

April 27, 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

**Re: AirlinePassengers.org Urges House-Senate Conferees on FAA
REAUTHORIZATION BILL to Accept the Best "Airline Passenger Rights"
Provisions in Each Version of This Important Legislation**

Dear Senators and Representatives:

AirlinePassengers.org, a newly-chartered non-profit organization¹ to serve as the "Voice for Airline Passenger Rights," congratulates the U.S. Senate and House of Representatives for having passed each chamber's own version (S. 223, H.R. 658) of the long-delayed FAA REAUTHORIZATION BILL. As you now approach the all-important House-Senate Conference to resolve the differences between those versions, hopefully for enactment by May 31, 2011, we urge you to include the best airline passenger rights provisions from each bill in your final legislation.

Passengers were highly pleased at the press descriptions of the contents of DOT's recently-released second airline passenger rights regulation² and are most supportive of those new requirements. However, most of its provisions involved topics not covered in Title IV - Airline Service; Subtitle A - Consumer Protection of the pending House and Senate bills. We believe that this Congress should codify its policy directions on the issues included in the pending legislation so as to provide instruction to DOT for additional consumer protection actions in the near future. (DOT indicated that an additional rulemaking can be expected on issues deferred in its new regulation.)

¹ AirlinePassengers.org, is a Virginia corporation recently organized to qualify for federal income tax exemption under Section 501(c)(3) of the Internal Revenue Code. It has filed comments in various Department of Transportation proceedings and sought to educate members of Congress concerning consumer aviation issues: its views have been widely cited in The Washington Post, the Chicago Tribune and elsewhere: and it is generally recognized as responsibly serving the interests of airline passengers.

² DOT Final Rule, "Enhancing Airline Passenger Protections" 76 FR 23110 (April 25, 2011).

Here are our suggestions:

1. Require DOT Approval of Airline and Airport Contingency Plans for Long Tarmac Delays, including Passenger Option for Deplaning Not Later Than at 3-Hours on the Tarmac

Section 425 of the House bill and section 401 of the Senate bill detail the Congress' primary legislative protections for airline passengers whose aircraft are stranded on airport tarmacs for long delays. Both bills require airlines and airports to submit to DOT their contingency plans for providing for the essential needs of passengers during these tarmac delays, for DOT's establishing minimum standards for these plans, for DOT review and approval of the submitted plans, and for periodic plan updates. Thus all these common elements in both bills should be included in the final conference version.

The 3-hour maximum tarmac delay is included only in the Senate bill. The House bill provides no maximum. This 3-hour maximum for airline operations should be codified by the conferees in the final legislation to be sent to President Obama because passengers know of and are depending on this criterion being retained.

Airline management and airport operators have increasingly been firming up their contingency planning, either because of the possibility of DOT civil fines or because the flying public now knows of this "3-hour standard" for all airline operations and is raising the issue with flight attendants when long tarmac delays occur.

Its reasonableness and technical feasibility has been proven since the DOT's first passenger rights regulation³, including the 3-hour maximum, came into effect. From May 2010 through February 2011, the number of 3-hour or longer tarmac delays dipped to 16 from 664 during the same period the year before! And, according to DOT data, its rule has not resulted in significantly more flight cancellations as the airlines had predicted. In the first 10 months after the rule became effective, carriers cancelled only 331 flights after tarmac delays of more than two hours, an increase of but 42 cancellations compared with the same period the year before.

Cabin temperature ("cabin ventilation and comfortable temperatures") is a required element of airline contingency plans in the Senate bill (in addition to food, water, restrooms and access to necessary medical treatment) but this language was unexpectedly dropped from this year's House bill. It should be included in the conference action. Many passengers complain that cabin air conditioning is often turned off to save power during tarmac strandings during summer months and the cabin becomes very uncomfortable.

³ DOT Final Rule, "Enhancing Airline Passenger Protections," 74 FR 68983 (December 30, 2009).

2. Require Airline Disclosure of Fares and (All) Fees so Consumers Can Do Side-by-Side Comparison Before Purchasing

Sections 407 and 405 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 charging tickets. In recent months, some airlines have stopped providing such information to third parties for side-by-side fare and fee comparability purposes, instead requiring passengers to visit individual carrier websites. This easy comparability of fares and fees charged by competing carriers is a highly-valued resource for individual passengers as well as business travel managers and should be included in the final legislation. The House Transportation and Infrastructure Committee held a hearing on this issue on July 14, 2010, but did not include any provision in the current House bill.

We urge the conference committee to include an instruction to DOT in the final FAA bill to require airline price transparency. Hidden fees are a violation of travelers' most basic right: to know how much they will have to pay for their trip. Plus, our free market system depends on price transparency to function properly. Obscuring a portion of the price only serves to mislead consumers by making airfares appear deceptively lower than they actually are.

3. Require Airlines to Include DOT's "Air Passenger Complaints Hotline" Telephone Number in All Email Confirmations of Ticket Purchases

Both House (§ 425) and Senate (§ 401) bills require DOT to establish a hotline telephone number for air passengers to contact DOT's Aviation Consumer Protection Office. Since this provision is in both bills, it should be included in the final conference measure. The House version is preferable since it requires airlines to include that useful information in any email confirmation they send after ticket purchase. This is far preferable to any narrower requirement that new information simply be posted at airline ticket counters where it is less readily available and useful to air travelers.

This "hotline" must not end up being a "cold line," just an answering machine at DOT with no live, trained counselors to talk in real time to air travelers. This passenger input can provide DOT with actionable data to help implement the consumer protection provisions of this legislation.

4. Require DOT to Establish an Aviation Consumer Protection Committee to Consider Additional Airline Passenger Protections

Section 404 of the Senate bill requires DOT to establish an advisory committee for aviation consumer protection to advise the DOT Secretary in carrying out air passenger service improvements. The advisory committee will evaluate existing aviation consumer protection programs and recommend additional programs if needed. The membership would be comprised of four representatives, one each from air carriers, airport operators, state/local governments and non-profit aviation public interest groups. The earlier House bill had included a similar provision of eight members, two each representing the four interest groups, but that provision was unexpectedly deleted from this year's House legislation.

Air passenger issues deserve a continuing forum for considering improvements and modifications to consumer policies within the Office of the DOT Secretary and, in turn, the Federal Aviation Administration. While other important areas in DOT/FAA (e.g., aviation safety rulemaking) have continuing advisory committees to provide input to DOT/FAA, air passenger issues have never had continuing, structured input to the DOT Secretary. DOT's Tarmac Delay Task Force (2008) and its Future of Aviation Advisory Committee (2010) were one-time efforts, since completed, in which some passenger rights matters were considered.

We hope the conferees will endorse this consumer advisory committee and give the DOT Secretary discretion to increase the size of the committee to permit other stakeholders to be included, as there are many categories of air carriers and other industry groups, etc., that may want separate representation concerning important air consumer policy matters. The advisory committee's annual report(s) to Congress can highlight continuing issues of concern to air travelers that may justify further legislation.

5. Require Airlines and FAA to Take Actions to Avoid Airlines' Scheduling Flights That Exceed Any Congested Airport's Hourly Departure and Arrival Capacity

Section 430 of the House bill authorizes FAA to convene a conference of air carriers to voluntarily reduce aircraft operations that cumulatively exceed the maximum hourly departure and arrival capacity of congested airports. It also authorizes FAA to take action as necessary if there is no voluntary agreement to reduce overscheduling. The Senate bill has no comparable provision.

This provision will be an important addition to any final legislation. Congressional hearings and reporting by the DOT's Inspector General document that airlines collectively schedule more departures at busy hours than some major airports' runways can possibly handle in the best of weather conditions. The same situation occurs during heavy departure/arrival periods. Long tarmac delays occur disproportionately at those few airports where flights are overscheduled.

6. Oppose House Bill's Provision That Would Weaken FAA Safety Regulatory Process by Requiring Separate Cost-Benefit Tests for Each Individual Segment of the Aviation Industry on Air Safety Matters

During House floor action, a controversial amendment was added, 215-209, that would require the FAA to tailor safety regulations to different segments of the aviation industry rather than setting across-the-board safety standards. It would also appear to prohibit new air safety regulations if the FAA can't justify the costs to the industry. We are concerned that this provision, if accepted in conference, could make FAA's already cumbersome rulemaking process even more protracted. Although the provision's sponsor maintains that the language would apply only to new FAA regulations and not to the draft pilot fatigue regulations on which the agency has received comment after the Colgan 3407 crash in Buffalo two years ago, we are concerned that the House language could be interpreted more broadly. We hope the conferees will reject this controversial, dangerous provision. Whenever aircraft operators take on

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passengers, and especially when passenger services are offered to the general public, a high and generally uniform safety standard should be applied.

We are also enclosing a side-by-side comparison of the passenger rights provisions of the two bills, including our recommendations on other provisions in the bills. They cover needed information on child safety seats on airline aircraft, DOT expansion of investigations of air passenger complaints, and updating denied boarding compensation for bumped passengers.

The Association for Airline Passenger Rights (AAPR) also shares the views expressed in this letter.

Thank you for your consideration of these recommendations during your upcoming House-Senate Conference Committee deliberations. For additional information, contact AirlinePassengers.org at email: Legislation@airlinepassengers.org or toll-free phone: 1-855-AIRPASS (247-7277).

Sincerely,



BURTON J. RUBIN
Director

cc: Members of the Senate Committee on Commerce, Science and Transportation and the House Committee on Transportation and Infrastructure
Hon. Ray LaHood, Secretary, U.S. Department of Transportation
Hon. Randy Babbitt, Administrator, Federal Aviation Administration

Enclosure: "Passenger Rights Provisions in House and Senate Versions of FAA Reauthorization Act"