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(d) *Ticket agent* has the meaning ascribed to it in 49 U.S.C. 40102(40).

§ 258.4 Unfair and deceptive practice.

The holding out or sale of scheduled passenger air transportation that involves change-of-gauge service is prohibited as an unfair or deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. 41712 unless, in conjunction with such holding out or sale, carriers and ticket agents follow the requirements of this part.

§ 258.5 Notice requirement.

(a) *Notice in schedules.* Carriers holding out or operating change-of-gauge services to, from, or within the United States shall ensure that in the written and electronic schedule information they provide to the public, to the Official Airline Guide and comparable publications, and to computer reservations systems, these services are shown as requiring a change of aircraft.

(b) *Oral notice to prospective consumers.* In any direct oral communication with a consumer in the United States concerning a change-of-gauge service, any carrier or ticket agent doing business in the United States shall tell the consumer before booking scheduled passenger air transportation to, from, or within the United States that the service requires a change of aircraft en route.

(c) *Written notice.* At the time of sale in the United States of transportation that includes a change-of-gauge service to, from, or within the United States, or, if no ticket is issued, no later than the time when the passenger checks in at the airport for the first flight in an itinerary that includes such a service, the selling carrier or ticket agent shall provide the following written notice:

NOTICE: CHANGE OF AIRCRAFT REQUIRED

For at least one of your flights, you must change aircraft en route even though your ticket may show only one flight number and have only one flight coupon for that flight. Further, in the case of some travel, one of your flights may not be identified at the airport by the number on your ticket, or it may be identified by other flight numbers in addition to the one on your ticket. At your request, the seller of this ticket will give you details of your change of aircraft, such as

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where it will occur and what aircraft types are involved.

§ 258.6 Effective and compliance dates.

(a) This Part is effective as of August 25, 1999.

(b) Compliance with the following sections is mandatory as of August 25, 1999: §§ 258.1, 258.2, 258.3, 258.4, 258.5(a), 258.5(b), and 258.6.

(c) Compliance with § 258.5(c) is mandatory as of March 15, 2000.

[64 FR 46821, Aug. 27, 1999]

PART 259—ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS

Sec.

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259.7 Response to consumer problems.

259.8 Notify passengers of known delays, cancellations, and diversions.

AUTHORITY: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, and 41712.

SOURCE: 74 FR 69002, Dec. 30, 2009, unless otherwise noted.

§ 259.1 Purpose.

The purpose of this part is to mitigate hardships for airline passengers during lengthy tarmac delays and otherwise to bolster air carriers' accountability to consumers.

§ 259.2 Applicability.

This part applies to all the flights of a certificated or commuter air carrier if the carrier operates scheduled passenger service or public charter service using any aircraft originally designed to have a passenger capacity of 30 or more seats, and to all flights to and from the U.S. of a foreign carrier if the carrier operates scheduled passenger service or public charter service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats, except as otherwise provided in this part. This part does not apply to foreign carrier

charters that operate to and from the United States if no new passengers are picked up in the United States.

[Docket No. DOT-OST-2010-0140, 76 FR 23163, Apr. 25, 2011]

§ 259.3 Definitions.

Certificated air carrier means a U.S. carrier holding a certificate issued under 49 U.S.C. 41102 to conduct passenger service or holding an exemption to conduct passenger operations under 49 U.S.C. 41102.

Commuter air carrier means a U.S. carrier that has been found fit under 49 U.S.C. 41738 and is authorized to carry passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule using small aircraft as defined in 14 CFR 298.2.

Covered carrier means a certificated carrier, a commuter carrier, or a foreign air carrier operating to, from or within the United States, conducting scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more seats.

Foreign air carrier means a carrier that is not a citizen of the United States as defined in 49 U.S.C. 40102(a) that holds a foreign air carrier permit issued under 49 U.S.C. 41302 or an exemption issued under 49 U.S.C. 40109 authorizing direct foreign air transportation.

Large hub airport means an airport that accounts for at least 1.00 percent of the total enplanements in the United States.

Medium hub airport means an airport accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States.

Non-hub airport means an airport with 10,000 or more annual enplanements but less than 0.05 percent of the country's annual passenger boardings.

Small hub airport means an airport accounting for at least 0.05 percent but less than 0.25 percent of the total enplanements in the United States.

Tarmac delay means the holding of an aircraft on the ground either before

taking off or after landing with no opportunity for its passengers to deplane.

[Docket No. DOT-OST-2010-0140, 76 FR 23164, Apr. 25, 2011]

§ 259.4 Contingency Plan for Lengthy Tarmac Delays.

(a) *Adoption of Plan.* Each covered carrier shall adopt a Contingency Plan for Lengthy Tarmac Delays for its scheduled and public charter flights at each U.S. large hub airport, medium hub airport, small hub airport and non-hub airport at which it operates or markets such air service and shall adhere to its plan's terms.

(b) *Contents of Plan.* Each Contingency Plan for Lengthy Tarmac Delays shall include, at a minimum, the following:

(1) For domestic flights, assurance that the covered U.S. air carrier will not permit an aircraft to remain on the tarmac for more than three hours before allowing passengers to deplane unless:

(i) The pilot-in-command determines there is a safety-related or security-related reason (e.g. weather, a directive from an appropriate government agency) why the aircraft cannot leave its position on the tarmac to deplane passengers; or

(ii) Air traffic control advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.

(2) For international flights operated by covered carriers that depart from or arrive at a U.S. airport, assurance that the carrier will not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours before allowing passengers to deplane, unless:

(i) The pilot-in-command determines there is a safety-related or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers; or

(ii) Air traffic control advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.

(3) For all flights, assurance that the carrier will provide adequate food and

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potable water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security considerations preclude such service;

(4) For all flights, assurance of operable lavatory facilities, as well as adequate medical attention if needed, while the aircraft remains on the tarmac;

(5) For all flights, assurance that the passengers on the delayed flight will receive notifications regarding the status of the delay every 30 minutes while the aircraft is delayed, including the reasons for the tarmac delay, if known;

(6) For all flights, assurance that the passengers on the delayed flight will be notified beginning 30 minutes after scheduled departure time (including any revised departure time that passengers were notified about before boarding) and every 30 minutes thereafter that they have the opportunity to deplane from an aircraft that is at the gate or another disembarkation area with the door open if the opportunity to deplane actually exists;

(7) Assurance of sufficient resources to implement the plan; and

(8) Assurance that the plan has been coordinated with airport authorities (including terminal facility operators where applicable) at each U.S. large hub airport, medium hub airport, small hub airport and non-hub airport that the carrier serves, as well as its regular U.S. diversion airports;

(9) Assurance that the plan has been coordinated with U.S. Customs and Border Protection (CBP) at each large U.S. hub airport, medium hub airport, small hub airport and non-hub airport that is regularly used for that carrier's international flights, including diversion airports; and

(10) Assurance that the plan has been coordinated with the Transportation Security Administration (TSA) at each U.S. large hub airport, medium hub airport, small hub airport and non-hub airport that the carrier serves, including diversion airports.

(c) *Code-Share Responsibility.* The tarmac delay contingency plan of the carrier under whose code the service is

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marketed governs, if different from the operating carrier, unless the marketing carrier specifies in its contract of carriage that the operating carrier's plan governs.

(d) *Amendment of plan.* At any time, a carrier may amend its Contingency Plan for Lengthy Tarmac Delays to decrease the time for aircraft to remain on the tarmac for domestic flights covered in paragraph (b)(1) of this section, for aircraft to remain on the tarmac for international flights covered in paragraph (b)(2) of this section, and for the trigger point for food and water covered in paragraph (b)(3) of this section. A carrier may also amend its plan to increase these intervals (up to the limits in this rule), in which case the amended plan shall apply only to departures that are first offered for sale after the plan's amendment.

(e) *Retention of records.* Each carrier that is required to adopt a Contingency Plan for Lengthy Tarmac Delays shall retain for two years the following information about any tarmac delay that lasts more than three hours:

(1) The length of the delay;

(2) The precise cause of the delay;

(3) The actions taken to minimize hardships for passengers, including the provision of food and water, the maintenance and servicing of lavatories, and medical assistance;

(4) Whether the flight ultimately took off (in the case of a departure delay or diversion) or returned to the gate; and

(5) An explanation for any tarmac delay that exceeded 3 hours (i.e., why the aircraft did not return to the gate by the 3-hour mark).

(f) *Unfair and deceptive practice.* A carrier's failure to comply with the assurances required by this rule and contained in its Contingency Plan for Lengthy Tarmac Delays will be considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 that is subject to enforcement action by the Department.

[Docket No. DOT-OST-2010-0140, 76 FR 23164, Apr. 25, 2011]

§ 259.5 Customer Service Plan.

(a) *Adoption of Plan.* Each covered carrier shall adopt a Customer Service

Plan applicable to its scheduled flights and shall adhere to the plan's terms.

(b) *Contents of Plan.* Each Customer Service Plan shall address the following subjects and comply with the minimum standards set forth:

(1) Disclosing on the carrier's website, at the ticket counter, or when a customer calls the carrier's reservation center to inquire about a fare or to make a reservation, that the lowest fare offered by the carrier may be available elsewhere if that is the case;

(2) Notifying consumers of known delays, cancellations, and diversions as required by 14 CFR 259.8 of this chapter;

(3) Delivering baggage on time, including making every reasonable effort to return mishandled baggage within twenty-four hours, compensating passengers for reasonable expenses that result due to delay in delivery, as required by 14 CFR part 254 for domestic flights and as required by applicable international agreements for international flights, and reimbursing passengers for any fee charged to transport a bag if that bag is lost;

(4) Allowing reservations to be held without payment or cancelled without penalty for a defined amount of time;

(5) Where ticket refunds are due, providing prompt refunds, as required by 14 CFR 374.3 and 12 CFR part 226 for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, including refunding fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation;

(6) Properly accommodating passengers with disabilities, as required by part 382 of this chapter, and other special-needs passengers as set forth in the carrier's policies and procedures, including during lengthy tarmac delays;

(7) Meeting customers' essential needs during lengthy tarmac delays as required by §259.4 of this chapter and as provided for in each covered carrier's contingency plan;

(8) Handling "bumped" passengers with fairness and consistency in the case of oversales as required by part 250 of this chapter and as described in each

carrier's policies and procedures for determining boarding priority;

(9) Disclosing cancellation policies, frequent flyer rules, aircraft seating configuration, and lavatory availability on the selling carrier's website, and upon request, from the selling carrier's telephone reservations staff;

(10) Notifying consumers in a timely manner of changes in their travel itineraries;

(11) Ensuring responsiveness to consumer problems as required by §259.7 of this chapter; and

(12) Identifying the services it provides to mitigate passenger inconveniences resulting from flight cancellations and misconnections.

(c) *Self-auditing of plan and retention of records.* Each carrier that is required to adopt a Customer Service Plan shall audit its own adherence to its plan annually. Carriers shall make the results of their audits available for the Department's review upon request for two years following the date any audit is completed.

[Docket No. DOT-OST-2010-0140, 76 FR 23165, Apr. 25, 2011]

EFFECTIVE DATE NOTE: At 76 FR 45181, July 28, 2011, the revision of §259.5(b)(4) printed at 76 FR 23165, Apr. 25, 2011 was delayed until January 24, 2012. For the convenience of the user, the revised (b)(4) is set forth as follows:

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* * * * *

(b) * * *

(4) Allowing reservations to be held at the quoted fare without payment, or cancelled without penalty, for at least twenty-four hours after the reservation is made if the reservation is made one week or more prior to a flight's departure; or more

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§ 259.6 Posting of Contracts of Carriage, Tarmac Delay Contingency Plans and Customer Service Plans on websites.

(a) Each U.S. air carrier that has a website and each foreign air carrier that has a website marketed to U.S. consumers, and that is required to adopt a contingency plan for lengthy tarmac delays, shall post its current

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contingency plan on its website in easily accessible form.

(b) Each U.S. air carrier that has a website and each foreign air carrier that has a website marketed to U.S. consumers, and that is required to adopt a customer service plan, shall post its current customer service plan on its website in easily accessible form.

(c) Each U.S. air carrier that has a website and each foreign air carrier that has a website marketed to U.S. consumers shall post its current contract of carriage on its website in easily accessible form.

[Docket No. DOT-OST-2010-0140, 76 FR 23165, Apr. 25, 2011]

§ 259.7 Response to consumer problems.

(a) *Designated advocates for passengers' interests.* Each covered carrier shall designate for its scheduled flights an employee who shall be responsible for monitoring the effects of flight delays, flight cancellations, and lengthy tarmac delays on passengers. This employee shall have input into decisions on which flights to cancel and which will be delayed the longest.

(b) *Informing consumers how to complain.* Each covered carrier shall make available the mailing address and e-mail or web address of the designated department in the airline with which to file a complaint about its scheduled service. This information shall be provided on the U.S. carrier's website (if any) and the foreign carrier's website (if marketed to U.S. consumers), on all e-ticket confirmations and, upon request, at each ticket counter and boarding gate staffed by the carrier or a contractor of the carrier.

(c) *Response to complaints.* Each covered carrier shall acknowledge in writing receipt of each complaint regarding its scheduled service to the complainant within 30 days of receiving it and shall send a substantive written response to each complainant within 60 days of receiving the complaint. A complaint is a specific written expression of dissatisfaction concerning a difficulty or problem which the person experienced when using or attempting to use an airline's services.

(d) *Social networking sites.* Each covered carrier that uses a social net-

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working site (e.g. Facebook, Twitter) and that does not intend for that site to be a vehicle for receipt of written consumer complaints subject to this section shall clearly indicate on the carrier's primary page on that social networking site that it will not reply to consumer complaints on that site and shall direct consumers to the carrier's mailing address and e-mail or website location for filing written complaints.

[Docket No. DOT-OST-2010-0140, 76 FR 23165, Apr. 25, 2011]

§ 259.8 Notify passengers of known delays, cancellations, and diversions.

(a) Each covered carrier for its scheduled flights to, from or within the U.S. must promptly provide to passengers who are ticketed or hold reservations, and to the public, information about a change in the status of a flight within 30 minutes after the carrier becomes aware of such a change in the status of a flight. A change in the status of a flight means, at a minimum, cancellation of a flight, a delay of 30 minutes or more in the planned operation of a flight, or a diversion. The flight status information must at a minimum be provided in the boarding gate area for the flight at a U.S. airport, on the carrier's website, and via the carrier's telephone reservation system upon inquiry by any person.

(1) With respect to any U.S. carrier or foreign air carrier that permits passengers to subscribe to flight status notification services, the carrier must deliver such notification to such passengers, by whatever means is available to the carrier and of the passenger's choice, within 30 minutes after the carrier becomes aware of such a change in the status of a flight.

(2) The U.S. carrier or foreign air carrier shall incorporate such notification service commitment into its Customer Service Plan as specified in section 259.5 of this chapter.

(b) For its scheduled flights to, from or within the U.S. within 30 minutes after the carrier becomes aware of a flight cancellation, a flight delay of 30 minutes or more, or a flight diversion, each covered carrier must update all flight status displays and other sources

of flight information that are under the carrier's control at U.S. airports with information on that flight irregularity.

(c) If an airport-controlled display system at a U.S. airport accepts flight status updates from carriers, covered carriers must provide flight irregularity information to that airport for the carrier's scheduled flights to, from or within the U.S. within 30 minutes after the carrier becomes aware of such a change in the status of a flight. Flight irregularity refers to flight cancellations, flight delays of 30 minutes or more, and diversions.

[Docket No. DOT-OST-2010-0140, 76 FR 23166, Apr. 25, 2011]

EFFECTIVE DATE NOTE: At 76 FR 23166, Apr. 25, 2011, § 259.8 was added, effective Aug. 23, 2011. The effective date was subsequently delayed to Jan. 24, 2012 at 76 FR 45181, July 28, 2011.

PART 271—GUIDELINES FOR SUBSIDIZING AIR CARRIERS PROVIDING ESSENTIAL AIR TRANSPORTATION

Sec.

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AUTHORITY: 49 U.S.C. Chapters 401, 417.

SOURCE: ER-1398, 49 FR 49846, Dec. 24, 1984, unless otherwise noted.

§ 271.1 Purpose.

This part establishes the guidelines required by 49 U.S.C. 41736 to be used by the Department in establishing the fair and reasonable amount of compensation needed to ensure the continuation of essential air service to an eligible place under 49 U.S.C. 41731 and 41734. These guidelines are intended to cover normal carrier selection cases and rate renewal cases, and not necessarily emergency carrier selection cases.

[60 FR 43524, Aug. 22, 1995]

§ 271.2 Definitions.

As used in this part:

Eligible place means a place in the United States that—

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89-9-37 and 89-12-52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

Essential air service is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

[60 FR 43524, Aug. 22, 1995]

§ 271.3 Carrier subsidy need.

In establishing the subsidy for an air carrier providing essential air service at an eligible place, the Department will consider the following:

(a) The reasonable projected costs of a carrier in serving that place;

(b) The carrier's reasonable projected revenues for serving that place;

(c) The appropriate size of aircraft for providing essential air service at that place; and

(d) A reasonable profit for a carrier serving that place.

[ER-1398, 49 FR 49846, Dec. 24, 1984, as amended at 60 FR 43524, Aug. 22, 1995]

§ 271.4 Carrier costs.

(a) The reasonable costs projected for a carrier providing essential air service at an eligible place will be evaluated:

(1) For costs attributable to the carrier's flying operations (direct expenses), by comparing the projected costs submitted by the carrier with the following:

(i) The carrier's historical direct operating costs with the same or similar aircraft types;

(ii) The direct operating unit costs of similar carriers using the same or similar equipment; and

(iii) Data supplied by the manufacturer of the carrier's aircraft.

(2) For other costs, by one or more of the following methods: