



Billing Code 4910-9X

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: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking would modify U.S. and foreign air carrier obligations with respect to tarmac delays and conform carrier obligations with respect to departure delays with the changes made to the FAA Extension, Safety, and Security Act of 2016. This rulemaking would also make changes to the notification requirements regarding the status of the tarmac delay and the opportunity to deplane as well as carrier tarmac delay reporting and record retention requirements.

DATES: Comments should be filed by [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT-OST-2019-9144 by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal Holidays.
- Fax: (202) 493-2251

Instructions: You must include the agency name and docket number DOT-OST-2019-0144 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents and comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

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

SUPPLEMENTARY INFORMATION:

Current Tarmac Delay Requirements

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 three hours for domestic flights and four hours for international flights without providing passengers the option to deplane subject to exceptions for safety, security, and Air Traffic Control related reasons. Carriers’ plans must also contain assurances such as assurances that carriers will provide adequate food and drinking water within two 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.

Need for a Rulemaking

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, the Department’s Office of Aviation Enforcement and Proceedings (Enforcement Office) issued an “Enforcement Policy on Extended Tarmac Delays” (Enforcement Policy)² on November 22, 2016. The Enforcement Policy states that, as a matter of prosecutorial discretion, the

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

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

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 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. 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.

In October 2017, the Department published a Notification of Regulatory Review (82 FR 4570, October 2, 2017), seeking public input on existing rules and other agency actions that are good candidates for repeal, replacement, suspension, or modification.³ DOT received comments from various regulated entities regarding the Department's tarmac delay rule.⁴ Further, on January 30, 2019, the Department issued a notice inviting the public to identify and provide input on existing guidance documents that are good candidates for repeal, replacement, or modification.⁵ American Airlines and jointly A4A and IATA filed comments related to the 2016 Enforcement Policy.

³ <https://www.regulations.gov/document?D=DOT-OST-2017-0069-0001>

⁴ The Department received comments from Airlines For America (A4A), United Airlines, International Air Transport Association (IATA), Kuwait Airways, National Air Carrier Association (NACA), Etihad Airways, Association of Asian Pacific Airlines (AAPA), Lufthansa Group, Qantas, El Al, WestJet, Airlines Association of Southern Africa, and Air France/KLM related to the tarmac delay rule. In addition, the Department met with A4A and various U.S. airlines to hear their views of the tarmac delay rule.

⁵ <https://www.regulations.gov/document?D=DOT-OST-2017-0069-2855>.

The Department has reviewed these comments and is proposing certain changes to the tarmac delay rule, primarily a new exception for departure delays to conform the regulations to the FAA Extension Act, provide greater flexibility to airlines, and alleviate concerns about the existing rule's potential effects on cancellations. DOT is also proposing several changes to reporting requirements and other carrier obligations with respect to tarmac delays. The proposals are described in more detail below. The Department plans to consider the comments received on the tarmac delay rule that are not addressed in this proposal at a later time.

Notice of Proposed Rulemaking

1. Departure Delay Exception

On July 15, 2016, the FAA Extension Act was signed. Section 2308 of the FAA Extension Act amends 49 U.S.C. 42301 by changing the standard for when tarmac delay violations occur with respect to departing flights. The FAA Extension Act requires the Department to issue regulations and take other actions necessary to carry out section 2308. Under section 2308 of the FAA Extension Act, a tarmac delay occurs when passengers are on board an aircraft on the tarmac (A) awaiting takeoff after the main aircraft door is closed in preparation for departure, or (B) awaiting deplaning after the aircraft has landed. Under that Act, an excessive tarmac delay is a tarmac delay that is more than three hours long for domestic flights or more than four hours long for international flights. 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.

In its amended form, 49 U.S.C. 42301 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, under amended section 42301, 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 to deplane passengers by those times.

Unlike the amended statute, DOT's current regulation prohibits a carrier from allowing an aircraft to remain on the tarmac for more than three hours for domestic flights and four hours for international flights without providing passengers the opportunity to deplane and applies this standard to both departing and arriving flights without consideration of the time the carrier begins to return the aircraft to a suitable disembarkation point for departing flights.

In the Enforcement Policy, the Department has stated that, if the aircraft is in an area of the airport property that is not under the carrier's control, the aircraft has begun the process of returning to a suitable disembarkation point when permission 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. However, if the aircraft is in an area of the airport property that is under the carrier's control, an aircraft has begun to return to a suitable disembarkation point when the pilot begins maneuvering the aircraft to the disembarkation point.

DOT is proposing to amend its tarmac delay regulation to reflect its Enforcement Policy, with slight modifications. To determine when the carrier begins to return to a suitable disembarkation point, we are proposing 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 Federal Aviation Administration control tower, airport authority, or other relevant authority directing the aircraft's operations, rather than when permission is granted as set forth in the Enforcement Policy. This revision would ensure that carriers are not held responsible for delays attributed to third parties and beyond the carriers' control. However,

similar to the Enforcement Policy, under this proposed rule, 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. The Department seeks comment on this proposed standard and whether there are other appropriate standards the Department should consider.

In addition, this rulemaking takes into account circumstances when a carrier has closed the main aircraft door for departure but the aircraft has not left the gate. Under the Enforcement Policy, the tarmac delay clock for departing flights begins when the main aircraft door has closed, even if the aircraft remains at the gate and the carrier asserts that an opportunity to deplane still exists. This rulemaking proposes that a tarmac delay on a departing flight begins when the main aircraft door is closed, which generally means that passengers on board the flight no longer have the opportunity to deplane. If a carrier can show that passengers on board the aircraft have the opportunity to deplane from an aircraft, even while the aircraft doors are closed, then, under the proposal, the tarmac delay clock has not started and will 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, there would be a presumption that passengers do not have an opportunity to deplane. This approach allows carriers some flexibility in determining when a tarmac delay begins, while adhering to the standard prescribed by the statute. DOT seeks comment on this approach to determining when a tarmac delay begins during departing flights.

DOT believes that adopting the departure delay exception as described in the Enforcement Policy—that a departing flight is not considered to be in violation of the assurance not to permit an aircraft to remain on the tarmac for more than 3 hours for domestic flights and

more than 4 hours for international flights so long as the air carrier begins to return the aircraft to a suitable disembarkation point—would provide covered carriers some relief in situations when they may be unable to reduce the length of a tarmac delay for circumstances beyond their control. While in most cases a carrier would violate the current tarmac delay regulation if the carrier has not provided passengers the opportunity to deplane by either the three or four-hour mark, the proposed inclusion of the departure delay exception offers carriers more flexibility and reduces the number of tarmac delays that are subject to enforcement. This would reduce the burden of the tarmac delay regulation on carriers in situations that they may be unable to control, while still maintaining important consumer protections.

Also, the proposal specifies that the exception 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, the flight would not be considered to have begun to return to a suitable disembarkation point to provide passengers an opportunity to deplane, and the tarmac delay clock would continue to run. For example, an aircraft that begins the process to return to the gate or another suitable disembarkation point for a mechanical-related problem would have the tarmac delay time continue accruing for the flight if the purpose of the return was not to provide passengers an opportunity to deplane and passengers were not provided the option to deplane.

We note that even though the requirements in 49 U.S.C. 42301, which were amended by the FAA Extension Act, only apply to U.S. carriers, DOT chose to apply its Enforcement Policy to both U.S. and foreign air carriers, under DOT's authority to prohibit unfair and deceptive practices in 49 U.S.C. 41712. We are also proposing to apply the requirements in the proposed

rule to both U.S. and foreign air carriers to streamline the tarmac delay requirements and decrease confusion in the airport environment. DOT seeks comment on this approach.

DOT is not proposing to change carrier obligations with respect to tarmac delays for arriving flights. Section 2308 of the FAA Extension Act states that the departure delay standard applies to departing flights, and, as such, DOT proposes to require carriers to modify their Contingency Plan for Lengthy Tarmac Delays to include specific assurances related to such flights.

With regard to diverting flights, this proposal would provide that diversions are 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 is treated as a departing flight and after that point, the departure delay exception applies if carriers begin to return to a suitable disembarkation point in order to deplane passengers. DOT seeks comment on this treatment of diverting flights.

2. Reporting Requirements

DOT proposes to revise the tarmac delay reporting requirements in 14 CFR part 244. Currently, reporting carriers⁶ 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

⁶ “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.

monthly basis to report information on passenger flights that 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 234.7.⁷ This has resulted in duplicative reporting.

Today, reporting carriers are required to submit tarmac delay information for scheduled domestic flights that they operate at medium, small, or non-hub U.S. airports both through Form 234 and Form 244. Also, tarmac delays on scheduled domestic flights marketed but not operated by a reporting carrier are being reported twice: the reporting carrier reports the flight using BTS Form 234, and the non-reporting carrier reports the same flight using BTS Form 244. This rulemaking would provide that tarmac delays on scheduled domestic passenger flights need no longer be reported by reporting carriers under 14 CFR part 244, provided that such flights are reported under 14 CFR part 234. Also, the proposed rule changes reporting requirements to relieve 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. This change would reduce the burden on non-reporting carriers that operate flights held out by reporting carriers. U.S. air carriers covered under 14 CFR part 234 would still 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 would

⁷ 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.

still be required to file BTS Form 244 for tarmac delays on domestic and international flights. The Department requests comment on the above reporting changes, including whether and how reporting requirements in 14 CFR parts 234 and 244 can be further consolidated.

With respect to international flights, carriers are currently required to file a report under 14 CFR part 244 for tarmac delays of more than three hours. Under this proposed rule, 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 three hours for a domestic flight and more than four hours for an international flight. This would reduce the number of instances in which a carrier is required to report to the Department a tarmac delay on an international flight. The Department solicits comment on this approach.

3. Record Retention

DOT proposes to eliminate the tarmac delay record retention requirement in 14 CFR 259.4(e) and replace it with a reporting requirement. The current rule requires that U.S. and foreign air carriers with a tarmac delay contingency plan retain for two years specific information related to a tarmac delay. The specific information includes, 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). Because the Department receives a written description of lengthy tarmac delays from U.S. carriers as mandated by statute, maintaining the record retention requirement for U.S. carriers is duplicative and of limited or no public benefit. As such, the Department proposes to change the record retention requirement in 14 CFR 259.4(e)

to a reporting requirement, thereby eliminating the requirement to retain certain information for two years.

The new reporting requirement would include the same information currently required to be retained under the current § 259.4(e), and would also satisfy U.S. carrier obligations under 49 U.S.C. 42301(h). To comply with the mandate in 49 U.S.C. 42301(h) for U.S. carriers to submit to the Department a written description of a flight that experiences an excessive tarmac delay and its resolution, U.S. carriers generally provide the Department with the same information that they are required to retain under § 259.4(e): the name of the operating carrier, the flight number, the origin and destination airports, the location of the delay, the length of the tarmac delay, and an explanation of the incident, including the cause of the delay and actions taken to minimize passenger hardship. This NPRM proposes that the same information be provided to the Department by U.S. and foreign air carriers under 14 CFR 259.4. Although 49 U.S.C. 42301(h) applies only to U.S. carriers, the Department is proposing to apply the same requirement to foreign air carriers pursuant to the Department's authority under 49 U.S.C. 41712. Accordingly, under the proposal, U.S. and foreign air carriers would file one written description of each excessive tarmac delay incident to the Department. As explained earlier, the airlines would no longer be required to retain for two years the records listed in 14 CFR 259.4(e). For both U.S. and foreign air carriers, 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). The Department requests comment on the above reporting and record retention changes, including the type of information to be required for reporting.

4. Other Exceptions to Tarmac Delay Requirements

Under the Department's existing tarmac delay rule, carriers must not allow an aircraft to remain on the tarmac for more than three hours for domestic flights and more than four hours for international flights before allowing passengers to deplane from an aircraft, except when the pilot-in-command determines that there is a safety-related or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers, or when air traffic control advises that returning to a suitable disembarkation point to deplane passengers would significantly disrupt airport operations. 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, or when air traffic control advises that returning to a suitable disembarkation point to deplane passengers would significantly disrupt airport operations. Title 49 U.S.C. 42301 also references a suitable disembarkation point when discussing deplaning passengers following a lengthy tarmac delay.

This rulemaking proposes to amend the safety and security exceptions to the tarmac delay rule to codify the exceptions in 49 U.S.C. 42301. Under this proposal, a safety or security exception occurs when the pilot-in-command determines that deplaning passengers at a suitable disembarkation point would jeopardize passenger safety or security, or when there is a safety-related or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers. A suitable disembarkation point is defined as a location at an airport where passengers have the ability to deplane from an aircraft. The Department's Enforcement Office already considers the exceptions provided in 49 U.S.C. 42301 and the Department's tarmac delay rule to determine whether a violation has occurred. As such, the Department does not anticipate that this change in language would impact carriers or consumers. Consistent with the statute and

prior practice, under this proposal, a safety or security exception would apply when passengers are at a suitable disembarkation point to deplane but are unable to do so for an unavoidable safety-related reason such as lightning. If, however, the passengers are at a suitable disembarkation point such as a remote hardstand to deplane but are unable to do so because of lack of buses or stairs, the safety or security exception would not apply.

As this rulemaking would not have an effect on the safety or security exceptions articulated in the rule and the statute, this NPRM would not negatively impact safety.

5. Other Carrier Obligations

This rulemaking would clarify carrier obligations with respect to the provision of food and water. Currently, carriers must provide adequate food and potable water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security considerations preclude such service. Because the obligation to provide food and water is triggered two hours after the aircraft leaves the gate, there are 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 starts after the main aircraft door has closed in preparation for departure, which generally means that passengers on board the aircraft no longer have the opportunity to deplane. On the other hand, carriers' obligation to provide food and water occurs within two hours of the aircraft leaving the gate. The two start times are not always in alignment. For example, if an aircraft remains at the gate for one hour and passengers do not have the opportunity to deplane, and then the aircraft leaves the gate, the flight crew must maintain two separate timers, one to monitor the time of the tarmac delay, and the other to monitor the time since the aircraft left the gate to determine when food and water must

be provided. This proposed rule would standardize carrier obligations such that the food and water timer would begin at the same time a tarmac delay begins. The proposed rule would also clarify that the food and water obligation only applies to situations in which the aircraft remains on the ground, both during departure and after touch-down.

The proposed rule would also change carrier obligations with respect to notifying passengers when they have an opportunity to deplane. Currently, carriers must provide notification to passengers that they have the opportunity to deplane from an aircraft if the opportunity to deplane exists. The first notification must be made beginning 30 minutes after the scheduled departure time and every 30 minutes thereafter while the opportunity to deplane exists. This proposed rule would 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. 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).

This rulemaking also proposes 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. The Department believes that the current rule, specifically the required frequency of notifications, provides no or limited value to passengers. It may even be harmful to passengers for carriers to provide frequent updates when the flight crew have no new updates to share with passengers and/or when passengers may be attempting to sleep during late night delays. The Department seeks comment on the elimination of this requirement.

REGULATORY NOTICES

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

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.

Nearly all the provisions in this proposed rule are deregulatory in nature, which would generate cost savings, or clarifications, which would result in no economic impact. Minimal costs may be associated with three provisions consisting of a requirement for 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 carriers begin to return the aircraft to a suitable disembarkation point to deplane passengers on departing flights. The primary purpose of this proposed rule is to implement changes to the FAA Extension Act regarding carrier obligations during an excessive tarmac delay. In general, we expect the rule to generate cost savings and benefits to carriers and consumers due primarily to the new standard for departure delays. This rulemaking also includes provisions to make conforming changes to carrier tarmac delay reporting and record keeping requirements. The changes to record retention and reporting requirements would reduce the burden on carriers. However, these cost savings and benefits are minimal and difficult to quantify as annual tarmac delays are becoming relatively rare since the implementation of the 2009 Tarmac Delay rule. In particular, domestic tarmac delays have

already been reduced to 193 in 2017 from 1,642 in 2007, or 2.2 delays dropping to 0.3 delays per 10,000 flights. Details are provided in the preliminary regulatory evaluation which is available in the docket.

B. Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This NPRM does not propose any regulation 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 NPRM 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 options on which we are seeking comment would 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 are deregulatory in nature (which would generate cost savings) or clarifications (which would result in no economic impact). This NPRM's proposals are 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 NPRM would have a significant impact on a substantial number of small entities. However, we invite comment on the potential impact of this rulemaking on 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 OMB control number. This NPRM proposes a revision to the existing information collection burdens under OMB control number 2105-0561. Under the PRA, before an agency seeks OMB approval for a proposed collection of information, it must first publish a document in the **Federal Register** providing 60-day notice to the public to allow for comment. The Department invites interested parties to comment on the information collection requirements contained in this document. As prescribed by the PRA, the requirement will not go into effect until OMB has approved them after a 30-day notice is issued and the Department has published a notice announcing the effective date of the revised information collection requirements.

This NPRM proposes to modify existing information collection requirements under OMB control number 2105-0561. This NPRM proposes changes to 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 would eliminate reports for tarmac delays between 3 and 4 hours on international flights, eliminate duplicative reporting of domestic tarmac delays that are already reported under 14 CFR part 234, and change 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 proposed by this NPRM, 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 234.⁸ Based on data submitted by airlines to BTS from 2014 to 2018, we expect the NPRM's proposals to result in an average of 37 tarmac delays on international flights to be reported through BTS Form 244 in a given year.

⁸ The NPRM 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.

Estimated Annual Burden on Respondents: Based on 2014-2018 data, the NPRM's proposals would result in 0 to 18 reports being filed under 14 CFR part 244 by U.S. air carriers each year, and 0 to 7 reports being filed under 14 CFR part 244 by foreign air carriers each year. This range reflects the lowest and highest number of reportable tarmac delays on international flights experienced by U.S. and foreign air carriers during the 2014-2018 period. At 30 minutes of burden per report filed, this proposal 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 foreign air carriers.

Estimated Total Annual Burden: As the proposals in this NPRM would result in an estimated 37 reports filed under 14 CFR part 244 each year, the total annual burden would be 1110 minutes (18.5 hours). This reflects a reduction in existing burdens that would result from the NPRM's proposals, including (1) elimination of reports for tarmac delays between 3 and 4 hours on international flights, and (2) elimination of duplicative reporting for domestic tarmac delays that are already reported under 14 CFR part 234. The NPRM's proposal to require 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 New

Descriptive Reporting Requirement for Foreign Air Carriers

Title: Changing Tarmac Delay Record Retention Requirement into a Descriptive 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 2014 and 2018, we expect an average of 148 reportable tarmac delays to occur in a given year, with 128 operated by U.S. air carriers and 20 by foreign air carriers. Based on the NPRM's proposals, carriers would no longer need to retain for two years the records related to these tarmac delays. Instead, carriers would be required to file a report with a written description of the tarmac delay incident to the Department's Aviation Consumer Protection Division. Because U.S. carriers already file such reports pursuant to 49 U.S.C. 42301(h), U.S. carriers would not encounter any additional reporting burdens under the NPRM's proposed 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. Only the 20 tarmac delays operated by foreign air carriers would result in new reports being filed under 14 CFR 259.4.

Estimated Annual Burden on Respondents: We expect 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. As the NPRM only results in a new reporting burden for foreign air carriers, the expected burden per respondent is between 0 and 7 reports per year (based on the highest annual number of tarmac delays experienced by a single foreign carrier between 2014 and 2018), or 0.0 to 28.0 hours of burden per respondent. There will be no new burdens on U.S. air carriers under this information collection, due to U.S. air carriers' existing reporting requirement under 49 U.S.C. 42301(h).

Estimated Total Annual Burden: This information collection would result in an estimated annual burden of 20 reports, or 80 hours. This reflects a reduction in burden for U.S. carriers based on the elimination of the record retention burden required by 14 CFR 259.4(e).

The Department invites interested persons to submit comments on any aspect of each of these information collections, including the following: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information. Comments submitted in response to this NPRM will be summarized or included, or both, in the request for OMB approval of these information collections.

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 NPRM.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action 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). 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 1508.4. 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 the definition of

excessive tarmac delay. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

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, DOT proposes to amend 14 CFR chapter II, subchapter A, 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, 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.

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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 U.S., the charter flights are not flights subject to the reporting requirements of this part.

(2) For U.S. air carriers that submit Airline Service Quality Performance Reports under 14 CFR part 234, their scheduled domestic flights are not flights subject to the reporting requirements of this part to the extent part 234 reports are submitted for those flights.

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, 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 considered the main aircraft door.

* * * * *

Suitable disembarkation point means a location at an airport where passengers have the ability to 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 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 if the aircraft remains on the tarmac, each covered carrier must provide adequate food and potable water no later than two hours after the main aircraft door is closed (in the case of a departure) or touches down (in the case of an arrival), 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, when the opportunity to deplane exists at a suitable disembarkation point, each covered carrier must notify the passengers on board the aircraft that they have the opportunity to deplane;

(7) 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

(8) 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.

(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 Aviation Consumer Protection Division 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 (Air Carrier Name), certify that the enclosed report is, to the best of my knowledge and belief, true and correct.

Date:

Signature:

Name (Please Print or Type):

(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 15th day of October, 2019, in Washington, DC.

Elaine L. Chao,

Secretary of Transportation.

[FR Doc. 2019-22973 Filed: 10/24/2019 8:45 am; Publication Date: 10/25/2019]