



FlyersRights.org

March 9, 2009

Hon. Ray LaHood
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

**Subject: Comments of FlyersRights.org on NPRM
“Enhancing Airline Passenger Protections”**

Reference: 14 CFR Parts 234, 253, 259, and 399
Docket No. DOT-OST-2007-0022
RIN No. 2105-AD72

**SUBJECT: NPRM Must be Strengthened to Require Airlines to Meet Minimum
Standards for Passenger Protections Set by DOT, That Can Thereafter be
Judicially Enforced**

Dear Secretary LaHood:

FlyersRights.org,¹ an organization of more than 24,000 airline passenger activists, believes that the Federal Government, and specifically your Department of Transportation, must -- by setting minimum regulatory standards -- assure that airline passengers are fairly treated by the airlines.

Thus we support -- but with necessary amendments -- the provisions in this Notice of Proposed Rulemaking (“NPRM”) (1) to require air carriers to adopt both Contingency Plans for Long Tarmac Delays (“Contingency Plans”) and Customer Service Plans² and to incorporate them into

¹ FlyersRights.org is the new organizational name for the Coalition for an Airline Passenger Bill of Rights (CAPBOR) that filed extensive comments on January 22, 2008, in response to the ANPRM on this subject. FlyersRights.org supports each of the positions advanced in that filing by CAPBOR and incorporates them by reference here. Our Section 501(c) (4) tax-exempt consumer group of air traveler advocates continues to grow. They support a continuing agenda of safety, health and regulatory issues of importance to them, particularly improving the content of this NPRM.

² A Customer Service Plan is an airline’s plan for its scheduled and public charter operations to provide necessary and promised services to passengers, including, as a minimum, the same subjects included in the Air Transport Association’s Customers First Customer Service Commitment (1999). See http://www.airlines.org/customerservice/passengers/Customers_First.htm.

their Contracts of Carriage;³ (2) to require air carriers to respond to consumer problems; and (3) to deem the continued operation of “chronically delayed” flights to be unfair and deceptive and thus illegal under 49 U.S.C. 41712.

We hope that you and the new Obama Administration will reconsider and reject each of the misguided premises that were imbedded in the original ANPRM on this topic and that have been unwisely continued as options in this NPRM: (1) that DOT should allow each of the major U.S. airlines to develop its own Contingency Plan for responding to long on-board tarmac delays without minimum standards and with no DOT review and approval of whatever each airline decides; (2) that whatever promises the airlines include in their Contingency Plans need not be truly enforceable by passengers either at DOT or through the provisions in the airlines’ Contracts of Carriage; and (3) that DOT should continue its passive role as a mere collector of monthly statistics about poor airline treatment of passengers and not become pro-active advocates for more humane treatment of airline passengers.

In addition, FlyersRights.org doesn’t agree with the airlines’ glib responses to the whole subject of protecting airline passengers: that (1) “passenger treatment is getting better so DOT (and Congress) should back off and let the airlines handle on their own”; (2) “no one size’ regulation fits all circumstances so there shouldn’t be any effective regulation of airlines; and (3) “market forces’ somehow will protect passengers from airline negligence and from their devoting inadequate resources to passenger information and care.”

Mr. Secretary, the treatment of airline passengers by the nation’s airlines has NOT improved since our comments were filed in January 2008 on the ANPRM that preceded this NPRM. As Attachment 1 documents, strandings of airline flights for many hours on airport tarmacs are continuing.⁴ DOT’s 36-member Task Force Report on Long On-Board Tarmac Delays (November 2008) missed a unique opportunity to establish minimum standards for tarmac delays (see Attachment 2). The 110th Congress was unable to agree on an FAA Reauthorization Act; the provisions in the House-passed and Senate bills that lapsed last December would have required this NPRM to be broadened in its scope.

FlyersRights.org views follow on each of the issues addressed in the NPRM. In general we are disappointed that DOT has broadly eliminated any requirement for consumers to be informed about the operating performance of international flights and has freed third party sellers of domestic flights from all obligations to provide full information to prospective purchasers of air travel.

³ A Contract of Carriage is the document air carriers use to specify legal obligations to passengers. Each air carrier must provide a copy of its Contract of Carriage free of charge upon request. The Contract of Carriage is also supposed to be available for public inspection at airports and ticket offices.

⁴ DOT’s Bureau of Traffic Statistics (BTS) has acknowledged that the data supplied by the airlines since October 2008 as to strandings that occur when flights are diverted or are subsequently cancelled are not yet accurate.

1. Require Airline Contingency Plans and That They be Incorporated into Airline Contracts of Carriage

FlyersRights.org supports, with amendments, a proposed new rule, 14 CFR Part 259, that would require any certificated or commuter air carrier that operates domestic passenger service using any aircraft with a design capacity of more than 30 passengers to develop a Contingency Plan for treating passengers during long tarmac delays of scheduled and public charter flights and to adhere to the terms in that plan. We also support the requirement that the Contingency Plan be included in each airline's Contract of Carriage.⁵

We believe that four amendments are essential to this section of the NPRM:

a. Adopt Federal minimum standards for the Contingency Plans for the reasons we have earlier stated.

First, DOT should adopt minimum standards in proposed section 259(4)(b) for passenger care during strandings, and should review and approve carrier contingency plans for consistency with those minimum standards. Letting each airline set its own standard of behavior means there is no standard. Worse, this would turn the Federal Government's regulatory authority over to private airline corporations with no Federal review or approval. ...Just giving away Federal authority without any effective controls.

Allowing different timeframes for each airline would cause needless confusion to passengers. As the DOT's Inspector General has repeatedly testified before Congress, he sees no reason why airlines should have different standards for meeting passengers' essential needs during long delays on departure or upon arrival.⁶

b. Include a requirement for individual passengers to have an option to deplane safely after "three hours plus" as proposed in Congressional legislation (S. 213; H.R. 624).

Again, that option to deplane could only be exercised by individual passengers if the pilot-in-command determined that deplanement could be accomplished safely. At this writing, the Canadian Government is considering adopting a one-hour standard for passenger deplanements at Canadian airports. This requirement, if adopted, would also be enforced on U.S. airlines serving Canadian airports.

Further, the NPRM (at proposed section 259.4(b)(1)) inaccurately assumes that deplanement would always require a return of the airline aircraft to the gate. In fact, passengers could be

⁵ The critically important issue of the enforceability of airline Contingency Plans and Customer Service Plans is separately addressed at 9., below.

⁶ "We are still of the view that a consistent policy across the airlines would be helpful to passengers." OIG Testimony Number CC-2008-058 "Status Report on Actions Underway To Address Flight Delays and Improve Airline Customer Service," April 9, 2008, at page 23.

deplaned at many airports by buses unloading passengers while the aircraft is still on the taxiway (the funding for which buses is eligible for Federal airport grants). Other airports have holding areas adjacent to the taxiways where deplaning could safely occur without the aircraft always having to return to the gate. Thus the airline argument -- that “deplaning involves returning the aircraft to the gate and cancelling the flight, and that disadvantages passengers more than additional tarmac delay” -- is not factually accurate.

The airlines suggest that long tarmac delays are generally weather-caused and that strandings are out of their control, or that airspace congestion or a shortage of airport gates are a major factor. History shows this is not always the case. Many extended tarmac strandings occur for factors the airlines can affect – such as not pushing an aircraft back from a gate when a long tarmac delay before takeoff is inevitable. Because of the variety of circumstances surrounding extended tarmac delays, plenty of opportunity exists for flexibility in airline responses to each situation -- including trying to facilitate the deplaning of passengers who would opt off after “three plus” hours.

c. Cover U.S. Operations of Non-U.S. Airlines.

DOT proposes to require only U.S. airlines to prepare contingency plans. We urge that DOT find a simplified way for U.S. airports to respond to long tarmac delays of non-U.S. carriers. There were two recent and egregious stranding situations involving non-US airlines keeping passengers on board for many hours at West Coast airports. Similar situations could occur in the future until DOT or Congress requires that this gap be covered.⁷

d. Require Detailed Reports to DOT from Airlines on Each of Their “Three Hours or Longer” Stranding Incidents.

Proposed section 259(4)(d) of the NPRM would require carriers to retain information about their extended strandings for two years. This proposal for recordkeeping is off the mark. Future DOT policymaking could benefit from DOT’s requiring, receiving within 14 days, and analyzing reports from carriers as to the causes of any extended stranding incidents. Are there common elements to problem areas (such as involving the Transportation Security Administration (TSA), or the Bureau of Customs and Border Patrol (BCP)) that DOT could help mitigate? Allowing the airlines just to file away information on stranding incidents as they occur wouldn’t help improve the situation for future passengers involved in future incidents. DOT should be pro-active in investigating all extended strandings

FlyersRights.org believes that regional carriers should be treated the same as their larger carrier code-sharing partners. Airline aircraft designed for 30 passengers should be covered as well. Time spent in a smaller aircraft can be even more confining than larger aircraft, and the passengers’ minimum health, safety and convenience needs are the same.

⁷ See section 406 of H.R. 915, Federal Aviation Reauthorization Act of 2009, as ordered favorably reported by the Committee on Transportation and Infrastructure to the U.S. House of Representatives on March 5, 2009.

2. Require Carriers to Respond to Consumer Problems.

FlyersRights.org supports including in proposed 14 CFR Part 259 a requirement that every certificated and commuter air carrier that operates scheduled domestic passenger service using any aircraft with a design capacity of more than 30 seats respond to consumer problems concerning its scheduled flights by (a) designating appropriate airline employees for carrying out its Contingency Plan; (b) providing information to airline passengers about how to file complaints; and (c) substantively responding to passengers' complaints in as short a period of time as possible.

We renew our earlier recommendation, which DOT did not adequately respond to, about the desirability of combining the complaints received by the airlines with those received by DOT's Aviation Consumer Protection Division so that the public would have a complete understanding of the combined level of complaints that result from poor airline service over time. DOT publishes and the media duly reports on the monthly reports of complaints (and their categories) received by DOT's Office of Aviation Consumer Affairs. However, the public doesn't know that the numbers and kinds of complaints received directly by the airlines are a large multiple (20-30 times) of the complaints reported to DOT.

In this instance and others, DOT seems to be "hiding" from any increased role in learning about and improving the quality of airline service for fear that the President's Office of Management and Budget might have to restore some of the manpower DOT had devoted to this function in years past. Congress recently increased appropriations to DOT specifically for activities to benefit airline passengers but these funds were wasted on public relations events around the country.

We are pleased that the House Transportation and Infrastructure Committee last week endorsed a provision that would require the airlines to provide information about how airline passengers can file complaints to it and to DOT in its email confirmations of booked flights, in its boarding passes and on its website.⁸

FlyersRights.org defers to DOT and the airlines as to the best use of airline manpower to mitigate the effects of flight delays, cancellations and lengthy tarmac strandings, in proposed section 259.7(a). We believe that a reasonable timeline for a carrier response to a passenger complaint should involve the airline providing a "proposed final resolution" rather than just a "substantive response" within 60 days.

⁸ See section 406 of H.R. 915 as ordered reported.

3. Declare the Operations of Flights That Remain Chronically Delayed (or Chronically Cancelled) to be an Unfair and Deceptive Practice and an Unfair Method of Competition.

We continue to find the NPRM's proposed definition of a "chronically delayed flight"⁹ to be woefully lax, and not helpful to consumers. There are four timing elements within the definition: (1) measuring delays over "three consecutive calendar quarters" means that a carrier can continue its poor quality service on a flight for virtually nine months without any consequences. We favor (the American Society of Travel Agents' (ASTA) suggestion) giving the airline just one calendar quarter to correct a chronically delayed flight; (2) the "more than 70% of the time" late-arrival threshold is still laughably absurd, and makes people question DOT's seriousness. We now favor the "more than 50% of the time" criterion suggested by Airports Council International – North America (ACI-NA) and ASTA; (3) the test should be applied to any flight that is operated at least 30 times in a calendar quarter; and (4) the "15 minute" definition of a delay should be continued because this criterion has long been used for the monthly Air Travel Consumer Report and a change to 30 minutes would result in the loss of continuity in those reports.

Chronically delayed flights are truly an unfair and deceptive practice and an unfair method of competition and should be treated as such by DOT under 49 U.S.C. 41712.

We disagree with the DOT proposal that an airline could be allowed to continue a chronically delayed flight indefinitely so long as it notifies all passengers that it is continuing to provide such poor service. Instead we think the airline should be incentivized to improve the quality of service it provides.

We believe that DOT should have proposed for public comment a parallel regulatory approach for "chronically cancelled flights" as well. Since it has not, we will urge Congress to consider legislating such a regulatory requirement. We hear reports from passengers that some last-flights-of-the-day are often cancelled when the aircraft designated for those flights are needed as replacement aircraft someplace else in the system.

4. Require Carriers and Other Sellers to Publish Delay Data on Their Websites.

FlyersRights.org supports the pending proposal to amend 14 CFR 234.11 to require air carriers to publish on their websites the performance of each flight during the latest reported month: the percentage of arrivals that arrived within 15 minutes of their scheduled arrival times; the percentage that were more than 30 minutes late, with special highlighting if the flight was late more than 50% of the time and the percentage of cancellations.

⁹ DOT has proposed a somewhat revised definition of a "chronically delayed flight": one that is operated at least 30 times in a calendar quarter and that arrives more than 15 minutes late more than 70 percent of the time over three consecutive calendar quarters.

In fact we would urge that the airlines publish the on-time performance data for all their flights. This might be easier to do technically and software-wise than just including the “nonperforming” flights. Consumers could then make their own judgments with full information.

The regulation should require covered carriers to provide this information only for code-share flights operated by carriers that report on-time performance. This will somewhat narrow the amount of information required; if necessary DOT can later expand the requirement based on consumer comments.

We continue to believe that passengers would like to be told – without their having to ask – about the past performance of the flight they are discussing on the phone or in person with a carrier employee or travel agent. Having to divulge that a flight has a poor on-time performance or a high cancellation rate would help educate passengers to make more informed choices (where they have choices!) as to available flights.

5. Require Carriers to Publish Complaint Data on Their Websites.

FlyersRights.org is disappointed that DOT has not proposed a regulation requiring the publication of complaint data by the airlines who receive the complaints and by third party sellers of air travel. As a minimum, DOT should require, as suggested by the Regional Airline Association (RAA), that the airlines’ web sites provide a link to DOT’s Aviation Consumer Protection Division’s web site. This would alert passengers that there is another source of information available that could help them make better choices about airlines and the particular flights they are considering.

6. Require Carriers to Report On-Time Performance of International Flights.

FlyersRights.org is disappointed that DOT has not proposed a regulation requiring the reporting of on-time performance for international flights.

7. Require Carriers to Audit Their Adherence to Their Customer Service Plans.

FlyersRights.org has become convinced by the comments received by DOT on the earlier ANPRM that airline self-auditing of the Customer Service Plans that the ATA member produced in 1999 to forestall Federal passenger rights legislation won’t be useful. Instead we support the proposal in the NPRM that DOT’s proposed 14 CFR 259 will require every U.S. air carrier that accounts for at least one percent of domestic scheduled passenger revenue to adopt a Customer Service Plan, covering public charter flights as well, and addressing the same subjects as in ATA’s Customers First Customer Service Commitment, and to incorporate those plans in their Contracts of Carriage.

As proposed earlier, FlyersRights.org believes that DOT should set minimum standards for airline Contingency Plans for long on-board tarmac delays and for Customer Service Plans as well and to review and approve carrier submissions of their draft Plans for adequacy. Our comments as to the need for DOT to help assure the practical enforceability of those airline promises and obligations within Contracts of Carriage is discussed at 9., below.

8. Shorten the Effective Date of Proposed Regulations.

Because all parts of the airline industry were actively involved in the DOT Task Force on Long On-Board Tarmac Delays, which completed its work last November, the airlines are very knowledgeable about all the issues discussed in that forum, and commented substantively on all the proposed regulatory issues in the ANPRM last January. Thus we believe that 120 days should be an adequate interval for the airlines to have adopted their Plans (after DOT has reviewed and commented on drafts), to have modified their computer programs, and to be in full compliance with the new requirements.

9. Assure That Obligations Included in Airline Contingency Plans and Customer Service Plans Must be Truly Enforceable Through Their Inclusion in DOT-Reviewed Contract of Carriage Language

FlyersRights.org agrees with the NPRM proposal that each carrier that is required to adopt a Contingency Plan for lengthy tarmac delays and a Customer Service Plan (hereafter “Plans”) must be required to incorporate those Plans into each carrier’s Contract of Carriage, and that each carrier that has a website must post its Contract of Carriage there.

Including the content of the Plans in the Contract of Carriage is intended to make the carrier’s promises and obligations truly enforceable in state courts, and that is a worthwhile objective if it can be achieved in practice. Providing Contract of Carriage information on a carrier’s website at least provides passengers with the opportunity to educate themselves to the carrier’s stated obligations. It’s a lot better than the passenger’s theoretical right just to review a copy of the Contract of Carriage at the airport check-in counter or at ticket offices.

(a) Individual passengers have no alternative avenue to obtain relief for an airline’s violation of its obligations other than to rely upon the language in its Contract of Carriage.

DOT has, by its own assertions¹⁰ and as reflected in some court decisions, preempted the field of regulating airline obligations to passengers in interstate commerce. Thus no state or local government currently can regulate the behavior of airlines and impose fines or grant rights to passengers to enforce promises made by or obligations of U.S. airlines. As a result, until there is a different interpretation of law or a statutory change, the passengers’ only recourse is to the Federal Government.¹¹

¹⁰ DOT Clarification Concerning Advance Notice of Proposed Rulemaking, 73 FR 11843 (March 5, 2008) citing *Rowe v. New Hampshire Motor Transport Assoc.* 128 S. Ct. 989, (February 20, 2008).

¹¹ International conventions ratified by the United States Government have the force and effect of Federal law. Thus passengers do have certain rights enforceable in Federal courts under the Montreal Convention -- for airline violations of obligations to passengers only on international flights. In contrast, this NPRM is limited to enforcement of carrier obligations for their domestic operations that have not (yet) been enacted into Federal law; thus individual passengers can look only to state contract (or tort) law for any relief for violations of the provisions in the Contract of Carriage.

Within this federally-preempted area, DOT has limited its own enforcement function over airline obligations mandated under Federal statutes or regulations to monitoring carrier behavior and imposing (and then compromising) civil penalties on the airlines (payable to the U.S. Government) for prohibited activities occurring in interstate commerce. DOT does not determine whether any airline has violated its obligations to individual passengers and whether that airline need satisfy individual passengers for their losses or damages.

Thus the only possible avenue for individual passengers to enforce airline promises or other obligations is by litigating in state court on the language in each airline's Contract of Carriage.. State law enforcement of the provisions in an airline's contract with its passengers is not federally preempted.

b. For passenger rights to be truly enforceable, the language in each airline's Contract of Carriage must not condition its obligations so that they are not justiciable.

FlyersRights/org renews its claim that the language of the provisions in airline Contracts of Carriage relating to an airline's obligations to its passengers has been so eviscerated by generations of airline lawyers inserting limitations such as "to the extent reasonable," "best efforts," etc. -- that no judge, arbitrator or master, for example, in a state's small claims court, could fairly and readily determine whether the airline had legally damaged the passenger and to what extent the passenger can be made whole for the damage (or loss) sustained.

c. DOT must review Contract of Carriage provisions proposed by airlines to assure that passenger rights are not negated by restrictive language.

Since DOT is unwilling to provide an internal forum to determine whether an individual passenger's rights have been violated, FlyersRights.org asserts that DOT, as a corollary, has an obligation to assure that the provisions in an airline's Plans that are includible in the Contract of Carriage are clearly written in language understandable to a layman and that they are not so conditioned by weasly lawyer words that they are, in practice, unenforceable.¹² This is yet another reason why DOT should establish minimum standards for carrier obligations to passengers, and to review and approve carrier submissions of their Plans, including the actual language proposed to be included in their Contracts of Carriage.

d. Airline arguments against the proposed DOT requirement for incorporating airline Plans into their Contracts of Carriage are specious.

In brief, the (Air Transport Association member) airlines were willing in 1999 to adopt Customer Service Plans -- to avoid Federal legislation. Now they're willing to develop Contingency Plans if mandated by DOT -- just so long as their commitments in those Plans aren't ever enforceable against them!

¹² The DOT NPRM at p. 73 FR 74600 acknowledges that the airlines would try to squirm out of their enforceable obligations to passengers by including language "weakening their existing plans" if these obligations are incorporated into their Contracts of Carriage.

The airlines argue that including their Plan obligations in their Contracts of Carriage would just foster litigation in state courts, which could result in inconsistent judicial decisions, and that these results could cause them to weaken the content of their existing and future Plans. All in all – a big bother.

In our view, all corporations -- even U.S. airlines already protected to an extraordinary degree by Federal preemption -- need defend against challenges under state laws that they did not live up to their contractual obligations. However, to the extent DOT establishes minimum standards for carrier behavior and reviews the language of carrier Contracts of Carriage for consistency with their Plan obligations, as we have recommended above, there should be more consistency in state law determinations.

If DOT reviewed the language the airlines were proposing for their Contracts of Carriage, DOT could deal appropriately with the airlines' concerns that that document should not contain technical and operations terms. DOT's standard of review should be "Does this draft provision indicate clearly to the airline consumer what the airline commits to do?"

FlyersRights.org appreciates the opportunity to comment on this NPRM and hopes that DOT will soon issue a strengthened final regulation, hopefully including some additional provisions from pending Federal legislation.

Sincerely,

A handwritten signature in cursive script that reads "Kate Hanni".

Kate Hanni
Founder/Spokesperson
FlyersRights.org

Attachments

Sample Airline Stranding/Long Tarmac Delay Stories

January 1st, Albany: United flight 5309 pushed only a few feet from the gate and sits for 7 hours and 50 minutes. The airline tell the passengers they could have deplaned, the door was shut and they were pushed back from the gate, but only a few yards from the gate. United opened the door but no stairs were presented. Passengers were told "you get off you don't get your luggage". The passengers were hungry, angry and lost. Their flight was, after 7 hours and 50 minutes canceled. Dan Higgins from the Times Post described it as near mutiny and said that many passengers were relieved to have a law that would protect them. Since the New York Law was overturned there are still no protections and the passengers got nothing to compensate them.

January 16th: Delta in Atlanta flight 1201: Chaira Bell sitting next to two elderly folks in coach was pushed back from the gate to a deicing line. This was early evening. She was headed from Atlanta to Palm Beach. The pilot said they would have to de-ice. What was never shared with them were the number of jets in the deicing line were 90. At 25 minutes per jet to de-ice, they were in the deicing line 5 hours before the pilot came on and said he was returning to the gate to allow folks to go get food, water, and a toilet, they had 15 minutes. He threatened them with not getting their baggage and not having a flight home at all if they did not return to complete the flight. He said they would re-enplane immediately and take off. But with full knowledge on the part of pilot and crew they went out and sat for another 5 hours in the deicing line and then took off. Elderly were shaking, diabetics were near shock and no one cared...For 4 solid days the Atlanta Constitution Journal reported that Delta airlines had lines of 30 to 90 jets deicing and folks sat for 8 to 10 hours in aircraft that held live human beings who were parched, hungry, tired and unsuspecting.

June 9, Gary Indiana: United flight 1020 was diverted out of Chicago airspace to Gary Indiana. The landing was so rough that the flight attendants had bruised ribs. Passengers were shaken from the dangerous landing and now at an airport that was closed. For 12 hours they were in that plane with no food, water or ability to get off. There were medical events treated on board but no plan in place for airports or airlines to do what should have been done to help them off of the plane. The airline blamed the airport for not being open. The airport said the airline never called them. The DOT stated, when I asked them, that folks were "just happy to be on the ground". We had a member on that plane Lucy Fitzpatrick and she was outraged to hear this summary dismissal of what really happened inside the plane. The passengers did want off and like prisoners, simply weren't allowed.

December 1st, TACA airlines flight 670 was diverted to Ontario airport due to FOG at LAX. Apparently their Brand New airbus 321 did not have appropriate equipment to land in FOG? Having been in flight for 5 hours they were then put down on the ground to sit for 9 solid hours. One passenger was so ill, she needed her medication and they made no effort to get it for her. She then called 911. Emergency vehicles came to the jet, but when passengers wanted off they were refused.

December 16th, AA flight 154 from Norita to Chicago was diverted to Detroit. Chris O'meary and his classmates were on board in Coach. DETROIT, the infamous home of the NWA debacle of 1999. Chris said he and his college friends were trading cell phones, trying to reach their parents as each cell phone died he found himself the only one with a live cell phone. When Chris went to the restroom (having been on board the same plane for 19 hours) there was vomit in the sink. Chris said there was no water, no food and people were shaking from lack of both. They were lied to and told that no gate was the size of their jet. Then no customs people were available. Then, well, the pilots rest hours expired so guess what? Gate and customs were ready and waiting.

January 22, Portland Oregon. Aero Mexico plane diverts to Portland. They had already flown for 6 hours and were tired when they were informed they were diverting to Portland due to fog in Seattle. The passengers became restless after 4 hours on the ground (10 hours in the plane) and they began to let the crew know they wanted off, the excuse was "No customs". Homeland Security entered the aircraft and told the hot, angry, hungry, thirsty people "if you want off, you'll be arrested". That plane then took off and flew all the way back to Mexico, only to turn around and fly back to Seattle.

The New York Times

ARTHUR OCHS SULZBERGER JR., *Publisher*

The Tarmac's Maddening 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.
