

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 244 and 259

[Docket No. DOT-OST-2019-0144]

RIN 2105-AE47

Tarmac Delay Rule

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: The U.S. Department of Transportation (DOT or the Department) is issuing a final rule to modify U.S. and foreign air carrier obligations with respect to tarmac delays and to conform carrier obligations with respect to departure delays with the changes made to the Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016. The final rule also makes changes to passenger notification requirements during tarmac delays, as well as carrier tarmac delay reporting and record retention requirements.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ryan Patanaphan, Senior Trial Attorney, or Blane A. Workie, Assistant General Counsel, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave., S.E., Washington, D.C., 20590, 202-366-9342, 202-366-7152 (fax), ryan.patanaphan@dot.gov or blane.workie@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Background

Current Rule

On April 25, 2011, the Department published the “Enhancing Airline Passenger Protections” rule to improve the air travel environment for passengers.¹ Under this rule, carriers are required to adopt and adhere to tarmac delay contingency plans. DOT’s regulations require that these plans contain assurances that covered carriers will not allow aircraft to remain on the tarmac for more than 3 hours for domestic flights and 4 hours for international flights without providing passengers the option to deplane, subject to exceptions related to safety, security, and Air Traffic Control related reasons. Carriers’ plans must also contain assurances that carriers will provide adequate food and drinking water within 2 hours of the aircraft being delayed on the tarmac, provide notifications regarding the status of the delay and the opportunity to deplane if the opportunity to deplane exists, maintain operable lavatories and, if necessary, provide medical attention.

FAA Extension, Safety and Security Act

Section 2308 of the FAA Extension, Safety, and Security Act of 2016, Pub. L. 114-190 (FAA Extension Act) requires the Department to issue regulations and take other actions necessary to carry out the amendments made by Section 2308. These amendments include new language requiring air carriers to begin to return an aircraft to a suitable disembarkation point no later than 3 or 4 hours after the main aircraft door is closed for departure. In response to the FAA Extension Act, the Department’s Office of Aviation Enforcement and Proceedings (renamed the Office of Aviation Consumer Protection, or OACP) issued an “Enforcement Policy on Extended Tarmac Delays” (Enforcement Policy)² on November 22, 2016. The Enforcement

¹ Enhancing Airline Passenger Protections Rule, 76 FR 23110, Apr. 25, 2011.

² <https://www.transportation.gov/airconsumer/enforcement-policy-extended-tarmac-delays>

Policy states that, as a matter of enforcement discretion, the Department will not take enforcement action against U.S. and foreign air carriers with respect to departure delays if U.S. and foreign air carriers begin to return the aircraft to a gate or another suitable disembarkation point no later than 3 hours for domestic flights and no later than 4 hours for international flights after the main aircraft door has closed in preparation for departure. The Enforcement Policy further provides that the process of beginning to return to the gate or a suitable disembarkation point varies based on whether the aircraft is in a carrier-controlled part of the airport or a non-carrier-controlled part of the airport. The Enforcement Policy is intended to be a temporary fix until the Department issues a final rule that specifically addresses lengthy tarmac delays pursuant to the FAA Extension Act.

Notification of Regulatory Review and Notice of Review of Guidance

In October 2017, the Department published a Notification of Regulatory Review,³ seeking public input on existing rules and other agency actions that are good candidates for repeal, replacement, suspension, or modification. The Department received comments related to the tarmac delay rule from Airlines for America (A4A), United Airlines, International Air Transport Association (IATA), Kuwait Airways, National Air Carrier Association (NACA), Eithad Airways, Association of Asian Pacific Airlines (AAPA), Lufthansa Group, Qantas, El Al, WestJet, Airlines Association of Southern Africa, and Air France/KLM. Further, on February 5, 2019, the Department published a Notice of Review of Guidance⁴ inviting the public to identify and provide input on existing guidance documents that are appropriate candidates for repeal, replacement, or modification. The Department received joint comments from A4A and IATA as

³ 82 FR 4570, Oct. 2, 2017.

⁴ 84 FR 1820, Feb. 5, 2019.

well as comments from American Airlines related to the 2016 Tarmac Delay Enforcement Policy. The Department reviewed comments received in response to the Notification of Regulatory Review and Notice of Review of Guidance and proposed certain changes to the tarmac delay requirements. These proposed changes, which consist primarily of a new exception for departure delays to conform the regulations to the FAA Extension Act and several changes to reporting requirements and other carrier obligations with respect to tarmac delays, are described in more detail below.

Notice of Proposed Rulemaking

On October 25, 2019, the Department published a Notice of Proposed Rulemaking (NPRM), 84 FR 57370, in which it proposed to implement changes to the tarmac delay rule resulting from the FAA Extension Act. The NPRM incorporated the FAA Extension Act's new departure delay standard by proposing a new exception applicable to departure delays, with additional proposals intended to clarify or improve the existing tarmac delay rule. In response to the NPRM, the Department received 18 comments from U.S. and foreign air carriers, air carrier associations, a consumer advocacy group, an individual consumer, and a data and technology company. The comments addressed ten subjects discussed in the NPRM: (1) departure delay exception, (2) start of the tarmac delay, (3) applicability of the tarmac delay rule to U.S. and foreign air carriers, (4) diversions, (5) data reporting requirements (including reducing duplicative reports and other adjustments to existing requirements), (6) narrative reporting requirement, (7) status announcements, (8) deplaning announcements, (9) tarmac delay safety exception, and (10) provision of food and water. The Department also received comments on issues that were not raised in the NPRM and are outside the scope of this rule—*i.e.*, additional exceptions to the tarmac delay rule, methodology used to calculate tarmac delay civil penalties,

and comfortable cabin temperatures. The Department has carefully reviewed and considered the comments received. The commenters' positions that are germane to the specific issues raised in the NPRM and the Department's responses are set forth below.

Comments and Responses

1. Departure Delay Exception

The NPRM: Section 42301 of Title 49 of the United States Code provides that a tarmac delay ends for an arriving and departing flight when a passenger has the option to deplane an aircraft and return to the airport terminal; however, for a departing flight, it is not a violation of the assurance to permit an aircraft to remain on the tarmac for more than three hours for domestic flights and more than four hours for international flights if the air carrier begins to return the aircraft to a suitable disembarkation point by those times in order to deplane passengers. DOT proposed to amend its tarmac delay rule by creating a new departure delay exception to reflect the statutory changes in 49 U.S.C. 42301. To determine when the carrier begins to return to a suitable disembarkation point, DOT proposed that if the aircraft is in an area of the airport property that is under the carrier's control, an aircraft would be considered to have begun to return to a suitable disembarkation point when the pilot begins maneuvering the aircraft to the disembarkation point. DOT also proposed that if the aircraft is in an area that is not under the carrier's control, then the aircraft has begun to return to a suitable disembarkation point when a request is made to the FAA control tower, airport authority, or other relevant authority directing the aircraft's operations, rather than when permission is granted as was articulated in the Enforcement Policy. The Department proposed to apply the same standard to flights of U.S. and foreign air carriers experiencing a tarmac delay at a U.S. airport.

Comments: Carriers were generally in agreement with the adoption of the departure delay exception, with some carriers proposing different standards for determining when the process of beginning to return to a suitable disembarkation point is triggered. Although many carriers agreed with changing the trigger from “permission granted” to “permission requested,” carriers and others mostly disagreed with varying the standard for returning to a suitable disembarkation point depending on the location of the aircraft on the airfield. Many carriers expressed concern about their flight crews not being aware of whether the aircraft was in a carrier-controlled area or an area controlled by another entity. IATA and A4A, in a joint comment joined by several other airlines, recommended adopting a performance-based standard for determining when a carrier begins to return to a suitable disembarkation point regardless of the location of the aircraft. Instead of finding that an aircraft begins to return when a request is made to the FAA or other authority, IATA, A4A, and others proposed that the aircraft begins to return when the decision is made to return. Air China and Xiamen Air recommended that the exception be triggered when a request to return is made by any carrier representative.

An individual and the FlyersRights organization opposed the adoption of a departure delay exception. The individual commented that the permissible tarmac delay time should be shortened, not lengthened as would occur under the NPRM. FlyersRights commented that tarmac delay incidents have increased in number since adoption of the 2016 Enforcement Policy, which provided for a new departure delay standard. FlyersRights also commented that Congress intended the departure delay exception to be triggered when the aircraft physically moves back to the gate, rather than the standard articulated in the NPRM.

DOT Response: After fully considering the comments received, the Department has decided to implement the departure delay exception as proposed in the NPRM. The 2016 FAA Extension

Act requires the Department to adopt a revised standard for tarmac delays on departing flights. Compliance with the 2016 FAA Extension Act requires that the Department permit carriers to keep departing flights on the tarmac for periods longer than the 3- and 4-hour time periods currently allowed under DOT's tarmac delay regulation, provided that the aircraft have begun to return to a suitable disembarkation point by those times in order to deplane passengers. The Department does not interpret its authority under 49 U.S.C. 42301 to allow it to require a decrease in the amount of time carriers are permitted to keep aircraft on the tarmac, unless a carrier voluntarily chooses to lower the time-period it will permit an aircraft to remain on the tarmac and incorporates that lower time limit into its tarmac delay contingency plan.

The Department acknowledges that commenters of multiple perspectives suggested eliminating the dichotomy of carrier-controlled and non-carrier-controlled areas from the analysis of whether an aircraft has begun to return to a suitable disembarkation point. DOT fully considered these comments and evaluated whether a single standard could work in both situations. The Department concluded that its approach to analyzing the location of the aircraft and using a different standard for whether the aircraft is in a carrier-controlled or non-carrier-controlled area sufficiently balances the needs of effective enforcement of the tarmac delay rule and the circumstances and interests of carriers and passengers, while appreciating the complexity of airport environments. A standard that requires carriers physically to maneuver aircraft back to the gate regardless of the aircraft's location, as sought by consumer advocates, may be difficult for carriers to meet if their aircraft are in a position on the airfield where FAA, for example, is directing the aircraft's movements and FAA does not provide the clearance for an aircraft to physically move. Conversely, industry commenters' suggestion that the process of returning to the gate has begun when a decision is made to return, lacks a measurable standard that can be

easily corroborated. It could also result in situations in which a carrier makes a decision to return to a suitable disembarkation point, but the aircraft does not actually begin the process to return to a suitable disembarkation point for some time due to reasons within the carrier's control.

The Department believes that the exception articulated in the NPRM provides the best middle ground that balances the above interests. For aircraft in an area of the airport that is not controlled by the carrier, there are typically verifiable and objective indicia of when an aircraft has begun the process of returning to a suitable disembarkation point, and the Department has determined that an appropriate trigger for this process is when the carrier makes a request for permission from the third party directing the aircraft's movements (*e.g.*, FAA, airport authority, or terminal) to return to a suitable disembarkation point. For aircraft that are in a carrier-controlled area, the physical maneuvering of the aircraft will signal the start of the process of returning to a suitable disembarkation point, consistent with the standard that has been in effect since the Department issued its 2016 Enforcement Policy.

As stated in the NPRM, the Department notes that the departure delay exception only applies when carriers begin to return to a suitable disembarkation point *in order to deplane passengers*. If a flight begins to return to a suitable disembarkation point, but does not provide passengers an opportunity to deplane, absent one of the safety, security, or air traffic control (ATC) exceptions provided in the regulation, DOT would not consider the flight to have begun to return to a suitable disembarkation point to provide passengers an opportunity to deplane, and the departure delay exception would not apply. For example, an aircraft that begins the process of returning to the gate or another suitable disembarkation point for a mechanical-related problem would not benefit from the departure delay exception if the purpose of the return did not

include providing passengers an opportunity to deplane and passengers were not provided the option to deplane.

2. Start of the Tarmac Delay

The NPRM: The Department proposed that for departing flights, a tarmac delay starts when the main aircraft door is closed, in line with the language in the FAA Extension Act. The Department further proposed to provide flexibility to carriers by taking into account circumstances when a carrier has closed the main aircraft door for departure but the aircraft has not left the gate. The Department proposed that, if a carrier can show that passengers on board the aircraft have the opportunity to deplane an aircraft, even while the aircraft doors are closed, then the tarmac delay clock would not start until passengers no longer have the opportunity to deplane. Absent a showing that passengers have the opportunity to deplane while the aircraft is at the gate with the doors closed, the Department would presume passengers do not have an opportunity to deplane.

Comments: Industry comments were generally supportive of the proposal regarding the start of a tarmac delay for departing flights and for the flexibility that the Department proposed for carriers. Some carriers, as well as IATA and A4A, also preferred to use the gate departure time as the start of the tarmac delay, in line with the data that is submitted to the Bureau of Transportation Statistics under Form BTS 244. Some carriers noted that many aircraft do not capture the door closing time. Exhaustless, Inc. opposed any standard that does not start the tarmac delay when the aircraft doors close, as provided in the statute. FlyersRights noted that the flexibility offered in the NPRM, in which carriers can rebut the presumption that the opportunity to deplane ends when the aircraft doors close, negates the benefits of the Department's proposal regarding the provision of food and water. FlyersRights argues that, if the timer for the food and

water requirement starts when the aircraft doors close, then the timer for a tarmac delay would not be in alignment if it starts at any time other than the time the aircraft doors close.

DOT Response: As amended by the FAA Extension Act, 49 U.S.C. 42301(b)(3) provides that “[a] passenger shall have the option to deplane an aircraft and return to the airport terminal when there is an excessive tarmac delay,” and that “[i]n providing the option described in subparagraph (A), the air carrier shall begin to return the aircraft to a suitable disembarkation point” no later than three or four hours (depending on whether the flight is domestic or international) “after the main aircraft door is closed in preparation for departure.” Based on this statutory language, the Department interprets the tarmac delay to start when the main aircraft door is closed for departing flights, rather than the gate departure time (*i.e.*, the time the aircraft pushes back from the gate), as proposed by some carriers. The Department expects that in most situations, the time the aircraft door is closed is equivalent to the time passengers no longer have the opportunity to deplane, thereby starting the tarmac delay. However, the Department acknowledges that there may be a few instances in which the opportunity to deplane may still exist after the aircraft doors are closed, for example, circumstances in which the jet bridge is still attached to the aircraft and the crew is available and willing to open the aircraft door immediately to allow a passenger to deplane. For this reason, this rule allows carriers to present evidence that the opportunity to deplane exists even with the doors closed. In such situations, evidence that the carrier made announcements that the opportunity to deplane was available and that the aircraft doors could be opened as soon as a passenger requested to deplane would be sufficient to show that an opportunity existed.

The Department agrees with FlyersRights regarding its comment that flexibility in the start of the tarmac delay could create a misalignment between the start of the tarmac delay and

the start of the food and water clock. For this reason, the Department has modified the food and water provision in the rule, as discussed in a later section.

3. Applicability to U.S. and Foreign Carriers

The NPRM: Although 49 U.S.C. 42301, which was amended by the FAA Extension Act, only applies to U.S. carriers, the NPRM proposed to apply the departure delay exception to both U.S. and foreign air carriers under DOT's authority to prohibit unfair and deceptive practices in 49 U.S.C. 41712. The NPRM proposed to apply the requirements of the NPRM to both U.S. and foreign air carriers to streamline the tarmac delay requirements and decrease confusion in the airport environment.

Comments: Commenters on this issue all agreed that adjustments to the tarmac delay rule should be applied to U.S. and foreign air carriers alike.

DOT Response: The requirements of this final rule apply to both U.S. and foreign air carriers, as proposed.

4. Diversions

The NPRM: The NPRM proposed that diversions would be treated as arriving flights up to the point that an opportunity to deplane is provided to passengers. Once an opportunity to deplane is provided, the diversion would be treated as a departing flight and after that point, the departure delay exception could apply if carriers begin to return to a suitable disembarkation point to deplane passengers within the time frames specified in the exception.

Comments: Industry comments were not all supportive of the NPRM's proposed treatment of diversions. While Exhaustless, Inc. and Delta Air Lines agreed with the proposals, Air China, the Association of Asia Pacific Airlines (AAPA), the National Air Carrier Association, and the Regional Airline Association (RAA), expressed their view that the tarmac delay requirements

should not apply to diversions. Many of them noted that carriers should not be held accountable for the lack of deplanement facilities at diversion airports, particularly during mass diversions, or in instances in which foreign carriers do not serve the diversion airport. AAPA also stated that passengers may not benefit from the rule in such situations if the flights are cancelled and passengers are stranded at an airport without carrier staff. Spirit Airlines proposed that diversions be treated as departing flights entirely, or to stop the tarmac delay clock when gates are not available and the airport or air traffic control caused the delay.

DOT Response: Section 42301 provides that a passenger shall have the option to deplane from an aircraft during an excessive tarmac delay, and that the option shall be offered to a passenger “even if a flight in covered air transportation is diverted to a commercial airport other than the originally scheduled airport.” 49 U.S.C. 42301(b)(3)(B). The statute makes clear that the tarmac delay requirements apply to diversions, and the Department is implementing the tarmac delay rule consistent with the statute. The Department has decided to proceed with the NPRM proposal to permit carriers to take advantage of the departure delay exception during diversions only after an opportunity to deplane is provided to passengers. If no opportunity to deplane has been provided, then the diversion is still treated as an arriving flight and the carrier must provide an opportunity for passengers to deplane within 3 or 4 hours, depending on whether the flight is domestic or international. The departure delay exception, as written, is not easily applied to diverted flights before an opportunity to deplane is provided, particularly the exception’s primary elements such as *returning* to a suitable disembarkation point and doing so within 3 or 4 hours *after the main aircraft door is closed*.

In considering the concerns of foreign carriers who may have limited operations at a diversion airport, the Department’s Office of Aviation Consumer Protection, the unit within the

Office of the General Counsel that enforces aviation consumer protection requirements, already considers circumstances in which a carrier encounters unforeseeable conditions, and for which the carrier exerts no control, in determining whether to proceed with enforcement action and whether to mitigate any potential sanction. The Department also notes that carriers are required by the regulation to coordinate tarmac delay procedures in advance with the airport authorities and government agencies at the carrier's regular diversion airports in the United States. If exigent circumstances require a flight to divert to an airport that is not a regular U.S. diversion airport for the carrier, then, while the tarmac delay requirements would continue to apply, the Office of Aviation Consumer Protection would consider the totality of the circumstances in determining whether there is a violation in such a situation. In doing so, the Office of Aviation Consumer Protection recognizes that carriers diverting to a non-regular diversionary airport are not required to coordinate tarmac delay contingencies in advance with authorities at that airport and may not have a contingency plan with the airport, which may impact the airline's ability to provide the opportunity to deplane in a timely manner. The Office of Aviation Consumer Protection often affords the carrier additional leeway when the carrier finds itself in such circumstances; however, the tarmac delay requirements not related to the opportunity to deplane, such as providing timely food and water or notifications, would not be impacted when the delay occurs at a non-regular diversion airport. The Department expects the carrier to take reasonable efforts to prevent or mitigate tarmac delay violations given the resources available in each respective situation.

5. Data Reporting Requirements

The NPRM: The Department proposed to revise the tarmac delay reporting requirements in 14 CFR Part 244. Under existing reporting rules in 14 CFR Parts 234 and 244, reporting carriers⁵ are required to file BTS Form 234 “On-Time Flight Performance Report” on a monthly basis for all scheduled passenger domestic flights that they market under their code to or from any U.S. large, medium, small, or non-hub airport. The report includes information on domestic scheduled passenger flights that experience tarmac delays at U.S. airports. Reporting carriers are also required to file BTS Form 244 “Tarmac Delay Report” on a monthly basis to report information on passenger flights they operate that experience lengthy tarmac delays, including domestic scheduled passenger flights that experience lengthy tarmac delays at medium, small, or non-hub U.S. airports to the extent the carriers do not already report on-time performance data voluntarily for these airports under 14 CFR 234.7.⁶ The combination of 14 CFR Part 234 and Part 244 reporting requirements has resulted in reporting carriers reporting tarmac delays twice at most U.S. airports. The NPRM proposed that reports for tarmac delays on scheduled domestic passenger flights no longer needed to be reported by reporting carriers under 14 CFR Part 244, provided that such flights are reported under 14 CFR Part 234.

⁵ “Reporting carrier” for air transportation taking place on or after January 1, 2018, means an air carrier certificated under 49 U.S.C. 41102 that accounted for at least 0.5 percent of domestic scheduled-passenger revenues in the most recently reported 12-month period as defined by the Department’s Office of Airline Information, and as reported to the Department pursuant to Part 241 of this chapter. Reporting carriers will be identified periodically in accounting and reporting directives issued by the Office of Airline Information. 14 CFR 234.2.

⁶ Reporting carriers are not required to file BTS Form 244 to report information on scheduled flights that experience lengthy tarmac delays at large hub U.S. airports because when DOT issued its rule for carriers to file BTS Form 244, that information was already required to be reported for domestic scheduled flights at large hub airports through BTS Form 234. Since then, the requirement for reporting carriers to provide on-time performance data using BTS Form 234 has been expanded to cover medium, small and non-hub airports. Also, the reporting of on-time performance data for scheduled domestic flights at medium, small, or non-hub U.S. airports on BTS Form 234 is mandatory and no longer voluntary for reporting carriers.

The Department also proposed to eliminate the requirement that tarmac delay reports be filed under 14 CFR Part 244 for international tarmac delays of between 3 and 4 hours in duration. Under the proposal, the requirement to report would only be triggered if the tarmac delay rises to the level of an “excessive tarmac delay,” defined as a tarmac delay of more than 3 hours for a domestic flight and more than 4 hours for an international flight.

Comments: Commenters generally supported the proposed changes to data reporting requirements. IATA and A4A also proposed that flights falling under the departure delay exception be excluded from reporting requirements, as the organizations preferred not to have such flights included in the Department’s monthly Air Travel Consumer Report. They also proposed excluding such flights from the statutory reporting requirement for U.S. carriers under 49 U.S.C. 42301(h). The RAA disagreed with the NPRM proposal, and expressed the view that non-reporting carriers should be exempt from 14 CFR Part 244 reporting requirements entirely, including when a flight is not reported by a reporting carrier. Exhaustless, Inc. and FlyersRights opposed the proposal that international tarmac delays of between 3 and 4 hours in duration no longer needed to be reported under 14 CFR Part 244, with FlyersRights noting that a competitive market requires informed consumers.

DOT Response: On balance, the Department views the data reporting requirement as serving a useful purpose in providing information to consumers to enable them to make informed decisions. However, the Department found that continuing to require reports for international tarmac delays not exceeding 4 hours would serve limited value to consumers, particularly when the Department does not publish these underlying tarmac delays in the monthly Air Travel Consumer Report. The data for international tarmac delays between 3 and 4 hours in duration primarily served an academic function, without aiding consumers’ ability to make informed

choices, an element of the Department's consumer protection mission. For this reason, the Department has decided to adopt the proposal that international tarmac delays of 4 hours or less no longer need to be reported under 14 CFR Part 244.

Regarding duplicative reporting, the intent of the Department on this subject was to reduce unnecessary reporting that resulted from recent changes to 14 CFR Part 234, thereby reducing the reporting burden for both reporting and non-reporting carriers. After reviewing the comments, the Department continues to see no reason not to move forward with the proposed changes of eliminating duplicative reporting. The final rule makes minor adjustments and relieves non-reporting carriers of the obligation of filing BTS Form 244 for scheduled domestic flights if such flights are already reported by the reporting carrier to the Department using BTS Form 234. As noted in the NPRM, prior to this rule, tarmac delays on scheduled domestic flights marketed but not operated by a reporting carrier were reported twice: the reporting carrier reported the flight using BTS Form 234, and the non-reporting carrier reported the same flight using BTS Form 244. The final rule also relieves reporting carriers of the obligation of filing BTS Form 244 for scheduled domestic tarmac delays that occur at small, medium, and non-hub airports, delays which are already reported under 14 CFR Part 234. Under the final rule, all covered carriers continue to be required to file BTS Form 244 for tarmac delays occurring on international and public charter flights, and on flights not otherwise reported under 14 CFR Part 234 (*e.g.*, extra section flights). Non-reporting U.S. carriers that operate flights that are not held out by reporting carriers are still required to file BTS Form 244 for tarmac delays on domestic and international flights. The Department was not persuaded that non-reporting carriers should be exempt from the Part 244 reporting requirement. On the contrary, such reports may serve even greater value to consumers when they evaluate flight options from smaller, non-reporting

carriers, many of which may be less familiar to the traveling public than larger, reporting carriers.

The Department found unpersuasive commenters' suggestion that tarmac delays meeting the departure delay exception or another exception be excluded from reporting requirements. The Department notes that the definition of an "excessive tarmac delay" under 49 U.S.C. 42301 for U.S. carriers is unaffected by whether an exception to the tarmac delay incident exists. Such exceptions, if applicable, would mean that the lengthy tarmac delay incident did not violate the law, but the exceptions do not reclassify a tarmac delay as something other than a tarmac delay. The applicability of an exception also does not impact whether a carrier must file a tarmac delay report under 49 U.S.C. 42301(h), and in the regulatory context, the Department views the applicability of an exception to impact whether a carrier has violated the tarmac delay rule, but not whether a tarmac delay has occurred. Whether an exception to the tarmac delay incident applies, the consumer harm of being held on an aircraft for an extended period exists, and information concerning such incidents is important for consumers to make informed decisions.

The Department also notes that, if carriers were permitted to exclude flights meeting a tarmac delay exception from their reporting requirements, the result could be inconsistent reporting practices between carriers determining whether an exception applied, thereby adding subjectivity to the data. Moreover, reporting carriers would see an increase in the time and resources needed to file their monthly reports under 14 CFR Part 234 because the time needed to investigate and sort out tarmac delay exceptions from routine monthly on-time performance reports could be significant based on the amount of time that it currently takes airlines and the Department to make such determinations.

6. Narrative Reporting Requirement

The NPRM: The Department proposed to eliminate the tarmac delay record retention requirement in 14 CFR 259.4(e) and replace it with a reporting requirement. Prior to this final rule, U.S. and foreign air carriers with a tarmac delay contingency plan were required to retain specific information related to a tarmac delay for two years, including, among other information, the length and cause of the delay and an explanation of the actions taken to minimize passenger hardship. Under 49 U.S.C. 42301(h), U.S. carriers are also required to submit a written description of each excessive tarmac delay, which may include the information required to be retained under 14 CFR 259.4(e). The Department proposed that the new reporting requirement, which would replace the record retention requirement, would include the same information required to be retained under the existing § 259.4(e), and would also satisfy U.S. carrier obligations under 49 U.S.C. 42301(h). The Department proposed that the new reports would be due within 30 days of the date an excessive tarmac delay occurs, which is consistent with the time frame reports are due for U.S. carriers under 49 U.S.C. 42301(h).

Comments: Comments from industry were supportive of the proposal. The AAPA, IATA, and A4A noted that the 30-day timeframe for filing the narrative reports as proposed in the NPRM may be insufficient, particularly when the precise cause of the delay may take longer to determine. The associations felt that carrier personnel may feel uncomfortable certifying to information that may change after the report is filed, and they asked that the certification statement accompanying the report be qualified to certify to the accuracy of the report at the time the report is submitted. IATA and A4A expressed their view that the Department should rely on a carrier's narrative report to the exclusion of other evidence that the Department would otherwise seek from carriers during the course of a tarmac delay investigation.

DOT Response: After reviewing the comments, the Department has decided to adopt the proposal in the final rule, with slight revisions to address carrier concerns regarding the certification statement. The Department has decided to maintain a 30-day time frame for this narrative reporting requirement because this aligns with the narrative reporting requirement for U.S. carriers under 49 U.S.C. 42301(h). Because the final rule permits U.S. carriers to fulfill their section 42301(h) reporting obligation under this regulation, the time frame for the narrative reporting requirement under this rule is consistent with that set by the statute.

The Department has considered carriers' concerns that carrier staff may be uncomfortable with certifying to the accuracy of a report when new information may be learned following the submission of a report. This final rule modifies the certification language by clarifying that, to the submitter's knowledge and belief, the submitted report is true and correct based on information available at the time of this report's submission. The Department expects that carriers will supplement their reports with the Department and submit additional information or materials, including any corrections to the previously submitted reports, as soon as new information becomes known.

7. Status Announcements

The NPRM: The Department proposed to eliminate the requirement that carriers provide notifications regarding the status and cause of the delay every 30 minutes to passengers on board an aircraft.

Comments: Most comments were in favor of the proposal. FlyersRights disagreed with the proposed elimination of the status announcements and suggested that passengers on board a plane be informed of changes in the status or cause of the delay. Air New Zealand expressed the view that it would be more appropriate to provide passenger announcements when new

information becomes available or where there is information specific to a change in circumstances.

DOT Response: After carefully considering the comments submitted, the Department has decided to retain a scaled-down status notification requirement in the final rule, rather than eliminating the requirement entirely as proposed in the NPRM. Under the final rule, each covered carrier is required to notify passengers once regarding the status of the delay when the tarmac delay exceeds 30 minutes. The rule clarifies that each covered carrier may provide subsequent updates, including flight status changes and additional information beyond the requirements of the rule, as the carrier deems appropriate. The Department believes that carriers should, at a minimum, provide basic information about the status of a delay when passengers have been on board a delayed aircraft for over 30 minutes, and the status notification requirement in this rule enables passengers to receive that minimum information. Such a notification may have the effect of setting passenger expectations for the length of the delay, and may help to mitigate passenger concerns or complaints. The Department expects that carriers will continue to notify passengers regarding changes in the status of the delay as changes occur, and the Department encourages them to do so. However, the Department no longer requires that carriers provide regular status notifications every 30 minutes. In the NPRM, the Department noted that regular status notifications may serve limited value to consumers if no new information is available, particularly during overnight delays when passengers may prefer to remain uninterrupted. Accordingly, the Department believes that carriers are in the best position to determine what information will be most useful and least disruptive to passengers in each situation.

8. Deplaning Announcements

The NPRM: The Department proposed to change carrier obligations with respect to notifying passengers when they have an opportunity to deplane. Prior to this final rule, carriers were required to notify passengers that they have the opportunity to deplane an aircraft if the opportunity to deplane exists. The first notification was required beginning 30 minutes after the scheduled departure time, and another notification needed to be made every 30 minutes thereafter while the opportunity to deplane existed. The Department proposed to eliminate the carrier's obligation to provide additional notifications every 30 minutes, thereby reducing the burden on carrier staff, while maintaining passengers' access to information. Under the proposal, carriers would be obligated to make a notification when an opportunity to deplane exists (and each time such an opportunity recurs, if, for example, an aircraft returns to the gate after taxiing).

Comments: Commenters unanimously agreed with the proposed change to the rule. FlyersRights commented that passengers should also be notified about the end of an opportunity to deplane.

DOT Response: The obligation to provide an announcement regarding the passengers' opportunity to deplane from an aircraft is an essential component of the tarmac delay rule. As the Department has previously noted, the announcement serves the critical purpose of informing all passengers on the aircraft that the opportunity to deplane exists, which, in many situations, will not be apparent to passengers seated in areas that do not have a line of sight to an open aircraft door. It prevents situations in which some passengers experience a tarmac delay while other passengers on the same aircraft do not.

Based on the comments, the Department has decided to adopt the proposal regarding deplaning announcements, with slight clarifying modifications, in this final rule. Under the final

rule, each time the opportunity to deplane exists at a suitable disembarkation point, each covered carrier must timely notify the passengers on board the aircraft that they have the opportunity to deplane. Carriers no longer have an ongoing obligation to make deplaning announcements every 30 minutes, as required by the existing rule, but they are required to make a timely announcement when the opportunity to deplane arises, including in situations in which the aircraft returns to the gate on departure, or during a diversion when an aircraft is parked and awaiting departure to the intended destination. In determining whether a deplaning announcement is timely, the Office of Aviation Consumer Protection considers various factors, such as the length of time that the opportunity to deplane exists prior to an announcement being made and whether a lack of a deplaning announcement had the effect of depriving passengers of an opportunity to deplane. Carriers are not expected to provide deplaning announcements during the boarding process or prior to the scheduled departure time of the flight.

Although the Department does not prescribe the precise content of these announcements beyond informing passengers that they have the opportunity to deplane, the Department encourages carriers to provide passengers sufficient detail in their announcements to create a realistic expectation of how long the opportunity to deplane will continue to exist. This could help passengers gauge whether and when to take advantage of the opportunity to deplane. Whether the carrier permits a passenger to re-board the aircraft after the passenger has taken advantage of the opportunity to deplane is an operational decision left to the carrier for purposes of this rule. This rule does not impact carriers' ability to announce that deplaning passengers should stay near the gate area, or that deplaning passengers may not be permitted to re-board the aircraft, as appropriate.

9. Tarmac Delay Safety and Security Exceptions

The NPRM: Prior to this final rule, the tarmac delay regulations and 49 U.S.C. 42301 had slightly different standards for the safety and security exceptions to the tarmac delay requirements. Under the regulation, 14 CFR 259.4, a safety or security exception existed when the pilot-in-command determined that there was a safety related or security related reason why the aircraft could not leave its position on the tarmac to deplane passengers. Under 49 U.S.C. 42301, a passenger must have the option to deplane an aircraft and return to the airport terminal when there is a lengthy tarmac delay except when the pilot in command determines that permitting a passenger to deplane would jeopardize passenger safety or security. The Department proposed to amend the safety and security exceptions to the tarmac delay rule to incorporate the exceptions articulated in 49 U.S.C. 42301 into the existing safety and security exceptions in the regulation. Under this proposal, a safety or security exception would occur when the pilot-in-command determined that deplaning passengers at a suitable disembarkation point would jeopardize passenger safety or security, or when there was a safety related or security related reason why the aircraft could not leave its position on the tarmac to deplane passengers. As the Department's Office of Aviation Consumer Protection already considered the exceptions provided in 49 U.S.C. 42301 and the Department's tarmac delay rule to determine whether a violation occurred, the Department did not expect that this change in language would impact carriers or consumers.

Comments: Commenters generally agreed with the proposal, but many carriers added that the Department should afford flight crews greater deference and discretion in determining when a safety or security exception exists, and that the Department should not second guess a crewmember's decision on where to divert a flight. The RAA also commented that the lack of

buses and stairs should be considered a safety exception to the tarmac delay rule, as the availability of such equipment is often out of the carrier's control and is needed for passenger safety.

DOT Response: The Department has carefully considered the comments submitted on this issue and is adopting the language of the safety and security exceptions as articulated in the NPRM in this final rule. To address commenters' concerns about deference to flight crews, the Department notes that the Office of Aviation Consumer Protection already defers generally to crew decisions not to offload passengers for reasons that are reasonably based on safety and security concerns when the circumstances that give rise to those safety and security concerns are unavoidable and not precipitated by a carrier's own actions or inactions. For example, the Office does not question a pilot's decision about where to divert a flight because that is an exigent, operational decision. The Office of Aviation Consumer Protection may evaluate a carrier's decision to dispatch a flight, however, if the carrier has reason to know that a diversion would be likely at the time of the flight's departure. Regarding a lack of buses and stairs, the Department does not consider the inability to offload passengers due to the lack of deplaning equipment, absent other factors, to create a per se safety exception to the tarmac delay rule. If lacking a way to offload passengers were a per se exception to the rule, the rule, which itself requires carriers to find ways to offload passengers stranded on the tarmac, would have no effect.

Consistent with current practice and Department policy, the Office of Aviation Consumer Protection, when investigating potential tarmac delay violations, affords the carrier the opportunity to present evidence in support of its position, including whether the carrier believes the rule was violated, whether an exception applies, whether there are any mitigating circumstances, whether the consumer harm was limited, and any other facts the carrier would

like for the Office to consider. The Office of Aviation Consumer Protection considers all the information presented in each matter when determining whether enforcement action and any sanction is appropriate.

10. Provision of Food and Water

The NPRM: The Department proposed to clarify carrier obligations with respect to the provision of food and water. Prior to this final rule, carriers were required to provide adequate food and potable water no later than 2 hours after the aircraft left the gate (in the case of a departure) or touched down (in the case of an arrival) if the aircraft remained on the tarmac, unless the pilot-in-command determined that safety or security considerations precluded such service. Because the obligation to provide food and water was triggered 2 hours after the aircraft left the gate, there were two separate start times for carriers' tarmac delay responsibilities. More specifically, for the purposes of calculating the length of a tarmac delay, a tarmac delay started after the main aircraft door was closed in preparation for departure, which generally meant that passengers on board the aircraft no longer had the opportunity to deplane. On the other hand, carriers' obligation to provide food and water occurred within 2 hours of the aircraft leaving the gate. The proposal sought to standardize carrier obligations such that the food and water timer would begin at the same time a tarmac delay begins.

Comments: FlyersRights and several carriers agreed with the proposal. IATA and A4A commented that the start of the food and water timer should match the gate departure time, while Spirit Airlines commented that starting the clock when the aircraft doors are closed could lead to situations in which the aircraft is actively taxiing while the food and water requirement is triggered, which could present an unsafe situation.

DOT Response: Based on the comments received, the Department has adopted the proposal on this requirement, with slight modifications. The language has been revised to clarify that the obligation to provide food and water exists no later than 2 hours after the tarmac delay begins. With this change in language, the tarmac delay clock and the food and water clock are in alignment, addressing the concerns raised by commenters including FlyersRights. As stated previously, a tarmac delay for a departing flight generally starts when the main aircraft door is closed. In some situations, this start time may also approximate the time that the aircraft pushes back from the gate, minimizing the potential impact of this modification to the rule in such situations. The Department also notes that, as with the prior iteration of the food and water requirement, safety or security considerations may preclude the provision of food and water. If 2 hours into the tarmac delay, for example, the carrier can show that operation of the aircraft would make the provision of food and water unsafe (*e.g.*, the aircraft is taxiing and approaching an active runway for takeoff), the obligation would not be imposed at that time. The Department expects the carrier to provide food and water at the next safe opportunity if the aircraft remains on the ground with passengers onboard.

As with prior guidance on this issue, the Department has chosen not to define what constitutes “adequate food” for purposes of this rule. The Department previously stated that a granola bar and a bottle of water or similar snack would suffice. The Department does not expect carriers to serve full meals, but carriers are expected to have or obtain adequate supplies of food and drinking water for all passengers onboard the aircraft during the delay. Carriers may provide more substantial food or more frequent service as they deem appropriate.

Effective Date of Reporting Requirements

The amended provisions of 14 CFR Part 244 take effect for reports submitted to the Department on or after the effective date of this rule. As such, data for tarmac delays that are already reported under 14 CFR Part 234 or data for tarmac delays of 4 or fewer hours in duration on international flights are not to be included in reports submitted to the Department on or after the effective date of the rule. Also, Part 244 reports submitted to the Department on or after the effective date of the final rule must include the data points required by 14 CFR 244.3(a) in the order they are listed in the regulation, consistent with the BTS Accounting and Reporting Directive. The report must also include the data point required by 14 CFR 244.3(b), if applicable.

Narrative reports under 14 CFR 259.4(g) are required for tarmac delays occurring on and after the effective date of this rule. U.S. carriers may continue to file their narrative reports at the website <https://filingtarmacdelayplan.dot.gov/>, consistent with the prior practice for reports filed under 49 U.S.C. 42301(h). Foreign carriers may also file their narrative reports at this website after creating an account. Alternatively, carriers may send their narrative reports to the email address TarmacDelayEmailAccount@dot.gov.

Summary of Regulatory Analysis

Nearly all of the provisions in this final rule are deregulatory, which would generate cost savings, or clarifications, which would result in no economic impact. Minimal costs may be associated with three provisions requiring carriers to: (1) report the length of the excessive tarmac delay if the length is not otherwise represented by the data listed under 14 CFR 244.3(a); (2) collect a new data point for the start time of a tarmac delay for enforcement purposes for departing flights, which would be the time the main aircraft door closes; and (3) collect a new

data point for the time that carriers begin to return the aircraft to a suitable disembarkation point to deplane passengers on departing flights.

Statutory Authority

The Department has the authority to establish minimum standards for the emergency contingency plans of air carriers and to require adherence to those plans, pursuant to 49 U.S.C. 42301. In addition, the Department's authority to regulate unfair and deceptive practices in air transportation or the sale of air transportation is found at 49 U.S.C. 41712. This final rule modifies or clarifies existing regulatory requirements and does not declare a new practice to be unfair or deceptive to consumers.

Pursuant to 49 U.S.C. 41708, the Department has the authority to require air carriers and foreign air carriers to file annual, monthly, periodical, or special reports in the form and way prescribed by the Department, and it may require such reports to be filed under oath. Additionally, 49 U.S.C. 42301 requires air carriers to submit to the Department a written description of an excessive tarmac delay within 30 days of the incident.

A different statute, 49 U.S.C. 46301, gives the Department the authority to issue civil penalties for violations of sections 41708, 41712, 42301, or for any regulation issued under the authority of those sections.

REGULATORY NOTICES

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures (49 CFR Part 5)

This action has been determined to be nonsignificant under Executive Order 12866 ("Regulatory Planning and Review"), as supplemented by Executive Order 13563 ("Improving Regulation and Regulatory Review"). Accordingly, the Office of Management and Budget

(OMB) has not reviewed it under that Order. It is also not significant under the Department of Transportation's Regulatory Policies and Procedures (49 CFR Part 5).

The primary purpose of this rule is to implement changes to the FAA Extension Act regarding carrier obligations during an excessive tarmac delay. Nearly all of the provisions in this final rule are deregulatory, which would generate cost savings, or clarifications, which would result in no economic impact. Minimal costs may be associated with three provisions requiring carriers to: (1) report the length of the excessive tarmac delay if the length is not otherwise represented by the data listed under 14 CFR 244.3(a); (2) collect a new data point for the start time of a tarmac delay for enforcement purposes for departing flights, which would be the time the main aircraft door closes; and (3) collect a new data point for the time that carriers begin to return the aircraft to a suitable disembarkation point to deplane passengers on departing flights.

The Department expects the rule to generate cost savings and benefits to carriers and consumers due primarily to the new standard for departure delays. This rule also includes provisions to make conforming changes to carrier tarmac delay reporting and record keeping requirements, which reduce the burden on carriers. These cost savings and benefits are minimal and difficult to quantify, however, because annual tarmac delays have become relatively rare since the implementation of the 2009 Tarmac Delay Rule. In particular, the number of domestic tarmac delays lasting more than three hours declined from 1,081 in 2005 (15.1 delays per 100,000 flights) to 282 in 2019 (3.5 delays per 100,000 flights). The regulatory evaluation for the final rule has been placed in the docket.

B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This rule does not contain any provision that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, (2) imposes substantial direct compliance costs on State and local governments, or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the provisions in the final rule significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.*, aircraft with up to 60 seats/18,000 pound payload capacity). See 14 CFR 399.73. Nearly all the provisions in this proposed rule generate minimal cost savings or are clarifications (which would result in no economic impact). This rule is expected to result in cost

savings or benefits that are minimal and difficult to quantify. A small number of tarmac delays occur on flights operated by small entities, and the impact on the small entities is expected to be minimal. Accordingly, the Department does not believe that the final rule would have a significant impact on a substantial number of small entities. In addition, the Department did not receive comments to the NPRM that suggested that the rule would have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. As required by the PRA, the Department has submitted the Information Collection Request (ICR) abstracted below to OMB. Before OMB decides whether to approve those proposed collections of information that are part of this final rule and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to: Department of Transportation, Office of Aviation Consumer Protection, Office of the General Counsel, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Department may not impose a penalty on persons for violating information collection requirements that do not display a current

OMB control number, if required. The Department intends to renew the OMB control number for the information collection requirements resulting from this rulemaking action. The OMB control number, when renewed, will be announced by separate notice in the Federal Register. The 60-day notice for this information collection was previously published in the Federal Register as part of the NPRM. See 84 FR 57370. The Department invited interested parties to comment on the information collection requirements contained in the NPRM and did not receive comments regarding the estimated burdens that would be imposed by the proposed changes to collection requirements and that were referenced in the NPRM. However, commenters generally supported the changed reporting obligations and the reduction in burdens, as noted above.

This final rule modifies existing information collection requirements under OMB control number 2105-0561. OMB control number 2105-0561 addresses five information collections: (1) retention of tarmac delay data, (2) adoption and audit of tarmac delay plans, (3) display of on-time performance data on carrier websites, (4) reporting of tarmac delay data, and (5) posting of customer service plans and contracts of carriage on carrier websites. The changes implemented by this rule modify information collections 1 and 4 in the above list. This rule does not replace, change, or discontinue the other information collections that are addressed in OMB control number 2105-0561.

This rule changes two parts of the Department's regulations: 14 CFR Part 244 (reporting tarmac delay data) and Part 259, specifically § 259.4(e) (retention of records related to tarmac delays). It eliminates reports for tarmac delays between 3 and 4 hours on international flights, eliminates duplicative reporting of domestic tarmac delays that are already reported under 14 CFR Part 234, and changes a record retention requirement in 14 CFR 259.4(e) into a descriptive tarmac delay reporting requirement.

For each of the information collections proposed for 14 CFR Part 244 and 14 CFR 259.4, the title, a description of the respondents, and an estimate of the burdens are set forth below:

1. *Requirement that carriers report certain tarmac delay data to BTS for tarmac delays exceeding 3 hours (for domestic flights) and exceeding 4 hours (for international flights) on a monthly basis.*

Title: Reporting Tarmac Delay Data to BTS for Tarmac Delays Exceeding 3 Hours (for Domestic Flights) and 4 Hours (for International Flights)

Respondents: U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with 30 or more seats, and foreign air carriers that operate scheduled passenger or public charter service to and from the United States using any aircraft with 30 or more seats.

Number of Respondents: 61 U.S. and 70 foreign carriers (estimated). Due to the changes in the rule, it is expected that, in nearly all cases, tarmac delays that would be reportable under 14 CFR Part 244 would be on international flights, as nearly all tarmac delays on domestic flights would be reported under 14 CFR Part 234.⁷ Based on data submitted by airlines to BTS from 2012 to 2019, the final rule would result in an average of 27 tarmac delays on international flights to be reported through BTS Form 244 in a given year.

Estimated Annual Burden on Respondents: Based on the highest and lowest number of reports submitted by each individual carrier in the years 2012 through 2019, the rule's requirements would result in each U.S. air carrier filing 0 to 18 reports annually under 14 CFR Part 244, and each foreign air carrier filing 0 to 7 reports annually under 14 CFR Part 244. The ranges reflect the highest number of reportable tarmac delays on international flights experienced in a year by

⁷ The rule would not affect the reporting of tarmac delays on domestic flights if those flights are not already reported under 14 CFR Part 234 (*i.e.*, those flights that are neither held out or operated by carriers that file reports under 14 CFR Part 234); however, such tarmac delays are generally uncommon.

carriers during the period. At 30 minutes of burden per report filed, the rule would result in a burden of between 0.0 hours and 9.0 hours for each U.S. carrier, and between 0.0 and 3.5 hours for each foreign air carrier.

Estimated Total Annual Burden: This rule would result in an estimated 27 reports filed under 14 CFR Part 244 each year, with a total annual burden of 13.5 hours. This total reflects a reduction in existing burdens that would result from the rule's changes to existing regulations, including (1) eliminating reports for tarmac delays between 3 and 4 hours on international flights, and (2) eliminating duplicative reporting for domestic tarmac delays that are already reported under 14 CFR Part 234. The rule's requirement for an additional data point for certain tarmac delay reports (when the length of the tarmac delay is not reflected in the required data points reported on BTS Form 244) would not result in any measurable effect on burden.

2. Eliminating Tarmac Delay Record Retention Requirement and Adding a Narrative Reporting Requirement

Title: Changing Tarmac Delay Record Retention Requirement into a Narrative Reporting Requirement That Complies with 49 U.S.C. 42301(h)

Respondents: U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with 30 or more seats, and foreign air carriers that operate scheduled passenger or public charter service to and from the United States using any aircraft with 30 or more seats.

Number of Respondents: 61 U.S. air carriers and 70 foreign air carriers (estimated). Based on reports submitted by carriers to BTS between 2012 and 2019, the Department expects an average of 150 reportable tarmac delays to occur in a given year, with an average of 134 delays on flights operated by U.S. air carriers and an average of 14 delays on flights operated by foreign air carriers (out of an average of 27 annual tarmac delays occurring on international flights operated

by both U.S. and foreign carriers).⁸ Under the final rule, carriers no longer need to retain for 2 years the records related to these tarmac delays. Instead, carriers are required to file a report with a written description of the tarmac delay incident to the Department's Office of Aviation Consumer Protection. Because U.S. carriers already file such reports pursuant to 49 U.S.C. 42301(h), U.S. carriers do not encounter any additional reporting burdens under the rule's changes to 14 CFR 259.4, and would experience a net burden decrease as a result of the proposed elimination of the record retention requirement. For purposes of calculating total burdens, the Department has decided to incorporate the U.S. carrier reporting burden under 49 U.S.C. 42301(h) into this information collection, thereby combining the burden calculation for both U.S. and foreign carrier narrative reports under this rule. U.S. carriers file narrative reports for the 134 average annual tarmac delays they experience, while the 14 average annual tarmac delays operated by foreign air carriers would result in new reports being filed under 14 CFR 259.4. These reports replace the record retention that was required of carriers prior to this final rule.

Estimated Annual Burden on Respondents: The Department expects that the burden on carriers to file descriptive tarmac delay reports is 2 hours per report for U.S. carriers and 4 hours per report for foreign carriers. The expected burden per U.S. carrier is between 0 and 84 reports per year, and the expected burden per foreign carrier is between 0 and 7 reports per year (based on the highest annual number of tarmac delays experienced by a single U.S. and foreign carrier between 2012 and 2019), or 0.0 to 168.0 hours of burden per U.S. carrier and 0.0 to 28.0 hours of burden per foreign carrier.

⁸ Due to rounding, the average number of annual tarmac delays by U.S. and foreign carriers does not add up to the total average number of annual tarmac delays (150).

Estimated Total Annual Burden: This information collection would result in an estimated annual burden of 134 reports for U.S. carriers and 14 reports for foreign carriers, or a total of 324 hours (134 reports multiplied by 2 hours per report for U.S. carriers, and 14 reports multiplied by 4 hours per report for foreign carriers)

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this final rule.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979) available at <https://www.transportation.gov/office-policy/transportation-policy/procedures-consideringenvironmental-impacts-dot-order-56101c>). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and, therefore, do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.1(d). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 4(c)(6)(i) of DOT Order 5610.1C provides that "actions relating to consumer protection, including regulations" are categorically excluded. The purpose of this rulemaking is primarily to amend obligations of carriers during tarmac delays. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with

this final rule. As this action relates to airline consumer protection regulations, the action is categorically excluded under the order.

H. Executive Order 13771 Reducing Regulation and Controlling Regulatory Costs

This final rule is considered an EO 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule’s economic analysis.

List of Subjects

14 CFR Part 244

Administrative practice and procedure, Airports, Consumer protection.

14 CFR Part 259

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 14 CFR chapter II, subchapter A, is amended as follows:

PART 244 REPORTING TARMAC DELAY DATA

1. Revise the authority citation for part 244 to read as follows:

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, 41708, 41712, and 42301.

2. Amend § 244.1 by removing the definition of “Arrival time”, adding definitions for “Excessive tarmac delay” and “Gate arrival time” in alphabetical order, and revising the definition for “Tarmac delay” to read as follows:

§244.1 Definitions.

* * * * *

Excessive tarmac delay means a tarmac delay of more than three hours for a domestic flight and more than four hours for an international flight.

* * * * *

Gate arrival time is the instant when the pilot sets the aircraft parking brake after arriving at the airport gate or passenger unloading area. If the parking brake is not set, record the time for the opening of the passenger door. Also, for purposes of § 244.3 carriers using a Docking Guidance System (DGS) may record the official “gate-arrival time” when the aircraft is stopped at the appropriate parking mark.

* * * * *

Tarmac delay means the period of time when an aircraft is on the ground with passengers and the passengers have no opportunity to deplane.

3. Revise § 244.2 to read as follows:

§244.2 Applicability.

(a) Covered operations. Except as provided in paragraph (b) of this section, this part applies to U.S. certificated air carriers, U.S. commuter air carriers and foreign air carriers that operate passenger service to or from a U.S. airport with at least one aircraft that has an original manufacturer’s design capacity of 30 or more seats. Covered carriers must report all passenger operations that experience an excessive tarmac delay at a U.S. airport.

(b) Exceptions. (1) For foreign air carriers that operate charter flights from foreign airports to U.S. airports, and return to foreign airports, and do not pick up any new passengers in the United States, the charter flights are not flights subject to the reporting requirements of this part.

(2) For U.S. air carriers whose flights are reported under 14 CFR part 234 (Airline Service Quality Performance Reports), their scheduled domestic flights are not subject to the reporting requirements of this part.

4. Revise § 244.3 to read as follows:

§244.3 Reporting of tarmac delay data.

(a) Each covered carrier shall file BTS Form 244 “Tarmac Delay Report” with the Office of Airline Information of the Department’s Bureau of Transportation Statistics setting forth the information for each of its covered flights that experienced an excessive tarmac delay at a U.S. airport, including diverted flights and cancelled flights on which the passengers were boarded and then deplaned before the cancellation. The reports are due within 15 days after the end of any month during which the carrier experienced the excessive tarmac delay. The reports shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Information, and shall contain the following information:

- (1) Carrier code.
- (2) Flight number.
- (3) Departure airport (three letter code).
- (4) Arrival airport (three letter code).
- (5) Date of flight operation (year/month/day).
- (6) Gate departure time (actual) in local time.
- (7) Wheels-off time (actual) in local time.
- (8) Wheels-on time (actual) in local time.
- (9) Gate arrival time (actual) in local time.
- (10) Aircraft tail number.
- (11) Total ground time away from gate for all gate return/fly return at origin airports including cancelled flights.
- (12) Longest time away from gate for gate return or canceled flight.
- (13) Three letter code of airport where flight diverted.

(14) Wheels-on time at diverted airport.

(15) Total time away from gate at diverted airport.

(16) Longest time away from gate at diverted airport.

(17) Wheels-off time at diverted airport.

(b) Covered carriers that experience an excessive tarmac delay at a U.S. airport and are filing a form under this section must also report the length of the excessive tarmac delay to the Office of Airline Information of the Department's Bureau of Transportation Statistics, if the length of the excessive tarmac delay experienced is not otherwise represented by the data points listed in paragraph (a) of this section (*e.g.*, the pilot sets the aircraft parking brake after arriving at the passenger unloading area, but passengers are not provided an opportunity to deplane at that time).

(c) The same information required by paragraphs (a)(13) through (17) of this section must be provided for each subsequent diverted airport landing.

PART 259 ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS

5. The authority citation for part 259 is revised to read as follows:

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, 41708, 41712, and 42301.

6. Revise § 259.2 to read as follows:

§259.2 Applicability.

This part applies to all the flights of a certificated or commuter air carrier if the carrier operates scheduled passenger service or public charter service using any aircraft originally designed to have a passenger capacity of 30 or more seats, and to all flights to and from the U.S. of a foreign air carrier if the carrier operates scheduled passenger service or public charter

service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats, except as otherwise provided in this part. This part does not apply to foreign air carrier charters that operate to and from the United States if no new passengers are picked up in the United States. Section 259.4 does not apply to a flight that diverts to the United States when the flight is operated by a foreign air carrier and scheduled to operate between two foreign points.

7. Amend § 259.3 by adding definitions for “Main aircraft door” and “Suitable disembarkation point” in alphabetical order and revising the definition of “Tarmac delay” to read as follows:

§259.3 Definitions.

* * * * *

Main aircraft door means the door used for boarding. In situations in which there are multiple doors that can be used for boarding, the last door closed is the main aircraft door.

* * * * *

Suitable disembarkation point means a location at an airport where passengers can deplane from an aircraft.

Tarmac delay means the period of time when an aircraft is on the ground with passengers and the passengers have no opportunity to deplane.

8. Revise § 259.4 to read as follows:

§259.4 Contingency Plan for Lengthy Tarmac Delays.

(a) Adoption of plan. Each covered carrier, as defined by § 259.3, shall adopt a Contingency Plan for Lengthy Tarmac Delays for its scheduled and public charter flights at each U.S. large hub airport, medium hub airport, small hub airport, and non-hub airport at which it

operates or markets such air service, except as specified in § 259.2, and shall adhere to its plan's terms.

(b) Contents of plan. Each Contingency Plan for Lengthy Tarmac Delays shall include, at a minimum, assurances that the covered carrier shall comply with the requirements set forth in paragraph (c) of this section.

(c) Requirements. Covered carriers must comply with the following requirements:

(1) For all domestic flights, each covered U.S. air carrier shall provide a passenger on a flight experiencing a tarmac delay at a U.S. airport the opportunity to deplane before the tarmac delay exceeds three hours in duration, subject to the exceptions in paragraph (c)(3) of this section;

(2) For all international flights, each covered carrier shall provide a passenger on a flight experiencing a tarmac delay at a U.S. airport the opportunity to deplane before the tarmac delay exceeds four hours in duration, subject to the exceptions in paragraph (c)(3) of this section;

(3) A covered U.S. carrier that experiences a tarmac delay at a U.S. airport must comply with paragraphs (c)(1) and (2) of this section, and a covered foreign air carrier must comply with paragraph (c)(2) of this section, unless:

(i) For departing flights, the flight begins to return to a suitable disembarkation point no later than three hours (for domestic flights) or four hours (for international flights) after the main aircraft door is closed in order to deplane passengers. If the aircraft is in an area that is not under the carrier's control, the aircraft has begun to return to a suitable disembarkation point when a request is made to the Federal Aviation Administration control tower, airport authority, or other relevant authority directing the aircraft's operations. If the aircraft is in an area that is under the

carrier's control, the aircraft has begun to return to a suitable disembarkation point when the pilot begins maneuvering the aircraft to a suitable disembarkation point;

(ii) The pilot-in-command determines that deplaning passengers at a suitable disembarkation point would jeopardize passenger safety or security, or there is a safety related or security related reason why the aircraft cannot leave its position on the tarmac to deplane passengers; or

(iii) Air traffic control advises the pilot-in-command that returning to a suitable disembarkation point to deplane passengers would significantly disrupt airport operations;

(4) For all flights during a tarmac delay, each covered carrier must provide adequate food and potable water no later than two hours after the start of the tarmac delay, unless the pilot-in-command determines that safety or security considerations preclude such service;

(5) For all flights, each covered carrier must ensure operable lavatory facilities, as well as adequate medical attention if needed, during a tarmac delay;

(6) For all flights, each covered carrier must notify the passengers on board the aircraft during a tarmac delay regarding the status of the delay when the tarmac delay exceeds 30 minutes, and thereafter each covered carrier may provide subsequent updates, including flight status changes, as the carrier deems appropriate;

(7) For all departing flights and diversions, each time the opportunity to deplane exists at a suitable disembarkation point, each covered carrier must timely notify the passengers on board the aircraft that the passengers have the opportunity to deplane.

(8) Each covered carrier must ensure that it has sufficient resources to implement its Contingency Plan for Lengthy Tarmac Delays, as set forth in paragraphs (a) and (b) of this section; and

(9) Each covered carrier must ensure that its Contingency Plan for Lengthy Tarmac Delays, as set forth in paragraphs (a) and (b) of this section, has been coordinated with the following entities:

(i) Airport authorities (including terminal facility operators where applicable) at each U.S. large hub airport, medium hub airport, small hub airport, and non-hub airport that the carrier serves, as well as its regular U.S. diversion airports;

(ii) U.S. Customs and Border Protection (CBP) at each large U.S. hub airport, medium hub airport, small hub airport, and non-hub airport that is regularly used for that carrier's international flights, including regular U.S. diversion airports; and

(iii) The Transportation Security Administration (TSA) at each U.S. large hub airport, medium hub airport, small hub airport, and non-hub airport that the carrier serves, including regular U.S. diversion airports.

(d) Diversions. For purposes of this section, a diverted flight is treated as an arriving flight up to the point that an opportunity to deplane is provided to passengers. Once an opportunity to deplane is provided, the diversion is treated as a departing flight, and after that point, the departure delay exception in paragraph (c)(3)(i) of this section applies if the carrier begins to return to a suitable disembarkation point in order to deplane passengers as required by the exception.

(e) Code-share responsibility. The tarmac delay contingency plan of the carrier under whose code the service is marketed governs, if different from the operating carrier, unless the marketing carrier specifies in its contract of carriage that the operating carrier's plan governs.

(f) Amendment of plan. At any time, a carrier may amend its Contingency Plan for Lengthy Tarmac Delays to decrease the time for aircraft to remain on the tarmac for domestic

flights covered in paragraph (c)(1) of this section, for aircraft to remain on the tarmac for international flights covered in paragraph (c)(2) of this section, for aircraft to begin to return to a suitable disembarkation point covered in paragraph (c)(3)(i) of this section, and for providing food and water covered in paragraph (c)(4) of this section. A carrier may also amend its plan to increase these intervals (up to the limits in this part), in which case the amended plan shall apply only to departures that are first offered for sale after the plan's amendment.

(g) Written reports. (1) Each covered operating carrier subject to this part shall submit to the Office of Aviation Consumer Protection of the U.S. Department of Transportation a written description of each of the flights it operates that experiences a tarmac delay of more than three hours (on domestic flights) and more than four hours (on international flights) at a U.S. airport no later than 30 days after the tarmac delay occurs.

(2) The written description referenced in paragraph (g)(1) of this section shall include, at a minimum, the following information:

(i) The name of the operating carrier, the name of the marketing carrier if the operating carrier is not the marketing carrier, and the flight number;

(ii) The originally scheduled origin and destination airports of the flight;

(iii) The airport at which the tarmac delay occurred and the date it occurred;

(iv) The length of the tarmac delay that occurred; and

(v) An explanation of the incident, including the precise cause of the tarmac delay, the actions taken to minimize hardships for passengers (including the provision of food and water, the maintenance and servicing of lavatories, and medical assistance), and the resolution of the incident.

(3) The written description referenced in paragraph (g)(1) of this section shall be accompanied by a signed certification statement that reads as follows:

I, (Name) and (Title), of (Carrier Name), certify that the enclosed report has been prepared under my direction, and affirm that, to the best of my knowledge and belief, the report is true and correct, based on information available at the time of this report's submission.

Date:

Signature:

Email address and phone number:

(4) A U.S. air carrier that submits a report in accordance with paragraph (g) of this section is in compliance with the reporting mandate for U.S. air carriers in 49 U.S.C. 42301(h) with respect to the excessive tarmac delay reported.

(h) Unfair and deceptive practice. A carrier's failure to comply with the assurances required by this part and contained in its Contingency Plan for Lengthy Tarmac Delays will be considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 that is subject to enforcement action by the Department.

Issued this 18th day of December, 2020, in Washington, D.C. under authority delegated in 49 CFR 1.27(n):

-ORIGINAL SIGNED-

Steven G. Bradbury,

General Counsel.