

Ending a Tarmac Confinement

In light of the rapidly increasing rate of excessive tarmac confinements, FlyersRights.org opposes any attempts to further chip away at consumer protections. Before Congress weakened the Tarmac Delay Rule in 2016 by ending the measurement when the airline began movement back to deplane, excessive tarmac confinements had been at a low rate from the beginning of the rule. Since late 2016, excessive tarmac confinements, although now easier to avoid, have increased dramatically, most notably in 2018 and 2019. The Department should take stronger action to punish excessive tarmac confinements rather than reclassify existing tarmac confinements.

FlyersRights.org opposes enacting a regulation that is even weaker than the Department's current enforcement policy. When Congress set how to measure excessive tarmac confinements in the 2016 Reauthorization Act, Congress was clear that a tarmac confinement ends when an airline begins movement to disembarkation. The current enforcement policy, enacted in 2016, recognizes this simple idea.

Airlines currently decide whether to return to the gate around the 2.5 hour mark (DOT-OST-2010-0140-2046, Pg. 6). The proposed rulemaking would push this back thirty minutes if the airline merely needs to submit a request to the airport. FlyersRights.org trusts that the Department can continue to exercise its prosecutorial discretion and decline to punish or fine an airline when it is on an area out of its control and the airport takes an inordinate or unreasonable amount of time to grant the airline permission to return to a gate for a deplaning opportunity. The tarmac delay rule is already underenforced, and FlyersRights.org is not aware of an instance where an airline was fined for a tarmac confinement after seeking permission to deplane at the 2.5 hour mark, but was denied by the airport or Air Traffic Control. This modification only serves to allow airlines to keep passengers confined for longer than allowed by Congress. This does not correct a non-existent problem of over-enforcement.

Tarmac times have increased since 2018 and are at their highest occurrence since the creation of the Tarmac Delay Rule. In the two most recent years with available data (November 2017-October 2019), there have been 675 excessive tarmac confinements, an average of 337 per year. This is not much closer to the average annual number of excessive tarmac confinements from 2011-2014 (67) than to the number of excessive tarmac confinements in 2009 (868), the last calendar year before the tarmac delay rule.

Airlines are drifting closer and closer to the pre-Tarmac Delay Rule numbers, yet enforcement actions have not increased. The Department's proposed solution is not to reduce the number of 3+ hour tarmac confinements, but to reclassify those confinements.

Starting a Tarmac Confinement

FlyersRights.org opposes the proposed change that seeks to postpone when the clock starts for a tarmac confinement when an airline is able to rebut the presumption that a closed door means that no passenger is free to disembark. Currently, a tarmac confinement begins counting when the aircraft door closes. The proposal to allow the airline to litigate the start of a confinement with the Department after the fact adds unnecessary confusion for the Department as well as for the passengers and crews on the ground. The change would negate the benefits the Department seeks to achieve by synchronizing the 2 hour water and food clock with the 3 hour tarmac delay clock, measured from when the door closes.

When the plane door closes, passengers are not always sure of their option to deplane. The closing of the door symbolizes that the aircraft is nearing departure from the gate. As most passengers fly only once per year, passengers generally will not assume that they have the opportunity to deplane at this time.

According to the Department the change “provides greater flexibility to airlines.” We find this notion to be an abrupt departure from the history of the tarmac rule and the original intent of the rule and ill-suited to address the problem of increased tarmac confinements. Airlines are already given ample flexibility under the current Tarmac Delay Rule and in the absence of a passenger right to flight delay compensation in domestic travel.

Reporting International Tarmac Confinements of More than 3 Hours

FlyersRights.org opposes the proposal to no longer require reporting of international tarmac confinements of more than three hours but less than four hours. While a tarmac confinement of this length is not deemed “excessive”, a three hour tarmac confinement remains a difficult experience for passengers. Passengers should have this information made available for them to make informed decisions in a competitive market, a goal often championed by the airlines. Here, the benefit of passengers having this information and making an informed choice and allowing the competitive market to operate outweighs the cost of reporting this tarmac confinement.

Synchronizing

FlyersRights.org supports synchronizing the current tarmac clock with the food and water clock. Both would begin at clear events, unambiguous to passengers and airlines, and immune to any possible rebuttable presumptions after the fact. If the proposal is to tie the two hour food and water clock to a rebuttal by the airline, this will increase confusion among passengers and the workload of flight attendants. Lost in this discussion, however, is that the airlines should not need to be told to provide food and water during a long tarmac confinement.

Passenger Notifications

FlyersRights.org has opposite positions on the two passenger notification proposals.

First, FlyersRights.org supports the proposal to not require subsequent notifications, every 30 minutes, of the opportunity to deplane after the initial notification is made (30 minutes after the scheduled departure time). As long as the carrier is obligated to report when passengers no longer have the opportunity to deplane, we agree the periodic notifications as to the opportunity to deplane are burdensome to the flight attendants with little benefit to the consumer.

As to notifications on the causes and status of the tarmac confinement, FlyersRights.org opposes the proposal to end the periodic updates. Unless carriers are required to notify passengers about changes to the status or cause of the delay, these periodic requirements need to remain.

FlyersRights.org appreciates the opportunity to comment on the proposed rules.

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