

Calendar No. 35

**107th Congress }
1st Session }**

SENATE

**{ REPORT
{ 107-13**

**AIRLINE CUSTOMER SERVICE
IMPROVEMENT ACT**

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

ON

S. 319



APRIL 26, 2001.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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AIRLINE CUSTOMER SERVICE ACT

APRIL 26, 2001.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 319]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 319) “A bill to amend title 49, United States Code, to ensure that air carriers meet their obligations under the Airline Customer Service Agreement, and provide improved passenger service in order to meet public convenience and necessity”, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the Airline Customer Service Improvement Act, S. 319, is to ensure that air carriers provide improved passenger service to meet public convenience and necessity and fulfill their obligations under the voluntary Airline Customer Service Agreement, which was agreed upon on June 17, 1999. The bill would implement recommendations made by the Department of Transportation’s (DOT) Inspector General’s (IG) office in its Final Report on the Airline Customer Service Agreement as well as additional customer service protections.

BACKGROUND AND NEEDS

Statistics kept by DOT show that complaints about commercial air travel have risen dramatically in the past few years. While some of the increase can be attributed to the ease of making such complaints through the Internet, it is not in dispute that air traveler discontent and frustration are at high levels. Many factors con-

tribute to increased consumer dissatisfaction with the airlines. For example, steps that the airlines have taken to control costs and maintain their profitability have a direct impact on travelers' experiences. In addition, demand for air travel has increased tremendously over the last several years, causing planes to be more crowded and placing strains on carriers' ability to provide adequate services. Inadequacies in airport and air traffic control infrastructure have contributed to air travel delays and ground holds.

In many other industries, a company risks losing customers due to its poor service. However, this principle does not always apply in the airline industry. For instance, travelers who are dependent on a hub airport that is dominated by one carrier do not necessarily have the option of flying on another carrier that offers better service. In addition, freedom of entry is usually a disciplining factor when it comes to poor service, but the barriers to entry in the airline industry are relatively high. The overall state of air travel and service has led to calls from the public for governmental intervention.

In response to this public outcry, the Air Transport Association (ATA), which represents the major domestic airlines, in June 1999, voluntarily agreed to a Customer Service Commitment that required each of its members to develop a Customer Service Plan with the following features: offer the lowest fare available; notify customers of known delays, cancellations and diversions; deliver baggage expeditiously; support an increase in the baggage liability limit; allow reservations to be held or canceled; provide prompt ticket refunds; properly accommodate disabled and special needs passengers; meet customers' essential needs during long on-aircraft delays; handle "bumped" passengers with fairness and consistency; disclose travel itineraries, cancellation policies, frequent flyer rules, and aircraft configurations; ensure good customer service from code-share partners; and be more responsive to customer complaints. As part of the voluntary agreement, the air carriers agreed to support an increase in the baggage liability limit, as well as legislation that increased possible fines for violations of DOT customer service regulations. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (P.L. 106-181, known as AIR-21) required the DOT Inspector General's (IG) Office to review the airlines' progress and prepare Interim and Final Reports.

The IG's Interim Report was intended as a mid-term review to determine if the carriers had made sufficient progress in implementing their voluntary commitments. The IG found the airlines were making a clear and genuine effort to strengthen the attention paid to customer service, but bottom-line results were mixed, and the airlines needed to do more to restore customer confidence. The preliminary results included areas where the airlines could improve, such as disclosures to passengers relating to fare and refund availability and what to expect in the case of an extended onboard delay. The IG's Interim Report also noted that the airlines' Plans were not legally enforceable by consumers, unless their provisions were also incorporated into the airlines' contracts of carriage. The IG recommended that the airlines ensure that their contracts of carriage fully reflected the benefits afforded by their Plans and the airlines' Customer Service Commitment. The Committee held a hearing on the Interim Report on June 28, 2000.

In the Final Report, issued on February 12, 2001, the IG indicated that the Commitment had resulted in positive benefits for air travelers on a number of important fronts. Notwithstanding progress made by the airlines, the IG continued to find significant shortfalls in reliable and timely communication with passengers by the airlines about flight delays and cancellations, the major causes of customer dissatisfaction. The IG believes that actions by the airlines to reduce flight delays and cancellations are critical because major improvements in providing capacity to meet demand, such as new runways and new air traffic control capacity enhancing technology, will take at least several years.

The IG found the customer service areas most in need of improvement are the provisions that are triggered when there are delays and cancellations, namely, keeping customers informed of delays and cancellations, meeting customers' "essential" needs during "extended" on-aircraft delays, and making reasonable efforts to return delayed or mishandled checked baggage within 24 hours. According to the IG, although the airlines have made significant investment and progress toward meeting these commitments, problems persist, including untimely, incomplete, or unreliable reports to passengers about flight status, delays, and cancellations.

According to the IG, although airline mitigation measures alone will not solve the complex delay and cancellation problem, the airlines should be doing their part. The FAA's efforts to modernize air traffic control through new technology, satellite navigation at airports, airspace redesign, and, importantly, new runways will be central elements in any successful effort to add capacity and avoid gridlock.

The Final Report was the subject of a Committee hearing on February 13, 2001. The Committee was told that the airlines had invested billions of dollars in technology and training to improve customer service as a result of their voluntary commitments. At the hearing, the IG noted that, while the airlines' voluntary efforts had produced benefits faster than a legislative or regulatory mandate, additional steps were needed to improve customer service that would require implementation by legislation and regulations.

As directed by law, the IG made numerous, specific recommendations for improving accountability, enforcement, and the consumer protections afforded commercial air passengers. S. 383 was introduced to implement these recommendations and additional customer protections.

SUMMARY OF MAJOR PROVISIONS

As reported, S. 319 would:

1. Direct the DOT to increase resources allocated to providing the following:
 - Airline passenger consumer protection and related services.
 - Oversight and enforcement of laws and regulations that provide protection for air travelers.
2. Require each large air carrier to incorporate its individualized Airline Customer Service Plan into its contract of carriage.
3. Require each large air carrier to take numerous, concrete actions to improve customer service, such as giving air travelers at airports and on aircraft the best available information

regarding delays and cancellations. Many of the requirements would be civilly enforceable by DOT.

4. Provide for improved DOT statistics with respect to missing passenger baggage and chronically-delayed or -canceled flights.

5. Require the DOT to initiate a rulemaking to accomplish the following:

- To consider establishing a uniform check-in deadline and to require air carriers to disclose their policies on how such deadlines apply to passengers making connections.
 - Increase the maximum amount of denied boarding compensation for passengers denied boarding involuntarily (bumped).
6. Require the DOT to perform the following functions:
- Review all regulations relating to air carriers' treatment of customers and to make modifications as needed.
 - Prescribe regulations to establish minimum standards for emergency medical and first-aid equipment carried aboard aircraft with 30 or more seats.
 - Study incidents of damage to equipment of passengers with disabilities.

LEGISLATIVE HISTORY

On February 12, 2001, the IG issued its Final Report on Airline Customer Service Commitment, and, on February 13, the Committee held a hearing on the findings and recommendations of the IG. After the hearing on the 13th, Senators McCain, Hollings, and Hutchison introduced S. 319, the Airline Customer Service Improvement Act, to implement the recommendations of the IG. Senators Feingold, Kerry, and Snowe subsequently cosponsored this bill. On March 15, 2001, the Committee ordered S. 319 reported with an amendment in the nature of a substitute offered by Senators McCain, Hollings, Hutchison, Wyden, and Kerry.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 20, 2001.

Hon. JOHN MCCAIN,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 319, the Airline Customer Service Improvement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Hadley.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 319—Airline Customer Service Improvement Act

Summary: S. 319 would require air carriers to provide certain services to customers, including:

- providing timely information about delays;
 - offering the lowest fare for which a customer is eligible;
- and
- disclosing to customers the performance of flights that are chronically canceled or delayed.

In addition, the bill would require air carriers to incorporate within their standard contract of carriage the provisions of the Airline Customer Service Commitment as agreed to by the members of the Air Transport Association on June 17, 1999. Finally, under the bill, each large air carrier would be required to establish a quality assurance system for measuring customer service.

Based on information from the Department of Transportation (DOT), CBO estimates that implementing the oversight, compliance, and enforcement efforts required by the bill would cost the department \$20 million over the 2001–2006 period. In addition, CBO estimates that air carriers would pay on average about \$1 million a year in additional civil fines under this bill. Such fines are recorded in the budget as receipts; therefore, pay-as-you-go procedures would apply.

S. 319 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). S. 319 would impose private-sector mandates on certain air carriers. CBO will provide an estimate of the impact of this legislation on the private sector in a separate statement.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 319 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2001	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	(¹)	4	4	4	4	4
Estimated Outlays	(¹)	4	4	4	4	4
CHANGES IN REVENUES						
Estimated Revenues	0	1	1	1	1	1

¹ Less than \$500,000.

Basis of estimate: For this estimate, we assume S. 319 would be enacted within the next few months. On that basis, CBO estimates that implementing the bill would cost \$20 million over the 2001–2006 period, assuming appropriation of the necessary amounts. CBO estimates that air carriers would pay civil fines totaling about \$5 million over the 2001–2006 period for violations of the bill's provisions.

Spending subject to appropriation

S. 319 would require DOT to monitor air carriers and enforce the customer service provisions of this bill. In addition, under the bill, DOT would issue new regulations concerning emergency medical

assistance and deadlines for passenger check-in. It would also have to prepare reports on damage caused by air carriers to equipment owned by passengers with disabilities, and on service provided to passengers with disabilities. Based on information from DOT, CBO estimates that implementing S. 319 would cost approximately \$4 million a year for between 30 to 50 new employees to work primarily on monitoring and enforcement activities.

Revenues

S. 319 would impose civil fines on air carriers for violating the customer service requirements of the bill. Collections of civil penalties are recorded in the budget as governmental receipts (revenues). Under current law, air carriers pay between \$350,000 and \$1.5 million a year in civil fines for violating consumer protection requirements. Because S. 319 would significantly expand consumer protection efforts, CBO estimates, based on information from DOT, that air carriers would on average pay an additional \$1 million annually in fines under the bill.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO's estimate of the net change in governmental receipts is shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays											
Changes in receipts	0	1	1	1	1	1	1	1	1	1	1

Estimated impact on state, local, and tribal governments: S. 319 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act. The bill would require air carriers to coordinate with local airport authorities and airport operators regarding certain customer service procedures in terminal areas, but the cost to local airport authorities and airport operators to participate in this coordination with air carriers would not be significant.

Estimated impact on the private sector: S. 319 would impose private-sector mandates, as defined by UMRA, on certain air carriers. CBO will provide an estimate of the impact of this legislation on the private sector in a separate statement.

Estimate prepared by: Federal Costs: Mark Hadley, Impact on State, Local, and Tribal Governments: Victoria Heid Hall.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis. G. Thomas Woodward, Assistant Director for Tax Analysis.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 25, 2001.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed statement on private-sector mandates for S. 319, the Airline Customer Service Improvement Act. CBO completed a federal cost estimate and an assessment of the bill's effects on state, local, and tribal governments on April 20, 2001.

If you wish further details on this statement, we will be pleased to provide them. The CBO staff contacts are Jean Talarico and Paige Piper/Bach.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE ESTIMATE OF COSTS OF PRIVATE-
SECTOR MANDATES

S. 319—Airline Customer Service Improvement Act

Summary: S. 319 would impose several private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA) on large air carriers. CBO cannot determine whether the direct cost to the private sector would exceed the annual threshold defined by UMRA (\$113 million in 2001, adjusted annually for inflation).

Private-sector mandates contained in bill: S. 319 would require large air carriers, as defined in the bill, to provide certain services to customers, including:

- Incorporating within its contract of carriage the provisions of the Airline Customer Service Commitment as agreed to by the members of the Air Transportation Association;
- Disclosing on-time performance and cancellation rates whenever a customer makes a reservation or purchases a ticket on a chronically delayed or cancelled flight;
- Establishing a quality assurance and performance measurement system;
- Establishing an internal audit process to measure compliance with their customer service commitments and obligations;
- Developing and implementing a system to track and document the time between receipt of a claim for missing baggage and its delivery;
- Monitoring and reporting its efforts to improve services to passengers with disabilities and special needs;
- Providing timely information about flight delays; and
- Offering the lowest fare for which a customer is eligible.

In addition, the bill would require large air carriers to provide other service-enhancing improvements.

According to government and industry sources, business practices related to customer services vary widely in the airline industry. As a result, the cost of complying with mandates in the bill would differ greatly among affected air carriers. CBO cannot determine whether the aggregate direct cost would exceed the annual

threshold defined by UMRA because we do not have sufficient information about existing practices and industry costs.

Estimate prepared by: Paige Piper/Bach and Jean Talarico.

Estimate approved by: Roger Hitchner, Assistant Director for Microeconomics and Financial Studies Division.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

All large U.S. airlines, as defined in the bill, would be subject to the new statutory requirements regarding customer service under sections 4, 5, and 7.

Section 10 would lead to new regulations regarding standards for onboard medical equipment for all passenger airlines that operate aircraft with 30 or more seats. New standards and regulations would also affect flight attendants who would be primarily responsible for using such equipment. Such airlines and their employees are, however, already subject to significant levels of regulation.

ECONOMIC IMPACT

Section 3 would cause increases in DOT resources for airline passenger consumer protection and related services and for oversight and enforcement of laws and regulations protecting air travelers. These increases were authorized by provisions of AIR-21. With respect to sections 3 through 9, improvements in airline customer service brought about by these requirements and mandates could save consumers significant amounts of money in the aggregate, particularly if they are given more and better information when making air travel decisions.

Section 4 may lead to modest economic costs, mostly administrative in nature, for air carriers to alter their contracts of carriage. For airlines not currently performing the mandated practices, this section would lead to additional costs. This section would also cause carriers to incur the costs of customer service quality assurance and performance measurement systems and internal audits of their customer service plans. Carriers could also incur fines if they commit violations enforced by DOT, but some could be avoided if the airlines invest in systems to improve the quality and flow of information provided to consumers.

Section 5 may lead to modest economic costs for airlines to implement the obligations imposed by this section, such as the establishment of toll-free numbers for baggage status monitoring of code shares, the development of systems for tracking mishandled bags, and the monitoring of customer service performance by code-share partners.

Section 6 may cause the DOT to incur incidental costs to develop and post a monthly table showing flight data for the prior three months. Because the other portion of this section merely requires the DOT to change an existing calculation technique, no additional impact should result from this provision.

Section 7 may cause air carriers to incur additional costs due to an increase in the maximum amount of denied boarding compensation for bumped passengers.

Section 10 may lead to additional costs for air carriers for emergency medical and first-aid equipment and training prescribed by DOT. The saving of lives and mitigation of serious medical problems that may result from this section could result in substantial economic benefits to individuals and society at large.

PRIVACY

This legislation would not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

Section 3 would increase paperwork for DOT, which must prepare reports for congressional authorizing committees. However, expansion of DOT resources regarding airline passenger consumer protection will undoubtedly enhance DOT's oversight in this area.

Section 4 would moderately increase the paperwork burden of large air carriers that still need to incorporate their customer service plans into their contracts of carriage. The quality assurance and performance measurement systems and internal audits mandated under this section will also create paperwork for these carriers. DOT will also incur additional paperwork to monitor airline performance.

For any large air carrier not currently doing so, section 5 would impose an additional paperwork burden associated with the publication of comprehensive reports of frequent flyer redemption information. There would also be additional paperwork for airlines associated with their 90-day implementation reports to DOT and for DOT associated with its preparation of a report to Congress on the airlines progress on implementing requirements under the bill. This section may impose additional paperwork on these carriers to improve and monitor practices related to delayed and canceled flights, baggage delivery, services for special-needs passengers, and code-share agreements.

Section 6 may require a minimal amount of additional paperwork by DOT associated with adding chronically-delayed and chronically-canceled flight statistics to existing monthly tables.

Section 7 would require additional paperwork from the DOT to conduct rulemakings related to bumping of airline passengers.

Section 8 would impose additional paperwork on the DOT to study damage to equipment used by disabled passengers.

Section 9 may require additional paperwork if DOT determines that modifications to regulations are needed to promote the purposes of this bill or improve treatment of passengers.

Section 10 imposes additional paperwork on the DOT to prescribe regulations regarding medical and first-aid equipment.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section establishes the title of the bill as the "Airline Customer Service Improvement Act".

Section 2. Findings

This section sets forth five congressional findings establishing the general basis for enactment of the bill. The amendment includes additional findings to establish the basis for the bill.

Section 3. Department of Transportation to Devote Greater Resources to Airline Passenger Consumer Protection

This section directs the Secretary of Transportation to increase DOT resources allocated to providing: (1) airline passenger consumer protection and related services; and (2) oversight and enforcement of laws and regulations that provide protection for air travelers. Within 60 days after enactment of the bill, DOT would be required to report to congressional authorizing committees on steps taken to increase such resources.

The IG found the resources available to the DOT to carry out oversight and enforcement of consumer protection and unfair competition laws and regulations are seriously inadequate. Until this situation is changed, the IG believes DOT will not be able to satisfactorily discharge its consumer protection responsibilities, including the duties assigned to it for investigating complaints involving disabled airline passengers.

Section 4. Airline Customer Service Commitment

This section requires each large air carrier to incorporate the provisions of the Airline Customer Service Commitment (Commitment), as executed by the members of Air Transport Association on June 17, 1999, in its contract of carriage. These carriers are also required to incorporate their individual customer service plans, which were developed in accordance with the Commitment, into their contracts of carriage to the extent such plans are broader or more specific than the underlying Commitment.

This section requires each large air carrier to institute the following, specified practices: (1) provide passengers with timely and accurate information regarding delays and cancellations (as promised in the original Commitment); (2) offer the lowest fares available to customers making inquiries at the air carrier's ticket offices and airport ticket service counters; (3) notify customers that lower fares may be available on the Internet (as promised in the original Commitment); (4) provide the on-time performance rate for each flight (based on the most recently available data) on its Internet website; (5) disclose, without being requested, the on-time performance and cancellation rate for chronically delayed or canceled flights whenever a customer makes a reservation or purchases a ticket; (6) establish a plan with respect to passengers who must unexpectedly remain overnight during a trip due to flight delays, cancellations, or diversions; and (7) tell all passengers on a flight what the airline is required to pay bumped passengers before the airline makes offers to passengers to induce them to relinquish their seats voluntarily.

Each large air carrier is also required to establish a customer service quality assurance and performance measurement system, to establish an internal audit process to measure compliance with the Commitment and its customer service plan, and to cooperate fully with DOT in any external audits of those systems and processes.

Because the foregoing obligations are set forth in the U.S. Code, DOT would be able to enforce violations through civil administrative proceedings, which could lead to fines. In enforcing the new statutory obligations, DOT is required to focus on practices and patterns of conduct, where appropriate, rather than individual failures or violations.

This section requires DOT to do the following: monitor airline compliance with this section and take such actions as may be necessary to enforce compliance; monitor airline quality assurance and performance measurement systems to ensure they are meeting their commitments; and review the airline internal audits of their quality assurance and performance measurement systems.

In this section, a “large air carrier” is defined as a U.S. airline that (1) operates aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds or (2) conducts operations where one or both terminals of a flight stage are outside the U.S. The definition excludes charter operators.

This section defines a chronically-delayed flight as one with at least 40 percent of its arrivals delayed for at least 15 minute during the most recent three-month period for which data are available. Chronically-canceled flights are those canceled at least 30 percent of the time during the same period of time.

Section 5. Other Service-Enhancing Improvements

This section requires each large carrier, within 90 days of enactment of the bill, to do the following: (1) establish realistic targets for reducing chronically-delayed and -canceled flights; (2) establish a system passengers may use before departing for the airport to determine whether there is a lengthy flight delay or whether a flight has been canceled; (3) establish realistic performance goals for reducing the number of mishandled bags; (4) develop and implement a system for tracking and documenting the amount of time between the receipt of a passenger’s claim for missing baggage and the delivery of the baggage to the passenger; (5) monitor and report its efforts to improve services provided to passengers with disabilities and special needs; (6) clarify terminology used to advise passengers of unscheduled delays or interruptions in service, such as “extended period of time” and “emergency,” to better inform passengers about what they can expect during onboard delays; (7) ensure that comprehensive passenger service contingency plans are properly maintained and that the plans, and any changes to those plans, are coordinated with local airport authorities and the FAA; (8) ensure that master airport flight information display monitors contain accurate, up-to-date flight information and that the information is consistent with that shown on the carrier’s flight information display monitors; (9) establish a toll-free telephone number that passengers may use to check on the status of checked baggage that was not delivered on arrival at the passenger’s destination; (10) if it maintains a domestic code-share arrangement with another air carrier, conclude an agreement under which it will conduct an annual audit of that air carrier’s compliance with the Airline Customer Service Commitment; and (11) if it has a frequent flyer program, make available to the public a comprehensive report of frequent flyer redemption information in its customer literature

and annual reports. These requirements are not subject to enforcement by DOT.

This section requires each airline, within 90 days after enactment of the bill, to report to DOT on its implementation of the obligations imposed by this bill. Within 270 days after enactment of the bill, DOT is required to report to Congress on the implementation by the airlines of the obligations imposed on them by this bill, together with such additional findings and recommendations for additional legislative or regulatory action as deemed appropriate by the Secretary.

Section 6. Improved DOT Statistics

This section requires DOT to change how it calculates mishandled baggage statistics so that passengers who do not check bags are not factored into the calculations. It also requires DOT to include a table in its monthly Air Travel Consumer Report that shows the number of chronically-delayed or -canceled flights (as defined by the bill).

Section 7. DOT Regulations on Bumping

This section requires DOT to initiate a rulemaking to amend regulations to: (1) consider establishing a uniform check-in deadline and to require air carriers to disclose their policies on how such deadlines apply to passengers making connections; and (2) increase the maximum amount of denied boarding compensation for passengers denied boarding involuntarily (bumped). DOT is also required to define “any undue or unreasonable preference or advantage” and “unjust or unreasonable prejudice or disadvantage” as those terms are used in DOT regulations related to air carrier priority rules or criteria for passengers denied boarding involuntarily.

Section 8. Study of Damage to Passengers with Disabilities Equipment

This section requires DOT to study incidents involving damage to equipment used by disabled passengers.

Section 9. Review of Regulations

This section requires DOT to review all regulations that relate to air carriers’ treatment of customers and to make such modifications as may be appropriate to promote the purposes of the bill and protect consumers.

Section 10. Emergency Medical Assistance

This section requires DOT to prescribe regulations, after consulting with the U.S. Surgeon General, to establish minimum standards for emergency medical and first-aid equipment carried aboard aircraft with 30 or more seats. Factors that DOT would have to consider in developing the regulations include the following: weight and size of equipment, special training that may be needed for airline employees, space limitations of affected aircraft, the effect of the regulations on aircraft operations, the practical experience of airlines in carrying and operating similar equipment, whether any carriers are already training their employees in this area, and other relevant factors.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART IV. ENFORCEMENT AND PENALTIES

CHAPTER 417. OPERATIONS OF CARRIERS

SUBCHAPTER I. REQUIREMENTS

§ 41722. Airline passenger emergency in-flight medical care

(a) *IN GENERAL.*—*The Secretary of Transportation shall prescribe regulations to establish minimum standards for resuscitation, emergency medical, and first-aid equipment and supplies to be carried on board an aircraft operated by an air carrier in air transportation that is capable of carrying at least 30 passengers.*

(b) *FACTORS CONSIDERED.*—*In prescribing regulations under subsection (a), the Secretary shall consider—*

(1) *the weight and size of the equipment described in subsection (a);*

(2) *the need for special training of air carrier personnel to operate the equipment safely and effectively;*

(3) *the space limitations of each type of aircraft to which the standards apply;*

(4) *the effect of the regulations on aircraft operations;*

(5) *the practical experience of airlines in carrying and operating similar equipment, and whether any air carriers are already training appropriate personnel to an acceptable level of proficiency in the operation of such equipment and the provision of first-aid; and*

(6) *such other factors as the Secretary finds relevant.*

(c) *CONSULTATION WITH SURGEON GENERAL.*—*Before prescribing regulations under subsection (a), the Secretary shall consult with the Surgeon General of the United States.*

* * * * *

SUBCHAPTER IV. AIRLINE CUSTOMER SERVICE

§ 41781. Airline customer service requirements

(a) *IN GENERAL.*—*Within 60 days after the date of enactment of the Airline Customer Service Improvement Act, each large air carrier shall incorporate in its contract of carriage—*

(1) *the provisions of the Airline Customer Service Commitment executed by the Air Transport Association and 14 of its member airlines on June 17, 1999; and*

(2) *its customer service plan developed in accordance with that Commitment to the extent that the plan is more specific or broader than the Commitment.*

(b) **ADDITIONAL OBLIGATIONS.**—*Within 60 days after the date of enactment of the Airline Customer Service Improvement Act, each large air carrier shall institute the following practices:*

(1) *Provide to customers at an airport and on board an aircraft, in a timely, reasonable, and truthful manner, the best information available to the air carrier regarding a delay, cancellation, or diversion affecting the customers' flight, including—*

(A) *the cause of any such delay, cancellation, or diversion; and*

(B) *for a delayed flight, the air carrier's best estimate of the departure time.*

(2) *Offer the lowest fare available for which a customer is eligible at the air carrier's ticket offices and airport ticket service counters for the date, flight, and class of service requested.*

(3) *Notify customers that lower fares may be available through other distribution systems, including Internet websites.*

(4) *Provide, no later than the 5th day of each month, the air carrier's on-time performance rate for each scheduled flight for the most recently ended month for which data is available through its Internet website.*

(5) *Disclose, without being requested, the on-time performance and cancellation rate for a chronically delayed or chronically canceled flight whenever a customer makes a reservation or purchases a ticket on such a flight.*

(6) *Establish a plan with respect to passengers who must unexpectedly remain overnight during a trip due to flight delays, cancellations, or diversions.*

(7) *Tell all passengers on a flight what the air carrier is required to pay passengers involuntarily denied boarding before making offers to passengers to induce them to relinquish seats voluntarily.*

(c) **COMPLIANCE ASSURANCE.**—

(1) **AIR CARRIER FUNCTIONS.**—*Each large air carrier also shall—*

(A) *establish a customer service quality assurance and performance measurement system within 90 days after the date of enactment of the Airline Customer Service Improvement Act;*

(B) *establish an internal audit process to measure compliance with the commitments and obligations under subsections (a) and (b) within 90 days after the date of enactment of the Airline Customer Service Improvement Act; and*

(C) *cooperate fully with any Department of Transportation audit of its customer service quality assurance system or review of its internal audit.*

(2) **DOT FUNCTIONS.**—*The Secretary of Transportation shall—*

(A) *monitor compliance by large air carriers with the requirements of this section and take such action under subpart IV of this title as may be necessary to enforce compliance with this section under subpart IV of this title;*

(B) monitor, in particular, and enforce air carrier performance under paragraphs (1), (2), (3), (5), and (7) of subsection (b), focusing on practices and patterns of conduct rather than specific incidents of failure to follow the air carrier's established practices;

(C) monitor air carrier customer service quality assurance and performance measurement systems to ensure that air carriers are meeting fully their airline passenger service commitments; and

(D) review the internal audits conducted by air carriers of their air carrier customer service quality assurance and performance measurement systems.

(d) DEFINITIONS.—In this section:

(1) LARGE AIR CARRIER.—The term “large air carrier” means an air carrier holding a certificate issued under section 41102 that conducts scheduled passenger air transportation and—

(A) operates aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds; or

(B) conducts operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

(2) CHRONICALLY DELAYED FLIGHT.—The term “chronically delayed flight” means a regularly scheduled flight that has failed to arrive on time (as defined in section 234.2 of title 14, Code of Federal Regulations) at least 40 percent of the time during the most recent 3-month period for which data are available.

(3) CHRONICALLY CANCELED FLIGHT.—The term “chronically canceled flight” means a regularly scheduled flight at least 30 percent of the departures of which have been canceled during the most recent 3-month period for which data are available.

* * * * *

CHAPTER 463. PENALTIES

§ 46301. Civil penalties

(a) GENERAL PENALTY.—

(1) A person is liable to the United States Government for a civil penalty of not more than \$1,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 441 (except section 44109), 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), and 44908), or section 47107(b) (including any assurance made under such section) of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman) is liable to the Government for a civil penalty of not more than \$10,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502(b) or (c), chapter 447 (except sections 44717–44723), or chapter 449 (except sections 44902, 44903(d), 44904, and 44907–44909) of this title; or

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(3) A civil penalty of not more than \$10,000 may be imposed for each violation under paragraph (1) of this subsection related to—

(A) the transportation of hazardous material;

(B) the registration or recordation under chapter 441 of this title of an aircraft not used to provide air transportation;

(C) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;

(D) a violation of section 44725, relating to the safe disposal of life-limited aircraft parts; or

(E) a violation of section 41705, relating to discrimination against handicapped individuals.

(4) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41715) continues or, if applicable, for each flight involving the violation (other than a violation of section 41715).

(5) Penalty for diversion of aviation revenues. The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(6) Air service termination notice. Notwithstanding paragraph (1), the maximum civil penalty for violating section 41715 shall be \$5,000 instead of \$1,000.

(7) Consumer protection. Notwithstanding paragraphs (1) and (4), the maximum civil penalty for violating section ~~40127~~ ~~or 41712~~ ~~40127, 41712, or 41781~~ (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary that is intended to afford consumer protection to commercial air transportation passengers, shall be \$2,500 for each violation.

(b) SMOKE ALARM DEVICE PENALTY.—

(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than \$2,000.

(c) PROCEDURAL REQUIREMENTS.—

(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, or section 44909 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—

(1) In this subsection—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), 44908, and 44909), or section 46301(b), 46302, 46303, 46318, or 47107(b) (as further defined by the Secretary under section 47107(l) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Administrator initiates if—

(A) the amount in controversy is more than \$50,000;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5)(A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)(A) The Administrator may impose a penalty on a person (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

(i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(ii) each conclusion of law is made according to applicable law, precedent, and public policy; and

(iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

(i) a civil penalty shall not be assessed against an individual;

(ii) a civil penalty may be compromised as provided under subsection (f); and

(iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.

(8) The maximum civil penalty the Administrator or Board may impose under this subsection is \$50,000.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

(f) COMPROMISE AND SETOFF.—

(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except 44717 and 44719–44723), or chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), 44908, and 44909) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) JUDICIAL REVIEW.—An order of the Secretary or the Administrator imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) NONAPPLICATION.—

(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.