

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

In the matter of: :
 :
Notice of Proposed Rulemaking :
Concerning Enhancing Airline : **Docket No. DOT-OST-2007-0022**
Passenger Protections :

REQUEST TO EXTEND PUBLIC COMMENT PERIOD

The Air Transport Association of America, Inc., on behalf of our members, has a strong interest in the proposed rule (published in the Federal Register at 73 FR 74586 on December 8, 2008 that proposes to change airline passenger protections. A 60- day comment period, closing February 6, 2009, has been provided. By this filing, ATA requests the comment period be extended an additional 60 days. The reasons supporting this request are as follows:

The Initial Regulatory Evaluation (IRE) for this proposal lacks substantial factual data in several areas that need to be developed to complete the cost-benefit analysis required by Executive Order 12866.¹ As the IRE notes on page 18, "...the likely impact of these actions on costs are estimated without input from affected carriers other than that available in comments to the ANPRM." The absence of carrier input is obvious because whole areas of costs are excluded. For instance, the IRE fails to address what likely will be the greatest cost of this proposal: the litigation costs that will result directly from the private right of action against any carrier that does not adhere to the provisions of its contingency or customer service plan, which the proposed rule seeks to create.² The Department is well aware of the substantial costs associated with litigation and to omit any costs associated with potential litigation in all 50 states renders this IRE incomplete. In addition, if included in this analysis, litigation costs alone could easily tip the cost-benefit ratio into a negative number. Using the IRE's own calculations of 10 year net present value (NPV) of economic benefits of \$106 million and 10 year NPV costs of \$45 million, the 10 year NPV of litigation costs would only have to reach \$61 million to result in a proposed rule that is not cost justified by Executive Order 12866 standards. (IRE Table 21, page 50).

We also note that other factual data is missing or vastly underestimated, including costs associated with the following: (1) incorporating specialized delay data into carrier websites, particularly for those items not currently reported to the Bureau of Transportation Statistics, which would require additional programming to capture flights more than 30 minutes late and the percentage of cancellations,³ and (2) costs associated with a hard time limit and gate returns, especially lost consumer time costs resulting from overly conservative scheduling, return to gate

¹ Initial Regulatory Analysis, docket number DOT-OST-2007-0022-0218.

² IRE section 2.1.6 Component 5, Carriers to Incorporate Customer Service Plans into Contract of Carriage and Self-Audit Compliance.

³ IRE section 2.1.5 Carriers to Publish Delay Data on Websites.

or cancelations resulting from any hard time limits.⁴ Finally, the original copy of the IRE placed in the docket was very difficult to read on more than 30 pages, making most of the conclusions unintelligible and preventing the public from formulating a response.⁵

All parties will have to develop as much information as possible about future costs associated with implementing a final rule in order to provide meaningful input. Speculation will not assist the Department, the public or stakeholders, could lead to inappropriate benefit-cost analysis and decision-making, and would detract from the validity of this rulemaking process. It will be difficult, at best, for our members to develop information that will inform the judgment of the Department regarding this rulemaking.

Given the extensive coordination this proposal will require and the coincidence of the comment period with the holiday season, and in light of the importance of this rulemaking – both in terms of customer service and the potential cost burden on industry that will result from a final rule – the proposed 60 day time period is inadequate. We therefore request that the public comment period for this proceeding be extended for an additional 60 days.

Respectfully submitted,



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⁴ IRE section 2.1.2 Component 1, Develop and Implement a Contingency Plan for Extended Tarmac Delays.

⁵ The following IRE pages contained information that could not be read ix, x, xi, 9, 10, 14, 15, 20, 22, 23, 25, 27, 28, 30, 31, 32, 36, 38, 40, 42, 44, 50 thru 59, 67, 68, 69, all of appendix B. We note appendix B contains all of the IRE calculations.