

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC**

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**ENFORCEMENT POLICY  
ON EXTENDED TARMAC DELAYS**

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The Department of Transportation’s Office of Aviation Enforcement and Proceedings, a unit within the Office of the General Counsel, is issuing this new enforcement policy on extended tarmac delays in light of the FAA Extension, Safety, and Security Act of 2016.

FAA Extension

On July 15, 2016, the President signed the FAA Extension, Safety, and Security Act of 2016 (2016 FAA Extension). Section 2308 of the 2016 FAA Extension amends 49 U.S.C. § 42301 by changing the way that excessive tarmac delays are measured in the case of departure delays for U.S. carriers. Under section 2308 of the 2016 FAA Extension, a tarmac delay begins “after the main aircraft door is closed in preparation for departure” and ends when a U.S. carrier “begin[s] to return the aircraft to a suitable disembarkation point.” Prior to the 2016 FAA Extension, a departure tarmac delay was considered to have begun after passengers were boarded and were no longer free to deplane and to have ended when passengers were given the opportunity to deplane.

Section 2308 of the 2016 FAA Extension also amends 49 U.S.C. § 42301 by defining an “excessive tarmac delay” as a tarmac delay of more than three hours for a domestic flight and more than four hours for an international flight. Previously, an excessive tarmac delay was defined in 49 U.S.C. § 42301 as a tarmac delay that lasts for a length of time as determined by the Department of Transportation, which the Department defined as three hours for a domestic flight and four hours for an international flight.

The 2016 FAA Extension requires the Department of Transportation to issue regulations and take other actions necessary to carry out Section 2308. The Department is actively working on a rulemaking to meet that requirement.

Enforcement Policy

The authority to pursue or not to pursue enforcement action against covered carriers<sup>1</sup> with respect to lengthy tarmac delays lies with the Department’s Office of Aviation Enforcement and Proceedings (Enforcement Office), a unit within the Office of the General Counsel. In light of the 2016 FAA Extension and the Department’s anticipated rulemaking, as a matter of

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<sup>1</sup> A “covered carrier” means a certificated carrier, a commuter carrier, or a foreign air carrier operating to, from, or within the United States, conducting scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more seats. 14 CFR 259.3.

prosecutorial discretion, the Enforcement Office will not take action against U.S. and foreign air carriers for not complying with 14 CFR 259.4(b)(1) and (2)<sup>2</sup> with respect to departure delays so long as covered airlines begin to return aircraft to the gate or another suitable disembarkation point no later than three hours for domestic flights and no later than four hours for international flights after the main aircraft door has closed in preparation for departure.

For purposes of this enforcement policy, if the aircraft is in an area of the airport property that is not under the carrier's control, the Enforcement Office considers an aircraft to have begun the process of returning to a suitable disembarkation point when permission to do so is granted by the Federal Aviation Administration (FAA) control tower, airport authority, or other relevant authority directing the aircraft's operations while it is on the tarmac. If the aircraft is in an area of the airport property that is under the carrier's control, the Enforcement Office considers an aircraft to have begun the process of returning to a suitable disembarkation point when the pilot begins maneuvering the aircraft to the disembarkation point. The Enforcement Office considers the main aircraft door to be closed when the last door that passengers use to board the flight in question is closed. This enforcement policy does not change existing exceptions to the tarmac delay requirements for safety and security considerations and in instances where Air Traffic Control advises the pilot-in command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations.

With respect to flights arriving at an airport, including diverted flights, the Enforcement Office will continue to apply the Department's tarmac delay rule in 14 CFR. 259.4 as written, i.e., that a covered carrier's failure to allow passengers to deplane by the three-hour mark for domestic flights and the four-hour mark for international flights, violates the tarmac delay rule and subjects covered carriers to enforcement action.

The Enforcement Office cautions covered carriers that neither the 2016 FAA Extension nor this enforcement policy changes their current obligation to adhere to the assurances in their contingency plans for lengthy tarmac delays that are required pursuant to 14 CFR 259.4 (b)(3)-(10).<sup>3</sup> Further, covered carriers should continue to report on-time performance and tarmac delay data as they have been in the manner prescribed in 14 CFR Parts 234 and 244 and any relevant BTS reporting directives.

This policy supersedes any prior enforcement policy, frequently asked questions, or other document that conflict with it. This temporary enforcement policy applies to flights operated on

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<sup>2</sup> 14 CFR 259.4(b)(1) and (2) require airlines to provide assurances that they will not permit aircraft to remain on the tarmac for more than three hours for domestic flights and more than four hours for international flights.

<sup>3</sup> Under 14 CFR 259.4 (b)(3) - (10), airlines must provide -- assurance of adequate food and potable water; assurance of operable lavatory facilities and adequate medical attention if needed; assurance that the passengers on the delayed flight will receive notifications regarding the status of the delay; assurance that the passengers on the delayed flight will be notified of opportunity to deplane from an aircraft that is at the gate or another disembarkation area with the door open if the opportunity to deplane actually exists; assurance of sufficient resources to implement tarmac delay plan; assurance that the plan has been coordinated with airport authorities; assurance that the plan has been coordinated with U.S. Customs and Border Protection; and assurance that the plan has been coordinated with the Transportation Security Administration.

or after July 15, 2016, and will remain in effect until the Department issues a final rule that specifically addresses lengthy tarmac delays pursuant to the 2016 FAA Extension. The Enforcement Office may issue further clarifications of this policy if necessary.

Questions regarding this policy may be addressed to the Office of Aviation Enforcement and Proceedings (C-70), 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

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