



May 9, 2011

Hon. John D. Rockefeller IV  
Chairman  
Committee on Commerce, Science  
And Transportation  
United States Senate

Hon. John L. Mica  
Chairman  
Committee on Transportation and Infrastructure  
U.S. House of Representatives

Hon. Kay Bailey Hutchison  
Ranking Minority Member  
Committee on Commerce, Science  
And Transportation  
United States Senate

Hon. Nick Joe Rahall II  
Ranking Minority Member  
Committee on Transportation and Infrastructure  
U.S. House of Representatives

Subject: FlyersRights.org and the Undersigned Consumer and Labor Groups Urge Adopting the Best Airline Passenger Rights Provisions of Each Version of the **FAA REAUTHORIZATION BILL**

Dear Senators and Representatives,

As leading consumer rights and labor organizations across the United States, we are pleased and encouraged by your respective chambers' passage of the **FAA Air Transportation Modernization and Safety Improvement Act** (S. 223, H.R. 658). As a House-Senate Conference meets to resolve the differences between these two critically important bills, we urge you to include the best airline passenger rights provisions from each bill in the legislation's final conference text.

In the last ten years, our organizations have become intimately familiar with the issues that led to the April 29, 2010, Department of Transportation (DOT) rulemaking. These long overdue regulations established, among other things, the Three-Hour Tarmac Rule, required airlines to provide food and water after two hours, and mandated several other vital passenger protection measures. We strongly support that rulemaking. Moreover, we applaud the DOT's recent announcement of further passenger protections, significantly enhancing total fare transparency, requiring refunds for lost baggage, and implementing other very positive regulations.

We are concerned that many of the DOT-imposed requirements are not reflected in *Title IV—Airline Service; Subtitle A—Consumer Protection* of either pending bill. The contributions to

the public good provided by the DOT rulemakings are of such significance that they must be codified into public law. We ask that Congress do so by defining the key elements of those provisions in the **FAA Air Transportation Modernization and Safety Improvement Act of 2011**.

We urge that the following provisions be incorporated into the final long term FAA Reauthorization conference report:

**Require that all airlines' contingency plans for long tarmac delays include a provision extending passengers the option of deplaning not later than three hours on the tarmac for all flights**

Both *Section 401 of S. 223 and Section 425 of H.R. 658* include language affording deplaning rights to passengers. Though the House version assures that some rights are afforded passengers and mandates contingency plans for domestic flights, we believe that more substantial measures are required. Specifically, we urge that Congress adopt the Senate provision, providing passengers the option to deplane after no more than three hours on the tarmac for all flights.

The House version's language essentially leaves airlines free to define the term "extended" for themselves. History demonstrates the inadequacy of that policy. In 1999, after 4300 passengers were confined to the tarmac for up to 11 hours in Detroit during the New Years' Eve weekend, the Senate held hearings and produced the first airline passenger rights bill. However, after the airlines promised to voluntarily eliminate such situations through Customer First programs and contingency plans, the legislation was dropped.

Over the ensuing years, the problem remained. Airline plans and guidelines were vague and were never made mandatory. Time and again, passengers were stranded for extended periods on the tarmac. In 2008 alone, there were 1,232 extended tarmac delays. Clearly, a firm time limit was required, and the April 29, 2010, DOT rulemaking set that limit at three hours. Choosing three hours for this rule was not arbitrary. Studies such as the World Health Organization Research Into Global Hazards of Travel (WRIGHT) report found that the danger of deep vein thrombosis (DVT) is doubled with four hours of immobility, confirming the need for the Three Hour Rule.

The DOT rule has proven an unqualified success. Since implementation in April, 2010, long tarmac delays for domestic flights (the only ones included in that initial ruling) have dropped dramatically. Comparing the May through December periods for 2009 and 2010, extended delays dropped from 574 to 16. The Christmas Blizzard that paralyzed many northeastern airports, particularly in the New York City area, demonstrated the rule's effectiveness. Not a single domestic flight, covered by the rule, experienced an extended tarmac delay; however, 16 international flights, not covered by the rule, experienced tarmac strandings of up to 10 hours.

Airlines and certain industry advocacy groups predicted disaster as a result of the rule, and have made much of what they called "unintended consequences." They asserted that the Three-Hour Rule would cause massive cancellations as airlines tried to avoid the rule-imposed fines. They

produced a study claiming to prove that the rule had produced those consequences, but that study was flawed in many critical respects.

First and foremost, the study focused on only the differences between 2009 and 2010 cancellations. In fact, cancellation rates differ wildly from year to year, because of the many “moving parts” involved in airline operation. Weather is the biggest single factor, but many other factors come into play. Any attempt to compare only one year to any other single year produces an incomplete and necessarily inaccurate picture. While the study’s bare facts are true, its conclusion is simply inaccurate and indeed misleading. The cancellation rate for 2010 is actually the median rate over the 2006-2010 period, and well within the middle range of cancellations over the last 16 years. It was, in fact, the third lowest cancellation rate for that 16-year period.

In addition, the study alleges huge costs to passengers associated with cancellations, but again, this study fails to prove that the cancellations were caused by the Three-Hour Rule. In fact, a 2010, FAA-sponsored National Center for Excellence in Aviation Operations Research (NEXTOR) study showed that while flight delays cost passengers \$16.7 billion a year, only \$3.2 billion of that was related to cancellations. The other \$13.5 billion in costs was related to actual delay time, not to cancellations.

Furthermore, the study ignores the human costs of extended entrapment on the tarmac. The three-hour limit was not arrived at lightly. Health and safety are severely impacted, as long periods of enforced, cramped confinement such as those experienced by passengers sitting on the tarmac, significantly increase the likelihood of such health hazards as DVT.

Finally, both studies ignore the opportunity cost to 21<sup>st</sup>-Century travelers. No traveler ever made alternative arrangements while trapped in an airplane on the tarmac. Once inside the airplane, Wi-Fi is unlikely to be available; so many business travelers are left unconnected. Laptop and cell phone batteries continue to discharge during extended delays, ultimately resulting in complete loss of contact with the outside world.

**Require both airlines and airports to develop comprehensive contingency plans for long tarmac delays, and that both entities train personnel in their provisions and test them annually.**

Airline contingency plans are an absolute necessity, but they are not enough. Equally important are plans that would enable airports to deal with unexpected tarmac delays and their consequences. The Blizzard of 2010 last December vividly demonstrated that airports must be prepared to deal with unexpected tarmac delays, and graphically illustrated that some major airports are woefully unprepared to do so. After that Christmas nightmare, the New York/New Jersey Port Authority promised to develop plans that would preclude a recurrence.

On April 29, 2011, the first anniversary of the DOT’s Three-Hour Tarmac Rule for domestic flights, 300 passengers on two Caribbean Airlines flights were subjected to a six-hour deplaning delay when their flights were diverted from JFK Airport to Newark’s Liberty Airport because of

weather. Absent a contingency plan, the Newark airport was unable to deal with the situation. Once again, undelivered promises resulted in unacceptable tarmac delays. Airports must also develop contingency plans.

We also urge that these contingency plans include training to airline and airport personnel in their operation and annual testing of plans. Litigation against American Airlines and JetBlue for tarmac confinements in 2006 and 2007 showed that pilots and most other personnel were ignorant of contingency plans already in place and that there had been no testing of these plans to ensure their success. Recent experience has shown that when airlines and airports are left to voluntarily put in place these plans, the practical result is a lack of coordination, unclear lines of authority and a failure to call up adequate personnel in emergency situations. Without training and testing of contingency plans with airline and airport operations personnel, these plans will remain, in our view, ineffective in most situations.

### **Food, water, working lavatories, and climate control must be available at all times.**

Section 401 of S. 223 and Section 425 of H.R. 658 both include requirements for the provision of essential services during extended tarmac delays. The Senate requirements are more complete than are those of the House version and current DOT rules, as the Senate language also requires cabin ventilation and comfortable temperatures. We strongly support the Senate version, but urge Congress to do more by requiring food, water, adequate restroom facilities and cabin climate control at all times when passengers are aboard aircraft.

### **Require airlines to disclose fares, fees, and taxes when quoting price to consumers.**

Sections 405 and 407 of the Senate bill collectively require DOT to establish rules to assure that all consumers can easily and fairly compare airfare and ancillary airline charges, including all taxes and fees, before purchasing tickets through any booking channel. In recent months, some airlines have made serious attempts to hide their fares from consumer-oriented travel sites, making it impossible to find “best price” information on those sites.

The ability to easily compare competing fares is highly valued by our membership, as well as by business travel managers, and it should be included in the final legislation. Current practices obscure air fare comparisons and encourage airlines to do so to avoid perceived competitive disadvantage. Therefore, we urge that Sections 405 and 407 of S.223 be included in the final text of the FAA Reauthorization conference report.

### **Require airlines to display DOT consumer hotline information on all ticket media, printed and electronic.**

One of our primary member complaints is the difficulty in gathering all the information they need to make informed travel decisions. Both H.R. 648 and S. 223 require DOT to establish a hotline number enabling consumers to contact an Aviation Consumer Protection Office. Posting

this information at airline ticket counters is insufficient, as the consumer's need for that number is likely to occur later in the trip. We believe that the consumer should have that information when needed, in the form of a number printed on any travel confirmation they have received, either in the form of a printed ticket or an electronic confirmation or boarding pass. Our coalition also urges that a live hotline, offering timely passenger assistance especially in emergency situations, be included in the final bill.

**Accept the Senate language regarding establishment of an Aviation Consumer Protection Committee.**

*Section 404* of S. 223 requires DOT to establish an advisory committee for aviation consumer protection to advise the DOT Secretary in carrying out air passenger service improvements. Our coalition has long supported efforts to include the consumers' voice during consideration of governmental actions. The Senate language on this matter should be adopted.

Thank you in advance for your consideration of the recommendations of America's airline traveling public during the Conference Committee deliberations for a long term FAA reauthorization bill. Should you have any questions or require additional information, please do not hesitate to contact Kate Hanni at Flyersrights.org by e-mail: [kate@flyersrights.org](mailto:kate@flyersrights.org), or by phone at (707) 337-0328.

Sincerely,

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