunds for unused or lost tickets or fare adjustments;
- (5) incorrect or incomplete information about fares, discount fare conditions and availability, overcharges, and fare increases;
- (6) the rights of passengers who hold frequent flier miles or equivalent redeemable awards earned through customer-loyalty programs; and
- (7) deceptive or misleading advertising.

(b) Budget Needs Report- The Secretary shall provide, as an annex to its annual budget request, an estimate of resources which would have been sufficient to investigate all such claims the Department of Transportation received in the previous fiscal year. The annex

shall be transmitted to Congress when the President submits the budget of the United States to the Congress under section 1105 of title 31, United States Code.

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EDITORIAL

## **The Tarmac's Madding Crowds**

A federal study group — created with fanfare to tackle the wretched ordeal of passengers stranded for hours on idled jetliners — has refused to mandate how long airlines can keep their passengers trapped before taxiing back for relief.

The experts' answer: Suck it up and sit there on America's unfriendly tarmacs for as long as it takes.

The task seemed a no-brainer a year ago when advocates for harried nonfliers estimated three hours would be a reasonable limit before heading back to the gate and civilization. But the so-called tarmac task force set up by the Department of Transportation was stacked with airline and airport executives who treated the definition of a lengthy delay as if it were some conundrum of astrophysics.

Instead, the 36-member task force feebly recommends that airlines try to update passengers every 15 minutes, even if there's nothing new to report and, of course, no end now mandated for their predicament.

As for the grisly tales of parched and frenzied passengers stranded without food or drink, the task force recommends that airlines offer refreshments and entertainment "when practical." Oh yes, and make reasonable efforts to keep restrooms more usable than fetid as stalled planes sit there clueless and unairconditioned.

The department's inspector general had recommended setting a limit for how long passengers can be forced to be sealed off in planes. But the task force's conclusion was that this is a complicated question best left to the different airlines and airports. Or, as one industry member arrogantly maintained: "One size doesn't fit all." Enough already.

Surely the incoming administration will be less captive to industry on this issue — and every other. It certainly doesn't take an expert to realize that it is the passengers who pay to keep the airlines airborne. It's only humane that they be accorded something short of full captivity on the ground.

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