
Office of Inspector General

Audit Report

OVERSIGHT WEAKNESSES LIMIT DOT'S ABILITY TO ENSURE PASSENGER PROTECTIONS DURING LONG, ON-BOARD FLIGHT DELAYS

Office of the Secretary of Transportation

Report Number: AV-2015-001

Date Issued: October 9, 2014





Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** Oversight Weaknesses Limit DOT's
Ability To Ensure Passenger Protections During
Long, On-Board Flight Delays
Department of Transportation
Office of the Secretary of Transportation
Report No. AV-2015-001

Date: October 9, 2014

From: Matthew Hampton 
Assistant Inspector General
for Aviation Audits

Reply to
Attn. of: JA-10

To: Office of General Counsel

Airline passengers experienced over 2 million flight delays per year in 2012 and 2013. In the same time period, the number of domestic on-board delays reported by air carriers exceeding 3 hours more than doubled, from 41 to 84.¹ While lengthy on-board delays² are rare events, they cause passengers undue discomfort and inconvenience, particularly when the delay occurs on the tarmac with passengers on board the aircraft. Both Congress and the Department of Transportation (DOT) have taken steps to ensure that airlines are providing passengers the best service possible during these lengthy tarmac delays.

Since 2000, our office has issued numerous recommendations to DOT to reduce the impact of flight delays and cancellations on air travelers.³ In response, DOT issued regulations⁴ in 2009 and 2011 to increase the accountability, enforcement, and protection afforded to air travelers by requiring airlines to establish contingency plans with assurances that provide for passenger comfort during long, on-board flight delays (LOBFD).⁵ In addition, in 2012, the Federal Aviation

¹ Much of this increase was due to a February 16, 2013 snowstorm in North Carolina, where 34 aircraft were stuck on the tarmac—all for more than 3 hours. See exhibit C, Tarmac Delays at a Glance, for more information about delays.

² DOT regulations require airlines to report lengthy flight delays exceeding 3 hours to the Bureau of Transportation Statistics (BTS).

³ See exhibit D for our prior audit coverage.

⁴ 14 CFR Part 259 “*Enhanced Protections for Airline Passengers*” contains other requirements for air carriers, such as publishing flight delay information on their Web sites and adopting customer service plans.

⁵ For the purposes of our audit, a long, on-board flight delay is a delay that requires airlines to execute any assurance in their tarmac delay contingency plan.

Administration (FAA) Modernization and Reform Act⁶ (act) required airport operators to have contingency plans that contain a description of how they will provide an area that can be secured by U.S. Customs and Border Protection (Customs), and equipment to aid in passenger deplanement.

As part of the act, Congress directed us to update our 2000 report as well as examine the impact of flight delays and cancellations on air travelers. Accordingly, our audit objective was to assess DOT's oversight of airports' and airlines' compliance with contingency plans and other LOBFD requirements. Specifically, we assessed DOT's efforts to (1) review and approve airports' and airlines' contingency plans and (2) investigate potential violations and ensure implementation of LOBFD requirements.

We conducted our work in accordance with generally accepted Government auditing standards. Exhibit A details our scope and methodology, and exhibit B lists organizations we visited or contacted.

RESULTS IN BRIEF

DOT has effectively reviewed and approved contingency plans submitted by U.S. airports and U.S. airlines.⁷ For example, all 20 of the DOT-approved airport plans⁸ we reviewed contained the required assurances for protecting passenger comfort (see exhibit E). We also analyzed 23 U.S. carrier plans⁹ and found that only 1 did not contain all required assurances. However, DOT's oversight of plans posted on airlines' Web sites is insufficient because the Department does not verify that all posted plans are complete. In fact, of the 23 U.S. and 32 foreign carriers¹⁰ we reviewed, 4 U.S. and 15 foreign carriers' Web-posted plans did not include all the required assurances. For example, one U.S. carrier's plan was missing 7 of the 11 required assurances¹¹ and one foreign carrier's plan was missing 7 of the 10 required assurances (see exhibit F). As a result, passengers may not be aware of their rights in the event of a LOBFD.

DOT's efforts to investigate potential violations and ensure implementation of LOBFD requirements are limited by weaknesses in its investigation process and tarmac delay regulations. Specifically, DOT sometimes relies on responses from the airline to describe what occurred during a tarmac delay and whether the carrier met LOBFD regulations without collecting supporting evidence during its

⁶ Public Law No. 112-95, February 14, 2012.

⁷ Airlines are required to have a contingency plan in place 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.

⁸ We analyzed 20 of 390 plans that DOT approved.

⁹ We analyzed 23 out of 61 plans that DOT approved.

¹⁰ We analyzed 32 of 113 plans. The act does not require DOT to approve foreign carriers' plans.

¹¹ The act requires U.S. carriers, but not foreign carriers, to include an assurance of comfortable cabin temperature in their contingency plans. The DOT regulations do not contain this requirement.

investigations. As a result, DOT may not have sufficient evidence for determining whether a violation occurred. In addition, weaknesses in DOT's tarmac delay regulations make some LOBFD assurances difficult to implement and enforce. For example, DOT does not require carriers to record their compliance with time-sensitive assurances, such as when the crew serves food and water or notifies passengers of delay status as required. Consequently, DOT cannot determine whether carriers have complied with these assurances within the required time limits. Also, both DOT's regulations and its subsequently issued guidance provide requirements for when food and water should be served that do not meet the Department's stated intent. Further, although the act requires carriers to provide comfortable cabin temperature to passengers, DOT has not included this requirement in its regulations nor defined what constitutes comfortable cabin temperature. Without robust requirements, DOT cannot be sure that passengers are being afforded the relief intended during lengthy flight delays.

We are making recommendations to improve DOT's oversight of LOBFD requirements.

BACKGROUND

DOT's Office of Aviation Enforcement and Proceedings is responsible for overseeing and investigating LOBFDs of U.S. and foreign carriers operating at U.S. airports. DOT requires air carriers to adopt, implement, and adhere to tarmac delay contingency plans. Specifically, the regulations require U.S. and foreign carriers' plans to include the following requirements (see figure 1 and exhibit E):

Figure 1. Required Tarmac Delay Assurances for Air Carriers

1	Provide an opportunity to deplane from an aircraft within 3 hours for domestic flights
2	Provide an opportunity to deplane from an aircraft within 4 hours for international flights
3	Serve food and water no later than 2 hours after the aircraft leaves the gate or touches down
4	Provide operable lavatory facilities and medical attention
5	Notify passengers of the delay status every 30 minutes including the reason if known
6	Notify passengers that they have an opportunity to deplane from an aircraft every 30 minutes if it exists
7	Contain sufficient resources to implement their plan
8	Coordinate with the airport, including airports carriers use to divert their flights
9	Coordinate with the U.S. Customs and Border Protection agency
10	Coordinate with the U.S. Transportation Security Administration (TSA)

Source: Title 14 CFR, Part 259

In addition, the act requires that U.S. carriers include an assurance for providing passengers with a comfortable cabin temperature.

DOT becomes aware of possible tarmac delay violations through various means, including customer complaints, Bureau of Transportation and Statistics (BTS) reports, media reports, and carriers' self-reporting. DOT determines whether the potential violation warrants further analysis, and if so conducts an investigation.

According to DOT regulations, some required assurances do not apply if: (1) the pilot-in-command determines there is a safety-related or security-related reason for the delay, or (2) air traffic control (ATC) determines that returning the aircraft to the gate would significantly disrupt airport operations. Airlines found not complying with the requirements can be fined up to \$27,500 per passenger. As of April 2014, DOT assessed over \$3.5 million in civil penalties.

DOT ENSURED THAT CARRIERS HAVE LOBFD PLANS, BUT CARRIERS' WEB-POSTED PLANS DO NOT CONTAIN ALL REQUIRED ASSURANCES

DOT developed processes to review and approve U.S. airports and U.S. carriers' contingency plans. However, DOT did not ensure that plans posted on U.S. and foreign air carrier Web sites contained all required assurances and were easily accessible. As a result, consumers may not be aware of their rights in the event of a LOBFD.

DOT Ensured All U.S. Airports and U.S. Carriers Have Contingency Plans in Place

DOT has made progress in ensuring that carriers implement LOBFD requirements by reviewing and approving airports' and carriers' contingency plans. In February 2012, Congress passed the act requiring U.S. air carriers and U.S. airports to submit their contingency plans for lengthy tarmac delays to DOT for review and approval. Carriers and airports were required to submit their contingency plans to DOT by May 14, 2012, and DOT had to review and approve the plans by August 23, 2012. If DOT's review determined that a carrier's plan did not contain the required content, the plan was returned to the carrier or airport for revisions to ensure compliance with the regulations.

Per the act, 390 airports and 61 U.S. air carriers were required to submit contingency plans to DOT. The Department reviewed and approved all plans within the established timeframe. For airports, we analyzed 20 of the 390 plans that were approved by DOT, and found that all of them contained the required assurances. For air carriers, we analyzed 23 of 61 plans that DOT approved and

found that only 1 did not contain all required assurances. Since we brought this to DOT's attention, it has obtained a corrected plan from the carrier.

DOT Has Not Ensured Carriers' Web-Posted Contingency Plans Contain All Required Assurances

DOT's review of contingency plans did not extend to ensuring that plans posted on U.S. and foreign air carrier Web sites contained all required assurances. According to DOT regulations, U.S. and foreign air carriers must ensure public access to their contingency plans by posting them on their Web sites.

However, DOT reviews U.S. and foreign air carrier Web-posted contingency plans to ensure they contain all required assurances only while investigating potential LOBFD violations.¹² If no potential violations occur, it is possible that DOT may never review a carrier's Web-posted plan. We found 4 of the 23 plans posted on U.S. carriers' Web sites did not include one or more of the required assurances. For example, one U.S. carrier's plan did not include 7 of the 11 required assurances (see exhibit F).

We also analyzed 32 of 113 plans posted on foreign carrier Web sites and found 15 did not include one or more of the assurances (see exhibit F). Thirteen of the 15 plans were missing at least two assurances. For instance, one of the foreign carriers' plans was missing 7 of the 10 required assurances. As a result, consumers may not be aware of their rights in the event of a LOBFD.

DOT Has Also Not Ensured Carriers' Web-Posted Contingency Plans Are Easily Accessible

DOT regulations require that carriers' Web-posted plans be easily accessible to the public. However, we found instances where it would be difficult for passengers to find the plans on carriers' Web sites, especially if they do not know key search words such as "tarmac delay" or "contingency plan." According to DOT, "easily accessible" means a customer should be able to find a carrier's plan on its Web site without great difficulty. DOT officials told us that most carriers place their plans under the "customer commitment" or "legal" section of their Web sites, which the Department determined to be acceptable.

However, as an example, we could not locate one carrier's contingency plan at all. It was not accessible from its Web site's home page, listed under the customer care or legal section, or easily searchable without knowing the key words. Another carrier's contingency plan was under the legal section of its Web site, but could be

¹² According to the Department, it has recently been involved in a long-term project to review 30 foreign carrier Web sites for compliance with all consumer protection regulations, including the regulations related to the posting and the adoption of tarmac delay contingency plans. The Department also stated that since 2012 it has conducted onsite audits of selected foreign carriers, which includes reviewing Web-posted contingency plans.

found only after clicking six links in the following order: (1) legal, (2) contract of carriage, (3) U.S. contract of carriage download, (4) customer service commitment, (5) customer service commitment link, and (6) comfort during extended delays. Other carriers placed contingency plans in the passenger rights or contract of carriage sections. Without specific guidance, consumers may not be aware of how to get information about their rights during a LOBFD.

DOT'S OVERSIGHT OF LONG, ON-BOARD FLIGHT DELAYS IS INSUFFICIENT DUE TO WEAKNESSES IN ITS INVESTIGATIONS AND REGULATIONS

Weaknesses limit DOT's efforts to investigate potential violations and ensure implementation of LOBFD requirements. Although DOT conducts investigations of LOBFDs to determine whether a violation occurred, we found instances where DOT did not collect supporting documentation during its investigations, other than the carriers' written response. In addition, weaknesses in DOT's regulations make some LOBFD requirements difficult to enforce. Specifically, the Department does not require carriers to record time-sensitive requirements, indicate when food and water should be served as DOT intended, or define what constitutes comfortable cabin temperature.

DOT Does Not Always Obtain Sufficient Documentation To Support Its Investigations of Tarmac Delays

Some of DOT's investigations of carriers' compliance with LOBFD requirements are limited by a lack of supporting evidence. When investigating a LOBFD, DOT requests and receives a written response from the carrier regarding the incident. The carrier's response describes what occurred during the tarmac delay according to the carrier's internal investigation of the incident and its statement of whether the regulations were violated. However, we found that sometimes DOT relies on the carrier's response, and does not obtain copies of underlying supporting documentation to verify the airlines' responses or follow up with other entities to corroborate the carriers' statements.

We reviewed DOT's investigations of 41 LOBFDs and found instances where the investigations could have been more thorough. For example:

- **DOT Relied on the Carrier's Response Without Corroborating Evidence.** In one investigation, a passenger complained that she was held on the aircraft for about 4 hours, during which restrooms were out of commission most of the time, there were no delay notifications to passengers, and she was not notified that she could deplane while the aircraft was at the gate. DOT concluded there was no violation based solely on the carrier's response. Specifically, the carrier stated that the door was open and passengers had the opportunity to deplane if

they wished, but did not state that announcements were made informing passengers that they could deplane. Further, the carrier stated it urges the crew to communicate more with passengers during delay situations and apologized if this was not done. In addition, the carrier stated that the lavatories were inoperative temporarily during the incident but that the issue was resolved prior to leaving the gate.

DOT accepted this response and did not collect corroborating evidence, such as the carrier's Aircraft Communication Addressing and Reporting System (ACARS) report¹³ or crew and maintenance statements to validate the carriers' claim that a violation did not occur. Information in the ACARS report would have provided the exact gate departure and take-off times. In addition, DOT did not collect any evidence proving that announcements were made to inform passengers that they could deplane. Crew statements may document when and if delay notifications were made, the nature of the announcements to the passengers during a tarmac delay event, and if the crew made an opportunity to deplane announcement. DOT also did not seek or review maintenance records for the lavatory, which would have shown whether a problem existed with the lavatory and when and if it was repaired.

- **DOT Did Not Verify Exceptions Claimed by Carriers.** Under DOT's regulations, certain tarmac delay assurances do not apply if the delay occurs under an established safety and security or ATC exception. However, in some cases, DOT relied on the carrier's statement as justification, without verifying the circumstances that prompted the exceptions. For example, after a foreign carrier did not deplane passengers within 4 hours, it claimed in its written statement to DOT that the delay was due to a security issue, as Customs did not permit the flight crew to deplane the passengers. DOT closed the case without contacting Customs to corroborate the carrier's statement. In another investigation, a U.S. carrier stated that it could not deplane passengers within 3 hours because ATC stopped airport operations several times, preventing the aircraft from returning to the gate on time. DOT did not pursue enforcement action against the carrier and applied the ATC exception without contacting FAA to verify whether the circumstances justified an exception.
- **DOT Missed Potential Discrepancies in a Carrier's Response.** According to DOT, the Department relies on carriers' responses for its investigations because DOT believes that carriers would not risk the severe repercussions of providing false information. However, by relying on a single source for information DOT could miss discrepancies. For example, in one investigation

¹³ Most aircraft are equipped with an automated system, ACARS, which is used to transmit messages between the pilot and the airlines Operations Control Center. Also, it may be used to capture flight data such as the exact time the plane was in and out of the gates.

the carrier's response to DOT stated, "Timely announcements were made by the Captain regarding the cause of the delay and updates." However, in our review of supporting documentation for this incident, an email provided to us by the air carrier noted that "...no one could accurately give the contents or time of the announcements made." This example illustrates that it is important for DOT to collect supporting documentation from the carrier because discrepancies between carriers' responses and carriers' documentation can exist.

DOT Does Not Require Carriers To Record Time-Sensitive Assurances

Although DOT regulations require carriers to provide passenger protections during LOBFDs through time-sensitive assurances (see figure 2), the Department does not require carriers to specifically record or otherwise document the exact times they complied with these requirements, such as the exact times when the crew serves food and water to passengers and makes the required announcements. As a result, DOT cannot verify whether carriers complied with these requirements.

Figure 2. Time-Sensitive Tarmac Delay Assurances

- Provide an opportunity to deplane from an aircraft within 3 hours for domestic and 4 hours for international flights
- Serve food and water no later than 2 hours after the aircraft leaves the gate or touches down
- Notify passengers of the delay status every 30 minutes including the reason if known
- Notify passengers that they have an opportunity to deplane from an aircraft every 30 minutes if it exists

Source: Title 14 CFR, Part 259

Recording compliance with time-sensitive assurances is particularly important because there can be a time lapse between when a LOBFD incident occurs and when DOT actually investigates the incident. As a result, relying on the carrier staff's memory alone to determine whether and when they met the required assurances may not be reliable. For example, for one incident, we reviewed carrier emails and found that the carrier's staff could not remember exactly when they served food and water since DOT initiated the investigation one month after the flight. Specifically, one email states, "We have not been successful in having anyone that remembers the exact details of this flight since it was a month ago." Therefore, it is difficult to verify that food and water were provided within the required timeframes for this flight, by relying only on the flight carrier staff's memory.

DOT officials told us that they consider the opportunity to deplane assurance to be one of the most important LOBFD requirements. In fact, a significant percentage of DOT's enforcement actions relate to this assurance. Yet, DOT does not require airlines to document when the opportunity to deplane announcement is made to passengers, which results in a significant gap in DOT's tarmac delay reporting requirements.

Specifically, DOT regulations¹⁴ require U.S. and foreign carriers to report tarmac delays over 3 hours at U.S. airports through monthly BTS reports. These reports are essential to DOT in identifying tarmac delays not reported by the media or passengers.¹⁵ However, these reports do not contain sufficient information for DOT to determine whether an airline violated the requirement to notify passengers that they may deplane. This is because DOT regulations do not require airlines to report the amount of time an aircraft is at the gate and the time the crew announces that passengers have an opportunity to deplane.

To illustrate, one airline was not required to report an international flight delay in which all but three passengers remained on the plane for more than 4 hours prior to take off. After initial departure and a delay on the runway, the aircraft experienced mechanical problems and returned to the gate, where it remained for over 90 minutes. Under DOT reporting regulations,¹⁶ the tarmac delay ended when the aircraft returned to the gate. However, in our opinion, simply returning to the gate without making the announcement does not constitute an effective opportunity to deplane. For example, airline officials said “the Captain did not make the official deplaning announcements as he felt there was no opportunity to deplane during this time,” and the “3 passengers that asked to deplane were allowed to leave the aircraft.” Had there been no complaint, DOT would not have been aware of this violation of the requirement to notify passengers. Further, since 141 passengers stayed on the plane, an equal opportunity for all the passengers to deplane was clearly not provided; therefore, the total time for calculating the tarmac delay should have continued. Without requiring carriers to report the total amount of time passengers are on a plane, and also documenting the time the carrier announces the opportunity to deplane, DOT cannot ensure that airline passengers' rights are being protected.

DOT officials stated that the Department does not want to increase the burden on carriers by imposing additional requirements to record time-sensitive assurances.

¹⁴ 14 CFR Part 244 *Reporting Tarmac Delay Data* requires carriers to report tarmac delays of 3 hours or more at a U.S. airport on a scheduled or public charter flight, including a diverted or subsequently cancelled flight.

¹⁵ BTS reports are self-certified times of delays reported by carriers. Carriers often use data from their ACARS or other internal systems that record times—such as times when cabin doors open or close.

¹⁶ DOT's reporting regulation defines a gate return as the time that an aircraft that has left the boarding gate returns to a gate for the purpose of allowing passengers the opportunity to disembark from the aircraft.

However, some carriers have shown that additional recordkeeping requirements can be practical and not burdensome. For instance, one carrier tailored its ACARS system to capture when the crew serves food and water and makes required notifications, while another carrier fills out a form during or immediately after an incident. However, neither practice is mandatory.

DOT Issued Regulations and Guidance for Serving Food and Water, But Neither Meet DOT's Intent

Both DOT's regulations and its subsequently issued guidance to industry do not ensure that airlines implement the food and water assurances for departing flight delays, as the Department intended. As a result, it is difficult for DOT to enforce this requirement and ensure that passengers receive food and water during a tarmac delay, as intended.

Specifically, DOT's regulations and guidance provide conflicting requirements on when food and water should be served (see table 1). Moreover, neither the regulations nor the FAQ guidance accurately reflect DOT's stated intention for this requirement.

Table 1. DOT's Conflicting Times Regarding the Food and Water Assurance for Passengers

	DOT's Stated Intent (According to Interview)	DOT Regulations	DOT Guidance (FAQ Document)
When should food and water be served to passengers during a tarmac delay?	No later than 2 hours <i>after passengers no longer have an opportunity to deplane</i> —which may be before or after the aircraft leaves the gate.	No later than 2 hours <i>after the aircraft leaves the gate (in the case of departures)</i> .	<i>After 2 hours</i> without a chance to deplane

Source: OIG analysis and interviews

DOT's conflicting language about this requirement may cause passengers to receive food and water later than DOT intended—especially if an aircraft is delayed at the gate. Two major carriers said they implement the food and water service requirement as stated in the DOT regulations, while we found one carrier's contingency plan states the assurance as written in the guidance. However, the full impact is unknown because DOT does not require carriers to document when food and water service is provided.

DOT Has Not Defined Comfortable Cabin Temperature

DOT has not established a definition for what constitutes comfortable cabin temperature, despite the fact that the act requires U.S. carriers to include this assurance in their contingency plan. In addition, although DOT reviews complaints regarding comfortable cabin temperature, it has not incorporated this

requirement into the regulations. As a result, one carrier we spoke with did not believe it was bound by the requirement.

Although DOT has not provided a definition of comfortable cabin temperature, industry experts have made their own recommendations. For example, in a 2013 study, engineers recommended a targeted cabin temperature range from 65 to 75 degrees, but not exceeding 80 degrees.¹⁷

Without DOT defining comfortable cabin temperature, this requirement is difficult to investigate and enforce. For example, DOT received a complaint from a passenger saying that during a weather-related diversion, passengers sat on the plane for over 3 hours without an opportunity to deplane. The passenger stated that the plane “had little air and it was very hot in the cabin.” In response to DOT’s inquiry into the complaint, the airline stated, “Our reports indicate that the aircraft cabin temperature was not unusually warm.” However, the airline did not provide information about the temperature of the cabin during the incident. Regardless, based on the airline’s response, DOT did not cite the carrier with a violation.

Although DOT is in the process of updating its tarmac delay regulations, it has not yet addressed this or other issues with its requirements. DOT’s most recent proposed rule update, published in a Notice of Proposed Rulemaking on May 23, 2014, clarifies the definition of a “lengthy tarmac delay” to read “*more* than three hours” for reporting purposes under 14 CFR 244. The current reporting regulation incorrectly states that carriers must report tarmac delays of “three hours or more.” However, the update does not include a requirement to record time-sensitive assurances, a definition for comfortable cabin temperature, or clarification of when the food and water should be served. DOT staff told us they intend to address the cabin temperature issue in a future update to the tarmac delay regulations, but it is unclear when this regulation will be issued.

CONCLUSION

With the number of air travel passengers expected to grow over the next 10 years, it is important that DOT continue to enhance airline passenger protections. DOT has made progress in addressing LOBFDs through issuing regulations and ensuring airports and airlines have contingency plans intended to enhance passenger comfort and safety during lengthy delays. However, DOT can improve its review of contingency plans on carrier Web sites, especially for foreign carriers. In addition, there is room to strengthen its investigation and documentation processes and address weaknesses associated with LOBFD

¹⁷ The American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers issued Standard 161-2013, “Air Quality within Commercial Aircraft,” updated June 27, 2013, which addresses acceptable conditions for cabin temperature.

regulations. By enhancing its oversight and clarifying its regulations, DOT will improve the accountability, enforcement, and protection afforded to air travelers.

RECOMMENDATIONS

To meet its goals of improving passengers' air travel experience, we recommend that DOT:

1. Develop a process for periodically reviewing a sample of the contingency plans that U.S. and foreign air carriers have posted on their Web sites to ensure all of the required assurances are included.
2. Clarify the meaning of "easily accessible" in the case of posting carrier contingency plans on their Web sites to ensure consumers can easily access airlines' and airports' obligations to passengers.
3. Obtain supporting evidence from air carriers, and other entities (i.e., FAA, Customs, and TSA), to verify airline responses when investigating LOBFDs.
4. Require carriers to keep and maintain records documenting when they:
 - a) Notify passengers about the status of the flight delay;
 - b) Notify passengers when they have the opportunity to deplane; and
 - c) Provide food and water to passengers.
5. Revise DOT regulations to require carriers—when calculating the length of tarmac delays for reporting purposes—to include the time when an aircraft is at the gate with passengers on board and the crew has not made an announcement to deplane.
6. Revise DOT regulations and the FAQ to indicate that U.S. and foreign air carriers provide food and water service within 2 hours after passengers no longer have the opportunity to deplane.
7. Define comfortable cabin temperature and include the requirement in DOT regulations. In the interim, issue guidance to the industry that defines comfortable cabin temperature.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided a draft of this report to DOT on August 7, 2014, and received its response on September 22, 2014, which is included in its entirety as an appendix. In its response, DOT concurred with recommendations 1 and 2; partially concurred with recommendations 3, 4, 6, and 7; and did not concur with recommendation 5. We are requesting additional information or a revised response for the recommendations detailed below.

DOT partially concurred with recommendation 3, stating that it will obtain supporting evidence from carriers and other entities when investigating LOBFDs when warranted. In addition, DOT stated it will establish, by December 31, 2014, a standard practice for those cases that warrant further investigation and corroborating evidence. While these actions appear to address the intent of our recommendation, we request that DOT clarify when supporting evidence is warranted and provide us with documentation on its proposed new practice. We consider recommendation 3 resolved but open pending receipt of this information.

DOT partially concurred with recommendations 4, 6, and 7, stating that implementation of these recommendations requires a rulemaking, and it wants to avoid prejudging the outcome of the rulemaking process. However, DOT's response did not state whether and when it intends to carry out this rulemaking. It is also unclear whether any update to the regulations will include a requirement to record time-sensitive assurances and when food and water should be served, as we recommended. Accordingly, we request that DOT clarify how its planned actions will meet the intent of these recommendations and provide a target date for completion. We consider recommendations 4, 6, and 7 unresolved and open pending receipt of additional information.

DOT did not concur with recommendation 5, stating that it believed our recommendation was based on a misunderstanding of the "opportunity to deplane" provision in the Department's regulations. According to the Department, a case of an aircraft at the gate with passengers on board when the crew has not announced that passengers can deplane might not be considered a tarmac delay, because the opportunity to deplane might actually exist. However, in our opinion, returning to the gate without making an announcement does not constitute an effective opportunity to deplane because passengers would not be aware that they have the opportunity. As a result, passengers could experience unnecessary inconvenience or hardship by staying on board the aircraft during a lengthy delay. DOT needs to ensure passengers' rights are protected by requiring airlines to report the total length of time that passengers are on board an aircraft during a lengthy delay, as well as the time the carrier announces the opportunity to deplane. In response to

the Department's misunderstanding of the intent of recommendation 5, we clarified this recommendation to specifically recommend a revision of DOT regulations. Accordingly, we request that DOT reconsider its position on this recommendation.

ACTIONS REQUIRED

We consider recommendations 1 and 2 resolved but open pending completion of planned actions. We consider recommendation 3 resolved but open pending receipt of additional information requested above and completion of planned actions. In addition, we consider recommendations 4, 5, 6, and 7 unresolved, and request that DOT clarify how its planned actions will meet the intent of recommendations 4, 6, and 7 and reconsider its response to recommendation 5. In accordance with DOT Order 8000.1C, please provide this information within 30 days of this report.

We appreciate the courtesies and cooperation of the Department of Transportation, air carriers, airports, Federal Aviation Administration, U.S. Customs and Border Protection, and trade association representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-1987 or Scott Macey, Program Director, at (415) 744-3090.

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cc: DOT Audit Liaison, M-1

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted this performance audit from March 2013 through August 2014 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

DOT initially denied us access to three items during the audit: (1) a draft notice of proposed rulemaking on enhancing airline passenger protections; (2) a draft contractor's report on the impact of tarmac delay regulations on flight cancellations and delays; and (3) DOT case files on open tarmac delay investigations. We were granted access to these items after the issue was elevated to the Inspector General and Secretary. This caused a minor delay but did not impact the scope of the audit.

The FAA Modernization and Reform Act of 2012 requires our office to assess the impact of flight delays and cancellations on air travelers. Accordingly, our audit objective was to assess DOT's oversight of airports' and airlines' compliance with contingency plans and other LOBFD requirements. Specifically, we assessed DOT's efforts to (1) review and approve airports' and airlines' contingency plans, and (2) investigate potential violations and ensure implementation of LOBFD requirements.

To achieve our audit objective, we met with DOT's Office of Aviation Enforcement and Proceedings to obtain an understanding of their processes for overseeing airports' and airlines' compliance with DOT regulations and the act. We reviewed and analyzed the DOT regulations and the act to gain comprehensive understanding of DOT's responsibilities for overseeing carriers' and airports' contingency plans and enforcing LOBFD violations, as well as the carriers, airports, and other parties' (i.e., FAA and Customs) roles and responsibilities.

To address the first sub-objective, we assessed DOT's oversight of airports' and airlines' compliance with contingency plan requirements. We reviewed 20 of 390 U.S. airports plans (we selected primary airports)¹⁸ and 23 of 61 U.S. carrier contingency plans that were submitted to and approved by DOT as well as the version posted on their Web sites. The 23 carriers we selected carry at least 85 percent of passengers with U.S. carriers. Finally, we reviewed 32 of 113 foreign carrier plans posted on their Web sites to determine if they contained all required assurances. The 32 foreign carriers were selected from the top 6 hub airports.

¹⁸ A primary airport is an airport that has more than 10,000 passengers enplaned annually.

To address the second sub-objective, we met with 11 U.S. air carriers, which carry at least 70 percent of passengers traveling with U.S. carriers, and 3 foreign carriers that are required to comply with DOT regulations (see exhibit B). The three foreign carriers were selected because they have a presence in the United States, and DOT conducted an investigation on at least one LOBFD incident involving the carrier during the scope of our review, and the airlines were co-located with other U.S. carrier site visits. We discussed each carrier's role in (1) developing and coordinating their contingency plan, (2) ensuring compliance with the DOT regulations and the act, (3) reporting LOBFDs, and (4) internally investigating LOBFD incidents, including their process of collecting and submitting evidence to DOT. In addition, we collected supporting evidence from these carriers and compared to the supporting evidence DOT keeps on file for our sample of LOBFD cases.

To assess DOT's investigation efforts, we interviewed DOT senior management and seven DOT attorneys to gain an understanding of their investigative and enforcement procedures. We also selected and analyzed 41 of 409 LOBFD incidents that occurred between January 2011 and May 2013, among the 14 carriers we visited (see exhibit B, Airlines), for which DOT conducted an investigation. The 41 incidents we selected included a variety of assurances under DOT regulations and the act (including opportunity to deplane, food and water service, comfortable cabin temperature, flight status notifications, and lavatory service).

We also visited the FAA and airport personnel at 7 of 390 airports that were required to submit contingency plans to the Department to determine their role during a LOBFD, including FAA's roles in addressing the safety exceptions of the DOT regulations. We selected these seven airports because they were co-located with carriers we were visiting. Further, we met with Customs to determine their coordination role during a LOBFD. Finally, we met with trade associations to obtain their perspective on tarmac delay regulations (see exhibit B).

EXHIBIT B. ORGANIZATIONS VISITED OR CONTACTED

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation/Office of Aviation Enforcement and Proceedings

OTHER FEDERAL AGENCIES

U.S. Government Accountability Office
 U.S. Customs and Border Protection
 Federal Aviation Administration

AIRLINE TRADE ASSOCIATIONS

Airlines for America
 Airports Council International
 Air Line Pilots Association
 Association of Flight Attendants

AIRLINES

Delta Air Lines
 Virgin America
 American Airlines
 American Eagle
 U.S. Airways
 United Airlines
 Southwest Airlines
 Jet Blue
 Alaska Airlines
 Sky West Airlines
 Mesa Airlines
 Lufthansa
 Avianca
 Caribbean Airlines

AIRPORTS

Hartsfield-Jackson Atlanta International Airport
 Washington-Dulles International Airport
 San Francisco International Airport
 Charlotte Douglas International Airport
 Dallas/Fort Worth International Airport
 Chicago O'Hare International Airport
 John F. Kennedy International Airport

OTHER AIRLINE INDUSTRY ENTITIES

Rockwell Collins' ARINC

EXHIBIT C. TARMAC DELAYS AT A GLANCE

Year	Domestic Tarmac Delays (over 3 hours)	International Tarmac Delays (over 4 hours)	Total Tarmac Delays per Year	Total Delays
	50	12	62	2,152,299
	41	6	47	2,006,992
	84	13	97	2,498,610

Source: Research and Innovative Technology Administrations (RITA), Bureau of Transportation Statistics (BTS)

- Tarmac delays are considered rare events, as they represent only 0.004 percent of the total number of delays per year.
- Total delays include all delays where the flight arrived to or departed from the gate 15 minutes or more after the scheduled arrival/departure time.
- Although domestic and international tarmac delays decreased by 18 percent and 50 percent, respectively, between 2011 and 2012, both more than doubled between 2012 and 2013.

EXHIBIT D. OIG REPORTS AND TESTIMONIES ADDRESSING LONG, ON-BOARD FLIGHT DELAYS

1. *Interim Report on Airline Customer Service Commitment* (OIG Report No. AV-2000-102), June 27, 2000.
2. *Airline Customer Service Commitment* (OIG Testimony No. CC-2000-079), June 28, 2000.
3. *Air Carrier Flight Delays and Cancellations* (OIG Report No. CR-2000-112), July 25, 2000.
4. *Flight Delays and Cancellations* (OIG Testimony No. CC-2000-356), September 14, 2000.
5. *Flight Delays and Cancellations* (OIG Report No. CR-2000-122), September 25, 2000.
6. *Final Report on Airline Customer Service Commitment* (OIG Report No. AV-2001-020), February 12, 2001.
7. *Airline Customer Service Commitment* (OIG Testimony No. CC-2001-090), February 13, 2001.
8. *Flight Delays and Cancellations* (OIG Testimony No. CC-2001-118), March 15, 2001.
9. *Status Report on Airline Customer Service* (OIG Testimony No. CC-2001-217), June 20, 2001.
10. *Update II: Actions to Enhance Capacity and Reduce Delays and Cancellations* (OIG Testimony No. CC-2001-260), August 2, 2001.
11. *Actions To Enhance Capacity and Reduce Delays and Cancellations* (OIG Report No. CR-2001-075), August 17, 2001.
12. *Follow-Up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment* (OIG Report No. AV-2007-012), November 21, 2006.
13. *Refocusing Efforts To Improve Airline Customer Service* (OIG Testimony No. CC-2007-042), April 11, 2007.
14. *Actions Needed to Improve Airline Customer Service* (OIG Testimony No. CC-2007-046), April 20, 2007.
15. *Actions Needed to Minimize Long, On-Board Flight Delays* (OIG Report No. AV-2007-077), September 25, 2007.

16. *Actions Needed to Improve Airline Customer Service and Minimize Long, On-Board Delays* (OIG Testimony No. CC-2007-099), September 26, 2007.
17. *Actions Needed to Improve Airline Customer Service and Minimize Long, On-Board Delays* (OIG Testimony No. CC-2007-105), September 27, 2007.
18. *Status Report on Actions Underway To Address Flight Delays and Improve Airline Customer Service* (OIG Testimony No. CC-2008-058), April 9, 2008.
19. *Progress and Remaining Challenges in Reducing Flight Delays and Improving Airline Customer Service* (OIG Testimony No. CC-2009-067), May 20, 2009.
20. *More Comprehensive Data Are Needed To Better Understand The Nation's Flight Delays And Their Causes* (OIG Report No. AV-2014-016), December 18, 2013.

OIG reports and testimonies are available on our Web site at <http://www.oig.dot.gov/>.

EXHIBIT E. U.S. & FOREIGN AIR CARRIER AND AIRPORT CONTINGENCY PLAN REQUIREMENTS

Requirements	
U.S. & Foreign Air Carriers	
<i>FAA Modernization And Reform Act of 2012 (the act)</i>	<ul style="list-style-type: none"> • Provide adequate food, potable water, restroom facilities, comfortable cabin temperatures, and access to medical treatment for passengers. • Share facilities and make gates available at the airport in an emergency. • Allow passengers to deplane following an excessive tarmac delay.
<i>Title 14 CFR, Part 259</i>	<ul style="list-style-type: none"> • An opportunity to deplane within 3 hours for domestic flights. • An opportunity to deplane within 4 hours for international flights. • Food and water service no later than 2 hours after the aircraft leaves the gate or touches down. • Operable lavatory facilities and medical attention. • Delay status notifications to passengers every 30 minutes including the reason if known. • Notifications to passengers beginning 30 minutes after scheduled departure time and every 30 minutes thereafter that they have the opportunity to deplane from an aircraft, if the opportunity to deplane actually exists. • Sufficient resources to implement their plan. • Coordination with the airport including regular diversion airports. • Coordination with the U.S. Customs and Border Protection agency. • Coordination with the U.S. Transportation Security Administration. • Retain information on lengthy tarmac delays for 2 years after the incident. • Post contingency plans on their Web site.
U.S. Airports	
<i>FAA Modernization And Reform Act of 2012 (the act)</i>	<ul style="list-style-type: none"> • Provide for the deplanement of passengers following an excessive tarmac delay. • Provide for the sharing of facilities and make gates available at the airport in an emergency. • Provide a sterile area following excessive tarmac delays. • Post their plans on their Web site.

Source: FAA Modernization and Reform Act of 2012 and Title 14 Code of Federal Regulations, Part 259

Exhibit E. U.S. & Foreign Air Carrier and Airport Contingency Plan Requirements

EXHIBIT F. REQUIREMENTS MISSING FROM CARRIERS' CONTINGENCY PLANS

Airline	Opportunity to Deplane Within 3 Hours (domestic flights)	Opportunity to Deplane Within 4 Hours (international flights)	Food and Water Service Within 2 Hours	30 Minute Delay Notification	30 Minute Opportunity to Deplane if Opportunity Exists	Operable Lavatories and Medical Attention	Sufficient Resources to Execute the Plan	Plan Coordinated with Airports (including diversion U.S. airports)	Plan Coordinated with Customs	Plan Coordinated with TSA	Comfortable Cabin Temperature ¹	Total Missing
FOREIGN CARRIERS												
1				X	X				X	X		4
2				X	X				X	X		4
3					X							1
4				X	X							2
5					X				X	X		3
6				X	X			X	X	X		5
7									X	X		2
8									X	X		2
9		X		X	X		X	X	X	X		7
10					X							1
11				X	X				X	X		4
12		X			X				X	X		4
13									X	X		2
14									X	X		2
15									X	X		2
U.S. CARRIERS												
1				X	X			X	X	X	X	6
2		X					X	X	X	X		5
3				X	X		X	X	X	X	X	7
4											X	1

Key: X = Requirement missing from carrier's contingency plan

¹This requirement applies to only U.S. carriers.

EXHIBIT G. MAJOR CONTRIBUTORS TO THIS REPORT

Name	Title
Scott Macey	Program Director
Terri Ahuruonye	Project Manager
Mackensie Ryan	Senior Auditor
Doneliya Deneva	Senior Auditor
Amitra Mamdouhi	Senior Analyst
Alfredo Atregeno	Auditor
Audre Azuolas	Writer-Editor
Seth Kaufman	Senior Counsel
Petra Swartzlander	Senior Statistician

APPENDIX. AGENCY COMMENTS



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, SE
Washington, DC 20590

September 22, 2014

MEMORANDUM

SUBJECT: Management Comments to OIG Draft Report
on Long, On-Board Flight Delays

FROM: Kathryn B. Thomson
General Counsel

TO: Matthew Hampton
Assistant Inspector General
for Aviation Audits

The Department has been at the forefront of airline passenger protections¹. In 2009, there were 6,107 domestic long on-board flight delays (LOBFDs) of over two hours involving the largest U.S. scheduled airlines, of which 868 exceeded three hours. In 2013, there were 3,180 domestic LOBFDs of over 2 hours and the number of LOBFDs over three hours was less than 0.001% of all domestic flights. Moreover, per the FAA Modernization and Reform Act of 2012, DOT reviewed and approved 390 covered airports and 61 covered U.S. carrier tarmac delay plans within the 90-day statutory mandated time period, 49 U.S.C. § 42301. DOT views its LOBFD program to be a success.

- Since the tarmac delay regulations became effective, the Office of Aviation Enforcement and Proceedings (Enforcement Office) has investigated and closed 462 cases involving 587 flights. As a result of its investigations, DOT has issued cease and desist orders assessing civil penalties in 15 cases involving 43 flights for violations of various provisions of the tarmac delay rule, with civil penalties totaling \$3,550,000. A number of warning letters have also been issued.
- During the course of its audit, OIG reviewed 28 cases involving 41 incidents of LOBFDs. In 24 cases reviewed there is no dispute that the Enforcement Office collected sufficient evidence.

¹ On December 30, 2009, and April 25, 2011, DOT published a comprehensive set of regulations addressing long on-board flight delays (LOBFDs) and the related issues consumers face during these extended tarmac delays. These regulations and DOT's subsequent enforcement have contributed to a significant decline in the number of LOBFDs.

- The Enforcement Office has always obtained supporting documentation from carriers and corroborating evidence from other entities (FAA, airport authorities, TSA, CBP) in appropriate cases. The experience of the Enforcement Office has been that carrier statements, often signed by legal counsel, are reliable and that carriers routinely admit a violation when one occurs. Further, pursuant to 18 U.S.C. § 1001, carriers face civil penalties for providing false information to the federal government.
- DOT's reporting regulations (14 CFR Parts 234 and 244) adequately capture LOBFDs of three hours or more. DOT has issued 7 consent orders against carriers for failure to file accurate on-time performance information for a lengthy tarmac delay as required in DOT's reporting regulations, and issued several warning letters.
- DOT's investigation process currently captures time-sensitive assurances such as the times when the crew serves food and water to passengers and makes the required announcements. DOT has issued 4 consent orders as well as a number of warning letters that cover failure of airlines to provide food and water within the allotted time, and 6 consent orders that include failure to provide timely deplaning notification.

Based on our review of the draft report, we agree to implement OIG recommendations 1 and 2, as written, by September 30, 2015. We partially concur with recommendation 3 which concerns obtaining additional documentation to support investigations of tarmac delays. The Enforcement Office will obtain supporting evidence from carriers and other entities when investigating LOBFDs when the circumstances of the case warrant obtaining such supporting evidence. By December 31, 2014, the Enforcement Office will establish a standard practice for those cases that warrant further investigation and corroborating evidence. We do not concur with recommendation 5 which pertains to calculating the length of a tarmac delay for reporting purposes. It appears the recommendation is based on a misunderstanding of the 'opportunity to deplane' provision in the Department's regulation. In order to avoid prejudging the outcome of the rulemaking process, we partially concur with recommendations 4, 6 and 7 as implementation of those recommendations requires a rulemaking.

We appreciate this opportunity to offer additional perspective on the OIG draft report. Please contact Blane A. Workie, Acting Assistant General Counsel, Office of Aviation Enforcement and Proceedings, at (202) 366-9345 with any questions or if the OIG would like to obtain additional details about these comments.