

Public Comment and Submission Form

Docket and Document Information

Docket ID DOT-OST-2007-0022

Docket Title Enhancing Airline Passenger Protections

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Document Title Enhancing Airline Passenger Protections

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* denotes required f
denotes public viewable f

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Docket Information

Docket ID DOT-OST-2007-0022
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Comments

Regional Airline Association's Comments on Enhancing Airline Passenger Protections

Attachments

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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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|-----------------------------|---|--------------------------|
| In the Matter of |) | |
| |) | |
| ENHANCING AIRLINE PASSENGER |) | Docket DOT-OST-2007-0022 |
| PROTECTIONS |) | |
| |) | |

COMMENTS OF
THE REGIONAL AIRLINE ASSOCIATION

The Department’s proposed rule on “Enhancing Airline Passenger Protections” (73 Fed. Reg. 74586, December 8, 2008) (“NPRM”) is a solution in search of a problem. Providing a safe and positive experience for passengers is paramount to the Regional Airline Association (“RAA”) and its members.¹ Regional airlines and their nearly 60,000 employees usually succeed in providing safe, efficient, and timely transportation to the traveling public. Recent voluntary efforts by all airlines to improve on-time performance are working and have already reduced delay without the need for additional regulation. Accordingly, RAA urges the Department and the Federal Aviation Administration (“FAA”) to focus on initiatives that will increase the efficiency of the Air Traffic Control (“ATC”) system rather than finalizing the proposals outlined in this rulemaking. To the extent any of the proposals are adopted, they should be

¹ Aerolitoral, Air Canada Jazz, Air Wisconsin Airlines, AirNet Systems, American Eagle Airlines, Atlantic Southeast Airlines, Cape Air, Chautauqua Airlines, Colgan Air, Comair, Commutair, Compass Airlines, Empire Airlines, Era Aviation, ExpressJet, FedEx, GoJet, Grand Canyon Airlines, Great Lakes Airlines, Gulfstream International Airlines, Hawaii Island Air, Horizon Air, Lynx Aviation, Mesaba Airlines, New England Airlines, Piedmont Airlines, Pinnacle Airlines, Inc., PSA Airlines, Republic Airlines, Salmon Air, Shuttle America Airlines, SkyWest Airlines, and Trans States Airlines.

narrowly focused and should apply only to airlines that hold out services to the public, offer reservations services, and ticket passengers, and make the decisions regarding delays and food and beverage service.

I. The Proposed Rule Is Unnecessary

As a factual predicate for its customer service proposals, the Department cites a few high profile incidents of stranded aircraft in 2006 and 2007 and poor arrival times in the first seven months of 2007 and the first five months of 2008. (See 73 Fed. Reg. at 74586) The Department notes: "We observed that passengers were also being harmed by the high incidence of less extreme flight delays: In the first seven months of 2007, only 72.23 percent of flights arrived on time, a lower percentage than for the same period in any of the previous 12 years." (Id.) Yet, in the next four months (August 2007 to November 2007), on-time percentage figures jumped to 77.89 percent, which was better than the average of this same time period in the previous two years. AIRLINE ON-TIME STATISTICS AND DELAY CAUSES – ON TIME ARRIVAL PERFORMANCE, NATIONAL (through December, 2008), www.bts.gov, accessed March 6, 2009.

The Department continues: "On-time arrival performance remains problematic: It has improved only slightly since the issuance of the ANPRM. For the first five months of 2008, it was the second worst for these months in 14 years." (73 Fed. Reg. at 74586) In fact, the Department ignores the next five months of 2008, June through November, when on-time arrival performance for those months was the best it has been in five years, averaging 79.86 percent. Further, on-time arrival performance continues to improve remarkably, with on-time performance for October 2008 at a stunning 86.02 percent. There have only been three better

months in the past 13 years. Overall, the on-time performance average, over the past 13 years, is 76.97 percent. On-time performance for 2008 averaged 76.15 percent and would have easily surpassed the 13 year average, if not for exceptionally bad weather in December. Despite December's bad weather and related delays, on-time performance for 2008 was better than 2006 or 2007. AIRLINE ON-TIME STATISTICS AND DELAY CAUSES – ON TIME ARRIVAL PERFORMANCE, NATIONAL (through December, 2008), www.bts.gov, accessed, March 6, 2009.

Contrary to the Department's observation that passengers are being harmed by delays and poor service, the industry set records for completion, on time performance, and low incidence of mishandled bags by the end of 2008. In its own Air Travel Consumer Report, released in September 2008, the Department reported across-the-board improvements in customer service from July 2007 through July 2008. During that period of time, airlines have taken voluntary measures to decrease the number of flight cancellations, flight diversions, involuntary denied boarding, mishandled bags and the number of customer complaints went down while on-time flight arrival performance numbers went up. Similarly, lengthy tarmac delays have also become extremely rare. In November 2008, only 0.00002 percent of scheduled flights were subject to tarmac delays of greater than four hours.

The Department deserves a great deal of credit for these improvements. It has been aggressively addressing these problems through its existing programs and the carriers have responded. As such, the proposed rules leave the industry nonplussed. The Department is ignoring its own success and seeks to supplant effective programs with expensive and burdensome regulation. It is simply unfair to add new regulations, economic burdens and legal liabilities to an industry that has improved by working faithfully within current Department programs.

Additionally, the Department's proposals overlook a fundamental reality about delay: delay of any kind brings significant economic harm to airlines. The industry has no incentive to take long tarmac delays or operate a chronically delayed flight. Delays of any nature mean increased labor costs and greater fuel consumption costs for airlines operating the flight. Passengers who are unsatisfied with a long delay have the right to transfer their ticket (and its revenue) to another carrier. If they are stuck overnight, then the carrier must provide meal coupons and hotel room vouchers for passengers. These increased costs are not built into the ticket price; these costs come right out of the bottom line of airlines' profits. Delays also typically lead to adverse publicity and consumer reaction. These combined factors constitute powerful economic and competitive incentives for airlines to achieve on-time performance and avoid delays.

Regional airlines, in particular, have an economic incentive to avoid delay because their arrangements with code-share partners generally include financial incentives for on-time performance and substantial, adverse economic consequences for delayed flights. Because the airlines, as well as their passengers, suffer financial harm from delay of any kind, airlines are continuously working hard every day to improve their on-time performance.

Moreover, the actions proposed in this rulemaking will not avoid episodic tarmac or flight delays. Instead of seeking to penalize airlines for delays, the Department should focus on modernizing the nation's outdated ATC system, which will alleviate both airspace and runway congestion. ATC improvement, in contrast to punitive action against carriers, constitutes a healthier and more comprehensive means of reducing delays and improving the airline customer experience. With record performance being turned in by the airlines, who have already taken

voluntary measures to improve on-time performance, there is no need for the measures and enforcement policy proposed in this rulemaking.

II. If Adopted At All, the Proposed Rule Should Be Limited to Carriers Holding Out Services to the Public and Ticketing Passengers

The Department bases its proposed rules primarily on its authority to "protect consumers from unfair and deceptive practices" and its authority under 49 U.S.C. § 41712. (73 Fed. Reg. 74586). The scope of the rule, however, is not tailored to this goal. By basing exclusions to the rule's requirements on the size of aircraft used in air operations and the number of passengers carried, the Department improperly includes airlines that do not market flights to the public or ticket passengers and thus cannot deceive consumers. Moreover, the proposed rule also reflects a fundamental misunderstanding of the regional airline industry. Most regional airlines have little, if any, interaction with the public through the ticketing process and hold no contract of carriage with passengers. Any measures adopted should be limited to airlines that hold out flights to the public, offer reservations services, and ticket passengers. Failure to recognize the unique relationship between regional airlines and their mainline partners would result in unworkable, ineffective rules that would not achieve the Department's objective of preventing deceptive practices and improving customer service.

More than 90 percent of regional airline passengers travel on regional airline flights that are scheduled, processed, marketed, ticketed, and handled by the mainline airline partner. Under this scenario, the mainline airline partner, and not the regional airline, enters into a contract of carriage with the passenger. Unlike their mainline partners, these regional airlines have no reservations personnel or third-party sales agents of their own. In fact, most regional airlines have no direct interaction with consumers at all during the booking, sales, reservations, or

