

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**14 CFR Parts 244, 250, 253, 259, and 399**

[Docket No. DOT-OST-2010-0140]

RIN 2105-AD92

**Enhancing Airline Passenger Protections**

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation is issuing a final rule to improve the air travel environment for consumers by: Increasing the number of carriers that are required to adopt tarmac delay contingency plans and the airports at which they must adhere to the plan's terms; increasing the number of carriers that are required to report tarmac delay information to the Department; expanding the group of carriers that are required to adopt, follow, and audit customer service plans and establishing minimum standards for the subjects all carriers must cover in such plans; adding carriers to those required to include their contingency plans and customer service plans on their websites; increasing the number of carriers that must respond to consumer complaints; enhancing protections afforded passengers in oversales situations, including increasing the maximum denied boarding compensation airlines must pay to passengers bumped from flights; strengthening, codifying and clarifying the Department's enforcement policies concerning air transportation price advertising practices; requiring carriers to notify consumers of optional fees related to air transportation and of increases in baggage fees; prohibiting post-purchase price increases; requiring carriers to provide passengers timely notice of flight status changes such as delays and cancellations; and prohibiting carriers from imposing unfair contract of carriage choice-of-forum provisions. The Department is

taking this action to strengthen the rights of air travelers in the event of oversales, flight cancellations and delays, ensure that passengers have accurate and adequate information to make informed decisions when selecting flights, prohibit unfair and deceptive practices such as post-purchase price increases and contract of carriage choice-of-forum provisions, and to ensure responsiveness to consumer complaints.

**DATES:** This rule is effective August 23, 2011 except for the amendments to 14 CFR 399.84 which become effective October 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Blane A. Workie, Tim Kelly or Daeleen Chesley, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), [tim.kelly@dot.gov](mailto:tim.kelly@dot.gov) or [blane.workie@dot.gov](mailto:blane.workie@dot.gov) (e-mail).

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 30, 2009, the Department published a final rule in which it required certain U.S. air carriers to adopt contingency plans for lengthy tarmac delays; respond to consumer problems; post flight delay information on their websites; and adopt, follow, and audit customer service plans. The rule also defined chronically delayed flights and deemed them to be an "unfair and deceptive" practice. The majority of the provisions in that rule took effect on April 29, 2010. See 74 FR 68983 (December 30, 2009).

In the preamble to that final rule, the Department noted that it planned to review additional ways to further enhance protections afforded airline passengers and listed a number of subject areas that it was considering addressing in a future rulemaking. On June 8, 2010, the Department published a notice of proposed rulemaking (NPRM), 75 FR 32318, in which it addressed the following areas: (1)

Contingency plans for lengthy tarmac delays; (2) reporting of tarmac delay data; (3) customer service plans; (4) contracts of carriage; (5) responding to consumer problems/complaints (6) oversales; (7) full fare advertising; (8) baggage and other ancillary fees; (9) post-purchase price increases; (10) notification to passengers of flight status changes; (11) choice-of-forum provisions; and (12) peanut allergies. In response to the NPRM, the Department received over 2100 comments, the vast majority of which were related to the proposal to address peanut allergies in air travel.

The Department received comments on the NPRM from the following: U.S. carriers and U.S. carrier associations; foreign air carriers and foreign carrier associations; U.S. and foreign consumer groups; travel agents and members of organizations in the travel industry; airports and various airport-related industry groups; members of Congress; embassies; peanut industry groups and allergy associations; as well as a number of individual consumers. In addition, the Department received a summary of the public discussion on the NPRM proposals that occurred on the Regulation Room Web site, <http://www.regulationroom.org>. The Regulation Room site is a site where members of the public can learn about and discuss proposed federal regulations and provide feedback to agency decision makers. To support this Administration's open government initiative, the Department partnered with Cornell University in this pilot project to discover the best ways to use Web 2.0 and social networking technologies to increase effective public involvement in the rulemaking process.

The Department has carefully reviewed and considered the comments received. The commenters' positions that are germane to the specific issues raised in the NPRM and the Department's responses are set forth below, immediately following a summary of regulatory provisions and a summary of the regulatory analysis.

**Summary of Regulatory Provisions**

Subject	Final rule
<i>Tarmac Delay Contingency Plans</i> .....	<ul style="list-style-type: none"> <li>• Requires foreign air carriers operating to or from the U.S. with at least one aircraft with 30 or more passenger seats to adopt and adhere to tarmac delay contingency plans.</li> <li>• Requires U.S. and foreign air carriers to not permit an international flight to remain on the tarmac at a U.S. airport for more than four hours without allowing passengers to deplane subject to safety, security, and ATC exceptions.</li> <li>• Expands the airports at which airlines must adhere to the contingency plan terms to include small hub and non-hub airports, including diversion airports.</li> <li>• Requires U.S. and foreign carriers to coordinate plans with Customs and Border Protection (CBP) and the Transportation Security Administration (TSA).</li> </ul>

Subject	Final rule
	<ul style="list-style-type: none"> <li>Requires notification regarding the status of delays every 30 minutes while aircraft is delayed, including reasons for delay if known.</li> <li>Requires notification of opportunity to deplane from an aircraft that is at the gate or another disembarkation area with door open if the opportunity to deplane actually exists.</li> </ul>
<i>Tarmac Delay Data</i> .....	<ul style="list-style-type: none"> <li>Requires all carriers that must adopt tarmac delay contingency plans to file data with the Department regarding lengthy tarmac delays.</li> </ul>
<i>Customer Service Plans</i> .....	<ul style="list-style-type: none"> <li>Requires foreign air carriers that operate scheduled passenger service to and from the U.S. with at least one aircraft with 30 or more passenger seats to adopt, follow and audit customer service plans.</li> <li>Establishes standards for the subjects U.S. and foreign air carriers must cover in customer service plans. Examples include: <ul style="list-style-type: none"> <li>delivering baggage on time, including reimbursing passengers for any fee charged to transport a bag if the bag is lost;</li> <li>where ticket refunds are due, providing prompt refunds including refund of optional fees charged to a passenger for services that the passenger was unable to use due to an oversale situation or flight cancellation; and</li> <li>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 date.</li> </ul> </li> </ul>
<i>Posting of Customer Service Plans and Tarmac Delay Contingency Plans.</i>	<ul style="list-style-type: none"> <li>Requires foreign carriers to post their required contingency plans, customer service plans, and contracts of carriage on their websites as is already required of U.S. carriers.</li> </ul>
<i>Response to Consumer Problems</i> .....	<ul style="list-style-type: none"> <li>Expands the pool of carriers that must respond to consumer problems to include foreign air carriers operating scheduled passenger service to and from the U.S. with at least one aircraft with 30 or more passenger seats (<i>i.e.</i>, monitor the effects of irregular flight operations on consumers; inform consumers how to file a complaint with the carrier, and provide substantives responses to consumer complaints within 60 days).</li> </ul>
<i>Oversales</i> .....	<ul style="list-style-type: none"> <li>Increases the minimum denied boarding compensation limits to \$650/\$1,300 or 200%/400% of the one-way fare, whichever is smaller.</li> <li>Implements an automatic inflation adjuster for minimum DBC limits every 2 years.</li> <li>Clarifies that DBC must be offered to "zero fare ticket" holders (<i>e.g.</i>, holders of frequent flyer award tickets) who are involuntarily bumped.</li> <li>Requires that a carrier verbally offer cash/check DBC if the carrier verbally offers a travel voucher as DBC to passengers who are involuntarily bumped.</li> <li>Requires that a carrier inform passengers solicited to volunteer for denied boarding about all material restrictions on the use of transportation vouchers offered in lieu of cash.</li> </ul>
<i>Full Fare Advertising</i> .....	<ul style="list-style-type: none"> <li>Enforces the full fare advertising rule as written (<i>i.e.</i>, ads which state a price must state the full price to be paid). Carriers currently may exclude government taxes/fees imposed on a per-passenger basis.</li> <li>Clarifies the rule's applicability to ticket agents.</li> <li>Prohibits carriers and ticket agents from advertising fares that are not the full fare and impose stringent notice requirements in connection with the advertisement of "each-way" fares available for purchase only on a roundtrip basis.</li> <li>Prohibits opt-out provisions in ads for air transportation.</li> </ul>
<i>Baggage and Other Fees and Related Code-Share Issues.</i>	<ul style="list-style-type: none"> <li>Requires U.S. and foreign air carriers to disclose changes in bag fees/allowances on their homepage for three months, to include information regarding the free baggage allowance.</li> <li>Requires carriers (U.S. and foreign) and ticket agents to include on e-ticket confirmations information about the free baggage allowance and applicable fees for the first and second checked bag and carry-on but allows ticket agents, unlike carriers, to do so through a hyperlink.</li> <li>Requires carriers (U.S. and foreign) and ticket agents to inform passengers on the first screen on which the ticket agent or carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can go to see these baggage fees.</li> <li>Requires U.S. and foreign air carriers to disclose all fees for optional services to consumers through a prominent link on their homepage.</li> <li>Requires that the same baggage allowances and fees apply throughout a passenger's journey.</li> <li>Requires the marketing carrier to disclose on its website any difference between its optional services and fees and those of the carrier operating the flight. Disclosure may be made through a hyperlink to the operating carriers' websites that detail the operating carriers' fees for optional services, or to a page on its website that lists the differences in policies among code-share partners.</li> </ul>

Subject	Final rule
<i>Post-Purchase Price Increases</i> .....	<ul style="list-style-type: none"> <li>Bans the practice of post-purchase price increases in air transportation or air tours unless the increase is due to an increase in government-imposed taxes or fees and only if the passenger was provided full disclosure of the potential for the increase and affirmatively agreed to the potential for such an increase prior to purchase.</li> </ul>
<i>Flight Status Changes</i> .....	<ul style="list-style-type: none"> <li>Requires U.S. and foreign air carriers operating scheduled passenger service with any aircraft with 30 or more seats to promptly notify consumers through whatever means is available to the carrier for passengers who subscribe to the carrier's flight status notification services, in the boarding gate area, on a carrier's telephone reservation system and on its website of delays of 30 minutes or more, cancellations and diversions within 30 minutes of the carrier becoming aware of a change in the status of a flight.</li> </ul>
<i>Choice-of-Forum Provisions</i> .....	<ul style="list-style-type: none"> <li>Prohibits U.S. and foreign air carriers from limiting a passenger's forum to pursue litigation to a particular inconvenient venue.</li> </ul>

**Summary of Regulatory Analysis**

The regulatory analysis shows that the monetized benefits of the proposed requirements exceed their monetized

costs, even without considering non-quantifiable benefits. This analysis, outlined in the table below, has determined that the present value of monetized net benefits for a 10 year

period at a 7% discount rate is \$14.3 million. At a 3% discount rate, the present value of monetized net benefits is estimated to be \$20.3 million.

		Present value (millions)
Monetized Benefits .....	10 Years, 7% discounting .....	\$45.0
	10 Years, 3% discounting .....	53.5
Monetized Costs .....	10 Years, 7% discounting .....	30.7
	10 Years, 3% discounting .....	33.2
Monetized Net Benefits .....	10 Years, 7% discounting .....	14.3
	10 Years, 3% discounting .....	20.3

A comparison of the monetized benefits and costs for each of the final requirements is provided in the Regulatory Analysis and Notices section, set forth below, along with information on additional benefits and costs for which quantitative estimates could not be developed.

**Comments and Responses**

*1. Tarmac Delay Contingency Plans*

**A. Entities Covered**

*The NPRM:* The NPRM proposed to require any foreign air carrier that operates scheduled passenger or public charter service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more passenger seats to adopt and comply with a tarmac delay contingency plan for their flights to and from the U.S. that includes minimum assurances identical to those currently required of U.S. carriers. As proposed, it would apply to all of a foreign carrier's flights to and from a covered U.S. airport, including those involving aircraft with fewer than 30 seats if a carrier operates any aircraft originally designed to have a passenger capacity of 30 or more seats to or from the U.S.

We sought comment on whether the requirement to have a contingency plan should be narrowed or expanded, and if

so, the cost burdens and benefits of doing so. For example, we proposed to include foreign carriers that operate aircraft originally designed to have a passenger capacity of 30 or more seats to and from the U.S., but we invited interested persons to comment on whether, in the event that we adopt a rule requiring foreign carriers to have contingency plans, we should limit its applicability to foreign air carriers that operate large aircraft to and from the U.S.—i.e., aircraft originally designed to have a maximum passenger capacity of more than 60 seats. We also asked whether the requirement to adopt tarmac delay contingency plans should apply not only to U.S. and foreign air carriers but also to U.S. airports. We requested that proponents and opponents of these or other alternative proposals provide arguments in support of their positions.

*Comments:* A number of U.S. and foreign airlines and airline associations support requiring airports to develop their own contingency plans to address lengthy tarmac delays but generally agree that these plans should be limited to coordinating with airlines and government agencies and assisting airlines during tarmac delays. Some of these commenters note that airports are in the best position to address the logistics associated with lengthy delays,

particularly with respect to diverted flights. For example, they argue that an airport authority is most likely to know the areas in the airport where international passengers can be allowed to deplane without resulting in U.S. Customs and Border Protection (CBP) or Transportation Security Administration (TSA) concerns. Commenters also note that requiring only carriers to have a contingency plan unreasonably places the burden of the operations of the entire air transport industry on carriers. Consumer groups are also in favor of requiring airports to adopt contingency plans. Of the airport and airport industry commenters, Dallas/Fort Worth Airport generally supports requiring U.S. airports to adopt a tarmac delay contingency plan but notes that U.S. airports do not have direct contact with airline passengers when they are on the aircraft and have no control over deplaning. Airports Council International (ACI) supports the airlines' plans being coordinated with airports but does not support requiring airports to adopt separate plans. ACI believes that separate airport and airline contingency plans could result in confusion and states that it is committed to supporting airlines in the development of their plans.

With regard to the adoption of a tarmac delay contingency plan by

foreign carriers, the views of foreign carrier associations and carriers differed significantly from those of other commenters. In general, the foreign carriers and foreign carrier association commenters object to the proposal that they adopt tarmac delay contingency plans as unnecessary and note that the same issues with tarmac delays do not arise as often with international flights as they do with domestic flights. The International Air Carrier Association (IACA) states that EU Regulation 261/2004 is an EU passenger rights provision to which EU carriers are subject on all their flights, including flights that depart from U.S. airports, and that the Department's proposals could conflict with EU laws. The International Air Transport Association (IATA) generally supports the principle of contingency plans, but believes such plans should be developed individually by each carrier according to its specific operations and conditions as opposed to having terms set by the government. The Arab Air Carrier Association (AACAA) and the Latin American and Caribbean Air Transport Association (ALTA) concur with IATA, as do many foreign carriers. The Air Transport Users Council (AUC) and a number of European carriers point out, similar to IACA, that many of the provisions in the NPRM are covered under EU legislation. The National Airlines Council of Canada (NACC) supports the need for contingency plans in the event of irregular operations but states that they should be developed in the interest of enhanced customer service rather than being mandated by government regulation. TUI Travel notes that EU carriers must comply with EU regulations and asks that carriers originating outside the U.S. be excluded from the tarmac delay contingency plan rule. Monarch Airlines commented that an exception to any requirement should exist for flights that do not pick up passengers in the United States.

U.S. carrier associations such as the Air Transport Association of America (ATA) and National Air Carrier Association (NACA) indicated their support for requiring foreign air carriers to meet the same standards as U.S. carriers for adopting tarmac delay contingency plans. Of the U.S. carriers that commented, Spirit Airlines supports extending the rule to foreign carriers, while Virgin America states that DOT should not adopt any of the proposals related to tarmac delays.

Most of the comments received from individuals on this issue noted that a requirement to develop a tarmac delay contingency plan should be extended to foreign carriers because it is important to protect consumers on all flights to

and from the United States, not merely on flights operated by U.S. airlines. Among the consumer group commenters, the Consumer Travel Alliance (CTA) supports the expansion of the tarmac delay rules to foreign carriers, as does the Association for Airline Passenger Rights (AAPR), National Business Travel Association (NBTA), Flyersrights.org, Consumers Union and Aviation Consumer Action Project (ACAP). The American Society of Travel Agents (ASTA) also supports extending the tarmac delay contingency plan provisions to foreign carriers and states that the rule should cover all aircraft types.

Among the airports and airport industry commenters, ACI supports requiring foreign air carriers to adopt plans that include minimum assurances as required of U.S. airlines and strongly supports extending the rule to foreign air carriers operating aircraft with 30 or more seats. The American Association of Airport Executives (AAAE) agrees that foreign carriers should comply with specified contingency plans in order to provide equal and fair competition. The New York State Consumer Protection Board supports requiring foreign carriers to adopt tarmac delay contingency plans that provide for passengers to receive the same basic necessities that U.S. carriers are required to provide.

*DOT Response:* After fully considering the comments received, the Department has decided not to promulgate a requirement that airports adopt contingency plans addressing lengthy tarmac delays. The Department is aware that many airports are voluntarily working with U.S. carriers to develop policies and procedures to address lengthy tarmac delays and to cooperate with U.S. carriers in the coordination of the carriers' contingency plans as required of U.S. airlines by the first tarmac delay rule. As such, it is not necessary to regulate in this area at this time.

However, the Department thinks it is reasonable and necessary to require foreign carriers that operate scheduled passenger or public charter service to and from the U.S. to adopt and adhere to tarmac delay contingency plans. International air travel is a large and increasingly significant market sector, and customers who use non-U.S. airlines deserve no less protection from lengthy tarmac delays at U.S. airports than do customers of U.S. airlines. We also wish to be consistent with the application of our rules. The lengthy tarmac delays experienced by a number of foreign carriers at John F. Kennedy International Airport (JFK) during and

after the December 26, 2010, blizzard highlights the need to extend the rule to those carriers.

In order to address commenters' concerns that certain European laws (or laws of other countries) may conflict with this regulation, we want to clarify that the requirement to adopt and follow a plan applies only to tarmac delay events that occur at a covered U.S. airport. The rule should not conflict with EU Regulation 261/2004, the EU rule on compensation and assistance to be provided to passengers in the event of denied boarding, flight cancellation or long flight delays. The types of assistance required under the EU rule are for the most part services that would not be available on board an aircraft during a tarmac delay, e.g. phone calls, a hotel room, transportation between the airport and the hotel room, and rerouting on another flight. The context of the food and beverage requirement in regulation 261/2004 suggests that these services are to be provided in the airport terminal during a normal (*i.e.*, non-tarmac) flight delay before passengers have been boarded. As such, although EU 261/2004 applies to EU carriers departing from or traveling to an EU member state and to non-EU carriers departing from an EU member state airport, we see no conflict between that rule and this one. On a tarmac delay at a U.S. airport, EU and non-EU carriers can comply with all provisions of both rules.

With regard to charter flights, we agree with Monarch Airlines and TUI Travel that an exception should exist for foreign-originating charters that operate to and from the United States but do not pick up any U.S. originating passengers. Consequently, carriers will not be required to adopt a tarmac delay contingency plan as long as their operations fall within these parameters. This is consistent with 14 CFR 382.7(d) of the DOT rule on air travel by passengers with disabilities and with the minimal regulation of these flights by the Department's public charter rule in 14 CFR part 380.

#### B. Time Frame for Deplaning Passengers on International Flights

*The NPRM:* Under the proposed rule, a covered foreign air carrier would be required to include in its tarmac delay contingency plan an assurance that it will not permit an aircraft to remain on the tarmac at a U.S. airport for more than a set number of hours as determined by the carrier in its plan before allowing passengers the opportunity to deplane. The proposal included appropriate safety, security, and ATC exceptions. This is already

required of U.S. carriers for their international flights under the Department's existing rule. As for domestic flights, U.S. carriers are required to provide an assurance that they will not permit an aircraft to remain on the tarmac for more than three hours without deplaning passengers subject to the same safety, security and ATC exceptions. In the NPRM, we noted that there are ongoing questions as to whether mandating a specific time frame for deplaning passengers on international flights as currently exists for domestic flights is in the best interest of the public. We asked for comments on whether any final rule that we may adopt should set a uniform standard for the time interval after which U.S. or foreign air carriers would be required to allow passengers on international flights to deplane rather than allowing the carriers to set their own tarmac delay time limit for such flights. We also asked commenters who support the adoption of a uniform standard to propose specific time limits and state why they believe these intervals to be appropriate.

*Comments:* Of the U.S. carriers and carrier associations that commented, ATA objects to a hard time limit on tarmac delays for international flights. NACA supports requiring foreign air carriers to meet the same standards as U.S. carriers for adopting tarmac delay contingency plans.

In general, the non-U.S. carriers and carrier associations object to the proposal as unnecessary, asserting that the same problems with tarmac delays do not exist with international flights as with domestic flights. For example, Condor Flugdienst Airlines (Condor) states that it sees no reason to enforce a mandatory deplaning requirement for a problem that occurs only very rarely. Many of these carriers also comment that a "one size fits all" approach is not practical and note that there are large differences between domestic and international operations, and between long-haul and short-haul operations. IATA and IACA object to a uniform time limit entitling passengers to deplane. IACA states that the proposal may conflict with EU passenger rights requirements since EU carriers must follow EU requirements on all their flights, including flights that depart from U.S. airports. The Association of European Airlines (AEA) and foreign airlines' comments are similar to IATA's. Many object to the proposal to require carriers to set a time limit to deplane due to various operational concerns. Specifically, a number of foreign industry groups and airlines noted the following:

- International flights operate less frequently and a cancellation could result in missed connections with serious consequences for passengers;
- Returning to the gate and/or a flight cancellation may result in the crew "timing-out" and many foreign carriers do not have U.S.-based crews, which could result in a delay of 24 hours or more;
- International flights have limited windows of opportunity to depart due to gate constraints at foreign airports;
- Larger aircraft used for international flights take much longer to enplane and deplane (up to 40 minutes), which can cause even further delay;
- International flights are often better equipped to meet passenger needs on-board the aircraft; and
- Long-haul and ultra-long haul operations can make up time while in the air.

Some carriers, such as Air New Zealand, support a 3 hour time limit, but note that consideration should be given to crew restrictions and gate allocations, or situations where resolution of the delay is less than an hour away and deplaning would further delay the flight. Qantas also supports the 3 hour limit in principle, but thinks such an assurance is limited by the carrier's ability to control the circumstances. Of the travel agents and other industry group commenters that commented on this issue, ASTA agrees that a specific standard for international flights is important but supports a four hour rather than three hour rule.

Among the consumer commenters, the Association for Airline Passenger Rights (AAPR) and Flyersrights.org strongly advocate for a maximum permissible tarmac delay of three hours for international flights. Flyersrights.org urges that tarmac delays of over three hours not be permitted for international flights and notes that the "health and inconvenience problems" are the same regardless of whether the flight is domestic or international. Consumer Action, along with Consumer Federation of America, the National Consumers League, Public Citizen, and U.S. PIRG support the extensive comments filed by Flyersrights.org. Some individual commenters also expressed concern about lengthy tarmac delays on international flights and advocated for a uniform time limit for deplaning passengers. Of the commenters on "Regulation Room," almost half noted, generally, that the Department should apply a uniform federal time limit on tarmac delays to all flights and airlines, regardless of aircraft size, airport size, and whether the flight is domestic or international.

*DOT Response:* As noted above, the Department is expanding its requirement to adopt a tarmac delay contingency plan to foreign carriers, as we believe that it is important to ensure that passengers on these carriers are also afforded protection from unreasonably lengthy tarmac delays. With regard to a required time period for deplaning passengers on international flights operated by U.S. or foreign carriers, we are requiring that these carriers provide an assurance that they will not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours without providing passengers an opportunity to deplane. As in our initial rulemaking to enhance airline passenger protections, this new requirement will allow exceptions for safety and security considerations and in instances where Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations. We decided to impose a uniform time limit for deplaning passengers on international flights rather than allowing carriers to establish their own tarmac delay time limits because we believe the consistency in standard will provide passengers with clearer expectations as to when they would be allowed off aircraft in the event of a tarmac delay. A uniform standard will also make it clearer to the other stakeholders such as airports of the need to assist airlines in deplaning passengers on international flights before the four hour mark. Further, the Department believes that a uniform time limit will reduce or prevent lengthy tarmac delay incidents such as those that occurred at JFK during and after the December 26, 2010, blizzard and the resulting impact on passengers traveling on those flights.

We decided to impose a four hour time limit for lengthy tarmac delays on international flights as opposed to the three hour limit that applies to lengthy tarmac delays on domestic flights for a number of reasons. First, because international flights are of much longer duration on average than domestic flights, it is possible that delays may not have as negative an impact on international passengers as they were already planning on spending a significant amount of time in the aircraft and some of the time spent on the tarmac can be made up while in the air. We also reviewed the contingency plans for the U.S. carriers as they are already required to establish their own tarmac delay time limits for international flights, and found that most of these carriers have chosen to set a four hour

time limit for deplaning passengers from their international flights that experience a tarmac delay. In addition, we are persuaded by comments of the different environment in which international flights operate and the need to provide greater leeway for international flights than we allow for domestic flights. For these reasons, we have decided to impose a four hour time limit for deplaning passengers on international flights and not allow U.S. and foreign carriers to establish their own longer tarmac delay time limits for international flights.

As clarified in the first rule to enhance airline passenger protections, an international flight for purposes of this requirement is a nonstop flight segment that departs from the United States and lands in another country, or vice-versa, exclusive of non-traffic technical stops. For example, if a U.S. carrier operates a direct flight Chicago-New York-Frankfurt, with some Chicago-originating passengers destined for New York and others destined for Frankfurt, and the aircraft experiences a tarmac delay in Chicago, then we would consider the tarmac delay to be on a domestic flight. This is because Chicago-New York is a domestic flight segment even though the final destination of the flight is Frankfurt, Germany. If, on the other hand, the aircraft only stops for refueling or a crew change in New York and the flight carries no Chicago-New York traffic and no Frankfurt-bound passengers enplane in New York, then we would consider the tarmac delay in Chicago to be a tarmac delay on an international flight.

#### C. Provision for Adequate Food and Water, Operable Lavatories, and Medical Attention if Needed

*The NPRM:* As proposed in the NPRM, the tarmac delay contingency plans adopted by foreign air carriers for international flights that depart from or arrive at a U.S. airport would need to include: (1) An assurance that the carrier will provide adequate food and potable water no later than two hours after the aircraft leaves the gate in the case of 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; (2) an assurance of operable lavatory facilities while the aircraft remains on the tarmac; and (3) an assurance of adequate medical attention if needed while the aircraft remains on the tarmac. These requirements already apply to U.S. carriers under the current rule.

*Comments:* With regard to the provision for adequate food and water, ATA notes that generally aircraft used for international flights are able to comfortably accommodate passengers onboard for longer periods of time, with food service and entertainment options often available given the type of equipment used and the expected length of these flights. Among the foreign air carriers that commented, Condor Airlines notes that when a longer delay becomes inevitable, Condor has snacks and drinks available for passengers. Similarly, Qatar Airways notes that the logistics of the ultra long-haul flights operated to and from the U.S. already require that Qatar Airways provide extra catering and potable/bottled water to allow for extra time beyond that scheduled during which its customers and crew may have to spend in the aircraft. Qatar explains that it already ensures that its customers are regularly offered water and soft drinks by cabin crew. Qantas indicates that it too provides passengers access to potable water and refreshments during tarmac delays but does not consider it reasonable to impose a mandatory requirement to provide food to all passengers after two hours in all cases, as the commencement of a meal service may lead to further delays and missed opportunities for departure. The carrier also thinks that the term "adequate food" is too broad and open to different interpretations. South African Airways wants the Department to understand that foreign airlines have significantly less flexibility than U.S. airlines to store extra catering items onboard. In the absence of evidence that lengthy delays are a problem for passengers traveling on foreign airlines, the airline believes the Department is not justified in imposing the costs associated with these requirements.

Regarding assurance of operable lavatory facilities, a number of carriers noted that this is a reasonable requirement and that they have working lavatories and toilet serviceability is maintained at the highest levels. However, one carrier expressed concern about unforeseen maintenance issues.

With regard to providing medical attention, Condor states that its flight attendants are capable of providing basic first aid when needed and have access to remote medical advice for more serious medical emergencies. Similarly, Qatar Airways notes that its cabin crews are highly trained in first aid. Qantas Airlines believes that it is reasonable to require carriers to seek medical assistance for any onboard emergency and states that it engages the services of an external medical provider

to provide advice and assistance as required, but thinks the extent of this requirement needs clarification. South African Airways expresses similar concerns as Qantas and notes that the NPRM is not clear regarding what comprises medical attention within the meaning of the proposal. South African Airways states that while its in-flight crewmembers have basic first-aid capabilities, the carrier relies on consultations with remote medical-care contractors and other passengers with medical training to provide good-Samaritan assistance. South African explains that it sees no practical way to ensure medical attention during tarmac delays that exceeds this basic assistance. The National Airlines Council of Canada (NACC) states that many airlines are not in a position to provide adequate medical attention as airlines are not medical organizations and in-flight staff is not medical staff. As such, it believes that such assistance is up to local authorities to provide.

Among consumer groups and individual commenters, the AAPR urges the Department to require the tarmac delay contingency plans of U.S. and foreign air carriers contain minimum guidelines for accommodating passengers with disabilities. The New York State Consumer Protection Board states that foreign carriers should be required to adopt a plan that provides for passengers to receive the same basic necessities that U.S. carriers are required to provide, *i.e.*, adequate food and water, operable lavatories, and medical attention if needed. By and large, individual commenters also support the Department imposing identical requirements for foreign and U.S. carriers. Of those that commented on Regulation Room, they generally support the Department requiring airlines to provide working bathrooms, water, beverages, snacks and, in some cases, meals on delayed flights. A few commenters also mention the need for adequate temperature control and the ability to walk around an aircraft during a delay in order to stretch and use the restroom.

*DOT Response:* The Department continues to believe that passengers stuck on an aircraft during lengthy tarmac delays deserve to be provided some type of food, potable water, operable lavatories, and if necessary, medical care. It appears from the comments that most carriers already have procedures to provide food and water during long tarmac delays, and ensure that their lavatory facilities are operable while the aircraft remains on the tarmac. The concern expressed by South African Airways about storage

space for extra catering items seems to be based on a misconception that extensive supplies are needed. There also appears to be confusion as to what the Department means by the term "adequate food." The Department would consider snack foods such as granola bars that carriers typically provide on flights to suffice as "adequate" food. Carriers are, of course, free to provide more complete meals to passengers if they so wish. We note that the requirement to provide food and water within two hours would not apply if the pilot-in-command determines that safety or security precludes such service, so the commencement of a meal service should not lead to further delays or missed opportunities for departure as feared by at least one commenter. As for the requirement to provide medical care if necessary, the Department's expectation is that carriers would have the capabilities to provide basic first aid assistance on the aircraft and would seek further medical assistance as necessary for any onboard emergency, including disembarking the passenger for treatment if needed with the assistance of airport emergency personnel.

#### D. Coordination With Covered Airports

*The NPRM:* In the initial rulemaking to enhance airline passenger protections, we required U.S. carriers to have contingency plans for tarmac delays to large-hub and medium-hub airports, as well as diversion airports that the carrier serves or utilizes. In the NPRM for the current proceeding, we proposed to extend this requirement to small hub and non-hub airports and to require all covered carriers (U.S. and foreign) to coordinate their plans with each covered U.S. airport that they serve or utilize for diversions. In making this proposal, the Department noted its belief that the same issues and discomfort to passengers during an extended tarmac delay are likely to occur regardless of airport size or layout. We also noted our strong belief that it is essential that airlines involve airports in developing their plans in order to enable them to effectively meet the needs of passengers. We invited comment on whether it was workable to require covered carriers coordinate with small hub and non-hub airports to which they regularly operate scheduled passenger or public charter service. We also asked if the rule should be expanded to include other commercial U.S. airports (*i.e.*, those with less than 10,000 annual enplanements). Finally, we specifically solicited comments from airlines, airports and other industry entities on whether there are any special

operational concerns affecting such airports.

*Comments:* Of the U.S. carriers and carrier association commenters, ATA supports expanding the number of airports where carriers must coordinate plans to include small hub and non-hub airports. The Regional Airline Association (RAA) opposes extending the rule to small-hub and non-hub airports because it believes there is no evidence that doing so is necessary or beneficial and believes that the cost to expand tarmac delay contingency plans to smaller airports outweighs the benefits, as requiring regional and other carriers serving small airports to coordinate plans with all such airports would require significant resources.

In general, non-U.S. carrier and carrier association commenters object to the proposal as unnecessary and note that they have limited presence or service at these smaller airports. Air France and KLM specifically oppose this provision. On the other hand, Alitalia supports the idea of coordination, but believes the proposal is extremely burdensome. Singapore Airlines supports coordinating contingency plans with airports to handle diverted flights, but states that the plans should focus on customer care such as swiftly disembarking passengers, returning baggage, accommodating passengers if necessary in hotels or on alternate flights, and ensuring that passengers continue their journey. Monarch Air disagrees and states that coordination with airports is not necessary, as it would let the airport determine what is best for the customer.

Of the travel agent interests that commented, ASTA supports expanding contingency plan coordination obligations to include small hub and non-hub airports. TUI Travel states that coordinating contingency plans is not necessary, as the airport can determine what is in the best interest of the airline customer and notes restrictions on gate availability that may be determined on the day of arrival, so pre-coordination will reduce operational flexibility.

Of the airport and airport industry commenters, Dallas/Fort Worth Airport supports requiring carriers to coordinate their contingency plans with all airports that they serve and notes that important airport factors such as terminal capacity, equipment, and government services are taken into account during such coordination. ACI also supports the need for airlines to coordinate with airports of all sizes and states that it is committed to supporting airline development of contingency plans with accurate and relevant information about the airports the carriers serve.

Of the consumer and consumer group commenters, CTA supports the expansion of the tarmac-delay rules to smaller airports. AAPR and Flyersrights.org fully support increasing the number of covered airports to include small hub and non-hub airports. NBTA also supports these provisions. The New York State Consumer Protection Board supports expanding the rule to all airports, as do many Regulation Room commenters, some of whom state that airlines and airports should be required to work together to develop and implement tarmac delay contingency plans.

*DOT Response:* The Department is adopting the requirement that covered carriers, both U.S. and foreign, include small hub and non-hub airports in their tarmac delay contingency plans and ensure that the plan has been coordinated with airport authorities at those airports. We continue to maintain that the same issues and discomfort to passengers during an extended tarmac delay are likely to occur regardless of airport size or layout. Similar to the expansion of the scope of the requirement to adopt contingency plans to include foreign carriers, this requirement will protect a greater number of passengers at more airports.

We are not convinced by commenters' concerns that requiring carriers to coordinate their plans with small hub and non-hub airports will have a significant financial impact on carriers. U.S. carriers are already required to coordinate plans with large-hub and medium-hub airports and should be able to tailor existing plans to apply to these smaller airports. We recognize that the requirement to coordinate contingency plans with airports is a new requirement for foreign carriers, but expect that it will not be overly burdensome for foreign carriers as the large-hub and medium-hub airports are familiar with the coordination process after having worked with the U.S. carriers on tarmac delay contingency plans this past year. The need for such coordination was recently highlighted by the events at JFK airport following the December 26, 2010 blizzard. Also, during the past two years significant amount of work has been done through a project funded by the Federal Aviation Administration (FAA) to produce a best-practice guidance document for developing coordinated contingency plans for tarmac delays at small hub and non-hub airports.

The benefit of airlines coordinating with airports on contingency plans becomes particularly clear when there are flight diversions. In situations where flights must be diverted from their

intended destination airports, it is imperative that airlines and the airports that regularly serve as their diversion airports have already discussed things such as locations within the airport where passengers are allowed to wait when TSA or CBP personnel are not present and the availability of equipment to deplane/bus passengers to the terminal to minimize the hardship to travelers. It is essential that airlines involve airports in developing their plans to enable them to effectively meet the needs of passengers. The rule on coordination with airports is also being clarified to ensure that at airports, like JFK, where operations such as snow removal and gate use are managed by entities other than the airport authority (e.g., a carrier, a consortium of carriers, or a contractor), carriers covered by this rule must also coordinate with these terminal operators.

#### E. Coordination With CBP and TSA

*The NPRM:* As recommended by the Tarmac Delay Task Force,<sup>1</sup> we proposed to require carriers to include TSA in their coordination efforts for any large, medium, small, and non-hub U.S. airports, including U.S. diversion airports which they regularly use. We also proposed to require carriers to coordinate with CBP for any U.S. airport that the carrier regularly uses for its international flights, including diversion airports. We proposed these measures as it had come to the Department's attention on more than one occasion that passengers on international flights were held on diverted aircraft for extended periods of time because there were reportedly no means to process those passengers and allow them access to terminal facilities. At that time, the U.S. Department of Homeland Security (TSA and CBP are part of DHS) had advised this Department that, subject to coordination with CBP regional directors, passengers on diverted international flights may be permitted into closed/sterile terminal areas without CBP screening. In the NPRM, we invited interested persons to comment on this proposal and asked what costs and benefits would result from imposing this requirement.

*Comments:* Of the U.S. carriers and carrier associations that commented, ATA states that carriers already coordinate with TSA and CBP and will

continue to do so but stresses that interagency coordination between CBP and TSA as well as coordination between the airports and CBP/TSA is needed in order to get diverted passengers who so desire off airplanes. USA3000 suggests that airports may not be properly staffed by CBP during irregular operations and urges DOT to review this issue with CBP and local airports.

The non-U.S. carrier and carrier association commenters object in general to the proposal as unnecessary. IACA notes that tarmac delays of more than three hours are very rare and believes the NPRM imposes a disproportionate burden on airlines to coordinate plans not only with airports, but with federal agencies. IATA supports the need for the United States government to be more responsive to the needs of airline passenger who arrive at airports where TSA and CBP personnel are not normally stationed or are not present during off hours, but think it is the responsibility of those agencies to work together to put systems in place. The comments of the Association of European Airlines (AEA) and many foreign airlines' are similar to or support IATA, while NACA adds that DOT should work with CBP and other government agencies on a memorandum of understanding to address issues regarding extended tarmac delays. The National Airlines Council of Canada (NACC) adds that carriers have limited influence over TSA and CBP, so obligations should be on the U.S. government to ensure these agencies have their own contingency plans in place. The Arab Air Carrier Association (AACA) states that coordinating contingency plans with diversion airports as well as TSA and CBP will be very costly and suggests, along with other commenters, that TSA and CBP should design their own contingency plans for any airport that receives international flights.

Some foreign carriers assert that this proposal is flawed because TSA and CBP can provide only limited assistance at some airports due to limited after-hours federal inspection capabilities or limited federal personnel available at the smaller airports. Carriers also ask how they can ensure that passengers will remain in one area of the airport or that a sterile area will be available for containing such passengers. British Airways supports the proposal that passengers on diverted international flights be permitted into closed terminal areas without CBP screening and notes, as do some other foreign carriers, that these carriers generally do not have a presence at diversion airports. As such,

British Airways and other carriers assert that CBP and the airport operator should be responsible to ensure that passengers can disembark the aircraft. Cathay Pacific adds that the burden to coordinate plans should be on all the stakeholders, while Malaysia Airlines does not support coordinating delay contingency plans with CBP and TSA, but thinks those agencies should design their own plans. Cathay Pacific notes that not all airports can handle aircraft carrying 300+ passengers and states that airports not suitable for deplaning international passengers should fall outside the scope of the proposed rules.

Of the travel agents and other industry group commenters, ASTA supports extending the rule to include coordination with CBP and TSA. NBTA expresses concern that costs associated with requiring coordination with TSA and CBP may outweigh the benefits and may be passed on to the business traveler. As such, NBTA thinks DOT should develop a clearer picture of cost-benefits before implementing this provision. TUI believes that it is not necessary to coordinate plans with TSA or CBP, and is concerned that this would add another layer of planning.

Of the consumer and consumer group commenters, CTA supports rules being promulgated by CBP and TSA that will allow passengers on inbound international flights forced to land at a diversion airport to be processed, as does the AAPR, Flyersrights.org and the Consumers Union. Dallas/Fort Worth Airport supports requiring carriers to coordinate plans with CBP and TSA and states that plans should be in place to deal with the process of handling international passengers and allowing them access to terminal facilities at small and medium size airports with no CBP services. ACI applauds DOT for proposing to expand coordination to TSA and CBP.

*DOT Response:* After considering all the comments, the Department is adopting the requirement that carriers coordinate plans with CBP and TSA at large, medium, small, and non-hub airports that they regularly serve, including at diversion airports they plan to utilize. Because tarmac delays are a particular problem in situations where flights must be diverted from their intended destination airports, this rule requires carriers to coordinate their plans with airports that serve as diversion airports for such operations. As recommended by the Tarmac Delay Task Force, it is also important for carriers to include in their coordination efforts appropriate government authorities such as Customs and Border Protection and the Transportation

<sup>1</sup> In January 2008, the Department established a Tarmac Delay Task Force to coordinate and develop contingency plans to deal with lengthy delays. The Task Force comprising of individuals who represented airlines, airports and consumer groups issued a report that set forth guidelines for airlines, airports, and other stakeholders to use when dealing with long ground delays.

Security Administration, when appropriate.

In adopting this requirement, we note that more than one incident of concern to the Department has occurred at a diversion airport where passengers could not deplane the aircraft due at least in part to security concerns or issues with processing international passengers. It is important to ensure that there is a contingency plan in place in order to address the objective of deplaning passengers in those situations. The Department is actively working with TSA and CBP to develop policies and procedures in order to assist carriers with coordinating their plans and complying with this regulation. We would consider an airline to have complied with the requirement to coordinate its plan with CBP and TSA if the carrier submits its plan to CBP's Regional Director and TSA's Federal Security Director for that airport and considers any issues raised in response to those agencies.

#### F. Passenger Notification

*The NPRM:* In the NPRM we proposed to require that U.S. and foreign air carriers update passengers every 30 minutes during a tarmac delay regarding the status of their flight and the reasons for the tarmac delay. We also proposed that carriers announce that passengers have the opportunity to deplane the aircraft when the flight is delayed and the doors are open. In proposing these requirements, the Department gave consideration to passengers' frustration with lack of communication by carrier personnel about the reasons a flight is experiencing a long tarmac delay. We noted that it did not seem unreasonable or unduly burdensome to require carriers to address this issue and verbally inform passengers as to the flight's operational status on a regular basis during a lengthy tarmac delay. We did not anticipate that a carrier's flight crews will know every nuance of the reason for the delay, but we noted our expectation that they inform passengers of the reasons of which they are aware and make reasonable attempts to acquire information about the reasons for that delay.

We also invited comment on whether carriers should be required to announce that passengers may deplane from an aircraft that is at the gate or other disembarkation area with a door open. The Department's Office of Aviation Enforcement and Proceedings had previously explained that a tarmac delay begins when passengers no longer have an option to get off an aircraft, which usually occurs when the doors of the aircraft are closed, and has

encouraged carriers to announce to passengers on flights that remain at the gate with the doors open for lengthy periods that the passengers are allowed off the aircraft if that is the case. However, we noted that such an announcement is not explicitly required in the existing rule. Consequently, we sought comment on the benefit to consumers of mandating such announcements and asked commenters, including carriers and carrier associations, to address any costs and/or operational concerns related to implementing a rule requiring such announcements.

*Comments:* Non-U.S. carrier and carrier association comments generally object to the proposal to update passengers every 30 minutes during a tarmac delay regarding the status of their flight and the reasons for the tarmac delay, characterizing it as unnecessary. IACA states that notifying passengers every 30 minutes as to reason for a tarmac delay is unnecessary overregulation. Some foreign carriers, such as Air France and KLM note that requiring announcements every 30 minutes will have unintended consequences and state that keeping passengers informed is already important to carriers and a regulation is not needed. Other carriers, such as Qantas and JetStar, agree that notifying passengers every 30 minutes is reasonable, but state that too much detail may lead to false expectations on the part of the passengers. AACA expresses concern about the broad language regarding the format of communication and when a carrier should be aware of information to provide to the passenger, and the ability of airlines to prove they have relayed information to the passenger. NACC does not support updates every 30 minutes as this could result in relaying incomplete or inaccurate information to the passengers.

U.S. carriers and carrier association commenters generally agree that it would be beneficial for passengers to be updated frequently on flight status changes when there is a tarmac delay but expressed concern that carriers are not always updated by FAA on a timely basis. Of the travel agents and other industry group commenters, ASTA supports the provision for carriers to make tarmac delay announcements every 30 minutes. However, TUI Travel does not believe DOT should be overly prescriptive or detail the circumstances or time intervals upon which updates on delays should be given, but agrees that information needs to be given and updated at regular intervals.

Consumers and consumer group commenters support a requirement to provide updates every 30 minutes. More specifically, AAPR and Flyersrights.org fully support requiring carriers to communicate with passengers during delays. Of the airport industry commenters, the AAEE agrees that essential communication with passengers is necessary. The New York State Consumer Protection Board adds that communication with passengers during a delay is important because failure to update the flight's status adds to the frustration caused by the situation. As such, it strongly supports the proposal that air carriers update passengers every 30 minutes during a delay.

We received various differing comments on whether carriers should be required to announce that passengers may deplane from an aircraft that is at the gate or other disembarkation area with the door open. Spirit Airlines opposes DOT requiring carriers to permit passenger to leave an aircraft that remains at the gate for a delay of less than three hours but notes that its practice is to permit deplaning after two hours. It states that deplaning could create operational problems and raise costs and notes that the window of time to enplane may be small, passengers may be hard to locate and re-boarding will be time consuming and delay departure. Spirit believes that the airline can exercise the best judgment regarding whether passenger should be allowed to deplane.

IATA also does not support the proposal to announce that passengers may deplane from an aircraft with the door open and states that the option to deplane raises a number of issues (e.g. removing baggage if a passenger doesn't travel, DHS personal data accountability issues, passenger manifest issues, length of time to deplane and enplane large aircraft, short windows for departure). Comments of AEA and foreign airlines' comments are similar to IATA's. Many foreign carriers object to the proposal to notify passengers that they can deplane due to various operational concerns similar to those posited by IATA and other foreign carrier associations. ALTA raises additional concerns with safety issues, and questions who will have control over passengers that temporarily deplane and, miss flights. Air France and KLM also state that a carrier should be given the option to make the announcement that passengers can deplane depending on the specific circumstances. Air Tahiti asks for clarification on whether there is a minimum duration an air carrier must wait for passenger to re-enplane the

aircraft and whether deplaned passengers' baggage must be deplaned.

CTA states carriers should be required to communicate with passengers on a regular basis and agrees that carriers should inform passengers during delays while the aircraft is at a loading bridge with its doors open that they may deplane at any time, to stretch their legs, to be rebooked on another flight or to cancel their flight and get a refund. NBTA also supports this provision.

*DOT Response:* After considering the comments received, the Department has decided to require that carriers notify passengers every 30 minutes about the status of a tarmac delay, including the reasons for the delay if known. In implementing this requirement, we note that we expect the carrier to make reasonable attempts to acquire information about the status of the delay and to provide this information to consumers. A carrier would not be held responsible for failing to provide a status that was not known to it so long as the carrier made reasonable efforts to find out the status.

We have also decided to require U.S. and foreign air carriers to notify passengers that they can deplane from an aircraft that is at the gate or another disembarkation area with the door open, if that is the case. The purpose of this requirement is to address problems that have arisen since the first tarmac delay rule has been in effect where U.S. carriers have asserted that the three hour clock should not yet be running but where passengers did not know that the door to the aircraft was open and that they had the option to get off of the aircraft, particularly on a departure delay at the gate or on large aircraft. We are not requiring carriers to provide passengers the opportunity to deplane in less than three hours but simply to inform them that the opportunity to deplane exists, if it does. Of course, in situations where an aircraft is at the gate with the door open and passengers are not allowed off the aircraft, the tarmac delay begins at the point when passengers are no longer permitted to deplane and not when the doors of the aircraft are shut.

As for commenters' concerns with reconciling passenger manifests and dealing with the checked baggage of passengers who choose to deplane, we are not requiring airlines to re-board a passenger who chooses to deplane and therefore misses a flight, or to remove the checked baggage of a passenger that has deplaned. DHS/TSA also doesn't require that passenger's checked baggage be removed if the passenger is no longer on that flight. We encourage airlines to announce to passengers that

they are deplaning at their own risk and that the flight could depart at any time without them if this is the case.

#### G. Code-Share Flights

*The NPRM:* We sought comment on whether, in the case of a code-share flight, we should expand coverage of the requirement to adopt tarmac delay contingency plans so that the obligation to adopt such a plan and adhere to its terms is not only the responsibility of the operating carrier but also the carrier under whose code the service is marketed, if different.

*Comments:* Of the U.S. carrier and carrier association commenters, ATA states that the operating carrier has sole operating authority and is in sole control of how a passenger is treated, so it is unreasonable to also hold the marketing carrier accountable, especially if the contingency plans differ or are in conflict. The U.S. carriers that commented on this issue concur with ATA. RAA disagrees and states that, if DOT insists that operating carriers adopt contingency plans, it should place primary responsibility for adoption and compliance with the plan on the marketing carrier. RAA asserts that carriers that hold out, sell and ticket passengers should have sole responsibility to the Department and that liability of the operating carrier should be determined by its contract with the marketing carrier.

Of the non-U.S. carrier and carrier association commenters, IATA believes that only the operating carrier should be responsible for the terms of the contingency plan. AEA and ALTA, among others, concur with IATA. Of the foreign carriers that commented, most believe that only operating carriers should be responsible in a code-share situation based on their assertion that the operating carrier has responsibility for how the passengers are treated. Some commenters also note that the marketing carrier might not operate its own aircraft to all of the airports served by its code-share partners and thus would not have a relationship with those airport authorities. Others, such as Air Tahiti and Swiss International, note that the proposed regulations fail to consider the intricacies of the code-share relationship and suggest that there may be issues with collusion and antitrust concerns in some jurisdictions.

We received few comments from travel agents and other travel industry commenters on this issue. ASTA believes that code-share partners should be responsible for harmonizing their consumer protection processes so consumers don't worry about which carrier does the marketing, ticketing or

flying. Among the consumer and consumer group comments, CTA states that given the expansion of code-shares and with the antitrust immunity granted to airline alliances, there should be no difference between flights operated by U.S. or foreign carriers. AAPR supports expanding coverage of the requirement to adopt tarmac delay contingency plans to the carrier under whose code the service is marketed if different than the operating carrier.

*DOT Response:* After considering all the comments, the Department has decided to require that the tarmac delay contingency plan of the carrier under whose code the service is marketed governs if different from the plan of the operating carrier, unless the marketing carrier specifies in its contract of carriage that the operating carrier's plan governs. In adopting this rule, we have considered the comments stating that the operating carrier should be responsible for following the terms of a plan, as it is in the best position to address passenger concerns in the event of a tarmac delay. However, on balance, we have concluded that the expectation of the types of services a passenger will be provided is based on the information given to him or her by the marketing carrier, as this is the carrier that held out, sold, and ticketed passengers for the flight. It is reasonable for a consumer to expect the marketing carrier's tarmac delay contingency plan to apply unless the marketing carrier specifies in its contract of carriage that the operating carrier's tarmac delay plan governs. Irrespective of whether the marketing carrier's or operating carrier's contingency plan governs in a particular situation, we intend to hold both the marketing carrier and the operating carrier (*i.e.*, the carrier that sold the passenger a ticket under its name as well as the carrier that operates the aircraft in which that passenger travels) legally responsible. We encourage code-share partners to the extent possible to align their tarmac delay contingency plans. In situations where there are multiple marketing carriers on a single flight and the marketing carriers have not specified in their contracts of carriage that the operating carrier's plan governs, it becomes even more critical that the carriers' plans are aligned. If not, several different contingency plans may apply to passengers on the same flight.

#### H. Retention of Records

*The NPRM:* As is the case for U.S. carriers under the existing rule, the NPRM proposed to require foreign carriers to retain for two years the following information on any tarmac

delay that lasts at least three hours: the length of the delay, the specific cause of the delay, and the steps taken to minimize hardships for passengers (including providing food and water, maintaining lavatories, and providing medical assistance); whether the flight ultimately took off (in the case of a departure delay or diversion) or returned to the gate; and an explanation for any tarmac delay that exceeded three hours, including why the aircraft did not return to the gate by the three-hour mark.

*Comments:* We received few comments on this issue. Of the carriers and carrier associations that did comment, they expressed concerns that this provision would be burdensome and time consuming.

*DOT Response:* The requirement to retain tarmac delay records already applies to U.S. carriers. We are extending it here to foreign carriers operating passenger service to and from the U.S. on at least one aircraft with a passenger capacity of 30 or more seats. The tarmac delay information that the Department is requiring foreign airlines to retain is not available to it through other means. This information will help the Department obtain a more complete picture about lengthy tarmac delays and ensure carrier compliance with the tarmac delay requirements. The Department also believes that the requirement to retain tarmac delay data would not be burdensome for carriers, since we believe most carriers would as a matter of good business practice, obtain this information for their own purposes and, in any event, there are relatively few tarmac delays of more than three hours. In addition, the Department is not prescribing the manner in which this information must be kept and there is no requirement that a carrier submit the information to the Department unless specifically requested to do so, all of which should reduce any costs associated with this requirement.

## 2. Tarmac Delay Data

*The NPRM:* The proposed rule would require any U.S. or foreign carrier that operates passenger service (charter or scheduled) to, from or within the U.S. using any aircraft with a passenger capacity of 30 or more seats to submit monthly to the Department a set of data regarding tarmac delays of three hours or more at a U.S. airport to the extent that the carrier doesn't already provide such data to the Department. If a covered carrier has no flight with 3-hour tarmac delays, the proposed rule would require the carrier to submit a negative report, *i.e.*, a report stating there are no

3-hour tarmac times. The report would be due within 15 days after the end of each month being reported.

Reporting carriers (carriers that account for at least one percent of domestic scheduled passenger revenue which in calendar year 2009 consisted of the 16 largest U.S. carriers by scheduled passenger revenue plus two carriers that voluntarily file under Part 234) already file with the Department on-time flight performance data which includes all the data fields proposed to be reported here and more for their domestic scheduled flights pursuant to 14 CFR part 234. In recognition of this fact, the NPRM proposed that these U.S. carriers file tarmac delay data only for other types of transportation covered by the proposed rule, *i.e.*, their charter and international flights. The NPRM proposed to require other U.S. carriers and foreign carriers to provide data on tarmac delays that occurred at a U.S. airport and lasted for three hours or more for any of their flights—scheduled and charter flights as well as domestic and international flights. We sought comments on whether we should limit the tarmac delay reporting requirement to U.S. and foreign air carriers that operate large aircraft, *i.e.*, aircraft originally designed to have a maximum passenger capacity of 60 seats or more.

*Comments:* Individual consumers or consumer groups who submitted comments on this proposal unanimously support this proposal. Consumers Union states that it supports expanding the pool of reporting carriers to all U.S. and foreign carriers that operate any aircraft with 30 or more seats. It maintains that such a requirement is particularly important because it will reach many airline passengers who are currently not protected by these policies. One individual commenter states that equal treatment for all carriers is necessary to ensure competitive equality. Consumers Union also supports requiring Part 234 reporting carriers to provide tarmac delay data for public charter and international flights.

The Association for Airline Passenger Rights points out that the Department is attentive to the potential burden to small carriers and has narrowed the data fields it proposed to be reported for tarmac delays from the comprehensive on-time reporting scheme that exists. One commenter adds that most carriers already collect some of the data required under this proposal so it should not be overly burdensome for carriers to comply with the requirements. Several commenters from the Regulation Room state that technology development makes compliance relatively easy.

A few consumers and consumer organization commenters believe that the Department should go further in this respect. FlyersRights.org suggests that, in addition to filing reports under this Part and complying with the record retention requirement in Part 259, the Department should require carriers to submit a comprehensive written report within 14 days of the occurrence of any lengthy tarmac delay. One individual commenter asserts that data should be reported for tarmac delays of one hour or more to reflect a better picture of the tarmac delay problem.

Among U.S. carriers and carrier associations that commented on this proposal, ATA states that it generally supports expanding the reporting carrier pool. RAA, on the other hand, argues that all carriers that are not required to report tarmac delay data under Part 234 should be exempted from this reporting requirement. RAA reasons that the new reporting requirements are not necessary because most carriers, including carriers not covered under Part 234, are already required to retain tarmac delay data for two years. Thus, according to RAA, the Department may request such information for policy-making purpose whenever necessary. Additionally, RAA contends that the Department failed to provide a quantifiable cost/benefit analysis in the NPRM to justify such a requirement. NACA expresses its uncertainty regarding the purpose of requiring smaller carriers (which it defines as those that operate fewer than 25 aircraft) to report tarmac delay data. As a compromise, NACA suggests that carriers should be required to file tarmac delay reports under any rule only if during any given month the occurrences of tarmac delays have exceeded a certain threshold, *e.g.*, more than 10 incidents.

Comments provided by foreign carriers and carrier associations generally oppose this proposal or request that the reporting obligation be limited. Several commenters contend that the Department has not provided justification as to how the proposed data collection from foreign carriers would address the causes of tarmac delays and benefit consumers. Some commenters take the position that requiring foreign carriers to report tarmac delay data is not necessary because international flights operate less frequently than domestic flights and tarmac delay incidents for international flights are rare. Thus, according to these commenters, the cost for carriers to set up a reporting infrastructure outweighs the benefit. Furthermore, they believe it is inappropriate to require smaller

carriers to submit and retain tarmac delay data due to their lesser administrative resources and the small segment of the market these carriers serve. A number of commenters state that tarmac delays usually occur as the result of airport infrastructure problems. Therefore, these commenters believe that the Department should require airports to report this data. Likewise, some carriers argue that the data collected from this proposal is readily available from FAA's Air Traffic Control System Command Center. A few commenters note that the burden on foreign carriers is increased if the Department maintains the proposal that negative reports must be filed when no reportable tarmac delay has occurred during a month.

Qantas and JetStar Airways state that they would not oppose a rule if it imposed the reporting responsibility on operating carriers instead of the marketing code-share partners and limited the reporting fields to the identification of aircraft, airport, relevant times, and a brief explanation for the tarmac delay. They also request that easy methods of report submission should be permitted, such as email submission.

Virgin Atlantic raises the concern that publishing reported data may be misleading to consumers who tend to judge a carrier's performance based on raw tarmac delay records, and overlook the causes for such delay, which could be factors that are not under carrier's control. Lufthansa also requests that any publication of the tarmac delay data by the Department should also include the cause of the delay. National Airlines Council of Canada further states that such misjudgments will cause undue commercial damage to Canadian carriers that face the most challenging weather conditions, which could contribute to more tarmac delays.

Monarch Airlines and TUI Travel contend that foreign charter carriers that operate roundtrip flights to limited U.S. destinations should be exempted from the reporting requirements. In addition to consumers and industry commenters, NBTA and ACI-NA both provided comments in support of the Department's proposal.

*DOT Response:* After thoroughly considering all the comments received, the Department continues to believe that the proposed data collection requirement is crucial to obtaining a more complete picture of the tarmac delays at U.S. airports. Without such data, we do not have adequate statistical foundations to support a determination regarding whether lengthy tarmac delays are or will be a significant

problem for consumers on international flights or charter flights. We reiterate that the causes of lengthy tarmac delays are comprehensive and there is not a universal solution that would cure all problems at all airports. We continue to believe that a more complete picture of lengthy tarmac delays is the first step to obtaining a baseline that the Department can use to analyze the issue by carrier, by region/airport, by month, or by the type of flight, as appropriate.

We note that several recent tarmac delays that attracted significant public attention were international arrivals. Tarmac delays involving international flights, although rare, tend to be particularly lengthy and complicated. In that regard, we reiterate that collecting tarmac delay information for international flights is important. The data that we are seeking to obtain here are not available to us through other means. Commenters are mistaken when they assert that the FAA has this information readily available. Furthermore, the publication of the tarmac delay data would increase public awareness of the issue, providing incentives for airline management to focus on addressing tarmac delay problems.

With respect to whether the costs for foreign carriers to set up the reporting infrastructure justifies the benefits obtained from such reports in light of the relatively less frequent occurrence of tarmac delay incidents on international flights, we note that none of the commenters opposing extension of the reporting requirement to foreign carriers has provided any cost/benefit analysis in support of their position. We understand that most data contained in the reporting fields under this proposal are already collected by the carriers internally. BTS already has a system in place to accept reports electronically. Reporting to the BTS would incur a one-time IT infrastructure setup cost and minimal maintenance expenditure. We do not expect these costs to be significant.

We have also considered some commenters' suggestion that we should not require a negative report to be filed when no reportable tarmac delay occurred during a given month. Based on data submitted by the reporting carriers, during the past six months the total number of tarmac delay incidents that lasted for two hours or more at U.S. airports was less than 0.1% of the total domestic scheduled passenger flights operated by those carriers for each month. We agree that these data indicate that international flights that experience reportable tarmac delays will only represent a fraction of the total number

of flights. As such, the vast majority of carriers filing reports if the rule is adopted as proposed would be filing a negative report for most months. Although negative reports are an effective enforcement tool for ensuring accurate reporting of tarmac delay, we have decided not to require negative reports to be filed, in order to further reduce the carriers' burden in complying with this rule.

With respect to some foreign carriers' suggestion that for code-share arrangements we should require the marketing carrier rather than the operating carrier to file the report, we are of the opinion that it is up to the code-share partners to designate who has the responsibility to file the report. Based on each carrier's resources and ability, it may be more convenient for a foreign carrier to use its U.S. code-share partner to file the reports, but the Department will not dictate which carrier has the reporting responsibility and will hold both marketing and operating carriers legally responsible if data for a reportable tarmac delay are not timely or accurately filed.

Regarding some foreign carriers' comments on roundtrip charter services between foreign points and U.S. destinations, we agree that as long as these flights carry only passengers that originate at a foreign point and do not pick up any U.S.-originating passengers, tarmac delays on those flights will have minimal impact on U.S. consumers. Moreover, the Department is not applying its requirement for carriers to adopt contingency plans for lengthy tarmac delays to such operations. Therefore, we have decided that this reporting requirement should not apply to such flights.

We have also considered some carriers' concern that publishing tarmac delay information may lead the public to compare carriers' performance quality based on the raw data, while carriers may not be at fault for all tarmac delay incidents. We are not convinced that this will create overall false perceptions. The public is generally well informed about the causes contributing to a lengthy tarmac delay, not only through Departmental reports and press releases, but also through supplemental resources such as the media and the Internet. This information will normally enable the public to look beyond the net number of tarmac delays by each carrier. Moreover, carriers are always free to provide the public information about the cause of their tarmac delays, so long as that information is correct and not misleading.

To address the suggestion of some consumer commenters that we should require carriers to report tarmac delays of less than three hours, we note that the three-hour standard is consistent with the current tarmac delay contingency plan regulations and have reached the conclusion that this threshold represents the proper balance between the reporting burden placed on carriers and the benefits to the public. In addition, we do not believe it is necessary to mandate that a detailed explanation for each tarmac delay be filed with the tarmac delay report. Such detailed explanation is of little use to BTS, which is a data collecting and analysis agency. If the Department believes that a particular tarmac delay warrants further investigation, its Aviation Enforcement Office will request information from the carrier, which the carrier is required to retain for tarmac delays of more than 3 hours.

Finally, we would like to provide further clarification regarding the reporting duties for carriers that are currently filing Part 234 Airline Service Quality Performance Reports. According to BTS Technical Directive #20, issued on November 5, 2010, and effective on January 1, 2011, there are 15 U.S. carriers whose domestic scheduled passenger revenues meet the threshold for mandatory filing of Part 234 reports. These carriers are identified as Part 234 "reporting air carriers." The carriers on this list may change from time to time due to carriers' revenue fluctuation and corporate restructuring, and BTS updates the list annually. In addition to the 15 reporting air carriers, Express Jet will submit on-time data under Part 234 in 2011 as a "volunteer air carrier." Although Part 234 only requires data for domestic scheduled passenger flights to and from a large hub U.S. airport, all reporting carriers, including the volunteer air carriers, are currently filing data for all domestic scheduled flights to and from all U.S. airports, including medium, small, and non-hub airports. As long as they continue to do so, they are only required to file tarmac delay data for international and charter flights to a U.S. airport under the new reporting regulation, 14 CFR part 244. However, if any Part 234 reporting carrier decides to report only the minimum required data under Part 234, *i.e.*, on-time performance data for domestic scheduled flights to and from large hub U.S. airports, it must report any tarmac delay of three hours or more for domestic scheduled flights to and from a medium, small, or non-hub U.S. airport under Part 244. The same rationale applies to any volunteer air

carriers under Part 234. If a volunteer air carrier ceases to file any or all reports under 234, it must file tarmac delay data for reportable flights under Part 244. As we have explained in the NPRM, the purpose of Part 244 is to fill in the tarmac delay data gap that is not covered by Part 234. In that regard, no carrier is required to file both Part 234 and Part 244 reports for the same flight.

### 3. Customer Service Plans

#### A. Entities Covered

*The NPRM:* The NPRM proposed to increase the protections afforded consumers in the first Enhancing Airline Passenger Protections rule by requiring foreign air carriers to adopt, follow, and audit customer service plans, as covered U.S. carriers have been required to do since April 2010. We proposed to cover foreign air carriers operating scheduled passenger service to and from the U.S. that use any aircraft designed to have a passenger capacity of 30 or more. We noted that the rule would apply to all flights to and from the U.S. of those carriers, including flights involving aircraft with fewer than 30 seats, if a carrier operates any aircraft with 30 or more passenger seats to and from the U.S. We asked interested persons to comment on whether the proposed requirement for foreign air carriers to adopt, follow and audit customer service plans should be narrowed in any fashion. (*e.g.*, should never apply to aircraft with fewer than 30 seats).

*Comments:* Of the foreign-carrier industry commenters, the majority expressed their strong belief that the customer service plans requirement should not be extended to foreign carriers. IACA states that DOT's regulatory proposals ignore the fact that airlines have designed customer service in a way to attract their customer and asserts that these provisions intervene in the airline's business and service practices. IATA strongly opposes any customer service requirements being imposed on foreign carriers unless those requirements are harmonized with the regulations of other jurisdictions. IACA and IATA also assert that the proposals are extraterritorial in that they would apply to all flights to and from the U.S. and could be interpreted in such a way that these obligations would also cover sales generated outside the U.S. AACO, AEA and ALTA concur with IATA.

Of the foreign air carrier commenters, LAN Airlines (LAN Ecuador, LAN Peru, LAN Argentina), Emirates, and SAS, among others, oppose DOT requiring them to adopt customer service provisions. Swiss International

contends that the application of customer service plans to the conduct of foreign carriers on foreign soil or in foreign airspace poses several issues under U.S. and international law related to extraterritorial application of U.S. regulations. TAP Portugal makes similar comments regarding extraterritorial concerns, as do, among others, Lufthansa and Austrian Airlines. Other carriers, such as British Airways, note that they are already subject to customer service provisions in their own countries (*e.g.* EU provisions) and, therefore, the Department's proposal is unnecessary and redundant, as well as potentially inconsistent with those countries' requirements. Singapore Airlines adds that competition is more effective than government mandates in improving customer service, and the Department does not need to be involved in customer service matters.

All Nippon states that the customer service provisions should apply only to sales made within the U.S. Qantas states that it is not necessary, practical or efficient to require foreign carriers to provide customers with additional or different customer service plans when carriers already have such provisions in place (*e.g.*, Qantas has a Customer Charter on its website) and states that any requirement should be limited to carriers that do not already have a customer service plan in place. JetStar essentially concurs with Qantas. JAL makes similar comments and notes that some of its standards are more stringent than the service requirements proposed and that foreign airlines compete on service and should determine their own service standards. JAL also expresses concern about the potential costs associated with this provision, characterizes it as an intrusive service regulation and states that it is not justified. VivaAerobus opposes the Department requiring small carriers to have a customer service plan. The Washington Aviation Assembly, representing 35 Embassies in the U.S., notes general issues with extraterritoriality, operational consequences for foreign airlines, and the potential economic burden for foreign airlines if they are required to comply with the customer service provisions.

As for U.S. airlines and associations, ATA expresses concern that DOT requiring foreign carriers to adopt a customer service plan could drive foreign governments to retaliate against U.S. carriers operating outside the U.S., which could create conflicting standards and unnecessarily drive additional costs. Among the travel agency interests that commented, ASTA

agrees that customer service plan rules and standards should apply equally to foreign air carriers, with no aircraft-size exceptions. ITSA supports in general the Department's efforts to provide passengers with the means to make better informed decisions and more informed choices in travel.

Commenters on "Regulation Room," who primarily identified themselves as air travelers, generally support DOT's proposal. However, some of those that commented oppose the regulation and fear the costs will be passed on to consumers. The consumer groups that commented on this issue generally supported the provision and note that passengers should have the ability to know that certain customer service standards will be defined and met regardless of the carrier that a passenger chooses to travel on. CTA notes that foreign carriers operating as members of any international airline alliance must be included in these rules. AAPR, Consumers Union and Flyersrights.org generally support the proposal to require foreign air carriers to adopt, follow, and audit customer service plans. NBTA supports extending customer service provisions to foreign carriers using aircraft with 30 or more passenger seats.

*DOT Response:* After fully considering the comments, we have decided to require foreign carriers that operate scheduled passenger service to and from the U.S. using any aircraft with 30 or more seats to adopt, follow and audit customer service plans. As noted previously, a substantial number of passengers travel to and from the U.S. on flights operated by foreign air carriers and the Department continues to believe that it is important to protect these passengers, as well as to be consistent with the application of our consumer protection rules to both U.S. and foreign carriers.

Foreign carriers' and others entities' concerns with extraterritoriality have persuaded us, however, that some clarifications are needed. First, we want to point out that out of the twelve customer service commitments in this final rule, the substance of two of them already applies to foreign air carriers under existing DOT rules, *i.e.*, 14 CFR part 250 concerning passengers who are "bumped" from flights that are oversold and 14 CFR part 382 which addresses air travel of passengers with disabilities. Prior to issuing those final rules, the Department addressed the issue of extraterritoriality and determined how best to apply each of these requirements to foreign air carriers. For instance, the Department determined not to apply its oversales rule to international flights

inbound to the United States and determined not to apply U.S. disability rules to a foreign carrier simply because a foreign carrier's flight between two foreign points carried passengers under a code-sharing arrangement with a U.S. carrier. The manner in which we are applying these existing requirements to foreign air carriers through the customer service commitments is not new and is not an extraterritorial extension of U.S. jurisdiction.

We note also that several of the other customer service commitments are merely reinforcing new requirements imposed elsewhere in this final rule, *i.e.*, 14 CFR 259.8 which addresses notification of delays and cancellations, 14 CFR 259.4 which addresses lengthy tarmac delays, and 14 CFR 259.7 which addresses responding to consumer complaints. Concerns with extraterritoriality are specifically addressed in those sections of this preamble that deal with those issues. In this final rule, for example, we explain in the tarmac delay section that the requirement to adopt and follow a tarmac delay contingency plan applies only to tarmac delay events that occur at a covered U.S. airport. Likewise, we clarify in the section on known delays, cancellations and diversions that the requirement to notify consumers of flight irregularities on a carrier's website and via the carrier's telephone reservation system applies to a foreign carrier only if the carrier markets to U.S. consumers. We also make clear that the requirement to make this information available in the boarding gate areas applies only to boarding gate areas at a U.S. airport. We believe that these types of clarifications address the foreign carriers' main objections, which are the application of the customer service plan to sales made outside the U.S. and to the conduct of foreign carriers on foreign soil.

We have made similar changes to other customer service commitments that involve foreign carriers' websites and reservation centers to ensure that we are not applying U.S. rules to a foreign carrier when that carrier does not market its services to the U.S. For example, the customer service commitment to disclose, among other things, cancellation policies and frequent flyer rules on the selling carrier's website and upon request from the selling carrier's telephone reservations staff or the commitment to disclose the availability of the lowest fare on a carrier's website or through its reservation center will apply to a foreign carrier only if it markets its services to U.S. consumers. We are also making changes to the customer service

commitments related to services to be provided generally or services to be provided at the ticket counter and boarding gate area to specify that such action is required only at U.S. airports.

Finally, we want to clarify that for purposes of this section, except as otherwise provided in individual customer service provisions in this section, a "flight" that a foreign carrier operates to and from the U.S. means a continuous journey in the same aircraft or with one flight number that begins or ends at a U.S. airport. For example, if a carrier were to operate flight 100, a direct flight from San Francisco to Singapore with a stop in Hong Kong, the customer service plan applies to both segments of this flight with respect to U.S.-originating passengers. It would not apply to any Hong Kong originating passengers who board the aircraft there and go to Singapore. On the reverse routing, the plan would apply to passengers who board in Singapore or Hong Kong and travel to the U.S.; it would not apply to passengers boarding in Singapore whose destination is Hong Kong. Temporarily deplaning at the intermediate stop on a direct flight (Hong Kong in the above example) does not break the journey for purposes of the applicability of the customer service plan requirements for passengers who re-board and continue on that same flight operation. If an international passenger whose journey originates or terminates in the U.S. makes a connection to a flight with a different flight number, the carrier's customer service plan applies only to the direct flight to or from the U.S. In the case of change of gauge, all flight segments with the same flight number that begin or end in the U.S. are covered by the Customer Service Plan even if passengers must change aircraft due to a change of gauge.

As for the comments concerning the cost involved in adopting customer service plans, we note that a number of carriers state that they already have customer service plans or similar plans in place and that these plans contain provisions similar or more stringent than those the Department is requiring them to adopt, or that their governments have similar requirements. To the extent provisions in existing plans are more stringent than the minimum standards set in this rule, carriers are encouraged to continue to apply these more stringent provisions. To the extent provisions in existing plans vary from our requirements, even if they are similar to them, it does not seem overly burdensome for a carrier to amend those plans with respect to flights to and from the U.S. to comply with this rule. Also, while we understand that some foreign

countries have rules requiring customer service standards in air carriage, we are not aware, nor are we convinced based on the comments received, that any of those rules or standards conflict with the requirements of this provision in a manner that would prevent a carrier from complying with both requirements.

#### B. Content of Customer Service Plan

*The NPRM:* In the NPRM, we noted that under the final rule published on December 30, 2009, U.S. carriers are required to adopt customer service plans for their scheduled flights that address, at a minimum, the following service areas: (1) Offering the lowest fare available; (2) notifying consumers of known delays, cancellations, and diversions; (3) delivering baggage on time; (4) allowing reservations to be held or cancelled without penalty for a defined amount of time; (5) providing prompt ticket refunds; (6) properly accommodating disabled and special-needs passengers, including during tarmac delays; (7) meeting customers' essential needs during lengthy on-board delays; (8) handling "bumped" passengers in the case of oversales with fairness and consistency; (9) disclosing travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration; (10) ensuring good customer service from code-share partners; (11) ensuring responsiveness to customer complaints; and (12) identifying the services they provide to mitigate passenger inconveniences resulting from flight cancellations and misconnections. We proposed to extend the requirement to address these twelve subjects in the customer service plan to foreign air carriers and requested comment on whether any of these subjects would be inappropriate if applied to a foreign carrier.

The NPRM also proposed to require that U.S. and foreign carriers' customer service plans meet minimum standards to ensure that the plans are specific and enforceable. The minimum standards that we proposed are as follows: (1) Offering the lowest fare available 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; (2) notifying consumers in the boarding gate area, on board aircraft, and via a carrier's telephone reservation system and its website of known delays, cancellations, and diversions; (3) delivering baggage on time, including making every reasonable effort to return mishandled baggage within twenty-four hours and compensating passengers for reasonable expenses that result due to delay in delivery; (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; (5) where ticket refunds are due, providing prompt refunds for credit card purchases as required by 14 CFR 374.3 and 12 CFR part 226, and for cash and check purchases within 20 days after receiving a complete refund request; (6) properly accommodating passengers with disabilities as required by 14 CFR part 382 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 14 CFR 259.4 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 14 CFR part 250 and as described in each carrier's policies and procedures for determining boarding priority; (9) disclosing cancellation policies, frequent flyer rules, aircraft 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 good customer service from code-share partners operating a flight, including making reasonable efforts to ensure that its code-share partner(s) have comparable customer service plans or provide comparable customer service levels, or have adopted the identified carrier's customer service plan; (12) ensuring responsiveness to customer complaints as required by 14 CFR 259.7; and (13) identifying the services it provides to mitigate passenger inconveniences resulting from flight cancellations and misconnections.

In addition, we invited comment on whether the minimum standards for any of the subjects contained in the customer service plans should be modified or enhanced in some way. With regard to delivering baggage on time, we solicited comment on whether we should also include as standards (1) that carriers reimburse passengers the fee charged to transport a bag if that bag is lost or not timely delivered, as well as (2) the time when a bag should be considered not to have been timely delivered (e.g., delivered on the same or earlier flight than the passenger, delivered within 2 hours of the passenger's arrival). With regard to providing prompt refunds, we sought comment on whether we should also include as a standard that carriers refund ticketed passengers, including

those with non-refundable tickets, for flights that are canceled or significantly delayed if the passenger chooses not to travel as a result of the travel disruption. In addition, we requested comment on whether it is necessary to include as a standard the requirement that when a flight is cancelled carriers must refund not only the ticket price but also any fees for optional services that were charged to a passenger for that flight (e.g., baggage fees, "service charges" for use of frequent flyer miles when the flight is canceled by the carrier). With respect to notifying passengers on board aircraft of delays, we sought comment on how often updates should be provided and whether we should require that passengers be advised when they may deplane from aircraft during lengthy tarmac delays.

Finally, we requested comment as to whether it is workable to set minimum standards for any of the subjects contained in the customer service plans and invited those that oppose the notion of the Department setting minimum standards for customer service plans as unduly burdensome to provide evidence of the costs that they anticipate. We also sought comment on whether the Department should require airlines to address any other subject in their customer service plans. We specifically asked if mandatory disclosure to passengers and other interested parties of past delays or cancellations of particular flights before ticket purchase should be a new subject area covered in customer service plans.

*Comments:* U.S. carriers and carrier associations are generally opposed to the Department setting minimum standards for the customer service plans, particularly if the Department requires that the plans be incorporated into the carriers' contracts of carriage. ATA notes that, although U.S. carriers are already required under the current regulation to address each of the proposed customer service plan topics, the current regulation does not mandate minimum requirements and allows carriers to set their own standards for their customer service plans based on their own particular circumstances. ATA asserts that for the Department to set the minimum standards for carriers' plans would face a major change to existing carrier policies in areas where U.S. carriers currently compete and could dampen innovation, harm competition and reduce the flying public's options. Many U.S. carriers concur with ATA.

RAA is opposed not only to the establishment of minimum standards but also to any continued requirement for its members to adopt customer

service plans. RAA explains that most regional carriers do not offer fares, take reservations, ticket passengers, receive payment from passengers, provide refunds to passengers, or have their own frequent flyer rules or cancellation policies. RAA maintains that the subjects to be addressed in the customer service plan would be inappropriate if applied to an airline that does not hold out, market, sell tickets for its operations and asks that the customer service requirements apply only to carriers that hold out, market, sell and ticket air transportation.

Most foreign carriers and carrier associations expressed strong opposition both to the requirement to have a customer service plan and for that plan to meet minimum standards set by the Department. A number of foreign carriers such as Air Berlin and associations such as IATA and IACA raised the issue of extraterritoriality and argued that the Department was overreaching as the customer service requirements could be interpreted in such a way as to cover sales generated outside the U.S. and to cover the conduct of foreign carriers on foreign soil or in foreign airspace. There were also assertions that the Department's regulatory proposals ignore the fact that airlines have designed their customer service initiatives in a way to attract customers and the fact that carrier customer service plan provisions are a way for carriers to differentiate their services. South African Airways contends that prescriptive regulations should not take the place of competitive forces, especially when there is no evidence of market failure. Virgin Atlantic, while agreeing that defining a baseline standard is acceptable, states that forcing all carriers to be the same denies them the right to compete commercially and does not allow carriers to innovate.

Others raised the existence of customer service requirements imposed by other entities as a reason for the Department not to issue a rule in this area. For instance, Air France and KLM state that the customer service proposals should not be finalized as to EU carriers where they are inconsistent with or more stringent than EU regulations. Still other foreign carriers raised concerns that some of the minimum service levels are impracticable for a carrier to meet (for example, if a carrier sells a number of tickets via a travel agent and the passenger contact information is not passed on then the carrier may not have that passenger's contact information in order to advise them of a change in itinerary). Some carriers also expressed concerns that certain provisions may be

outside of a carrier's control (e.g., "good customer service" from a code-share partner).

Travel agent organizations such as ASTA and consumer groups such as AAPR, Flyersrights.org, NBTA, and CTA all support requiring carriers to adopt customer service plans and for those plans to meet the minimum standards as proposed in the NPRM. Most individual commenters also support these DOT proposals, but a few oppose the regulation as burdensome and fear the costs will be passed on to consumers. Many "Regulation Room" commenters want the Department to go further in setting minimum standards and prohibiting certain practices.

The Department received a number of comments on some of the minimum standards proposed to be included in the customer service plans as well as some of the questions we posed on modifying or enhancing these standards and we address those issues more fully below.

#### 1. Offering the Lowest Fare Available

Many foreign air carrier associations, including AACO and NACC, contend that requiring carriers to offer the lowest fare 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 make a reservation would interfere in airline business practices. ALTA seeks clarification on the meaning of "offering the lowest fare available" and asserts that a "one size fits all" fare will prejudice passengers by increasing fares and limiting competition.

Among the foreign air carriers that commented, Cathay Pacific states it can only publish the fare at the time a request is made, as fares are driven by complex inventory and fare managing systems and a fare guarantee cannot be made. JetStar basically concurs and states that the proposal fails to take account of legitimate distribution and pricing practices. Qantas strongly opposes this requirement on the basis that it fails to take into account the numerous possible options and fare constructions that may be applicable to a consumer, and there may be a false perception that a carrier is not quoting the best price when the lowest priced inventory sells out. It is also concerned that carriers will not be able to enforce the proposed requirement against ticket agents and should not be responsible for ticket agent actions. British Airways states that it offers the lowest fare that meets customers' needs and its website allows consumers to find the lowest fare. Similarly, JAL states that it already offers the lowest fare on its website, at

the ticket counter and via telephone reservations as appropriate. Singapore Airlines states that, if this requirement is adopted, the Department should confirm that this provision is intended to conform with ATA's Customers First initiative and should make it clear that the airline does not have to offer to a customer shopping via one point-of-sale the lowest fare available in any channel.

Of the U.S. carriers that commented, Spirit Airlines (Spirit) opposes a requirement that all fares available on its website should be made available through its telephone reservation service. Should DOT impose such a standard, it must be limited to a carrier's generally available fares and not apply to special sales fares because many of these lower fares cannot be purchased over higher-cost channels.

#### 2. Allowing Reservations To Be Held at the Quoted Fare

A number of foreign carriers and carrier industry groups also expressed serious concerns with the proposal to allow 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 and thought this provision may lead to inconsistent sales policies. For example, Air New Zealand strongly opposes this provision because it takes inventory off the market for the duration of the refund period, blocking it from sale to other customers and risking that the seat may not be sold again. The carrier points out that passengers have the option to buy refundable fares, and choosing whether to allow a passenger to hold a reservation without payment is a commercial decision. Air France and KLM oppose this proposal primarily for the reasons stated above, as does Qatar Airways. Alitalia opposes this proposal and thinks the airline should be the party that establishes commercial terms and conditions with its customers. Singapore Airlines states that it is not set up to permit reservation holds and reprogramming the system to do so is costly. It also notes that this proposal interferes with the free market and deprives other passengers of the lowest fare, as well as compromises an airline's ability to adjust to overnight currency fluctuations. British Airways notes that its current selling systems do not allow for reservations to be held without penalty, but passengers that book via call centers have a "24 hour cooling off" period. It also states that consumers that visit BA.com have several opportunities to review exactly what they are booking and to confirm knowledge of details prior to booking.

ATA strongly objects to a CSP proposal that would require a carrier to hold a reservation “at the quoted fare” for 24 hours for the following reasons: it eliminates the carrier’s ability to sell these seats to another willing buyer; the DOT has not demonstrated a market failure that merits this action; a consumer could hold a reservation during the last 24 hours and then cancel, resulting in a seat that will never be sold; and this requirement would effectively prevent re-pricing, which ordinarily happens multiple times a day.

Of the U.S. carriers that commented, US Airways does not support adoption of a 24-hour standard as a rigid rule. The carrier suggests that DOT allow airlines flexibility to restrict refunds in certain situations in order to assure that the largest number of potential passengers have access to seats. Spirit states this proposal is an effort to impose on all airlines a practice that was common prior to deregulation. As a low cost carrier, it states that almost all low-fare carriers require payments at time of booking to guarantee the fare and that making tickets non-refundable is a practice that is critical to its ability to keep fares low. Should a consumer choose to, he or she can buy refundable tickets at a higher price. The carrier states that travel agents that book via global distribution systems (GDS) can hold a reservation (space only) for 24 hours without penalty and Spirit offers a 24 hour courtesy refund for bookings made via GDS, but no other procedure for refunds via travel agents can be accomplished due to limited GDS functions. In order to comply with this provision, Spirit states that it would have to substantially change its business model and incur large IT cost.

Hawaiian Airlines (Hawaiian) notes that it has “on-demand” or “walk-up” flights that run on a high frequency basis. As proposed, this provision would put the carrier in the position of turning inventory over to passengers who will make several reservations for a flight (within a 24 hour time period) but will pay for only one of the reservations, even though Hawaiian must retain a seat for them on each flight. It notes the rule could result in forcing Hawaiian to oversell flights to protect against the loss of seats and revenue. The carrier suggests the proposal be modified to allow customers to hold seats for 24 hours up until 72 hours before the departure of the flight. Similar to Hawaiian, JetBlue suggest that the proposal be modified and that the “24 hour rule” apply not later than 120 hours prior to departure for carriers that have a no oversales

policy. JetBlue explains that it does not oversell seats on its flights and it is the company’s policy not to issue refunds to passengers that cancel their reservations (in return for a guaranteed seat on the flight). It notes that the proposal would allow customers to hold a reservation without making a financial commitment and could cause lower load factors, which would threaten JetBlue’s business model. ASTA supports the 24 hour “reservation hold” rule applying to travel agent bookings.

### 3. Refunding the Ticket Price for Flights That Are Canceled or Significantly Delayed

In discussing a commitment to provide prompt refunds, we asked for comments on whether we should require carriers to refund the ticket price for flights that are canceled or significantly delayed if the passenger chooses not to travel as a result of the travel disruption. ATA opposes including as a standard in the customer service plan a requirement that carriers automatically provide ticketed passengers holding non-refundable tickets a refund for flights that are canceled or significantly delayed. ATA notes that the regulatory effort to redefine restricted tickets as fully refundable even when cancellation is desirable due to impending weather or government order would impose obligations not present in any other mode of transportation. ATA adds that in most cases passengers on a cancelled flight are accommodated soon after the originally scheduled flight. In addition, ATA provides the following reasons for its opposition:

- The cause of the delay could be out of the carrier’s control;
- Carriers often allow free rebooking for significant delays or cancellation;
- This is a marketplace issue;
- Imposing mandatory refunds when a passenger chooses not to fly would convert all tickets in cancel or delay situations to fully refundable tickets;
- Passengers have a choice of what type of ticket to buy; and
- The DOT is not authorized to interfere in the marketplace in this manner.

Of the foreign carriers and carrier associations that commented, AACO asserts that this provision intrudes in business practices and raises a risk that carriers cannot resell the seat post-cancellation. NACC is also concerned about this proposal. Malaysia Airlines strongly opposes this proposal because delays are often beyond airlines’ control and carriers already make efforts to mitigate their impact. Similarly, Qantas

states that cancellations may also be out of the carrier’s control.

Lufthansa and Austrian state that, if imposed, the final rule should allow carriers to accommodate passengers in ways other than refunding the fare. JetStar contends that it is unfair to place the entire burden of costs of unforeseen delays and cancellations on the carriers and states that mandatory refunds may result in the operation of delayed flights empty or at a net loss. The carrier also believes that it is not unfair or deceptive for consumers to share some of the risk in return for lower priced non-refundable tickets, provided fare rules are disclosed prior to purchase. VivaAerobus states that it is a no frills ultra low-fare carrier that only sells non refundable tickets and its policy is disclosed on its website so customers can comparatively shop prior to purchase. The carrier asserts that it never overbooks flights and contends that it cannot give refunds.

Of the U.S. carriers that commented, US Airways notes that many of its tickets are fully refundable and consumers that purchase non-refundable tickets are clearly informed of the risk. While the carrier supports the Department’s efforts in the NPRM to enhance disclosure, it does not think DOT should restrict options available to passengers or competition among carriers by requiring refunds of non-refundable tickets. Spirit Air opposes requiring carriers to make refunds to passengers who choose to purchase non-refundable tickets but decide not to fly because of a flight cancellation or significant delay. Rather, Spirit gives passengers the option of re-accommodation or a voucher or refund, or a passenger can purchase travel insurance.

Of the consumers and consumer organizations that commented on this issue, Flyersrights.org thinks tickets should be refunded if the flight is cancelled or significantly delayed for reasons within the airline’s control. However, it is concerned about passengers who don’t receive refunds of taxes and fees collected by the government for services passengers do not receive due to cancelled reservations. Some “Regulation Room” commenters favor airlines providing full refunds as well as reimbursement for hotel rooms and meals if there is a significant flight delay.

With regard to defining a “significant delay” for purposes of ticket refunds, ATA opposes any definition of “significant” delay that would create a single government standard and eliminate a carrier’s latitude to create its own policies on non-refundable tickets

that serve customer and commercial needs. It reiterates that the application of non-refundable tickets and carrier policies to re-accommodate passengers during an event beyond the carrier's control is best left to the marketplace in a deregulated industry, which will leave customers with more options. Of the foreign carriers that commented on defining a "significant delay," Cathay Pacific states the Department should take into account the length of delay, length of the flight and the circumstances. The longer the flight, then the greater the tolerance should be for the delay. TAP Portugal makes a similar comment and states that the definition should depend on the duration of the flight. It also notes that long-haul flights can make up for delays while in the air. Some commenters on "Regulation Room" suggest that any delay over three hours is "significant," while others note they are willing to let the Department define the term.

#### 4. Refunding Fees for Optional Services for Flights That Are Canceled

In discussing prompt refunds, we specifically asked for comments on whether we should require, as part of any refund due a consumer, a refund of any optional fees charged a passenger in connection with the flight in question. ATA opposes including as a standard in the customer service plan that when a flight is cancelled carriers must refund not only the ticket price but also any fees for optional services that were charged to a passenger for that flight. ATA states that its members object to the Department's concept that cancellation in itself should create a right to the refund of optional fees. It urges the Department to clarify that a carrier has the opportunity to accommodate a passenger with other transportation options after a cancellation, instead of automatically refunding a ticket and ancillary fees. ATA also asks the Department to clarify that the proposed customer service plan requirement to provide prompt refunds "where ticket refunds are due" is meant to include only those situations where the passenger is unable to fly due to the carrier's decision to cancel. US Airways supports refunding fees for optional services for flights that are canceled, but only in cases where the services in question are not ultimately provided (e.g. baggage fees, seating fees). It asks the Department to clarify that if the services are provided, refunds are not mandated. Among the foreign carriers and carrier associations that commented, AACO states that fees should not be reimbursed for the ticket and ancillary services that have been

provided. Malaysia Airlines also states that this proposal should not require refunds of fees for services already delivered. ASTA thinks mandated refunds should include "optional fees" paid by a passenger.

#### 5. Delivering Baggage on Time, Compensating Passengers for Expenses Due To Delay in Delivery of Baggage and Refunding Baggage Fees

Of the foreign air carriers and industry groups that commented, AACO states that the Department needs to define what "on time" delivery of baggage means and opposes any requirement that airlines bear the sole responsibility for areas of business that other parties have control over (e.g. bags may be handled by airport or TSA). Air Berlin notes that international baggage compensation is already governed by the Montreal Convention. South African Airways states that the proposal does not address Montreal or Warsaw and asks DOT to confirm that the rule does not apply where either Convention controls. Singapore Airlines offers similar comments. Air France and KLM state that the NPRM does not take into account vast differences between long-haul international flights and domestic U.S./transborder flights, and as such, returning bags within 24 hours may be impossible due to limited frequencies to a specific destination, absence of local services, and/or a passenger with a multi-stop and multi-country itinerary.

Among the U.S. industry groups and air carriers, US Airways believes that, before advancing new proposals in this area, DOT should articulate any additional facts warranting action beyond steps that the Department has already taken. It asserts that it is neither possible nor desirable to set a uniform maximum time for delivery of delayed bags or to impose remedies for failure to make delivery within a time frame because there are too many variables involved, and asks that the Department seek more input from stakeholders involved. Spirit Airlines notes that Part 254 already requires airlines to compensate passengers and airlines have incentives to locate and return bags. It also states that "every reasonable effort" to return bags is a vague standard, and points out that there is no evidence that the current rules are inadequate or passengers are being treated unfairly or with deception.

ATA notes that its members oppose including as a standard in the customer service plan that carriers reimburse passengers the fee charged to transport a bag if that bag is lost or not timely delivered. ATA states that bag fees are a competitive issue and whether a

carrier chooses to refund a fee in all instances is a matter the marketplace should determine. Spirit also opposes such a requirement although it notes that its policy is to refund fees when there is a delay in delivery.

Flyersright.org states that fees should be refunded if the bag is not delivered on the same flight or an earlier one.

#### 6. Notifying Passengers of Past Delays and Cancellations Prior to Ticket Purchase

We already require the reporting carriers (i.e., largest U.S. carriers) to provide delay and cancellation information on their websites and upon request provide consumers on-time performance information during oral reservations. We asked for comment on whether all carriers required to have a customer service plan should be required to disclose past delays and cancellations of flights to consumers before the latter purchase a ticket. Many carriers oppose having a customer service commitment on disclosure to passengers of past delays or cancellations of particular flights before ticket purchase and do not see the need for it. They assert that past performance is not necessarily indicative of future performance. Swiss International also states that, if imposed, the requirement to disclose past delay and cancellation information should not apply to reservations agents via telephone because foreign carriers utilize call centers that often work with multiple carriers and the proposal is not feasible. Cathay Pacific does not support mandatory disclosure of past delays and cancellations before ticket purchase for international flights that have limited operations, but notes that for domestic services operated more frequently there may be value. ATA members oppose additional information notices regarding past flight delays or cancellations before purchase of a ticket, as the Department has recently adopted new flight information requirements and in accordance with those rules, the public will have access to information on flight delays, cancellations, and flights 30 minutes late more than 50% of the time before purchase on the largest U.S. carriers' websites. Of the U.S. carrier commenters, US Airways notes, similar to ATA, that this information is available on the carrier's website and that is sufficient to provide consumers with information. It also asserts that historic data is unreliable, the current rule is new and more time is needed to see how effective it is prior to initiating new rules, and DOT already decided further disclosures were not required.

## 7. Other Customer Service Provisions

With regard to the customer service requirement to notify consumers of itinerary changes in a timely manner, British Airways expressed support for this provision, but thinks it should be limited to passengers for which the carrier has reliable contact information. In situations where a passenger books his/her ticket through a travel agent, British Airways states that the travel agent and not the carrier should be held responsible for notifying the passenger of any itinerary changes. With respect to disclosing aircraft configuration, among other things, to consumers on the selling carrier's website and upon request from the selling carrier's telephone reservations staff, Singapore Airlines contends that there is no reason for its telephone reservations staff to provide this information as its customers can find this information on the carrier's website. With regard to responding to consumer complaints, Air Berlin is concerned that as drafted the proposed definition would obligate a carrier to react to complaints from non-passengers.

As for the requirement to ensure "good customer service" from code-share partners, a number of carriers and carrier associations expressed concerns with the definition of "ensuring good customer service" as it relates to code-share partners and claim that they cannot be held responsible for code-share partners' actions. More specifically, NACC contends that the provision to have "comparable service plans" could be an extraterritorial application of law if applied to more than flight segments to or from a U.S. airport. It states that the requirement to have comparable service is too prescriptive and is an unwarranted interference in commercial relationships, and may discourage such arrangements, leading to less flexibility and network connectivity. NACC also expresses concerns that aligning customer service plans with code-share partners may raise anti-trust issues. JetStar does not support requiring code-share participants to adopt each other's customer service plans or align their service levels and states that this is an issue of competition best left to the marketplace. It also notes that the marketing carrier has the primary relationship with the consumer. US Airways states that DOT should not adopt rules that marketing carriers are responsible for violations by operating carriers and says that marketing carriers cannot control the application of uniform standards of all operating carriers with which they work.

*DOT Response:* Having fully considered the comments, the Department has decided to adopt a final rule largely along the lines set forth in the NPRM, with some clarifications to address comments received about extraterritorial application of U.S. law and the appropriateness of individual customer service commitments. In adopting this approach, we believe that our action strikes a proper balance between ensuring that the traveling public is provided an adequate level of service and is not subjected to unfair or deceptive practices, while ensuring the marketplace governs to the extent possible. We also view our approach as striking the proper balance between protecting consumers on nearly all flights to and from the United States by requiring not just U.S. carriers but also foreign carriers to adopt and adhere to customer service plans, while ensuring that these requirements do not involve an extraterritorial application of U.S. law by limiting their application to foreign carriers to flights to and from the U.S., sales made within the U.S., and to the conduct of foreign carriers on U.S. soil.

Under the final rule, foreign carriers are required to address the same subjects in their customer service plan as U.S. carriers. The final rule also establishes minimum standards for the customer service plans of both U.S. and foreign carriers. In making this decision, we note that carriers are already required to address a number of the subjects and comply with the minimum standards imposed for these subjects through existing requirements [e.g., 14 CFR part 250, Part 254 (for U.S. carriers), and Part 382] or requirements imposed by other sections of this rule (e.g., 14 CFR 259.4, 259.7, and 259.8). Additionally, based on the comments received, many carriers already address many of the requirements in the customer service plans and, in some cases, their customer service commitment is more stringent than those we are adopting. Consequently, we are not persuaded that it would be unduly burdensome for carriers to adopt and adhere to these standards.

Commenters have convinced us that it is not appropriate to require U.S. or foreign air carriers to include in their customer service plans a commitment to ensure good customer service from their code-share partners by making certain that code-share partners have comparable customer service plans or provide comparable customer service levels. We agree with commenters that the requirement for code-share partners to have comparable service may unnecessarily restrict the marketplace

and may unduly discourage code-sharing arrangements. We have also decided against requiring covered carriers to include in their customer service plans an assurance that they will notify consumers of past delays and cancellations. We are persuaded that the current availability of data about past delays and cancellations provided by the largest U.S. carriers on their websites as a result of action of our recent consumer rulemaking is sufficient and additional requirements in this area would not materially benefit consumers.

While, as noted above, the Department has decided to establish minimum standards for the customer service plans of both U.S. and foreign carriers, we are modifying or clarifying a few of these standards based on comments received. For example, we are clarifying, as requested by U.S. and foreign carriers and associations, that the requirement to compensate passengers for reasonable expenses that result due to delay in baggage delivery comports with 14 CFR part 254 for domestic transportation and applicable international agreements for international transportation. We are also adding as a standard that carriers must reimburse passengers for any fee charged to transport a bag if the bag is lost. We have decided against requiring carriers to reimburse passengers for any fee charged to transport a bag that is not timely delivered. Arguably, as is the case with transporting passengers themselves, while delay in receiving baggage may be inconvenient, once the carrier delivers a bag the service has been performed. Consumers may, of course, seek reimbursement for damages caused by delay in the delivery of their baggage by filing a claim with the airline or, if dissatisfied with the airline's resolution of the matter, with an appropriate civil court.

With regard to carriers' obligation to notify passengers of known delays, cancellations and diversions, we specify that the minimum standard required to comply with this obligation is met through compliance with a requirement imposed elsewhere in this final rule, i.e., 14 CFR 259.8. Under section 259.8, we explain that the obligation to notify passengers of delays applies only to delays of 30 minutes or more and that the carrier has the obligation to inform passengers of such delays, cancellations and diversions within 30 minutes of the carrier becoming aware of a change in the status of a flight. We also explain that carriers must inform consumers of cancellations and delays of 30 minutes or more and diversions in the boarding gate area at U.S. airports, on board

aircraft, via a carrier's telephone reservation system and on its website, and through whatever means made available by the carrier for passengers who subscribe to the carrier's flight status notification services.

With respect to providing prompt refunds, we conclude that the obligation to provide such refunds applies not only to refunding the basic price of a ticket but also to refunding optional fees charged to a passenger for services that the passenger is unable to use due to an oversale situation or a flight cancellation. For example, if a passenger pays for premium economy seating, but his flight is canceled or oversold and that seating is not available on the flight that he/she has agreed to be re-routed on, then the carrier must promptly refund the passenger the fee paid for the premium seating. In adopting this requirement, the Department believes it is unfair for a carrier to refuse to provide a refund to a passenger of fees paid for services not provided through no fault of the passenger.

We continue to believe that there are circumstances in which passengers would be due a refund, including a refund of non-refundable tickets and optional fees associated with those tickets due to a significant flight delay. However, we have been persuaded by industry commenters that the Department should not adopt a strict standard of what constitutes a significant delay as such a delay is difficult to define. We agree with the contention of carriers and carrier associations that the definition of a significant delay depends on a wide variety of factors such as the length of the delay, length of the flight and the passenger's circumstances. The Department's Aviation Enforcement Office will continue to monitor how carriers apply their non-refundability provision in the event of a significant change in scheduled departure or arrival time, and will determine on a case by case basis based on the facts and circumstances of the delay whether a failure to provide a refund in response to such a delay is an unfair and deceptive practice.

We reject some carriers' and carrier associations' assertions that carriers are not required to refund a passenger's fare when a flight is cancelled if the carrier can accommodate the passenger with other transportation options after the cancellation. We find it to be manifestly unfair for a carrier to fail to provide the transportation contracted for and then to refuse to provide a refund if the passenger finds the offered rerouting unacceptable (e.g., greatly delayed or otherwise inconvenient) and he or she

no longer wishes to travel. Since at least the time of an Industry Letter of July 15, 1996 (see <http://airconsumer.dot.gov/rules/guidance>) the Department's Aviation Enforcement Office has advised carriers that refusing to refund a non-refundable fare when a flight is canceled and the passenger wishes to cancel is a violation of 49 U.S.C. 41712 (unfair or deceptive practices) and would subject a carrier to enforcement action.

We also have determined to modify the standard regarding the availability of the lowest fare from what was proposed in the NPRM. In the NPRM, we proposed that a carrier offer the lowest fare available 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. Having taken into consideration the comments received about how this requirement could unduly interfere with airline business models by requiring airlines offer to a consumer shopping via one point-of-sale the lowest fare available via any channel, we are modifying this provision to require carriers to disclose to consumers who contact the carrier through any of these mediums that a lower fare may be offered by the carrier through another channel (for example, the carrier must reveal via its telephone reservation service that a lower fare may be available on the carrier's website if that is the case). Of course, wherever the carrier offers its lowest fare, the carrier should not state that the lowest fare may be available elsewhere as such a statement would likely confuse consumers and could result in increased search time by consumers for a nonexistent lower fare. In sum, we are not requiring carrier personnel to offer the lowest fare available via whatever sales channel a consumer chooses to use, but to inform all of its customers and prospective customers that a lower fare may be available elsewhere in the carrier's systems in order to give the consumer the opportunity to locate a lower fare offered by that carrier.

We have also decided to modify the customer service proposal which would require carriers to allow 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. We agree with commenters who expressed concerns that allowing consumers to hold a seat without payment for twenty-four hours could result in loss of sales and revenue by carriers and prevent other passengers from purchasing the seat if the seat is not released in a timely manner prior to the flight. We find persuasive the

comments submitted by JetBlue and Hawaiian Airlines suggesting that a set point in time should exist after which carriers would no longer be required to hold a passenger's reservation in order to give the carrier a more realistic opportunity to sell that seat in the final days before the flight departs. Accordingly, we are modifying this provision to require carriers to hold the reservation for twenty-four hours only if a consumer makes the reservation one week (168 hours) or more prior to a flight's scheduled departure. After that time, a carrier is no longer required to hold a reservation without payment for any period of time. The Department believes that this modification strikes the right balance between a consumer's desire to make travel plans and shop for a fare that meets his or her needs, and the carrier's need for adequate time to sell seats on its flights.

As for the remaining seven customer service requirements, we received very few comments on them and we are adopting them as proposed in the NPRM. These seven customer service requirements pertain to accommodating passengers with disabilities, meeting customers' essential needs during lengthy tarmac delays, handling "bumped" passengers with fairness and consistency, disclosing cancellation policies, frequent flyer rules, aircraft configuration, and lavatory availability, notifying consumers of changes in their travel itineraries, ensuring responsiveness to customer complaints, and identifying the services the carrier provides to mitigate passenger inconveniences resulting from flight cancellations and misconnections. In adopting these customer service commitments as proposed, we note our disagreement with comments stating that the requirement for carriers to notify consumers of itinerary changes should be limited to passengers who book their tickets directly with the carrier and not apply to passengers who book their tickets through a travel agent. A passenger has a right to know and benefit from knowing about changes in his/her itinerary whether that person purchased the ticket directly from a carrier or from a travel agent. We also disagree with comments that the disclosure of aircraft configuration be limited to the selling carrier's website. While most consumers will have access to the Internet and be able to obtain this information from carriers' websites, we also see benefit in requiring that aircraft configuration information be made available upon request from the selling carrier's telephone reservations staff, particularly for those passengers who do

not have access to the Internet or are not familiar with how to use it. With regard to the concern expressed by a carrier that it may be required to respond to complaints from non-passengers, we want to point out that "complaint" is defined in section 259.7 as a specific written expression of dissatisfaction concerning a difficulty or problem which a person experienced when using or attempting to use an airline's services.

#### C. Self-Auditing of Plan

*The NPRM:* The NPRM proposed that foreign air carriers audit their adherence to their customer service plan annually and make the results of their audits available for the Department's review upon request for two years following the audit completion date. U.S. carriers are already required to self-audit their plans and to make the audit results available for the Department's review upon request for two years.

*Comments:* Of the foreign carriers that commented, TAP Portugal opposes self-auditing and contends that it is too burdensome to audit a dozen service standards, some of which involve hundreds of activities performed on a daily basis. Similarly, British Airways opposes self-auditing customer service plans on the basis that the plans cover many services and involve different departments that are responsible for these services, and as such would necessitate coordination at significant additional costs. Qatar Airways states that global surveys regarding customer service standards already exist and audits specific to a limited number of international routes will not add value to consumers. Swiss International and Air Tahiti note that there is no guidance as to what a "self-audit" requires.

A business travel organization supports requiring audits and states that its travel managers can provide their clients better protection on flights to and from the U.S. if they have this information available. Of the consumer groups, Flyersrights.org supports requiring foreign air carriers to audit customer service plans and thinks failure to adopt a plan, adhere to it, and make audit results available should be considered an unfair and deceptive practice.

*DOT Response:* We have decided to adopt the self-auditing requirements as proposed in the NPRM. The final rule requires each carrier to audit its own adherence to its plan annually and to make the results of each audit available for the Department's review upon request for two years afterwards. The Department believes that a system for verifying compliance with the customer

service plans is essential. As noted in the first rule to enhance airline passenger protections, we believe that requiring covered carriers to audit their plans annually will further ensure that carriers will live up to their commitments. It will also enable an airline to quickly take action if it learns that it is not in compliance with its customer service plans or if it is not effectively implementing its plan. A self-audit is essentially a system for the carrier to verify its compliance with its customer service plan. We are not requiring that such audits be conducted "at similar times in the year" or even that there be a single unified audit of all the subjects covered in the customer service plans, in order to allow each airline the flexibility to design an audit program that fits its particular operational environment.

#### 4. Contracts of Carriage

*The NPRM:* This NPRM was the second time that the Department proposed requirements regarding incorporation of tarmac delay contingency plans and customer service plans into carriers' contracts of carriage. In December 2008, the Department published in the Federal Register an NPRM proposing to require U.S. carriers to incorporate their tarmac delay contingency plans and customer service plans in their contracts of carriage, and make their contracts of carriage available on their websites. In December 2009, the Department issued a final rule where it decided not to require such incorporation. Instead, the Department strongly encouraged carriers to voluntarily incorporate the terms of their contingency plans and customer service plans in their contracts of carriage and required the carriers to post their plans and their contracts of carriage on their website. At that time, the Department also indicated its intention to address this matter again through rulemaking.

In this proceeding, the Department again proposed to require carriers to include their tarmac delay contingency plans and customer service plans in their contracts of carriage, and for foreign air carriers that have a website to post their entire contract of carriage on their website in an easily accessible form. U.S. carriers are already required to post their contract of carriage on their website under the existing rule.

The Department again sought comment on whether incorporation of the contingency plans and customer service plans in the contract of carriage would give consumers notice of what might happen in the event of a long delay on the tarmac and of passengers'

rights under carriers' customer service plans. As in the past, we asked commenters to address whether and to what extent requiring the incorporation of contingency plans in carriers' contracts of carriage might weaken existing plans: that is, would the requirement encourage carriers to exclude certain key terms from their plans in order to avoid compromising their flexibility to deal with circumstances that can be both complex and unpredictable.

*Comments:* RAA questions whether DOT has authority to impose a requirement for carriers to incorporate their tarmac delay contingency plans or customer service plans into their contracts of carriage. If the Department nevertheless adopts such a requirement, RAA states that it should not apply to regional carriers, as most regional passengers are subject to the ticketing carrier's contract of carriage.

ATA contends that the Department would be exceeding its regulatory authority if it were to require that the contingency plans and customer service plans be incorporated into carriers' contracts of carriage as a means of creating a private right of action. ATA asserts that Congress did not create a private right of action for violations of 49 U.S.C. 41712 and the Department cannot substitute a different enforcement process than the one Congress intended. ATA also states that the Department has failed to demonstrate how a carrier's failure to incorporate either its tarmac delay contingency plan or its customer service plan in its contract of carriage could be viewed as an unfair and deceptive practice under 49 U.S.C. 41712. ATA points out that if the Department is interested in ensuring that passengers are more aware of their rights, then it should be sufficient that both the contingency plan and customer service plan are available on carrier websites.

U.S. carriers that commented generally support ATA. For example, US Airways, like ATA, states that there is no reason to require incorporation of the contingency plans or customer service plans as U.S. carriers already post these plans on their websites. US Airways speculates that only a small percentage of visitors to its website review the page containing the Contract of Carriage, suggesting that the inclusion of the plans in carriers' contracts of carriage would not increase passenger awareness of their rights. US Airways as well as other carriers are particularly concerned that this requirement would create a private right of action and subject airlines to a multitude of lawsuits in a variety of jurisdictions.

Similar to the U.S. carriers and carrier association, foreign carriers and carrier associations strongly oppose the proposed requirement to incorporate plans into carriers' contracts of carriage. IATA asserts that the DOT exceeds its authority in proposing this requirement and that it would substantially increase airlines' legal costs. IATA also states that international airlines cannot be expected to adopt multiple contracts of carriage for each territory into and out of which they fly and that contracts of carriage are contracts between a carrier and all of its passengers, not just those that fly into the U.S. AEA generally supports and agrees with IATA. IACA states that placing contingency and customer service plans in a contract of carriage will make the contracts unreadable, as they are already detailed and will result in too much information for the consumer. IACA also states, similar to IATA, that for many airlines U.S. flights make up only a small share of the total flights, so it is inappropriate to incorporate information that is valid only for U.S. flights. IACA also notes that EU regulations already require carriers to provide customers with details of their rights, so the proposal is superfluous and counterproductive. IACA suggests that foreign carriers be exempted from this requirement.

The foreign air carriers that commented generally support IATA. Many carriers note that rules already exist in their countries regarding customer service issues. For example, Virgin Atlantic notes that EC Reg 261/2004 already has passenger rights requirements covering delays and oversales. Others raised concerns about extraterritoriality. More specifically, JAL and TAP Portugal note concerns about the proposal as their Conditions of Carriage are reviewed and approved by their homeland regulator and any changes would need to be approved by those bodies. Qatar Airways states that there should be global harmonization of different government regulatory standards before such plans are incorporated in each carrier's Contract of Carriage. Various carriers also expressed fears about the litigation risks that would exist. South African Airways notes that mandating terms of an airline's contract of carriage may improperly create a private right of action for minor lapses in service. Air France speculates that in order to avoid legal risks carriers may weaken plans if incorporation into carrier's contract of carriage is required. Air France as well as many other carriers who object to the proposal assert, similar to IATA, that the Department does not have authority

to impose this requirement. In a similar fashion, Lufthansa strongly opposes the proposal and fully supports ATA's and IATA's comments, as do Alitalia, British Airways and various other foreign carriers.

While most foreign air carriers are opposed to including the plans in their contract of carriage, a number of them did support the idea of placing the contingency plans and customer service plans on their respective websites or state that they have already done so. For example, Air France and KLM agree that the plans could be placed on a website. Virgin Atlantic states that its Conditions of Carriage are based on IATA standards and are available on its website, as does Qatar Airways. In addition, Virgin Atlantic suggests that contingency plans and customer service plans be provided, where there is a specific situation, to an affected passenger. South African Airways makes similar comments.

Of the consumer groups that commented, CTA and AAPR generally support the proposal to include tarmac delay contingency plans and customer service plans in a carrier's contract of carriage, or in the alternative on their websites. CTA also states that code-share rules should be included in the contract of carriage. Flyersrights.org, and its individual members that filed comments, support the proposal that carriers place both the tarmac delay contingency plans and the customer service plans in their contracts of carriage. The organization warns, however, that requiring carriers to incorporate plans into their contracts of carriage may result in carriers excluding key terms from the plan so as to make the plans unenforceable and asks that the Department review and monitor the plans.

*DOT Response:* Having considered all the comments, the Department has decided not to adopt the proposal requiring U.S. and foreign carriers to include their contingency plans and customer service plans in their contracts of carriage. In making this decision, we note that some carriers have voluntarily put not only their customer service plans but also their tarmac delay contingency plans into their contracts of carriage since we issued the first rule to enhance airline passenger protections. We will continue to monitor whether other carriers choose to do so, as well as determine if we need to revisit this issue in the future should a problem exist.

Further, with regard to the need to incorporate customer service plans into the contract of carriage, the Department believes that our decision to set minimum standards for the provisions

in a carrier's customer service plan gives consumers more certainty as to the quality and types of services they can expect. In addition, these minimum standards may make it easier for a consumer to demonstrate to the Department's Aviation Enforcement Office that a carrier has violated the law when that carrier does not meet its standard of service commitment as the requirements of the customer service plans are more exacting than in the past. If the minimum standards are not met by a given carrier, the Department can determine if enforcement action is appropriate in a given situation.

Although we are not requiring tarmac delay contingency plans and customer service plans to be incorporated in contracts of carriage, the Department has decided to require foreign carriers to post their tarmac delay contingency plans, customer service plans and contracts of carriage on their websites. The December 2009 rule to enhance airline passenger protections already requires U.S. carriers to post these plans on their websites. The purpose of this requirement is to ensure that interested consumers can easily review an airline's contract of carriage, customer service plan, and/or tarmac delay contingency plan. By having the ability to review these documents, consumers can find out an airline's stated obligations to passengers and be better informed about their rights and a carrier's responsibilities before purchasing tickets and whenever problems occur (for example, the passenger's rights and carrier's responsibilities if an airline delays or cancels a flight or loses a bag). The Department believes that having the plans and contracts of carriage on websites will lead to a better informed consumer. The Department's Aviation Enforcement Office will periodically monitor carriers' websites to ensure that the required information is available.

##### 5. Response to Consumer Problems

###### A. Designated Advocates for Passengers' Interests

*The NPRM:* The NPRM proposed to require foreign air carriers that operate scheduled passenger service to and from the United States using any aircraft with 30 or more seats to designate an employee who will be responsible for monitoring the effects of flight delays, flight cancellations and lengthy tarmac delays on passengers. We proposed that this employee have input into decisions about which flights to cancel and which will be delayed the longest. U.S. carriers must comply with this requirement under the existing rules.

*Comments:* IATA, IACA, and AEA generally state that the proposal to designate an advocate for passenger interests intervenes too much in an airline's operation as airlines organize themselves differently to monitor operational issues and address customer concerns. Lufthansa opposes this proposal and comments that the decision to designate an employee to monitor the effects of irregular operations should be left to the discretion of each carrier. Similarly, Air Tahiti states that requiring dedicated staff to monitor delays improperly interferes with internal airline operations. JAL does not think it makes sense to designate an employee for a non-problem and asks for additional information and clarification regarding the employee's responsibilities. Swiss International states that this proposal is a substantial burden and believes that one individual may not be effective because each airport has its own issues, so splitting these tasks makes more sense and would result in better data. The carrier urges the Department to require each airport to designate an employee responsible for monitoring delays and coordinate with carriers to reduce delays. Air France and KLM oppose this requirement and explain that it has limited resources in the U.S. to fulfill any such new role and contends that this requirement would impose substantial costs on foreign carriers. Air France and KLM state that, if this proposal is implemented, the Department should permit foreign carriers to comply by having an off-site employee in a specific department who is accessible by a specific telephone number assist in such matters, and by providing this advocacy only in the principal language of the carrier's homeland (French for Air France, Dutch for KLM) and in English. Of the travel agent interests that commented, ASTA generally supports the proposal to have a designated employee, but does not believe the employee should have to be available in the U.S. as long as he or she is accessible. We received a few comments from consumers and consumer groups, all of whom generally support the proposals.

*DOT Response:* The final rule requires foreign air carriers operating scheduled passenger service to and from the U.S. using any aircraft with 30 or more passenger seats to designate an employee to monitor the effects of flight delays, flight cancellations, and lengthy tarmac delays on passengers and to have input into decisions on which flights to cancel and which will be delayed the longest. It applies to all of a covered

foreign carrier's scheduled flights to and from the United States, including those involving aircraft with fewer than 30 seats if a carrier operates any aircraft with 30 or more passenger seats to/from the U.S.

We are not persuaded by commenters that the Department is excessively intervening in an airline's operation by requiring an employee or employees be designated to monitor performance of flights and that these employees have input into decisions such as which flights are cancelled or subject to the longest delays. Additionally, we have taken note of foreign carriers' concerns regarding the potential lack of carrier personnel located in the United States or at specific airports where the carrier does not have a large presence. We are not requiring that the employees responsible for monitoring irregular flight operations be located at a U.S. airport. As has been permitted for covered U.S. carriers, foreign carriers can determine where its employees are located, as long as the designated employees can monitor flight delays and cancellations for the carriers' flights to and from the U.S. throughout the carriers' system and have input into decisions regarding how to best meet the needs of passengers affected by irregular operations. This requirement is intended to ensure that passenger interests are considered by carriers when decisions on irregular flight operations are made. We are not requiring that the designated employees make themselves available to speak with airport personnel or passengers and certainly are not prescribing the language to be used by the designated airline employees. By adopting this performance standard, the Department leaves it up to each carrier to determine the most efficient and effective method to monitor the effects of flight delays and cancellations (for example, designating one or more individuals at its systems operations center). This rule does not require carriers to hire new employees to comply with this provision as these responsibilities may be borne by current employees in addition to their other responsibilities.

#### B. Informing Consumers How To Complain

*The NPRM:* Under the proposed rule, a foreign air carrier that operates scheduled passenger service to and from the U.S. using any aircraft with 30 or more passenger seats would be required to inform consumers how to file a complaint with the carrier (name of department, address, and email or web-mail address) on its website, on all

e-ticket confirmations, and, upon request, at each ticket counter and gate.

*Comments:* As with other sections of this proposal, carrier association commenters, such as IATA, IACA, and AEA, generally state that the proposal to inform consumers how to complain unnecessarily and excessively intervenes in an airline's operations. Many foreign carriers concur. For example, Qantas and JetStar state that if a carrier has given a consumer reasonable access for lodging complaints, there is no need for the Department to mandate a particular form of communication. Qatar Airways, among others, notes that foreign carriers already offer passengers a number of means by which to file a complaint.

Foreign carriers and carrier associations also oppose the requirement to inform consumers how to complain as an extraterritorial application of U.S. law. IATA asserts that this requirement would violate the Chicago Convention and U.S. Open Skies Agreement as it would necessitate foreign carriers modifying procedures and operations that take place outside the U.S. to meet U.S. regulatory requirements. For example, IATA states that this requirement would mandate that foreign carriers modify their home websites and foreign-issued tickets to include information mandated by the Department.

NBTA generally supports the provisions, as do Consumers Union and AAPR. Flyersrights.org, in addition to supporting a requirement for foreign airlines to make the mailing address and email or web address for filing a complaint available on their website and e-ticket confirmations, thinks there should be contact information for the Department's Aviation Consumer Protection Division on e-ticket confirmations and boarding passes.

*DOT Response:* The Department is extending this provision to foreign carriers as proposed in the NPRM, with some clarifications to address concerns about extraterritoriality. First, we are requiring foreign carriers to inform consumers how to complain, upon request, at each ticket counter and boarding gate at U.S. airports. We are not seeking to govern the activities of foreign carriers outside the United States. U.S. carriers are still required to inform consumers how to complain upon request at all ticket counters and boarding gates staffed by the carrier or a contractor of the carrier, whether or not those locations are within the U.S. We are also specifying that the requirement to make information about how to file a complaint available on a carrier's website applies to a foreign

carrier only if its website markets to U.S. consumers. Foreign carriers would not need to modify their home websites to ensure that they are complying with this requirement unless those sites market to U.S. consumers. We expect foreign carriers to follow U.S. law in the U.S. when marketing within the U.S. and when flights are entering, operating within or departing from the U.S.

Also, while we acknowledge foreign commenters' concerns with the Department mandating avenues by which a consumer can file a complaint, we believe it is important that consumers have more than one avenue for registering their service-related concerns. As commenters note, since some foreign carriers already provide a number of means by which to file a complaint, the requirements of this rule should not prove overly burdensome. As with the December 2009 rule to enhance airline passenger protections, this rule requires carriers to only provide passengers their email or web-form address and their mailing address. We did not propose and are not now requiring that carriers provide passengers a telephone number for complaint calls because of concerns that telephone "talk time" would impose a high cost on airlines when there are other more-efficient and effective complaint processing methods available. Of course, in addition to accepting complaints through the Internet and postal mail, airlines are free to voluntarily accept customer complaints through other methods such as telephone. We also point out that, as is currently allowed for U.S. carriers, a foreign carrier can comply with the requirement to provide contact information on an e-ticket confirmation or itinerary by including a link to a website containing the complaint information in lieu of displaying the entire text of the contact information, which will take up even less space on an e-ticket and reduce cost. It is our opinion that requiring complaint contact information on e-tickets and, upon request, at each ticket counter and boarding gate instead of just on websites will be beneficial to consumers since a large number of passengers do not have access to the Internet while traveling and would not be able to access the complaint contact information through the airlines' websites.

We are not adopting the suggestion that carriers be required to provide consumers information as a general matter on how to file complaints with DOT. That suggestion is beyond the scope of the notice and is not wise since it might direct consumers away from

contacting carriers that are in the best position to quickly resolve problems.

### C. Responding to Consumer Complaints

*The NPRM:* Under the NPRM, a foreign air carrier that operates scheduled passenger service to and from the U.S. using any aircraft with 30 or more passenger seats would be required to acknowledge receipt of a complaint within 30 days of receiving it and send a substantive response to each complainant within 60 days of receiving it. We proposed to define a complaint as 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. We solicited comments on any operational difficulties U.S. and foreign airlines may face in responding to such complaints when received through social networking mediums such as Facebook and Twitter.

*Comments:* We received a number of comments on this issue from foreign carriers and carrier associations, some of whom supported this requirement. IATA, IACA, AEA, and many foreign carriers generally state that the proposal to respond to consumer complaints within a set timeframe excessively intervenes into an airline's business practices and disregards procedures carriers already have in place to respond to consumer complaints. They also contend that the Department has not shown that this type of requirement is needed. More specifically, British Airways notes that the timeline is unnecessary and overly burdensome and would force carriers to divert personnel to unnecessary administrative and recordkeeping functions. Qantas states that it does not see the need to single out the airline industry for mandatory requirements related to customer response times and that the carrier already aims to provide substantive responses in less than 60 days. IATA suggests that, if adopted, any final rule should include a provision allowing an airline to stop the clock by providing a provisional response. Lufthansa makes a similar suggestion that the Department allow for a "provisional" response to a customer's concerns within the 60 day time frame in the event it cannot provide a full detailed response. A number of carriers such as Virgin Atlantic also recommend that any final rule adopted include an exception to the time frame established to respond to complaints for extraordinary circumstances, such as the Icelandic volcano incident, as the volume of complaints resulting from

such events requires a longer response time.

Some carriers generally agree with the proposal or note that they respond to consumers in a shorter time period. For example, Singapore Airlines states that it would not oppose the Department's proposal to provide a substantive response in 60 days if complaints are limited to actual customers and flights to or from the U.S. Japan Airlines states that its response time of 14 days surpasses the Department's proposal and that it has many mediums by which passengers can contact it. Air France notes that it tries to reply to complaints within 28 days. Virgin Atlantic states that it already has a robust complaint handling process and generally replies to all written complaints within 28 days of receipt. Air New Zealand states that the suggested timeframes to respond to complaints are generous.

A number of carriers expressed concern regarding the definition of a complaint. Swiss International states that complaints need to include the passenger's name, mailing address or email address, a copy of the ticket or boarding pass and the applicable flight number. Qatar Airways generally supports the principles stated in the NPRM, but states that it should only have to respond to complaints from passengers who use its service, *i.e.*, the definition of a complaint should be limited to a difficulty or problem which the person experienced when using an airline's service. Similarly, South African Airways and Condor state the proposal as drafted is burdensome and flawed because carriers would have to respond in 60 days to both customers and anyone else that "attempted" to use their service. They also note that the proposal fails to give carriers any discretion in refusing to respond to repetitive or frivolous complaints. With regard to complaints received through social networking mediums, U.S. and foreign carriers and carrier associations all oppose any mandate to communicate to passengers through such mediums. They recommend that the definition of complaint exclude complaints sent by passengers to carriers' Facebook or Twitter accounts.

The consumers and consumer groups that commented generally support requiring carriers to acknowledge and respond to complaints within the time frame set forth in the NPRM. Flyersrights.org states that U.S. passengers should have an avenue to file a complaint with a foreign carrier and to expect a timely and substantive response. CTA states that U.S. airline customer service personnel should be responsible for handling any foreign

alliance partner complaint and believes there should be a clear way to contact foreign carriers through the Internet or by telephone number provided on the homepage of the airline. Very few consumers or consumer groups commented on the issue of complaints sent through social networking sites. Of those that did, AAPR states that social networking sites are not an appropriate venue for filing complaints though it supports the requirement for foreign carriers to acknowledge a complaint within 30 days and send a substantive response within 60 days, as does the NBTA.

*DOT Response:* We have decided to require foreign carriers to acknowledge receipt of a complaint within 30 days and provide a substantive response to passengers within 60 days, as is currently required of U.S. carriers. We believe that 30 days to acknowledge a complaint and 60 days to provide a passenger with a substantive response allows carriers adequate time to investigate and respond appropriately. We are not convinced by arguments put forth by commenters that suggest 60 days is not enough time to provide a substantive response. We note that more than one carrier suggests that 60 days is a reasonable amount of time in which to respond.

We acknowledge and agree with industry commenters that it may not be possible in all instances to provide a final reply to a passenger within 60 days. The rule speaks of a substantive reply, which is not necessarily a final reply. By substantive response, we mean a response that addresses the specific problems about which the consumer has complained. This type of response often but not always results in a resolution of the complaint. If a carrier is actively investigating a complex complaint and is not able to conclude the investigation within 60 days, it is still likely to know more at the 60-day point than it did when it acknowledged the complaint. The airline can update the complainant with all known information prior to the 60-day mark by sending a substantive response, continue its investigation, and thereafter send the final reply later. Regarding carriers' suggestions for an exception for complaints concerning unusual events such as the Icelandic volcano, the Department believes that such an exception is not necessary as many consumers complain about similar issues associated with such events (e.g., delays, cancellations) and carriers generally create form letters in which to respond substantively to most such complaints.

As for the definition of a complaint to which carriers must respond, the

Department continues to believe that it is important that this definition include not just problems which a person experiences when using an airline's services but also problems encountered by a person attempting to use an airline's services (for example, if he or she had problems while attempting to book or cancel a flight on the carrier's website). Carriers are not required to respond to general complaints from members of the public. We are requiring a carrier to respond to complaints from individuals that had a problem when they used or attempted to use its services. As with other portions of this section, foreign air carriers are only required to respond to complaints from consumers that are related to a carrier's services being marketed in the U.S. and its flight to or from the U.S.

We are persuaded by the commenters that the Department should not mandate that U.S. and foreign carriers respond to complaints sent through social networking sites. Carriers do use such sites to invite the public to communicate with them and perhaps even to monitor public opinion about their practices. However, we can appreciate concerns that such sites are not intended to be a mechanism for handling individual consumer complaints. In recognition of these somewhat competing interests, the final rule makes it clear that U.S. and foreign carriers need not to respond to such complaints so long as (1) the carrier's primary page on that social networking site clearly indicates that it will not reply to complaints filed via that medium, and (2) on that page the carrier directs the consumer to the mailing address, e-mail address, or website location for filing written complaints. The Department believes this approach takes into account the difference between social networking sites and the traditional one-on-one methods of text communication (e.g. a letter, email, printed complaint form, or Internet complaint form) while ensuring passengers know how to file a complaint that will result in a response from the carrier.

#### 6. Oversales

##### A. Denied Boarding Compensation Limits, Rates, and CPI-U Adjuster

*The NPRM:* We proposed to increase the minimum for denied boarding compensation (DBC) limits from the current amounts of \$400 or \$800 depending on the length of the bumped passenger's delay to \$650/\$1,300 to take into account fully the increase in the Consumer Price Index—All Urban Consumers (CPI-U) since 1978. We also

proposed to implement an inflation adjuster for these minimum DBC limits. We sought comments on whether the proposed increases in the DBC limits and the periodic adjustment are called for and, if so, whether the increased amounts are reasonable. We asked whether we should completely eliminate the DBC limits and require carriers to pay DBC based on 100%/200% of a passenger's fare without limit, and whether the current 100%/200% formula (depending again on the length of the bumped passenger's delay) should be increased to, for example, 200%/400% of a passenger's fare.

*Comments:* Eighteen individuals and consumer organizations, in addition to over 60 individuals who participated on the Regulation Room website, provided comments on the oversales proposals. The majority of these commenters support increasing DBC limits. Some commenters, however, oppose calculating DBC amounts based on the passenger's fare, arguing that it will provide carriers an incentive to bump passengers with the lowest fare. As an alternative, one individual suggests that DBC should be based on a fixed amount. Another commenter suggests that DBC amounts should be based on the length of delay.

A number of individual commenters go further by suggesting that the Department should abandon the oversales rule and ban oversales. These commenters reason that a ticket is a contract between a passenger and a carrier and that when the carrier cannot honor the ticket, it should run a bid or auction by continuously increasing the offer to volunteers until enough volunteers come forward. Most commenters on Regulation Room support eliminating DBC limits though a number of these commenters support a DBC amount based on 200%/400% of the passenger's fare instead of the current 100%/200% of the passenger's fare.

Among the few individual commenters who oppose increasing DBC limits, one commenter questions whether raising DBC limits would result in the reduction of the number of passengers being bumped. Another commenter states that increasing DBC limits to \$650/\$1,300 would only benefit passengers whose fare is more than the current limits (i.e., \$400/\$800 one way). One commenter is concerned about the possibility that in response to the raised DBC limits and amounts, carriers would increase the required check-in time for the purpose of being eligible for DBC.

We also received comments on a variety of other issues. With respect to

the proposed bi-annual adjustment on DBC amounts based on CPI-U, Consumers Union as well as several commenters on Regulation Room expressed their full support for the proposal. FlyersRights.org suggests that we should declare it to be a deceptive practice to give boarding priority to passengers who checked in later but paid a higher fare. In addition, FlyersRights.org recommends that we ask carriers to increase offers to passengers solicited to volunteer.

Nine U.S. carriers and carrier associations as well as 27 foreign carriers and carrier associations commented on the oversales proposals. ATA states that it does not oppose the proposed increase to the DBC limits to \$650/\$1,300 but questions the effectiveness of such an increase in reducing the number of passengers being involuntarily bumped. According to ATA, increasing DBC limits may provide incentives to passengers who would have otherwise volunteered to hold out, hoping to be bumped involuntarily. ATA opposes eliminating the DBC limits, contending that DBC is meant to compensate passengers for the loss of time only, because passengers retain the value of the fare by accepting alternate transportation provided by carriers. Delta Air Lines does not oppose the proposed increase of DBC limits but suggests that the new DBC limits should not be applied to airfare purchases that occur before the effective date of the final rule. On the other hand, the Regional Airline Association (RAA) opposes the increase of DBC limits to \$650/\$1,300, asserting that these increases far exceed the costs of most regional airfares.

Southwest Airlines asserts that the current 100%/200% of one-way fare formula works well and if the Department worries about the impact of fare unbundling practices on the DBC value, it should require that the carriers refund all ancillary fees in the event of oversales, instead of raising the 100%/200% rates to 200%/400%. RAA avers that the DBC limits should be 100%/200% of the fare, and any adjustment to DBC limits should be based on fare changes. Spirit Airlines and Virgin America both oppose the increase of DBC limits, questioning the economic soundness of such increases. Virgin America argues that the new proposal is a departure from the hybrid calculation method that the Department established in 2008. Virgin America also points out that in 2007 the Department rejected the proposal to implement a CPI-based adjuster on the DBC limits. Spirit Airlines takes a similar position as Virgin America and further contends

that as a result of the proposal, many consumers will be harmed by increased fares due to the windfall that the new DBC proposal will provide to a small number of passengers.

The majority of foreign carriers and carrier associations oppose the proposed increase in the DBC limits to \$650/\$1,300. Several commenters argue that increasing DBC limits will reduce the number of passengers who volunteer to be denied boarding and in turn increase the number of passengers who are involuntarily bumped, a result that is counter to the goal of the oversales rule. Some commenters contend that the Department has failed to provide evidence showing that the current DBC amounts are inadequate and also failed to recognize that air fares have decreased in "real" terms during the past decade. IATA and several foreign carriers operating long haul international flights to and from the U.S. raise the concern that passengers on those flights will most likely get the higher limit of \$1,300 in an oversales situation due to the infrequent schedule, and these passengers, according to the commenters, will get a windfall for their mild inconvenience. Some long haul carriers also insist that the Department's proposal is aimed at addressing the fare unbundling practice by most U.S. carriers and these foreign carriers' bundled fares would be subject to inequitable and discriminatory treatment under this proposal. IATA further comments that the proposed \$1,300 DBC limit is disproportionate to the value of time that a passenger denied boarding involuntarily may lose due to the delay. The Air Transportation Association of Canada and National Airline Council of Canada, on the other hand, argue that the increased DBC limits will penalize foreign carriers operating short flights, as these limits far exceed the cost of air fare for those flights. IACA argues that the proposal interferes with the European Union (EU) laws and may create uncertainty for carriers and passengers. Several European carriers suggest that the U.S. oversales rule should be harmonized with the EU rule.

The majority of foreign carrier commenters firmly oppose eliminating DBC limits, averring that without a limit, the DBC amounts would be exorbitant, especially for many long-haul carriers who do not unbundle fares. Virgin Atlantic and Air New Zealand prefer a fixed amount for all involuntary denied boarding situations, reasoning that this approach will avoid the complexity in calculating DBC amounts based on fares.

Most foreign carrier commenters also oppose the CPI-based bi-annual adjuster, arguing that air fare changes in the past are not related to CPI. The National Airlines Council of Canada argues that the proposal ignores the fact that fares paid by passengers are significantly lower than what they were ten or fifteen years ago, accounting for the inflation. Qantas and JetStar Airways state that the interval for the CPI-U based adjuster should be every five years instead of two years to avoid excessive administrative costs to implement the changes.

*DOT Response:* With respect to the DBC limits increase, we have come to the conclusion that the proposed \$650/\$1,300 amounts are not only reasonable but also necessary. We disagree with carriers' remarks that the increase in the DBC limits is a disincentive for passengers to volunteer for denied boarding and will result in an increase in the number or rate of passengers who are involuntarily denied boarding. To the contrary, if the DBC limits are increased, carriers will have a greater incentive to seek volunteers through increasing the value of the compensation they offer to volunteers in order to avoid the higher DBC payments to involuntarily bumped passengers. The ultimate result is that involuntary denied boarding should decrease while both volunteers and passengers who must involuntarily be denied boarding will receive increased compensation that more accurately reflects their inconvenience.

Although it is our firm belief that the DBC limits at the level of \$400/\$800 tend to be insufficient to compensate the passengers who are involuntarily denied boarding for their inconvenience and loss of time, we maintain that the basic structure of the regulatory regime for oversales remains sound. In that regard, we are declining to adopt the suggestion of some commenters that the Department should eliminate involuntary denied boarding and require carriers to run auctions until they obtain sufficient numbers of volunteers. As we have repeatedly stated in the past, the benefits to most consumers of a well-controlled oversales system outweigh the inconvenience experienced by a few. By contrast, an unlimited auction system could increase the cost of oversales to carriers to a prohibitive level, which would cause airlines to be much more conservative in overbooking flights. Considering the reduced schedule frequency and capacity during recent years, such an approach would result in fewer affordable seats being available to the public in general. Running an

unlimited auction for volunteers is both time-consuming and complex, and requiring such a system may impose other negative impacts on all passengers, such as causing more flight delays, increasing the number of misconnections, and requiring earlier check-in times.

We are also not adopting some consumer commenters' suggestion that we should set a minimum standard for the amount of compensation offered to passengers solicited to volunteer for denied boarding. We maintain that other than the requirement that carriers must solicit volunteers before bumping any passengers involuntarily, the procedures for solicitation of volunteers and the amounts of incentive offered to potential volunteers should remain within carriers' discretion because this aspect of the system has worked well. The Department believes that the involuntary DBC rates and limits set by the regulation are effective tools to motivate carriers to offer adequate compensation for volunteers.

This final rule also provides that carriers must pay DBC equal to 200%/400% of the fare based on the length of delay experienced by passengers up to the maximum of \$650/\$1,300. We are unconvinced by the argument of some industry commenters that the regulatory mandated DBC limits should not be increased because airfares have not increased "in real terms." Although the "fare," in terms of the dollar amount reflected on a passenger's ticket confirmation or ticket receipt, may not seem to be increasing over the past decade, the actual cost for a passenger to travel by air, however, has indeed increased. Such increase in air travel cost is not reflected in the base ticket prices that are used as the basis for calculating DBC amounts. The increase of the cost to passengers is evident by the fact that a passenger now must pay, in addition to the base airfare, for many items that were included in the fare before the unbundling practice became widespread, such as for checked baggage, food and beverage, in-flight entertainment, preferred seating, advance seat selection, telephone reservations, etc. It is the Department's view that carriers may continue to explore other ways to further unbundle fares, thus leading to base ticket prices staying flat or declining. The Department believes that DBC amounts based on 100%/200% of the base fare are no longer adequate, under many circumstances, to address the inconvenience and consequential damages suffered by passengers who are denied boarding involuntarily, especially passengers who purchased

the most deeply discounted fares, and who, by virtue of the low fares, are most likely to be selected as the candidates for involuntary denied boarding. Realistic DBC rates are also a necessary incentive to encourage careful overbooking practices on the part of carriers. Precisely for these reasons, we are raising the 100%/200% rates in the involuntary DBC calculation to 200%/400%. In our opinion, this new formula, in conjunction with the raised DBC limits of \$650/\$1,300, strikes a balance between permitting carriers to continue to overbook flights, but limiting the carriers' financial burden from compensating passengers due to oversales, and adequately protecting passengers' interests in oversales situations.

We are aware that the amended DBC formula and limits may have a larger impact on carriers operating regional and international short-haul flights, because these flights' base fares are lower in general than the fares of long haul flights. RAA has argued in its comments that the DBC amounts should be based on 100%/200% of the fare and that the \$650/\$1,300 limits far exceed the costs of tickets on most regional flights. Several Canadian carriers and carrier associations also contended that the oversales rule as proposed unfairly discriminates against carriers operating shorter flights by requiring the same limits of compensation depending on the length of delay, regardless of the length of the flights from which the passengers were involuntarily denied boarding. The Department has fully considered these comments but remains unconvinced that the consequences of our amendment would be detrimental to these carriers. It is important to understand that the \$650/\$1,300 limits come into play only when the DBC formula would cause a passenger's DBC to exceed the limit. To the extent the fare paid by a passenger is low, the new \$650/\$1,300 limits have no effect. Fares in the \$49–\$59 range are still regularly sold and even under the 400% calculation formula, the DBC amounts would not even come close to the \$800 limit under the previous rule. Furthermore, compared to long-haul flights that are usually less frequently scheduled, regional and low cost carriers typically have more options with regard to finding alternate transportation in a timely fashion for passengers who are denied boarding involuntarily. Thus, passengers on these short haul flights often have a better chance of getting to their destination or the next stopover without extensive delay. Consequently, regional and low

cost carriers have a better chance of limiting their DBC exposure to the lower rate of 200% of the fare with a \$650 limit.

To ensure that there isn't any confusion as to how DBC is calculated, we have added a definition for "fare" in section 250.1. Under this definition, carriers do not need to take into account any ancillary fees and/or charges for optional service paid by passengers when calculating DBC amounts based on the passenger's fare. In relation to this definition, however, we emphasize in section 250.5 that when a passenger is denied boarding involuntarily, the carrier must refund all unused ancillary fees paid by that passenger. Carriers do not have to refund any ancillary fees that will be applied to the alternate transportation to the extent those same services are provided to the passenger. For instance, when a passenger denied boarding involuntarily has paid for seat selection and checked baggage for the original flight, the passenger should receive a refund for the seat selection fee if the alternate transportation arranged by the carrier does not allow the passenger to select his/her seat. Conversely, the carrier does not need to refund the checked baggage fee if the passenger was able to check in the same number of bags for the substitute flight at no additional cost.

We are also clarifying the meaning of the term "minimum DBC amounts" in this final rule as some commenters seem to be confused by the term. These commenters believe that the Department is mistaken in referring in the NPRM preamble to "minimum" DBC amounts when it should be referring to "maximum" DBC amounts. We recognize that the source of the confusion was the term "maximum" used in the rule text under section 250.5. The term "minimum DBC amounts" as used in the preamble of the NPRM refers to the lowest amount of DBC that is due an involuntarily oversold passenger when the DBC calculation based on the passenger's one-way fare results in an amount exceeding the DBC limits (previously \$400/\$800 and increased to \$650/\$1,300 in this Final Rule). For example, when a passenger on a domestic flight who paid \$550 one-way for a non-stop flight is delayed for 1 hour 20 minutes due to having been involuntarily denied boarding, the initial calculation of DBC due is based on 200% of the fare, which amounts to \$1,100. However, the maximum amount of DBC a carrier is required to pay this passenger under our rule would be \$650. We continue to use the term "maximum" in the rule text. Accordingly, in order to avoid further

confusion, we have used the term “DBC limits” instead of the term “minimum DBC amounts” in the preamble of this final rule.

With regard to an automatic inflation adjuster for DBC limits, the Department has decided to adopt the proposed bi-annual adjustment on DBC limits. In doing so, we note our disagreement with some carriers’ comments that such an adjuster is not justified because air fares do not reflect changes in the CPI-U. DBC is not meant to fully compensate passengers for the loss of transportation, because carriers are obligated to offer alternate transportation for the passengers or refund the passengers’ fare; therefore, fare value change is not directly relevant. DBC is meant as a form of liquidated damages to compensate passengers for their inconvenience, loss of time, and other incidental and consequential costs associated with the delay (*e.g.*, food, lodging, ground transportation, communication etc.). To simplify the DBC calculation and to expedite the process, the Department uses a formula that is tied to the one-way airfare paid by the passenger, which does not necessarily mean DBC amounts should be changed according to the levels at which the average airfare has changed. We observe that the costs for food, lodging and other accommodations and commodities passengers need in an oversales situation have all increased in correlation with inflation. In addition, as noted in the NPRM and further discussed above, the actual total cost of flying is likely to have increased, while what is commonly referred to as the “fare” may not have increased or increased as much as a result of the carriers’ current practice of unbundling fares, *i.e.*, charging extra for services once provided as part of the airfare. Our decision to adopt the bi-annual inflation adjustment provision for DBC limits is also not contradictory to our decision made two years ago that we would take up the issue *de novo*. We have indeed taken a fresh look at the issue during this rulemaking and ultimately reached the conclusion that the bi-annual inflation adjustment is the most efficient way to address the impact of inflation on the DBC limits.

We are also addressing the issue of airline travel vouchers vis-à-vis DBC in this final rule. Carriers frequently offer free or reduced-rate air transportation, most commonly in the form of airline travel vouchers, to passengers denied boarding involuntarily as an alternative to the cash or check DBC payment required by our rule. Our previous rule required that the value of such a voucher must be equal to or greater than

the cash or check DBC payment otherwise required. One issue we did not address in the previous rule is whether any mandatory fees, such as service fees, that some carriers charge for using the voucher should be taken into account when considering the value of the benefit of the voucher offered. In this final rule, we clarify that any fees that passengers must pay in order to use the voucher for future travel must be considered when determining the value of the voucher. For instance, if the cash or check DBC payment for a passenger involuntarily denied boarding is required to be \$400 under the 200%/400% calculation, and the passenger agrees to accept a travel voucher in lieu of that cash or check payment and there is a service fee of \$50 to redeem the voucher, the minimum voucher value that the carrier must offer to the passenger is \$450. The carrier must inform passengers, whether volunteers or involuntarily oversold, of any restrictions imposed on the use of the voucher. In addition, as described in detail below, it is unfair and deceptive for a carrier to offer a travel voucher as compensation, particularly in an oversales situation, without advising the person to whom the voucher is offered of any restrictions that may apply to the use of the voucher, such as service fees to redeem the voucher, and advance notice requirements or expiration dates.

Finally, we have made non-substantive revisions to the text of sections 250.5 and 250.9 in order to provide the most straightforward explanations of the methodology applicable under different circumstances for calculating DBC amounts. In a counterintuitive way, the previous rule describes the maximum DBC rate (200% at that time) and then states the circumstances under which the DBC amount will be reduced by half. We have encountered confusion on the part of both carriers and the public regarding this somewhat convoluted description. In this final rule, we discuss the DBC calculation for domestic flights and for international flights separately. In each category, we specify the amounts of DBC required under each of the three circumstances based on the length of delays incurred by a passenger using alternate transportation due to the involuntary denied boarding: no compensation; 200% of the fare subject to the \$650 limit; and 400% of fare subject to the \$1,300 limit. These categories and classifications are summarized in the two tables that we added in the written notice that carriers must provide to passengers who are denied boarding

involuntarily and to anyone else upon request. These tables are meant to be used by carriers as a quick reference to assist bumped passengers so they can better understand the DBC limits and calculations when those passengers may be confused and under time pressure during an involuntary bumping situation.

We have also added a definition for “alternate transportation” in section 250.1 to capture the two components of this term. The first component is what was described as “comparable air transportation” under the previous rule. In order to qualify as “alternate transportation” and consequently allow the carrier to limit its DBC exposure to less than the 400% rate, any air transportation offered to passengers involuntarily denied boarding as a substitute for the original flight must be operated by a carrier as defined in Part 250, *i.e.*, a U.S. certificated or commuter air carrier or a foreign carrier that has been duly authorized by the Department to operate scheduled air services. Thus, if the carrier offered a substitute flight operated by an air taxi operator that is not a commuter carrier, that flight would not qualify as “alternate transportation.” Furthermore, in order to qualify as “alternate transportation” carriers must offer a confirmed reservation on that alternative flight. The second component of the concept of “alternate transportation” includes non-air transportation (such as bus, rail, or taxi) and air transportation that does not meet the definition above of “alternate transportation” arranged by the carrier. In order for these modes of transportation to qualify as “alternate transportation,” the carrier must obtain the passenger’s consent that the passenger will accept the proposed form of transportation in lieu of air transportation. To further explain the concept and application of “alternate transportation,” we emphasize that carriers are free to offer substitute transportation that does not meet the definition of “alternate transportation” in this rule (*e.g.*, a flight on an air taxi that is not a commuter carrier, transportation on a scheduled flight without a confirmed reservation, or on a charter flight, or surface transportation), but the bumped passenger has “veto rights” over such arrangements. If the bumped passenger declines this “non-alternate” transportation, he or she is due DBC at the 400% rate because the carrier did not offer “alternate transportation” as defined in section 250.1. However, if the passenger chooses to accept the carrier-offered transportation that does not

qualify as “alternate transportation,” the carrier is free to avail itself of the lower 200% DBC rate in the case of rerouting within 2/4 hours, and need not pay DBC at all if the non-alternate transportation accepted by the passenger will arrive at the passenger’s destination less than one hour after the planned arrival time of the passenger’s original flight. The passenger has no such veto right over “alternate transportation.” If the carrier offers alternate transportation and the passenger declines it, the carrier is still free to limit DBC to 200% or zero as applicable.

Also in section 250.1, we have deleted the definitions for “sum of the values of the remaining flight coupons” and “comparable air transportation” as these terms are no longer used in the rule text.

#### B. Zero Fare Tickets

*The NPRM:* We proposed to clarify in the rule text that DBC must be offered to “zero fare ticket” holders who are involuntarily denied boarding. We asked the public to comment on whether these passengers should be protected by the oversales rule, and whether the proposed calculation method for their DBC amounts is reasonable (*i.e.*, the “passenger fare” for purposes of DBC would be the fare of the lowest priced ticket paid for a comparable class of ticket on the same flight). We also invited the public to suggest any alternative method of establishing denied boarding compensation for zero fare ticket holders, including whether we should allow carriers to compensate these passengers using the same “currency” (*e.g.*, frequent flyer miles or vouchers) in which the tickets were obtained.

*Comments:* The individual and consumer organization commenters generally support affording zero fare ticket holders who are involuntarily denied boarding the same protection and rights as passengers with other tickets. Regarding the form of compensation, some commenters suggest that compensation may be in the same form of “currency” as that was used in acquiring the tickets; others are in support of the Department’s proposal, *i.e.*, providing zero fare tickets holders DBC in the form of cash or check based on the lowest fare paid for a ticket on the same flight for a comparable class of service. Some commenters support payment in either form.

The majority of the industry commenters do not oppose applying the oversales rule to zero fare ticket holders who are involuntarily denied boarding. However, these commenters are adamant that zero fare tickets covered under the oversales rule should not

include non-revenue tickets such as airline employee passes. With respect to the form of DBC payment to zero fare ticket holders, several commenters are in support of compensating those passengers in the same form of “currency” that they used to acquire the tickets. ATA state that carriers should have the discretion to pay DBC in the same form of “currency,” in travel vouchers, in cash/check, or in any combination thereof. ATA reasons that a mandatory cash payment requirement would create problems for carriers because gate agents cannot assign a cash value to the passenger’s fare as they do not have information on the lowest comparable fare sold on the same flight. On similar grounds, the National Airlines Council of Canada avers that it is virtually impossible to figure out the value of a ticket in the comparable class of service “on the spot” as it is subject to a wide range of variables.

JAL opposes the inclusion of zero fare ticket holders under the oversales rule, stating that it should be left to a carriers’ commercial judgment as to whether to compensate zero fare ticket holders; JAL further states that the Department should not assume that carriers’ decisions would be adverse to passengers’ interests. Also in opposition to the proposal, South African Airways states that such a requirement would drastically reduce the carriers’ ability to offer zero fare tickets.

*DOT Response:* The majority of commenters from both consumer and industry representatives seem to agree that certain types of zero fare ticket holders should be compensated when they are denied boarding involuntarily in an oversale situation. The Department agrees with most industry commenters that compensable zero fare tickets should exclude “non-revenue” tickets as that term has traditionally been used in the industry. In that regard, we have added a definition in the final rule that defines “zero fare tickets” to cover only tickets acquired with frequent flyer miles and airline travel vouchers, as well as consolidator tickets that are purchased with money but do not display a dollar amount on the ticket. In our view and the view of most commenters, zero fare ticket holders provided something of value in exchange for their air transportation and when they are bumped, they should be compensated. The Department also wishes to point out that, for most non-revenue tickets such as airline employee and employee family travel vouchers, the terms and conditions accompanying these tickets have already explicitly excluded them from any compensation for involuntarily denied boarding. We

note that under the definition of “zero fare ticket,” a passenger who paid a nominal monetary amount in connection with a ticket may still qualify as a zero fare ticket holder. Therefore, a carrier must in those cases treat a passenger as a zero fare ticketholder even if the passenger’s fare is not “zero” in a literal sense, *e.g.*, where the passenger has paid by cash or credit card the requisite taxes or “processing fees” and “service fees” for the redemption of travel vouchers or frequent flyer miles. On the other hand, if a passenger has paid substantial monetary value for the air transportation, *e.g.*, paid cash for an economy class seat and used frequent flyer miles to upgrade to a business class seat, this passenger should not be treated as a zero fare ticket holder if bumped from the flight and the amount of DBC the passenger receives should be based on the economy class fare paid by that passenger. However, the carrier must credit the amount of frequent flyer miles used for an upgrade back to the passenger’s account if any substitute transportation provided is not in the class of service that he or she used the frequent-flyer miles to acquire.

With respect to the form of DBC for zero fare ticket holders, some consumer commenters urge the Department to require all DBC to be paid in cash or check while many industry commenters either oppose paying DBC to zero fare ticket holders or at a minimum, argue that the Department should allow those passengers to be compensated by means other than cash or check. The Department has fully evaluated the reasons presented by the carriers for why we should not mandate cash or check DBC payments to zero fare ticket holders, but we have decided to apply the same DBC standard by requiring carriers to offer DBC to these passengers in the form of cash or check. DBC in non-monetary forms such as frequent flyer miles would not compensate a passenger for food, lodging and other expenses that may be associated with delays caused by the denied boarding. Furthermore, we reject some commenters’ notion that requiring carriers to pay cash to these passengers may result in harm to consumers, such as making frequent flyer tickets more expensive and restrictive for consumers. We note that under section 250.5(c), carriers may offer free or reduced rate air transportation to any involuntarily bumped passengers, including zero fare ticket holders, in lieu of cash payment. Carriers should not assume that zero fare ticket holders would almost always opt to receive cash or check

compensation, as the cash or check DBC amount is calculated with the lowest comparable fare as the base amount. We also disagree with some carriers' suggestion that procedurally paying DBC in cash or by check based on the lowest comparable fare is unworkable because the gate agents may not have the lowest fare information "on the spot." Just as is permitted for DBC payment to passengers who purchased their tickets with money, carriers are being afforded up to 24 hours after the involuntary denied boarding occurred to tender a check to the affected passengers. We believe the 24-hour window is sufficient for the carriers to obtain necessary fare information and calculate the appropriate DBC amount for the zero fare ticket holders.

In calculating the DBC amounts for zero fare ticket holders, we clarify in the rule text as well as here that the applicable lowest comparable fare paid by cash, check, or credit card refers to the fare in the same class of service as the zero fare ticket. By adding a new definition for "class of service," we explain that we are referring to the lowest fare within the same service class or cabin such as first class, business class, economy/coach class, or economy plus (premium economy) class. For instance, when a passenger holding a zero fare ticket in economy plus class is bumped, as the base fare for DBC calculation purposes, the carrier should identify the lowest fare paid by cash, check, or credit card in the economy plus class on that flight, not the economy class.

### C. Disclosure Requirements

*The NPRM:* In the NPRM we proposed to require that (1) carriers offer cash/check DBC options verbally if they verbally offer a travel voucher as DBC to passengers who are involuntarily denied boarding, and (2) carriers inform passengers solicited to volunteer for denied boarding about their principal boarding priority rules applicable to that specific flight, the availability of alternate transportation, and all material restrictions on the use of any transportation vouchers that may be offered as compensation for giving up the passenger's reservation. We asked whether there are any other forms of disclosure that may better inform passengers being solicited to volunteer or those involuntarily bumped of their rights and carriers' obligations.

*Comments:* Most consumer advocacy groups and associations support imposing more disclosure rules regarding oversales. CTA proposes more disclosure to passengers solicited as volunteers, such as informing them of

the oversales rule in writing and orally prior to the negotiation, and providing them information on whether they will receive confirmed seats and when they are expected to arrive at the destination on the alternative flight. CTA also recommends that carriers provide their boarding priority rules to the passengers when soliciting volunteers.

FlyersRights.org suggests that carriers should be required to publish their principal boarding priority rules on their websites and inform passengers of their risks of being bumped before ticket sales. Comments posted on the website of Regulation Room generally support our proposal of requiring carriers to verbally inform passengers of the cash or check option for DBC payment if carriers verbally offer these passengers travel vouchers as DBC. These commenters also support the proposal that both passengers solicited as volunteers and passengers denied boarding involuntarily should be clearly informed of their options, the amount of compensation they can receive, and details of alternative flights. They also recommend enhancing disclosures regarding oversales prior to and at the time of ticket sales, such as requiring carriers to ask whether a passenger is willing to be bumped at the time of making the reservation and to provide notice to all passengers 24 hours before the departure if the flight is oversold.

ASTA supports the idea of disclosing oversales rule at the time of ticket purchase and advising passengers of the risk involved if they do not secure a seat assignment. ASTA also recommends that carriers be prohibited from "gaming the system" by making it impossible to obtain seat assignments. ASTA points out that all disclosures regarding oversales should be made earlier because providing an explanation to passengers at the gate is time consuming and it may create chaos and passenger confusion.

Most carrier and carrier association commenters oppose all the proposed verbal disclosure requirements. These commenters are generally concerned about the additional time they assert would be needed for gate agents to comply with the various verbal notification requirements, arguing that these requirements would impose hardship on the agents who are under time pressure to board passengers and close out the flight. These commenters also contend that this information is available in the written notice and assert that verbal notification is not necessary and may be hard to enforce. Some carriers also point out that if the gate agents are not familiar with the oversales rule, verbal notification may

result in inaccurate or incomplete information being passed on to consumers, causing further confusion.

*DOT Response:* As we have stated in the NPRM, we believe disclosure in an oversales situation is essential for the passengers to fully understand their rights and options. After thoroughly evaluating all the comments, we have decided to adopt some but not all of our proposals in this regard. We will discuss each proposal individually.

With respect to the requirement that carriers must verbally offer the cash option when they verbally advise passengers bumped involuntarily that a carrier voucher as a form of DBC is available, we have reached the conclusion that this requirement is in fact critical to ensuring that passengers are fully informed when they are given the opportunity to choose what form of DBC they are willing to take. Although the cash option is clearly stated in the written notice that carriers are required to provide to passengers denied boarding involuntarily, it is likely that due to the time pressure and occasional confusion associated with involuntarily denied boarding, passengers may not have the opportunity to fully review the written notice before they choose the form of DBC that they are willing to accept. Thus, it is the Department's view that when carriers verbally offer a voucher option but omit (either inadvertently or intentionally) mentioning the cash option, it is unfair and deceptive to the passengers. Furthermore we consider that to the extent carriers are willing to explain to passengers their option of receiving carrier vouchers as DBC payment, the additional time needed to add a few words about the cash/check option should not be substantial. In any event, if carriers are concerned about the additional time needed to verbally inform passengers of all options, it is permissible to not verbally advise passengers of DBC options at all. They can simply hand the passengers a written notice.

On similar grounds we have decided to adopt the proposed requirement that carriers must disclose any material restrictions on airline travel vouchers offered to both passengers solicited to be volunteers and passengers denied boarding involuntarily. Some carriers argue that the process of informing passengers is too time-consuming. The Department disagrees although we note that the more time-consuming such a notice is, the more restrictions must apply to the voucher, necessitating more than ever that notice of such restrictions be provided. To provide a brief summary covering all the material

restrictions on vouchers should not take more than a few moments. For example, when the carrier announces at the gate that it needs volunteers who will receive a roundtrip voucher for any destination within the continental U.S., to add a description of conditions on the use of vouchers such as “the vouchers are not transferrable, subject to certain blackout dates and service charges and will expire after two years \* \* \*” would not require more than a few moments, and carriers may encourage anyone who wants to learn more details to speak to the gate agent directly. Typical examples of material restrictions and conditions are expiration dates, blackout dates, advance booking requirements, transferability restrictions, administrative fees and flight choice restrictions. We emphasize that this is not an exhaustive list and by the term “material” we refer to all the restrictions and conditions that might reasonably be expected to affect a passenger’s decision regarding whether to accept the voucher.

Since the substance of any restrictions and conditions on the airline vouchers varies by carrier and is not incorporated in the general written notice mandated by section 250.9, we require that any verbal offer of a travel voucher by carriers, either to passengers solicited to volunteer or to passengers denied boarding involuntarily, must be accompanied by a verbal explanation of any material restrictions and conditions imposed on that voucher. In the event carriers make a written offer of travel vouchers, but no verbal offer, carriers should provide a written explanation of the restrictions and conditions on travel vouchers, along with the general written notice required by section 250.9.

In adopting these disclosure requirements, we clarify that we do not intend to require carriers to give every passenger who is in danger of being denied boarding involuntarily a “personal presentation” of their rights. The Department’s goal is to ensure that when carriers opt to verbally provide any information to the passengers, the information is not presented in a misleading manner regarding any material terms.

In the NPRM, we also proposed to require carriers to inform passengers solicited to volunteer of their principal boarding priority rules and the availability of comparable air transportation. Our intention in proposing these two requirements was to provide passengers more information upon which they would be able to determine whether volunteering to give up their confirmed reservations would be in their best interests. After

considering all the comments in this regard, we are convinced that these proposals, as well as some other disclosure measures not proposed by us but recommended by consumer commenters, may not achieve the expected goal. Although we disagree with some carriers’ comments that providing such information will only assist some passengers to “game” the system to the detriment of the majority of other passengers, we note that providing such information at the gate is time consuming and carriers’ principal boarding priority rules can be found in the written notice prescribed in section 250.9, as well as on most carriers’ websites and/or in the contracts of carriage. We conclude that the burden on carriers of verbally providing such information at the boarding gates outweighs the benefits. Furthermore, we reject some commenters’ suggestions that all passengers should be informed of the carriers’ principal boarding priority rules and whether a particular flight was oversold at the time they make their reservations. We note that oversales might not occur until close to the departure time or date and, due to no-shows, many overbooked flights will not be oversold on the day of departure. We believe requiring carriers to provide these two types of information through their reservation systems may not be beneficial to consumers yet will increase the operational costs of carriers, depress revenues and limit seat availability. These costs and restrictions ultimately will be borne by the consumers.

Related to the boarding priority rule disclosure proposal, FlyersRights.org and some other consumer commenters also suggested that we should not allow carriers to set their boarding priority rules based on the amounts of passengers’ fares. FlyersRights.org went further to urge the Department to declare that bumping a passenger who checked in earlier but who paid a lower fare is an unfair and deceptive practice. We cannot agree. With the exception of unlawful discrimination, the Department has traditionally allowed carriers extensive flexibility to set their boarding priority rules based on several criteria, including passengers’ fares. We believe affording carriers such flexibility is an important marketplace tool and permits carriers to proactively control the costs of oversales so they are able to continue to offer the maximum numbers of seats to the traveling public. It makes perfect sense that passengers who pay more for a ticket to get the last available seat and the right to obtain a full refund also want to be assured that they will be

the last person to be bumped from an oversold flight. We do agree that passengers seeking the lowest fare on a flight are most likely budget-conscious consumers and are most likely to be the ones bumped by some carriers. In this final rule, we have adopted provisions to increase the DBC limits and rates based on the passengers’ fare which should help them.

With respect to the proposal to require disclosure of the availability of alternate transportation at the time of volunteer solicitation, we have come to the conclusion that such a requirement is unworkable under most circumstances. The availability of alternate transportation is a fluid issue and is subject to many variables. Due to these variables, what carriers may offer at the time of volunteer solicitation could change by the time the alternate transportation is provided to the volunteer. Should such change occur, the expectation created by the earlier information may cause passengers further confusion and frustration. Thus, we are not going to require such information to be provided at the time of volunteer solicitation.

#### D. Covered Entities and Other Miscellaneous Issues

*The NPRM:* The oversales rule currently covers scheduled passenger service using aircraft with 30 or more seats. We solicited comments on whether the oversales rule should be expanded, either in its entirety or partially, to cover scheduled services using aircraft with 19–29 seats and whether we should allow these flights to be oversold at all.

*Comments:* CTA believes that the oversales rule should apply to all flights of major carriers, regardless of the size of the aircraft. Comments from RegulationsRoom.org generally support applying the oversales rule to all aircraft sizes. Some of these commenters urge the Department to ban oversales on small aircraft, arguing that being bumped from those flights is more disruptive and costly to passengers. ASTA supports extending the oversales rule to aircraft with 19–29 seats, stating that involuntary denied boarding on short-haul flights operated by small aircraft has drastic effects on passengers who are connecting to long-haul flights and these passengers are often surprised after being bumped to discover they have no protection from the Department’s oversales rule.

On the carriers’ side, ATA supports maintaining the status quo, *i.e.*, allowing overbooking on flights operated with aircraft with 19–29 seats and not applying the oversales rule to

these flights. ATA argues that banning oversales on these flights will threaten the existence of small community air services and imposing the oversales rule on these flights would be too costly to carriers. RAA also opposes banning oversales on regional flights, arguing that such a ban would eliminate the ability of carriers to serve small communities, as carriers would not be able to bear the costs of running flights with empty seats. RAA also contends that the denied boarding risk is low on regional flights operated by small aircraft because regional carriers' load factors lag behind large aircraft operators.

*DOT Response:* The Department has been persuaded that it should not extend the oversales rule to flights operated with aircraft with 19–29 seats. Aircraft of this size make up a small and diminishing portion of scheduled-service operations, particularly in the case of the code-share partners that were the predicate for this proposal. After being bumped from a short-haul segment, the cost of paying DBC based on the fare to a passenger's downline destination — up to 400% of the fare and \$1,300 under the final rule — would be an unreasonable burden for operators of 19–29-seat aircraft. These carriers are most likely to be the very small entities to which the Regulatory Flexibility Act requires federal agencies to afford special consideration in rulemaking. Based on similar rationale, we have also decided that it is not in the best interests of the public to ban oversales on these flights because doing so will further reduce the capacity of flights serving smaller airports and communities and cause price increases.

Although not proposed in the NPRM, there are several issues raised by the commenters that the Department feels it is important to address in order to clarify what appears to be confusion associated with the oversales rule. First, several foreign carriers urge the Department to harmonize its oversales rule with the rules of other jurisdictions, such as the European Union. The Department agrees in principle that the U.S. oversales rule should not conflict with the rules of other jurisdictions. The Department has worked diligently to that end, and sees no direct conflict between our oversales rule and the rules of other jurisdictions. We disagree with some commenters' claim that the rule as proposed and finalized here will cause confusion among carrier staff and passengers. With respect to both domestic and international flights, the U.S. rule applies only to denied boardings that occur at a U.S. airport, a relatively straightforward applicability

standard that is similar to the approach taken in the EU oversales rule for flights of non-EU carriers. Thus, passengers are clear that when they are denied boarding at a U.S. airport, the U.S. oversales rule applies. The carriers have the responsibility to train their staffs to be familiar with rules of the jurisdictions to and from which they operate. We note that the EU oversales rule has an exception for denied boardings that are subject to compensation requirements of other jurisdictions. To the extent that flights of EU carriers from the U.S. to an EU state may also be subject to the EU oversales rule, those carriers should be able to comply with both the U.S. and EU rules (e.g., by paying the higher compensation amount if the required amounts differ).

CTA and FlyersRights.org both suggest that the Department should not exempt carriers from complying with the oversales rule when the involuntary denied boarding is caused by an equipment change due to factors that are within carriers' control, e.g., crew schedule or maintenance issues. We have carefully examined this suggestion but are not convinced that this proposal is consistent with the underlying rationale of our oversales rule. The Department's longstanding policy of exempting carriers from paying DBC when an involuntary denied boarding was caused by equipment change is based on the grounds that in this situation, the resulting denied boardings were not caused by overbooking, a practice that absent compensation is fundamentally unfair to the passengers who have paid for confirmed seats but are not permitted to board the flight because their promised seat was sold to another person. Accordingly, we will not change our rule involving oversales that result from substitution of equipment of lesser capacity.

Also raised by several foreign carriers is the issue of an alternative to "cash" payment of DBC. These carriers are under the impression that in order to comply with our rule, they must keep a large amount of cash (currency) at the U.S. airports they serve for the purpose of making cash payments to passengers denied boarding involuntarily. These carriers assert that such a cash reserve at their stations in U.S. airports, many of which are staffed by third-party contractors, imposes security concerns. Thus, these carriers urge the Department to allow them to tender DBC payments to passengers in the form of a debit card or other forms of electronic funds. The Department wishes to clarify that under our rule, carriers are permitted to tender a check, in lieu of cash payment, to

passengers denied boarding involuntarily, and to do so up to 24 hours after the denied boarding occurred. The check may be mailed to the address that a passenger has provided. Therefore, it is not required that carriers maintain large amounts of cash at airports. We acknowledge the convenience and security features offered by electronic funds, but have not had the opportunity to fully examine the benefits and limitations of using this procedure as an alternative to cash/check DBC payments in this rulemaking proceeding. We may further explore this issue in future rulemaking.

Finally, we have decided not to adopt Delta's recommendation that the revised oversales rule should be applied only to tickets purchased on or after the effective date of the final rule. Such application would inevitably result in the situation where passengers bumped from the same flight will be subject to different rules. Additional delays may occur at the boarding gates when the gate agents have to spend additional time to determine the purchase dates of the tickets in order to determine which rule applies. For this reason, we will require that all denied boardings and other DBC-related processes covered by this rule that occur on or after the effective date of the final rule must comply with the new rule, regardless of the transaction dates of the ticket sales.

We note that this final rule also includes a technical amendment concerning reporting of oversales. We are correcting a technical inconsistency in the oversales reporting requirements in section 250.10. One sentence in that section states "The reporting basis shall be flights originating or terminating at or serving, a point within the United States." The last sentence of that section reads: "No reports need be filed for inbound international flights on which the protections of this part do not apply." Apparently, when the rule was amended many years ago to remove applicability to international flights inbound to the United States, the second sentence quoted above was added but the first sentence was not revised to remove the reference to flights "terminating in" or "serving a point within" the United States. The intent and the practice has been not to include international flights that terminate in the U.S. (i.e., inbound international flights) in these Form 251 data. This has been clear in paragraphs (A) and (E) in the instructions to the form (see [http://www.bts.gov/programs/airline\\_information/forms/pdf/form\\_251.pdf](http://www.bts.gov/programs/airline_information/forms/pdf/form_251.pdf)). We are not aware of any instances in which data for inbound international flights have been

inadvertently included in Form 251 reports.

### 7. Full Fare Advertising

#### A. Change in Enforcement Policy

*The NPRM:* The Department's price advertising rule (14 CFR 399.84) states that any advertised price for air transportation, an air tour or an air tour component must be the entire price to be paid by the customer for that transportation, tour or tour component. However, the Department's enforcement policy with regard to this rule has permitted sellers of air transportation to state separately from the advertised price government-imposed taxes and fees, provided that they are not *ad valorem* in nature, are collected by the seller on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full price to be paid. The Department has prohibited sellers of air transportation from breaking out any other seller imposed fees, including fuel surcharges and service fees, and taxes imposed on an *ad valorem* basis.

In the NPRM, the Department proposed enforcing the price advertising rule as it is written. This proposal would change the existing enforcement policy by ending the practice of permitting sellers to exclude government taxes and fees from the advertised price, and would instead require that the price advertised include all mandatory fees. The Department invited comments on how sellers of air transportation foresee this change in enforcement policy affecting the methods they use to advertise fares and how consumers view the change. The Department also requested comment on the potential cost of changing the current advertising structures that carriers and ticket agents have in place in order to adhere to the proposed policy shift.

*Comments:* Individuals and consumer organizations such as Flyersrights.org, in addition to individuals who participated on Regulation Room, support the proposal that advertisements for air transportation state the total price to be paid by the consumer. Some commenters participating in discussions through Regulation Room reported that there were occasions when they thought they were going to pay one price for air transportation, but the final price was much higher due to additional taxes and fees. Regulation Room commenters also stated that the current advertising method borders on bait-and-switch tactics. Some individual commenters

expressed similar sentiments, noting how they have been surprised by the total amount to be paid at the end of a purchase online and their preference to know the total amount to be paid earlier. Some consumers and consumer groups go further by suggesting that the Department should require that the true cost of travel, including ancillary fees, be disclosed earlier in the booking process. For example, CTA states that even if the price advertising rule requires the disclosure of all mandatory fees, consumers may still have trouble finding out the true cost of travel due to the proliferation of many kinds of ancillary fees for optional services.

U.S. carriers and carrier associations generally oppose the Department changing its enforcement policy to enforce the full price advertising rule as written. ATA states that its members support fare transparency, but notes that the Department declined to revise its full-fare rule four years ago and contends that the airfare advertising landscape has not changed since that time in a manner that would justify a change in 25 years of enforcement policy. ATA notes that several other industries advertise without including government-imposed taxes and fees, and states that the air transportation industry should not be treated differently. It asserts that this policy shift would suppress valuable information to consumers about how much of their total price consists of government-imposed taxes and fees. In addition, ATA argues that this policy shift would negatively impact competition because government-imposed taxes and fees vary from airport to airport and routing to routing. ATA contends that this means that an airline that has a competitive fare, but also has a routing that subjects the fare to higher taxes and fees, will be disadvantaged if it is required to include those taxes and fees in the advertised price. It remarks that this could negatively impact service to smaller communities. ATA also raised concerns about the cost implications of the proposal, because the proposal would require airlines to perform additional route pricing analysis, programming changes, website changes, and auditing and testing of changes. Many U.S. carriers raise similar points.

The views of foreign carriers and associations varied, with many opposing the proposed mandate that the advertised fare be the full fare to be paid by the customer but some supporting it. IATA believes that there is no evidence of widespread advertising deception to justify a change in the Department's enforcement policy. Additionally IATA

notes that the complexity of non-airline charges makes listing a full fare with "all mandatory fees" difficult, and would only confuse air travel consumers because this complexity prevents a true fare comparison as the actual fare is obscured by the additional government-imposed taxes and fees. IATA also notes that passengers are made fully aware of the purchase price before purchase. Most foreign airlines support IATA's comments. Some foreign carriers, such as Singapore Airlines, Qatar Airways, and Jetstar Airways, support the proposed mandate that advertisements state the total price to be paid by the consumer. Many of these airlines state that they already advertise the total price to be paid by consumers due to regulations of other governments. Some foreign carriers expressed concerns about the applicability of this rule to advertisements on websites that are not domiciled in the United States or directed to United States customers.

Among other industry interests that commented, ASTA and ITSA support this policy shift and note that full fare disclosure is the best way to eliminate passenger confusion and ensure that passengers understand the total cost of their air travel. ASTA asserts that the full fare displayed in advertisements should include all mandatory fees, regardless of their source. The United States Tour Operators Association (USTOA) disagrees and states that the proposed change will place costly burdens on travel agents while doing very little to ease customer confusion in airline pricing. USTOA contends, as does ATA and many U.S. airlines, that ending the practice of permitting sellers to exclude government taxes and fees from the advertised price is not justified because the airfare advertising landscape has not changed since the Department last declined to revise the full-fare advertising rule. USTOA states that tour operators would be especially negatively affected by this shift in policy because government-imposed fees vary widely depending on where the consumers choose to start their trip, and therefore a tour operator would not be able to advertise a tour effectively since the purchaser usually has the option of a number of gateways.

*DOT Response:* The Department has decided to adopt the proposed policy change in relation to the full-fare advertising rule. We disagree with comments that the Department has not shown true harm to consumers in not having the full price quoted to them up front. On the contrary, comments from individual commenters and persons participating in Regulation Room show consumers feel deceived when the total

price, including taxes and fees, is not quoted to them after an initial fare inquiry. Many consumers feel that advertising fares that exclude mandatory charges is a “bait and switch” tactic by travel sellers. The Department has also received complaints regarding fare advertising, some of which specifically mention feeling deceived when they are not quoted the full price to be paid after an initial inquiry.

Also, contrary to the assertions of some commenters, the Department has seen changes in the advertising methods used by sellers of air transportation since the Department declined to revise its full-fare rule in 2006. Sellers are now marketing air transportation through a variety of methods that they were not using then. For example, some carriers have started to sell tickets through Facebook and some have Twitter feeds dedicated solely to advertising sale fares. Additionally, in recent years, carriers are increasingly unbundling the cost of air travel, which further obscures the total fare to be paid by the consumer. Carriers and online travel agencies have also started to offer more complicated routings with multiple connections in order to provide the “lowest” airfare to consumers. However, with these changes in routings, taxes and fees can increase and become a significant portion of the price to be paid by consumers. In those cases, consumers need a full picture of the total price to be paid in order to compare fares and routings. In order to understand the true cost of travel, consumers need to be able to see the entire price they need to pay to get to their destination the first time the airfare is presented to them.

We also are not persuaded by argument that the Department should not require that the advertised price for air transportation, a tour or tour component be the total price to be paid by the customer for that transportation, tour or tour component because other industries advertise without including government-imposed taxes and fees. Airfares are different from products in other industries for a variety of reasons, including the multitude of methods of advertising that sellers of air transportation employ and the various taxes and government fees that apply. We believe that consumers are deceived when presented with fares that do not include numerous required charges and, in our view, air travelers will be better able to make price comparisons when they can see the entire price of the air transportation, tour or tour component being advertised. The advertised fare under this policy shift must include all government-imposed taxes and fees as

well as mandatory carrier-imposed charges, including booking fees if the only way the consumer can obtain the air transportation is by paying the booking fee. While a carrier or ticket agent generally is not required to include a booking fee in its advertised fare if there are other means for the passenger to obtain the air transportation (e.g., a booking fee only applies for tickets that are purchased over the telephone), where airfares are advertised via an Internet site that permits consumers to purchase fares, the fares advertised on the site must include all charges required to make the purchase on the site. For example, it would be unfair and deceptive to hold out on such an Internet site a fare that can be purchased only at airport ticket counters but that excludes a convenience fee that is applied to Internet sales.

In regard to the costs related to this change, online travel agencies that will face many of the same marketing and programming challenges as carriers do, if not more, feel that the operational costs of adhering to the rule will be overly burdensome. Sellers of air transportation are constantly updating their fare matrices and the methods by which they display fares. In addition, we believe many carriers may already have programs in place to accommodate this policy shift, as some foreign governmental entities such as Australia and the European Union already require the total price to be shown to consumers. We note also that the requirement for advertisements to state the total price is limited to advertisements published in the United States, including via the Internet if accessible in the U.S. Further, recognizing the amount of print advertising slated for use by tour operators that would need to be pulled thereby increasing costs of print advertising revision, we have decided that the new full fare advertising requirements will not take effect until 180 days after the publication of this final rule in the **Federal Register**. This should reduce the costs related to this requirement.

Some airlines were concerned that passengers would not know how much of their total price consists of government imposed taxes and fees. We want to assure these carriers that nothing in this rule prohibits them from making this information available to consumers. This final rule allows carriers to advise the public in their fare solicitations about government taxes and fees, or other mandatory carrier or ticket agent imposed charges applicable to their airfares. Sellers of air

transportation may have pop-ups or links adjacent to an advertised price to take the consumer to a listing of such charges, or they may display these charges on the same page in fine print if they prefer. Such charges must accurately reflect the actual costs to the carrier of the service or matter covered, be displayed on a per passenger basis, and be displayed in a manner that otherwise does not deceive consumers. Consequently, the rule requires that any such listing not be displayed prominently and be presented in significantly smaller type than the listing of the total price to ensure that consumers are not confused about the total price they must pay. Also, we are prohibiting the presentation of any “total” fares in advertising that exclude taxes, fees or other charges since the major impact of such presentations is to confuse and deceive consumers.

#### B. Explicit Inclusion of Ticket Agents

*The NPRM:* The Department proposed to explicitly apply the price advertising rule to ticket agents. We have for years considered ticket agents to be subject to the price advertising rule since the Department’s statutory authority to prohibit unfair and deceptive practices and unfair methods of competition applies to both carriers and ticket agents. However, the Department’s price advertising rule doesn’t specifically indicate that ticket agents are covered by the rule.

*Comments:* Comments received from airlines, travel agents, consumer groups and others all supported the inclusion of ticket agents in the price advertising rule. Air New Zealand and Qantas indicate that their support for including ticket agents in the rule is contingent on airlines not being responsible for the compliance of ticket agents.

*DOT Response:* The final rule explicitly includes ticket agents in the price advertising rule. This is consistent with longstanding Department policy and we did not receive any adverse comments. This inclusion will ensure that consumers are more fully protected. With regard to the Air New Zealand and Qantas comment, airlines have always been legally responsible along with their agents for their agents’ advertising violations and they will continue to be under the revised rule.

#### C. Each-Way Advertising

*The NPRM:* The Department proposed to codify its enforcement policy on each-way airfare advertising. Under this policy, advertisement of an each-way airfare that is contingent on a round-trip purchase is an unfair and deceptive practice unless the airfare is advertised

as “each way” and the round-trip purchase requirement is clearly and conspicuously disclosed in a location that is prominent and proximate to the advertised fare amount. The Department invited interested parties to comment on this proposal and on whether the Department should adopt a similar rule for air/hotel packages that advertise a single price but are sold at that price on a double occupancy basis, *i.e.*, two individuals must purchase the package to obtain the advertised fare.

*Comments:* Individual consumers and consumer groups had divergent views on whether the Department should allow each-way airfare advertising even if the round-trip purchase requirement is clearly and conspicuously disclosed proximately and prominently to the advertised fare. Flyersrights.org opposes this proposal, believing that disclosure of the full round-trip purchase price is most helpful to consumers. Consumers Union and AAPR support the proposed regulation, as long as the round-trip purchase requirement is clear and conspicuous. Most of the commenters on Regulation Room and individual commenters generally support this proposal but some, like Flyersrights.org, suggest the Department require that the full round-trip purchase price be disclosed. Airlines, airline associations and travel agency groups express support for the each-way advertising regulation. ATA requests clarification as to whether “one way” advertising would be allowed if there was no round-trip purchase requirement. ASTA supports this proposal as well, noting that specifically prohibiting the use of “one way” to advertise fares that are contingent on round-trip purchases will allow consumers to better comparison shop among fare quotes.

We received relatively few comments on whether the Department should adopt a rule requiring specific disclosure for air/hotel packages that advertise a single price but are sold at that price only on a double occupancy basis. Some commenters participating in the Regulation Room discussion state that clear and conspicuous disclosure concerning occupancy-related rates should be required. ASTA comments that double occupancy rates should still be allowed, as long as the “per person” requirement is disclosed.

*DOT Response:* The Department is codifying existing enforcement policy allowing sellers of air transportation to advertise an each-way price that is contingent on a round-trip ticket purchase so long as the round-trip purchase requirement is clearly and conspicuously disclosed in a location that is prominent and proximate to the

advertised fare. This codification of longstanding enforcement policy allows sellers of air transportation to be flexible in the way they advertise round-trip fares while still requiring all pertinent disclosures to consumers. While the Department understands that some consumers would prefer the full round-trip price to be displayed, the Department has not found that the current regime has led to consumer confusion or deception and it does permit certain types of advertising that are beneficial. We note also that this final rule specifically prohibits referring to such an airfare as “one way” even if the round-trip purchase requirement is clearly disclosed, which should minimize or prevent consumer confusion. In response to ATA’s request for clarification, we agree that “one way” advertising is allowed when purchase of that fare is not contingent on a round-trip purchase. We are deferring to a later date any requirement regarding double occupancy advertisements as we received few comments on this matter. We do not have enough information at this point to determine if consumers feel deceived by double occupancy rates, and consequently we will not formulate a specific regulation regarding the methods of such advertising at this time. “Double occupancy” advertising will still be subject to the general provisions of 49 U.S.C. 41712.

#### D. Opt-Out Provisions

*The NPRM:* The Department proposed to prohibit “opt-out” provisions by sellers of air transportation. “Opt-out” provisions involve situations where a consumer is purchasing air travel or an air tour package online and certain fees for ancillary services or products are pre-selected for the consumer and added to the total price to be paid by the consumer at the end of the transaction. The consumer is deemed to have selected these services (and the charges for them) unless the consumer “unchecks” the pre-selected box or boxes for the relevant services. The NPRM proposed prohibiting this practice as unfair and deceptive in violation of 49 U.S.C. 41712 and allowing carriers and ticket agents to add an optional service to the total airfare to be paid by the consumer only if the consumer affirmatively “opts in” to accept and purchase that service.

*Comments:* There was wide support among individual commenters and consumer groups for a prohibition against opt-out provisions. A few individual commenters noted that this prohibition will allow consumers to avoid unwanted fees. All of the individuals commenting through the

discussion on Regulation Room stated that all optional services should be presented to consumers as an “opt-in” choice. Individual consumers recounted how they were sometimes faced with paying for travel insurance they did not need or a seat selection fee they were not aware of because those options were “pre-selected” by the seller of air transportation.

Many industry commenters, though not all, also agree with a prohibition on “opt-out” features in advertising. ATA and most U.S. carriers, such as US Airways and Delta Air Lines, support this proposal. American Airlines states that non-aviation services should be offered on an “opt in” basis, but that aviation services that most consumers expect as part of their travel should be pre-selected. American notes that this will allow consumers to customize their travel options. IATA does not oppose the prohibition on opt-out provisions. AEA notes that EU Regulation 1008/2008 already has an opt-in requirement. Qantas Airlines opposes this regulation, stating that it feels customers appreciate pre-selected options. ASTA supports a prohibition on “opt-out” features in price advertising.

*DOT Response:* The Department has decided to prohibit the use of opt-out provisions by carriers and ticket agents. The fact that consumers often don’t realize that optional services are included in the total price of the ticket due to the deceptive nature of such opt-out provisions, is borne out by consumer comments. Many industry organizations also support prohibiting opt-out provisions. In addition, this action will align the United States with the consumer protection laws of other jurisdictions which prohibit opt-out provisions, including the European Union through its regulation 1008/2008. We do not agree with airline comments that consumers like having certain airline related services preselected for convenience sake so that they can see the total cost of travel with those services. We believe that having opt-in selections achieves the same goals of allowing travelers to customize their air transportation packages to their travel needs and see the total cost of travel with those service while eliminating the unfair and deceptive practice of pre-selecting items that the consumer has not selected and does not necessarily realize are pre-selected until late in the process — sometimes after a purchase is complete. This rule would prohibit opt-out provisions for any ancillary fee for an optional service such as seat selection, seat upgrades, pre-boarding, travel insurance, rental cars, and transfers to and from the airport. Under

this rule, an optional service can be added to the total airfare to be paid by the consumer only if the consumer affirmatively agrees to pay a fee for such service, *i.e.* by checking a box for that service or other concrete action.

#### 8. Baggage and Other Fees and Related Code-Share Issues

##### A. Covered Entities

*The NPRM:* In the NPRM, the Department proposed to require all U.S. and foreign air carriers that have websites accessible to the general public in the United States through which tickets are sold to provide notice to consumers about baggage fees and allowances and other ancillary fees that the carrier may charge. More specifically, the NPRM proposed: (1) Disclosure on the homepage for at least three months of any increase in the fee for passenger baggage or any change in the free baggage allowance for checked or carry-on baggage; (2) notice on e-ticket confirmations regarding the free baggage allowance for that flight and any applicable fee for the first and second checked bag and carry-on bag; and (3) disclosure of all fees for optional services in one central place on the seller's website. The Department noted that the recent trend to unbundle services and charge separate fees for services that may have once been included in the cost of a ticket has led to consumers having difficulty determining the total price they must pay to travel by air. The Department requested comment on whether these requirements to disclose baggage and other fees should apply to ticket agents as well as carriers. We also invited comment on alternative proposals, including whether the Department should limit the applicability of the disclosure requirements to all flights operated by U.S. carriers, U.S. and foreign carriers that operate any aircraft with 60 or more seats, or U.S. and foreign air carriers that operate any aircraft with or 30 or more seats.

*Comments:* Many consumers state that the type of fee disclosures contemplated in the proposed rule should apply to all sellers of air transportation. Some consumers relayed experiences where they felt fees were hidden when booking on online travel agency websites. CTA and BTC state that this section should apply to ticket agents as well as carriers, but they both note that the agents need accurate and up to date information from the airlines via the GDSs in order to provide accurate information to consumers.

USTOA contends that the disclosure requirements, as proposed, should not

be applied to ticket agents because the airlines are updating and changing fees constantly, and the cost to agents to ensure that the various airline fees they display are correct would be burdensome. USTOA proposes that instead ticket agents simply be required to inform consumers on their websites and on e-ticket confirmations that baggage and other charges may apply by stating that "airline fees for baggage and other optional services may apply to your journey; please consult with your airline for information on those fees." USTOA further states that in the event that the Department concludes that additional specific information should be provided by ticket agents, it should allow ticket agents to provide hyperlinks to the locations on the airline websites where specific information may be obtained. ITSA does not object to extending the requirements to disclose baggage and other fees to ticket agents, but notes that if the information is not provided to the GDSs, the costs associated with agencies constantly updating information are high and the possibility exists that the information may not be accurate. ASTA takes a similar position to ITSA in regards to applying the disclosure requirements to ticket agents.

*DOT Response:* The Department has decided that the requirements to provide specific notice to consumers about baggage fees and allowances and other ancillary fees shall apply to all U.S. and foreign carriers that advertise or sell air transportation in the U.S. We are not limiting the applicability of the disclosure requirements to flights of only U.S. carriers, as the harm to the consumer is the same whether the lack of information about baggage and other ancillary fees involve flights operated by a U.S. carrier or a foreign carrier. We are also not limiting the applicability of these requirements based on the size of the aircraft that carriers operate as we believe that disclosure of add-on fees is an issue of sufficient significance to warrant application of this requirement to aircraft of all sizes. Consumers want to be informed of the fees that they will be required to pay for optional services regardless of the size of the aircraft on which they travel.

The Department also believes that it is important to ensure that consumers are alerted to airline-imposed fees that may be applicable to itineraries purchased through ticket agencies. However, we are persuaded by USTOA and others to apply a more limited requirement to ticket agents, particularly since the Department is deferring decision on whether to require U.S. and foreign carriers to give ancillary fee information

to GDSs. Therefore, unlike the case for U.S. and foreign air carriers, this final rule does not require ticket agents to disclose on their website information about changes in baggage fees or allowances or to list on their website all of the airlines' fees for optional services. The final rule does, however, require ticket agents (and carriers) to inform passengers on the first screen in which the ticket agent or carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can go to see these baggage fees. This notification on the website must be clear, conspicuous and prominent. To comply with this requirement, ticket agents can choose between referring consumers to their own site where the baggage fees are displayed or to the airline websites where specific information may be obtained. This requirement is consistent with prior guidance provided by the Department's Aviation Enforcement Office. See, Notice of the Assistant General Counsel for Aviation Enforcement and Proceedings, *Guidance on Disclosure of Policies and Charges Associated with Checked Baggage*, May 13, 2008, <http://airconsumer.dot.gov/rules/guidance.htm>. The final rule also requires ticket agents (and carriers) to include on e-ticket confirmations information about the free baggage allowance and the applicable fee for the first and second checked bag and carry-on but allows ticket agents, unlike carriers, to do so through a hyperlink. We also want to make clear that when using the term "ticket agents" we are referring not only to agents of the carriers but also others who meet the definition of "ticket agent" contained at 49 U.S.C. 40102 (a)(40), *i.e.*, one who as a principal sells, offers for sale, negotiates for or holds itself out as selling, providing or arranging for air transportation.

##### B. Disclosure of Baggage Fees

*The NPRM:* In 2008, the Department's Aviation Enforcement Office issued guidance concerning the disclosure of baggage fees to the public. In that notice, the office stated that it views a carrier's failure to clearly disclose significant conditions applicable to air fares, such as baggage fees, to be an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712. It described steps that carriers should take to ensure that they are providing prominent and timely notice of their baggage policies and charges. For example, the office suggested carriers place a notice on the home page of their website highlighting new

baggage policies and charges. See, Notice of the Assistant General Counsel for Aviation Enforcement and Proceedings, *Guidance on Disclosure of Policies and Charges Associated with Checked Baggage*, May 13, 2008, <http://airconsumer.dot.gov/rules/guidance.htm>.

In the instant proceeding, the Department proposed to codify this guidance document by requiring carriers that maintain a website that is accessible to the general public to prominently disclose on the homepage of that website for at least three months any increase in the fee for passenger baggage or any change in the free baggage allowance for checked or carry-on baggage. The Department proposed that this notice could appear in its entirety on the home page or could be accomplished through a prominent, conspicuous hyperlink (e.g., "Revised Baggage Fees") that leads to an explanation of the carrier's baggage policies and fees. The Department invited comment on this proposal, including comment on how long the notice should remain on the page and the best options for displaying the information to consumers.

The NPRM also proposed to require carriers that issue e-ticket confirmations to include information on that confirmation regarding the free baggage allowance for that flight and the applicable fee for the first and second checked bag and carry-on bag. The goal of this proposed rule was to provide the specific information regarding a particular consumer's baggage allowance well before that consumer arrives at the airport with bags packed. The Department invited comment on this proposed section.

*Comments:* Most individual commenters and commenters from consumer groups did not address this proposal specifically, but overwhelmingly commented that, in general, they supported more disclosures. Individual commenters, through the Docket and through Regulation Room, noted how they are sometimes surprised by additional baggage fees when they check-in at the airport. CTA states that two out of three travelers responding to their survey were surprised by fees upon checking in for a flight at the airport. Many commenters wanted the Department to limit the carrier's ability to unbundle certain fees from the base fare, particularly baggage fees for the first checked bag. These commenters feel that carriers are "nickel and diming" passengers instead of trying to improve service. Other commenters found value in the a la carte pricing models of

carriers because the models allow travelers to customize their trips. The individual commenters who were not opposed to unbundling fees generally support more disclosure of fees to the consumer before purchase.

ATA and most U.S. carriers support more disclosure regarding changes in baggage fees. ATA supports the proposal to put notice of fee changes on a carrier's homepage and states that the best method for providing this notice is to put a hyperlink on the homepage. ATA notes that three months is a long enough time to require the information on the change to be on the website. Most U.S. carriers submitted comments similar to ATA's on the proposal to disclose baggage fee changes. Virgin America states, however, that the Department should refrain from establishing too much specificity or detail because such a regulation would detract from competitive market forces on how airlines design and set up their own websites. Furthermore, Virgin America notes that many carriers are developing mobile applications where screen space is limited. Allegiant Airlines opposes what it sees as attempts by the Department to micromanage how websites appear and how information is shared with consumers in the absence of a clear attempt by carriers to deceive consumers.

Foreign carriers and carrier associations generally were not in favor of what they view as increased U.S. government regulation of the appearance of websites that are not maintained in the United States. IATA warns that this proposal could be an extraterritorial application of U.S. law. IATA further states that most carriers already have baggage fee information readily available on their website, and most carriers do not charge for one or two checked pieces of baggage to or from the United States, so adding extra notice and advertising requirements to a carrier's website would increase costs greatly. The National Airlines Council of Canada agrees with disclosure of fees on websites, but disagrees with the requirement to place a link to the disclosure on the homepage. Jetstar Airways opposes posting notice about the change directly on the homepage of the carrier, asserting that space issues could limit airlines' ability to clearly disclose the changes and advertise products and services. Qantas raises similar concerns, noting that the Department should not dictate the content of a carrier's website or homepage. Lufthansa believes that the Department did not establish why these disclosure rules are necessary, but does

note that it already provides most of this information. Condor Flugdienst notes its objection to requiring changes to baggage allowances to be posted on the homepage, stating that failure to provide notice of a change is a violation of 49 U.S.C. § 41712 under Department guidance and that there is no need, therefore, for the Department to codify this requirement. Air France and KLM contend that having the information regarding baggage fee changes stand alone on the homepage would be costly. Those carriers suggest that this information's location on the website should be left to the airline's discretion and that a time period of one to two months would be enough time for consumers to be aware of the change.

With regard to disclosure of baggage information on e-ticket confirmations, as with the proposal to disclose such information on carriers' websites, most individual consumers and consumer groups support any provision that provides the consumer with more information and prevents consumers from being surprised about hidden fees. Some individuals specifically contend that baggage allowance disclosures should also include information regarding excess weight and excess baggage charges. Many consumers feel that the disclosure of baggage fees should occur earlier in the process, not after purchasing the ticket. One commenter noted that e-ticket confirmations are not required, and that some carriers still use paper tickets. This commenter noted that any requirement for disclosure of baggage fees on an e-ticket confirmation would not help consumers who are provided paper tickets because those consumers would not have that information. This commenter believes that the Department should clearly define what a ticket is, and then require baggage fee disclosures to be in the same method as the purchaser receives the ticket.

ATA and most U.S. airlines do not have an objection to this requirement, as many carriers currently provide this information in the e-ticket confirmation. US Airways and Delta Air Lines support baggage disclosures on e-tickets. Spirit Airlines supports baggage fee disclosures on e-tickets through a hyperlink to baggage information. IATA is not opposed to a provision requiring airlines to include information regarding optional services in e-tickets after a purchase is complete. AEA also states that it is not opposed to providing this information on an e-ticket. AEA points out that EU Regulation 1008/2008 mandates that optional price supplements be communicated in a "clear, transparent and unambiguous

way.” Some foreign carriers assert that requiring the information on the e-ticket confirmation is regulatory overkill, as a consumer cannot complete a purchase without becoming aware of the fees due to other government regulations. Other carriers state that due to the abundance of disclosure prior to completion of purchase, a carrier should not be required to provide all of the information in full on an e-ticket as that would be costly. All Nippon Airways expressed concerns about the costs of redesigning their e-ticket confirmations, noting that a recent overhaul cost upwards of \$145,000. Some carriers, such as Air France and KLM, note that they already have a system in place to provide information about baggage on the e-boarding pass issued via Internet check-in.

*DOT Response:* The Department has decided to require U.S. and foreign carriers that advertise or sell air transportation in the United States to promptly and prominently disclose any increase in its fees for carry-on or checked baggage and any change in the checked baggage allowance for a passenger on the carrier’s homepage. Such notice must remain on the homepage for at least three months after the change becomes effective. This rule is consistent with current enforcement policies regarding the disclosure of changes in baggage fees. Additionally, the Department feels that this rule will prevent passenger surprise about changes in baggage fees or allowances. We agree with consumers and consumer groups, who advocate that greater disclosure of fees, and particularly baggage fees, is needed. Recognizing the concerns raised by carriers, particularly foreign carriers, about space on a carrier’s homepage and a carrier’s legitimate need to be able to design a website that is competitive and presents information in a clear way, the Department will allow carriers to fulfill the notice requirements by providing a link from the homepage directly to a pop-up or a place on another webpage that details the change in baggage allowance or fees and the effective dates of such changes. The link on the homepage needs to be descriptive, clear and conspicuous, *i.e.*, easy for a consumer to locate. The link need only remain on the homepage for a period of three months after the change becomes effective. Most commenters agreed that three months is a long enough time to ensure that consumers are aware of any change in baggage fees or allowances.

The Department disagrees with Air France and KLM, which suggest that the carriers be allowed to decide where on their website to display the information

and that the information should only remain active on the website for one or two months. Changes that occur need to be posted on the website for a sufficient time in order to allow consumers to review the changes not only prior to choosing a flight but also after they chose a flight and are preparing to travel. The Department believes that allowing carriers to decide where the notice should be given may result in some carriers placing the information in an inconspicuous location on the website. If such information is difficult for consumers to find, they may not be aware of the change until after arrival at the airport and the consumer cannot evaluate the impact of the change in baggage fees and allowances on his or her scheduled transportation, which limits consumer choice.

The Department has also determined that there is value in providing a consumer information regarding baggage fees and allowances after the consumer completes a purchase for air travel. Therefore, the final rule requires U.S. carriers and foreign carriers and ticket agents that advertise or sell air transportation in the United States to provide information on e-ticket confirmations regarding the passenger’s free baggage allowance and/or the applicable fee for a carry-on bag and the first and second checked bag. By “applicable fee,” we mean the baggage fee information provided on the e-ticket confirmation cannot simply be a range of fees but must include information about any price that may exist for a carry-on bag and the first and second checked bag and any differing price that may exist depending on the passenger’s status (*e.g.*, frequent flyer, military personnel), on when the payment for the bag is made, or and on whether a consumer checks his or her bag online rather than at the airport. As explained in the section on covered entities, because they may not know the most recent carrier baggage policies, ticket agents may provide details on where to obtain this information by a hyperlink to the locations on the airline websites where specific information may be obtained since the airlines often update and change fees. The Department notes that this requirement will benefit consumers because it will reduce confusion over whether, and, if so, how much they will have to pay to check or carry-on bags. Additionally, this will save the time of both consumers and airline employees at the airport, because consumers will be notified in advance of check-in what the applicable fees are for a carry-on bag and the first and second checked bags. The Department

notes that carriers are already providing this information to consumers in compliance with existing enforcement policies. We disagree with the assertion by some carriers that consumers cannot complete a purchase without first becoming aware of the applicable baggage fees. Given the advent of new fees, such as fees for carry-on bags, the differing price for first and second checked bags, and the price difference that sometimes exists if a consumer checks his or her bag online versus checking the bag in at the airport, the Department believes that it is not a simple matter for consumers to determine the total price to transport their baggage. Additionally, the Department disagrees with airlines that assert that the disclosure requirements are burdensome, as most carriers already provide this information in one form or another.

#### C. Disclosure of all Ancillary Fees

*The NPRM:* The Department proposed to require carriers that have a website accessible to the general public to disclose all fees for optional aviation services in one central place on their website, so that consumers have an easily accessible reference guide for the cost of these services. This disclosure was proposed to be made through a link from the carrier’s homepage directly to a listing of those fees. The Department invited general comment on this proposal. We also asked for comment on whether only “significant” fees for optional services should have to be listed and, if so, how to define a “significant fee.” The Department also asked for suggestions for alternatives to the easily accessible link from the homepage for this disclosure.

*Comments:* Generally, the majority of consumers and consumer groups agreed with requiring carriers to disclose ancillary fees on their website. They contend that airlines hide their fees, and that requiring disclosure will benefit consumers’ ability to comparison shop and avoid surprise fees. Many consumer commenters urge the Department to require that the listing of optional fees on carriers’ websites be standardized. However, some commenters, commenting through the discussion on Regulation Room, expressed concern that a large fee table could be confusing to inexperienced or unsavvy casual travelers. Some consumers and consumer organizations assert that requiring the disclosure of ancillary fees does not go far enough and ask that the Department establish a list of ancillary services for which airlines are prohibited from charging a fee.

ATA generally supports the proposal requiring airlines to disclose fees for ancillary services on a carrier's website through a link, but feels that disclosure of such fees on e-ticket confirmations would be burdensome. ATA contends that some fees vary based on the flight and itinerary, such as food and beverage items. ATA, as well as industry groups such as ASTA and ITSA, do not see a reason why the disclosure should be limited to significant fees. US Airways generally supports this proposal, but requests sufficient lead time to fully implement the website changes required to list the fee information. US Airways notes that if the Department requires disclosure of these fees earlier in the process, the programming costs would increase to cover the complexity of new programming, and sufficient lead time would be required. Delta states that it already has a page that lists these fees, and does not object to a requirement that all carriers maintain such pages.

*DOT Response:* The Department has decided to require U.S. and foreign carriers to have one, central webpage on their website, linked from the carrier's homepage, which lists all ancillary fees. The reason for this requirement is that the Department considers it too difficult currently for consumers to effectively compare and determine the total cost for travel, including ancillary fees for optional services. Not all carriers provide information regarding charges for various services, such as seat assignments, extra leg room, priority boarding, telephone reservations, and seat upgrades in a centralized location so that it is easily accessible for the consumer to review prior to purchase. The Department considers it to be unfair and deceptive to charge an ancillary fee to a consumer, when that consumer had no simple, practical, and reasonable way of knowing about the fee prior to purchasing the ticket. Having a single listing of all of the ancillary fees that a carrier charges for optional services allows the consumer access to greater information without unduly burdening the carrier or stifling the carrier's need to compete on such services.

The Department agrees with commenters that state that all fees should be listed. We believe that there is no practical way to identify what is "significant," as each traveler, and even airline, might differ over what is significant. Therefore, the Department believes that to ensure adequate protection of consumers, as well as to ensure a level playing field among airlines, it is best to require carriers to list all fees. This includes, but is not limited to, fees for checked baggage, carry-on baggage, overweight bags,

meals, on-board entertainment, Internet connections, pillows, blankets, advanced or upgraded seating assignments, telephone reservations, early boarding, canceling or changing reservations, unaccompanied minors, and pet transportation. ATPCO has identified more than a hundred optional services and assigned each of those services a code. While the ATPCO list may not be an exhaustive list of services that are now offered or that will in the future be offered, the Department suggests that carriers may wish to use the ATPCO list of charges as a reference in developing a list of all optional services and fees to put on their websites.

The Department understands the carriers' concern that the availability and price of some items vary depending on a number of factors such as the type of aircraft being used, the frequent flyer elite status of a passenger, the flight on which a passenger is booked, or the time at which a passenger pays for the optional service. For non-baggage related optional services, carriers can provide a range of fees, acknowledging that they vary based on those types of factors. For example, if food and beverage service prices vary among flights, an airline can state that meals or snacks are available for purchase, and then give a range of prices for such meals and snacks.

This use of a range of fees would not, however, be acceptable under the rule with regard to fees in connection with checked or carry-on baggage, which are so fundamental to air travel and have until relatively recently been included in the price paid for travel on all carriers. With regard to those fees, we are specifically requiring that carriers, at a minimum, provide information about (1) any differing price that may exist for the first, second, third, or more checked and carry-on bag or overweight/oversized bag and (2) any differing price and allocation (e.g., whether or not a bag checked for free counts toward overall allowance) that may exist for each bag depending on the passenger's status (e.g., frequent flyer, military personnel), on when the payment for the bag is made, or whether a consumer checks his or her bag online versus checking the bag at the airport. If an airline offers discounted baggage fees through status as a member in a paid or unpaid membership "club," information regarding these programs should be offered as well. The Department believes that listing the fees in one place will allow consumers greater access to information, prevent the problem of hidden fees, and prevent confusion at the airport or in-flight due to an

unexpected charge. It should also enhance competition, as consumers will be better able to compare costs among carriers for the trip that they plan to take with the services that they would like to have. With regard to commenters who wanted the Department to mandate certain ancillary items that must be free, the law does not provide us the authority to do so.

#### D. Global Distribution Systems

*The NPRM:* The Department stated in the NPRM that it was considering requiring carriers to make information about charges for optional services available to global distribution systems (GDSs). The Department considered this proposal due to the fact that a significant portion of consumers purchase their air travel and air tours through travel agencies, both online and traditional brick-and-mortar agencies. The Department invited comments on the ability of carriers to provide this information in a usable format and the potential costs and benefits associated with providing this information to GDSs.

*Comments:* ATA and most of its members strongly oppose a requirement that forces airlines to provide ancillary fee information to GDSs. First, ATA notes that this is a competitive issue and would interfere with ongoing negotiations among carriers, GDSs, and travel agents, and would inject government regulation into private market decision making. ATA notes that GDSs already have a great share of the market for air transportation bookings, and warns that fares could increase to cover the charges the GDSs would likely levy on carriers that are required to provide this information to them. ATA also questions the existence of any unfair or deceptive practice this requirement would prevent.

Most U.S. carriers agree with ATA's position. US Airways does not believe the Department should mandate disclosure in a particular format, seeing this as interference with market forces. Delta Air Lines believes that this rule would affect its bargaining position with the GDSs and their ability to explore different options for sharing of this information with the GDSs. American Airlines contends that a carrier should have the ability and power to decide how to market its ancillary services. American states that requiring disclosure would unfairly bolster the GDS market power. In a joint filing, American Airlines, Continental Airlines, Delta Air Lines, United Air Lines, and US Airways reiterate the carriers' commitment to providing fee information to consumers, but assert

that interfering in market negotiations would harm competition and ultimately would harm consumers. These airlines note that providing fee information about optional services to consumers is good for the airlines because airlines are in the business of selling tickets and selling these ancillary services. They assert that carriers should be allowed to market their services how they see fit and to decide how to provide their customers with the greatest access to information and choice. The carriers reiterate ATA's point that requiring airlines to furnish this information to GDSs would harm consumers by increasing airline distribution costs, arguing that GDSs would charge the airlines fees to upload the information into the GDS system. The carriers note that many travel agents, including online travel agents, already have access to and disclose fee information, referring to the Expedia website which has a chart of baggage fees. The carriers contend that the GDS distribution system is anti-competitive and not efficient, and that requiring the airlines to provide fee information will further bolster the market power of the GDSs without allowing for substantive competition from third-party vendors.

Two U.S. carriers did not object to providing ancillary fee information to GDSs. Spirit Airlines does not oppose the proposal, unless it would impose significant costs on carriers to change the format the carriers already use to provide the information to the GDSs. Southwest Airlines supports limited transmittal of fee information to GDSs in order to provide information to all consumers, regardless of how they book their flights. Southwest states, however, that the requirement should only obligate carriers to furnish this information to existing GDS partners. Southwest opposes allowing GDSs to charge fees for collecting data on ancillary services. Southwest notes that carrier participation in GDSs and other distribution channels for selling air transportation is a strategic business decision by each carrier. The carrier also supports a provision that would require all carrier-imposed surcharges, such as seasonal fare adjustments, to be included in the fare information provided to GDSs.

IATA and most of the other foreign air carrier organizations oppose requiring carriers to provide ancillary fee information to GDSs as well, although they support carriers providing information about ancillary fees and services on carrier websites. The National Airlines Council of Canada agrees with the disclosure of fees in general, but recommends that the

Department not mandate the method of disclosure. It notes that this information is most effective when presented to the customer within the flow of the transaction, as Air Canada does on its website. Some carriers, such as Jetstar Airways and Qantas, oppose providing the fees for optional services to consumers via a static webpage, stating that it is more helpful for consumers and airlines to focus ancillary fee information to a particular booking. Other carriers, such as Virgin Atlantic, note that they already file this information with ATPCO, thus allowing for access by GDSs.

The vast majority of consumers and consumer groups (*e.g.*, BTC, CTA, Flyersrights.org) support the Department requiring airlines to disclose their ancillary fee information to the GDSs. BTC and CTA urge the Department to establish uniform standards for fee disclosures, on the basis that airlines may add new fees in the future. Both of those organizations state that airlines artificially deflate the cost of a fare so that they can tack on high ancillary fee charges that are hidden from the consumer during an initial fare search.

ITSA and ASTA implore the Department to require airlines to share ancillary fees with the GDSs. ITSA notes that a passenger who wants to search for a fare that includes a checked bag and a pre-assigned seat will have to spend a great deal of time and have to be especially computer savvy to find the total amount he or she would have to pay for their travel because the fees are hidden on carriers' websites. ITSA, representing GDSs, states that at least 50% and possibly as high as 60% of the traveling public relies on travel agents to comparison shop for fares. ITSA argues that without this information from GDSs, brick and mortar travel agencies and online travel agencies cannot adequately state the total cost of travel to their clients. ITSA notes that the Department already requires information beyond the base fare to be provided to the GDSs such as code-share information and change of gauge information. ITSA asserts that the costs of this requirement would be low as it believes the technology is already in place to distribute the fee information. ITSA further adds that the Department's mandate to prevent unfair and deceptive practices trumps claims that disclosure should be left to private market negotiations. ITSA believes that merely requiring carriers to post the fee information on a webpage is not adequate to alleviate the problems of hidden fares or reduce the time it takes to comparison shop. Uniglobe Travel,

Travizon, Inc., and individual travel agents that commented in the docket support the proposal to require that carriers provide ancillary fee information to GDSs.

Many third party commenters submitted comments related to providing ancillary fee information to GDSs. Several members of Congress wrote in support of a requirement obligating carriers to submit their ancillary fee information to GDSs. A member of the European Parliament also expressed his support for issuing a rule so that passengers booking through a GDS system are aware of the total price of the ticket before purchase. The New York State Consumer Protection Board states a similar position that information about fees should be distributed to consumers through a wide variety of channels, not just through a link on the carrier's website.

Farelogix, a third party distribution and management technology firm, opposes the proposal to require that the carriers provide information to GDSs. Farelogix believes that GDSs should coordinate directly with the airline. The firm does not think that the GDSs should be able to mandate the format of the information. Farelogix notes that the GDSs are resistant to third party technology to transfer information in order to preserve their place in the travel market, and states that this proposed requirement will further limit third parties from entering the travel technology marketplace. An airline consultant makes several similar points. This consultant points out that if the Department requires carriers to provide information about fees for optional services to GDSs, the airlines' bargaining leverage is eroded and the higher distribution costs the airlines will face will be passed on to consumers. The consultant notes that negotiations to sell ancillary services are working in some respects, using examples of United Airlines selling Economy Plus service through Sabre, Midwest Airlines selling seat assignments through Sabre, and Finnair selling ancillary services through Amadeus. This individual believes that these fees are not hidden, and notes that most of these fees are not charged until check-in or onboard the flight. A professor at Harvard Business School comments that compelling airlines to provide fee information to GDSs will have far-reaching and unintended consequences on existing contractual structures between airlines and GDSs. He believes that if a requirement to provide fees for optional services is adopted, the GDSs will mark up prices considerably because airlines will be

forced to disclose pursuant to government rule. The Airline Tariff Publishing Company (ATPCO), without taking a position on the merits of the proposal, notes that it has systems in place that could help implement any requirement regarding carriers sharing fee information with GDSs.

*DOT Response:* We have decided to defer final action on this proposal. The Department's goal to protect consumers from hidden and deceptive fees and to allow consumers to price shop for air transportation in an effective manner remains paramount. The Department's goal is to provide all air travel consumers with easy access to information about fares and optional fees, particularly baggage fees. As discussed earlier, this final rule requires U.S. and foreign carriers to disclose on their website information about changes in baggage fees or allowances and to list on their website all of the airlines' fees for optional services. The final rule also requires both carriers and ticket agents to provide information on the first screen in which the ticket agent or carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can go to access these baggage fees. In addition, ticket agents and carriers must include on e-ticket confirmations information about the free baggage allowance and the applicable fee for the first and second checked bag and carry-on. We believe that these steps partially address the problem of hidden and deceptive fees and allow consumers to price shop for air transportation. The Department is cognizant that some parties feel that requiring carriers to provide information on their ancillary fees to GDSs would be a reasonable way, if not the best way, to ensure consumers can easily comparison shop for air fares. We cannot at this time agree that it is in the public interest to mandate that step, since we lack information critical to a decision on the issue. Thus, in order to permit us time to obtain additional information about costs, benefits and consequences of requiring U.S. and foreign carriers to provide ancillary fee information to GDSs, including those involving competition, the Department is deferring final action on this matter. The Department wants to ensure that any action it takes does not have unintended consequences, particularly given the sensitive nature of the market and the negotiations currently taking place between carriers and the GDSs.

#### E. Display of Two Fares in Advertising

*The NPRM:* The Department asked for comment on the costs and benefits of displaying two fares in airfare advertising. The first price would be the full fare (*i.e.*, fare with all mandatory charges) and the second price would be that full fare plus the cost of baggage charges that traditionally have been included in the price of the ticket, if these prices differ. The Department asked whether the second fare should only include the price of baggage charges or whether it should also include other services traditionally included in air travel such as obtaining a seat assignment in advance. The Department also solicited comment on the cost and feasibility of requiring sellers of air transportation to allow consumers to conduct fare queries for their specific needs (*e.g.*, airfare and two checked bags, or airfare, one checked bag and extra legroom) and select the services they wish to include in the price of the travel.

*Comments:* Individual consumers and consumer groups are divided on the helpfulness of any requirement for a carrier to display two fares in response to a fare inquiry. Some commenters and groups assert that this type of fare display system could be helpful for comparison shopping. Commenters who participated in the discussion on the Regulation Room site were divided. Some state that such a dual fare display could be helpful, but others claim it would be confusing. Individuals commenting to the docket expressed similar opinions. Most were in favor of more robust disclosure, especially regarding baggage fees. Many who favored a dual fare disclosure disagreed, however, on what should be included in the second fare of a two-fare display system. Some state that just the cost of baggage should be included. Others contend that baggage, blankets, pillow, and a seat assignment should also be included. The idea that consumers could select the ancillary services they wished before receiving a fare quote had many supporters. CTA supports the approach to airfare searching that would allow a consumer to select the services and fees they wish to be included in their travel.

ATA does not support the two-fare model. ATA states it would be confusing for passengers. It adds that the Department does not have enough information to impose this requirement. ATA and certain U.S. carriers note that there are questions and ambiguities as to what is "traditionally included in the price of a ticket." As many U.S. carriers noted, each passenger's needs are

different, so the second fare would be confusing or of little help to many consumers.

IATA contends that a two-fare display system could be confusing and should not be mandated, as many carriers already have an established online advertising regime that includes an online menu of optional services presented to the consumer through the course of their purchase. IATA asserts that requiring a two-fare model would be an unwarranted government intrusion on business practices. The Arab Air Carriers Organization states that a two-fare model would be unworkable and prohibitively expensive, as most carriers' reservations systems would have to be reworked to accommodate a two-fare requirement. Many individual foreign carriers echoed the sentiments of IATA, including South African Airways and Lufthansa, which note that a carrier can always choose to adopt a two-fare system. British Airways states that if this proposal were to become a requirement, the requirement should only apply to fares that do not include one checked bag, and this requirement should apply to GDSs and travel agents as well as carriers. ITSA is not opposed to a two-fare system, as long as the Department is clear about what would be included in the price. ATPCO notes that it has technology that could implement any required two-fare pricing model or a consumer self-selection model.

*DOT Response:* The Department agrees with the commenters who feel that a "two-fare" display system would be too confusing for travelers. We agree that each traveler is unique with regard to what ancillary services he or she needs or wants on a particular flight, and therefore one "all-inclusive" price that includes baggage and a seat assignment may not be helpful to most passengers. The Department will also not require, at this time, that sellers of air transportation revise their online systems to allow consumers to conduct queries for specific optional services and the fees for those services before displaying a price. Although the Department understands that some Web sites may exist that have these capabilities and that some carriers utilize online menus for consumers from which to choose services during the booking process, the Department does not have enough information regarding the costs of implementing such a system to require that every carrier implement such an online system.

#### F. Services Provided by Code-Share Partners

*The NPRM:* The Department sought comments as to whether in a code-share situation the marketing/ticketing carrier should be required to disclose through reservation agents, Web sites, and/or e-ticket confirmations any differences in services and fees applicable to a consumer between the marketing carrier and the operating carrier. The Department also asked whether there were any ancillary fees for services that should not be permitted to vary among code-share partners, such as the allowances and charges for baggage. The Department noted that its policy states that, for passengers whose ultimate ticketed origin or destination is a U.S. point, the baggage rules that apply at the beginning of the itinerary apply throughout the itinerary and provides that the marketing carrier's rules take precedence.

*Comments:* Most individual commenters and consumer groups, including Flyersrights.org, favor a rule that would require the marketing or ticketing carrier's fees to apply for the whole trip. Some commenters, through Regulation Room, expressed the opinion that the lesser of the two fees should apply if the marketing carrier's fees differ from the operating carrier's fees. Most commenters support greater notice requirements regarding differing fee structures between code-share partners. Some commenters on Regulation Room specifically felt that the marketing carrier should provide greater information, especially if the operating carrier has more stringent or restrictive luggage requirements.

ATA believes that disclosure of fees between code-share partners can be accomplished effectively through a hyperlink on the marketing carrier's website directly to the operating carrier's fee list. It opposes any attempt by the Department to standardize optional fees amongst code-share partners. ATA notes that attempts at standardization would be counter to the goals of deregulation and could be anti-competitive. It further states that standardization of fees could be impractical and costly for flights that have multiple code-share partners selling tickets on the same flight. US Airways comments that applying the marketing carrier's rule is not feasible and would create different classes of passengers on the same aircraft. Delta states that ancillary fees should not be uniform amongst carriers and code-share partners as that requirement would stifle competition.

IATA states that requiring the marketing carrier to disclose fees of operating carriers is consistent with the Department's policy regarding code-share situations. IATA believes this notice can be accomplished through a hyperlink to the code-share partner's website that details their fees. Singapore Airlines notes that it already provides information to consumers regarding significant differences in services and fees among partners. It states that the best way to accomplish this is to provide a link to the partner's listing. The carrier also notes that its call center agents are trained to provide this information. However, Singapore Airlines states that if the Department proposes a harmonized scheme it should incorporate reasonable and commercially viable allowances and fees. Qatar Airways refers the Department to IATA Resolution 302 ("Baggage Provisions Selection Criteria") which will go into effect in April 2011. The carrier states that under this resolution, there will be no standard baggage allowances or charges, and each carrier will publish its own rules. Qatar Airways notes that in the event of a conflict between baggage allowances, the provision of the "Most Significant Carrier," as determined by the Resolution, would apply. Qatar Airways urges the Department to adopt a similar proposal. Many foreign carriers such as Qantas, Air France, and KLM oppose a Department rule that would prohibit differences in baggage fees between the marketing and operating carrier, but do support disclosure of any differences between the carriers.

*DOT Response:* After considering the comments regarding the differences between the ancillary services and fees between code-share and interline carriers, the Department has decided not to require code-share carriers to standardize their optional services and fees but to specify with respect to baggage which carrier's allowances and fees apply. We believe that baggage rules and fees should be treated differently from fees for other optional services, as variations in baggage fees among code-share and interline partners are likely to result in significant inconvenience and confusion for many passengers. The Department has received complaints from consumers who have been faced with multiple, differing, and uncertain baggage allowances and charges on both code-share and interline flights. Passengers experience significant difficulties when the baggage allowances and fees that apply at the beginning of their trip differ from what is applied later because their

itineraries include sectors where the baggage rules differ, notwithstanding the fact that the passenger was traveling on a single, code-share or interline ticket, service that carriers continue to tout as "seamless."

This final rule requires that for passengers whose ultimate ticketed origin or destination is a U.S. point, the baggage allowances and fees that apply at the beginning of the itinerary apply throughout the itinerary. In the case of code-share flights that form part of an itinerary whose ultimate ticketed origin or destination is a point in the U.S., the final rule requires that the baggage allowances and fees of the marketing carrier apply throughout the itinerary to the extent that they differ between the marketing carrier and the operating carrier. The Department is aware that these requirements may result in the situation foreseen by ATA and US Airways of consumers on the same flight being subject to different baggage allowances or fees. The Department does not find anything unfair or deceptive about passengers on the same flight being subject to different baggage provisions — just as many passengers on the flight would have typically paid different fares. Further, we believe this method of determining baggage rules is consistent with Department policy and affords the greatest protection to consumers from unfair application of baggage rules throughout their itineraries. The Department also believes these requirements align with the goals of IATA Resolution 302, which was adopted by IATA members to bring transparency and clarity to baggage rules on code-share and interline itineraries.

As to whether in the case of code-share flights whether the marketing/ticketing carrier should be required to disclose all of the operating carrier's fees for optional services, we have decided to require the marketing carrier to disclose on its website any difference between its optional services and fees and those of the carrier operating the flight. This disclosure may be made through providing a hyperlink to the operating carriers' websites that detail the operating carriers' fees for optional services, or to a page on its website that lists the differences in policies amongst code-share partners. A marketing/ticketing carrier may also choose to make this information available to consumers through notice on its own website of differences between its optional services and fees and those of the carrier operating the flight. We are not requiring disclosure of the fees for optional services of the operating carrier through reservation agents or e-ticket

confirmations because we believe the costs to carriers of providing this information in those formats far outweigh the benefit to consumers, particularly since this final rule already requires U.S. and foreign carriers to list on their website all of their fees for optional services. Further, of all the fees for optional services charged by airlines, consumers are generally most interested in fees charged for baggage and the final rule already requires ticket agents and carriers to disclose baggage fees and allowances on e-ticket confirmations. As discussed earlier, the final rule also requires carriers and ticket agents to inform passengers on the first screen in which the ticket agent or carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can go to see these baggage fees.

#### 9. Post-Purchase Price Increase

*The NPRM:* The Department proposed to revise its current regulation in 14 CFR 253.7 which allows post purchase price increases as long as the consumer receives direct notice on or with the ticket of any contract of carriage term that allows a carrier to increase the price after purchase. Under the proposed rule, the Department would prohibit all post-purchase price increases by carriers, tour operators, or other sellers of air transportation, tours or tour components. The seller would be prohibited from increasing the price after the consumer completes the purchase. The Department asked for comment on the proposal to ban post-purchase price increases as well as two alternatives. The first proposed alternative would allow post-purchase price increases, as long as the seller of air transportation conspicuously disclosed to the consumer the potential for such an increase and the maximum amount of such increase before the consumer purchased the air transportation, and the consumer affirmatively agreed to such an increase prior to the completion of the purchase. The second alternative would allow post-purchase price increases (with disclosure) that the consumer agrees to in advance of purchasing the ticket, but would prohibit such an increase within thirty or sixty days of the first flight in the purchased itinerary.

*Comments:* Individual travelers and consumer organizations representing travelers support the proposal to ban post-purchase price increases in air transportation or tours by carriers and ticket agents. Most consumer commenters state that an outright ban on post-purchase price increases is fair.

One commenter asserts that the practice of increasing the price after purchase is egregious, especially in the case of tour operators that raise prices due to fuel surcharges. Another commenter asks for clarification on what an increase in the price of the ticket means, because the commenter is concerned about change fees being applied to an already purchased ticket. Most commenters participating in Regulation Room favor an outright ban, rejecting the alternatives that allow for conspicuous disclosure of a potential price increase. A small number felt that the proposed alternative of requiring conspicuous notice of a potential maximum amount of an increase would adequately protect consumers.

We also received comments from carriers and carrier organizations regarding this proposal. ATA and its members support the primary proposal to ban post-purchase price increases outright, and do not feel that any alternative is necessary. ATA states that this is consistent with industry practice. IATA and many foreign carriers are not opposed to this proposal, but they do request that an exception be made for post-purchase imposition of government-imposed taxes and fees. AEA, ALTA, and AACO all support a limited exception to a complete ban in the case of an increase in government-imposed taxes and fees. IACA states that an outright ban on post-purchase increases is not consistent with the European Union regulations which allow post-purchase price increases in limited circumstances and with certain disclosures. IACA seems to support one of the alternatives which would allow some increase in the purchase price after purchase is completed.

Air France, KLM and Qantas generally support the proposal with the exception of government-imposed taxes and fees. Additionally Air France, KLM and Qantas ask for clarification on when a "purchase" is complete. Both airlines suggest that a booking that is being "held" by the airline but has not been purchased should not be a completed purchase for purposes of this rule. Air New Zealand further comments that change fees should be allowed because those apply when a consumer is purchasing a new ticket and not traveling on the same ticket.

USTOA is against the proposal for an outright ban without some contingency built into the rule regarding tax increases and partial customer payments. USTOA views a purchase as being complete if the consumer has paid in full. USTOA also states that an exception to a ban on post-purchase increases should be made for increases

in government taxes and fees, provided that the consumer is made aware of such a potential increase. USTOA points out that the tour operators have no control over the increase of the price of scheduled air transportation. USTOA supports the alternatives, but believes that sellers should not be required to state the maximum amount of a price increase because the tour operator will not know the maximum amount.

ASTA contends that in order to protect all sellers, a post-purchase price increase should only be applied on ticketed reservations, contracted group travel arrangements, and business to business transactions between tour operators and airlines. ASTA states that a travel agent does not impose the additional increases in price; rather, the government or carriers impose taxes, fees and fuel surcharges. ASTA prefers the first alternative which allows a post-purchase price increase with specific notice of the increase and a maximum amount of such increase identified to the consumer. ASTA suggests modifying the first alternative so that the sellers of air transportation also identify when they have imposed such post-purchase price increases in the past.

*DOT Response:* After fully considering the comments received, the Department has decided to adopt the rule as proposed, but allow for an exception related to an increase in government-imposed taxes and fees. Although taxes and fees are not retroactively applied in the United States, the Department is aware that government-imposed taxes and fees levied by entities outside of the United States might be applied retroactively to a completed ticket purchase. As these fees and taxes are outside of the control of the seller of air transportation, the Department agrees with ASTA and foreign carriers that sellers should be protected from having to absorb the costs imposed by retroactive application of government taxes and fees. This exception to a total ban on post-purchase price increases is limited to government-imposed taxes and fees imposed on a per-passenger basis. It does not include increases in fuel surcharges or other carrier or ticket agent imposed charges. The Department recognizes that changes may be necessary in the way a tour operator prices or advertises packages to comply with the prohibition on post-purchase prices increases with an exception only for government-imposed taxes and fees imposed on a per-passenger basis.

The final rule also requires sellers of air transportation to disclose the potential for a post-purchase price increase related to an increase in a

government-imposed tax or fee in a clear and conspicuous manner to the consumer. The consumer must affirmatively agree to the potential for such an increase prior to the purchase, for example by checking a box on the final page prior to purchase. After purchase, the seller of air transportation can only impose an increase due to government-imposed taxes or fees if such an increase applies to that particular consumer (*e.g.*, the increase cannot be collected from consumers to whom a general increase did not apply because they had purchased and fully paid for their ticket months earlier, and/or because an increase has been announced but is not yet in effect). For purposes of this section, a purchase is not deemed to have occurred until the full amount agreed upon has been paid by the consumer. Therefore, in the context of a tour that contains an air component, a purchase is complete when the consumer tenders the entire amount paid for the tour to the tour operator. The Department finds it to be unfair for consumers to bear the brunt of any increase in price after they have paid the full amount agreed upon for air transportation or a tour.

To further protect consumers, the final rule requires sellers of air transportation, tours or tour components to notify a consumer of the potential for a price increase that could take place prior to the time that the full amount agreed upon has been paid by the consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, an increase in an applicable fuel surcharge, or an increase in a government-imposed tax or fee. These entities must provide the consumer an opportunity to decline the purchase without penalty or affirmatively agree to the potential for such an increase prior to making any payment for the scheduled air transportation, or tour or tour component that includes scheduled air transportation. The Department believes that such a disclosure will provide consumers with important information to help them determine whether they want to purchase the air transportation or tour and if so, the appropriate time to make payment.

With regard to the comments relating to change fees, the Department agrees with commenters that change fees do not constitute an increase in the price of an already-purchased ticket, as technically the consumer is purchasing a new ticket for new travel. However, the Department considers it to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 for a seller

of air transportation to impose any fee on a consumer to change a travel itinerary unless this possibility was disclosed to the consumer prior to purchase. Additionally, to address the comments about the applicability of this section to tickets marketed and sold in Europe, the final rule specifies that with respect to ticket agents and foreign air carriers, these requirements only apply to advertising or selling in the United States of air transportation or tours.

#### 10. Flight Status Change

*The NPRM:* In the NPRM we proposed to require U.S. carriers that account for at least 1 percent of domestic scheduled passenger revenues (reporting carriers) to promptly provide passengers and other interested parties notice of flight status changes, defined as a cancellation of a flight or a delay of 30 minutes or more, for their domestic scheduled passenger flights. We proposed to require that this notification take place within 30 minutes after the carrier becomes aware or should have become aware of the status change. A carrier would be required to provide such information updates at boarding gate areas, on airport display boards that are under a carrier's control, on the homepage of a carrier's websites and through a carrier's telephone reservation systems. To the extent that carriers permit passengers and other interested persons to subscribe to receive flight information updates, we proposed that carriers provide those updates in a timely fashion, *i.e.*, providing the information and subsequent updates within 30 minutes after the carrier becomes aware or should have become aware of such information.

We sought comments on whether these flight status notification requirements should be extended to smaller U.S. carriers and/or international operations of U.S. and foreign carriers, particularly since we proposed to require U.S. and foreign air carriers conducting scheduled passenger service with at least one aircraft with 30 or more seats to adopt a customer service plan that pledged to notify consumers in the boarding gate area, on board aircraft, via a carrier's telephone reservation system and on a carrier's website of known delays, cancellations and diversions. We specifically asked for information about the cost or benefit of applying these requirements to smaller carriers. We also asked for comments on whether the proposed means of notification, *i.e.*, website, telephone reservation system, airport display boards under carriers' control, and boarding area, should be mandatory, or whether we should leave

it to the carriers to determine what means they prefer to use. With respect to the timeliness standard, we invited the public to comment on whether "within 30 minutes after the carrier becomes aware or should have become aware" is a reasonable standard. We also sought public opinion on whether the proposed requirement that updated information should be provided for flight delays of 30 minutes or more is an appropriate standard.

*Comments:* Comments from consumers and consumer rights advocacy groups overwhelmingly support our proposal for the largest U.S. carriers to promptly notify passengers of changes in the status of particular flights as a result of delays or cancellations. The New York State Consumer Protection Board, AAPR, FlyersRights.org, Consumers Union, and most commenters on RegulationRoom.org support expanding the requirements to cover smaller U.S. carriers and international operations of U.S. and foreign carriers. ACI-NA suggests that the rule should include small carriers that serve small and non-hub airports, arguing that the impact of delays and cancellation occurring at those airports may have great adverse effect on larger connection hubs.

Several foreign carriers specifically oppose applying the notification requirements to foreign carriers. IACA states that the proposed rule may potentially be an extraterritorial application of U.S. law to activities in a foreign jurisdiction. Qantas and JetStar Airways aver that the rule should not apply to foreign marketing code-share partners, as the operating carriers are in the best position to notify passengers of any flight status changes. ATA, on the other hand, states that the marketing carrier should have the responsibility to update flight information up until the date of flight departure, at which point the operating carrier should be responsible for the notification. ANA raises the issue of technical difficulties faced by foreign carriers in complying with the electronic notification rule when they must conduct extensive automation modifications including sharing data with code-share partners. Many carriers contend that when information is not timely transmitted to carriers by FAA, carriers should not be held liable. TUI Travel asks that foreign leisure travel charter operators be exempted from the rule based on its assertion that there are already established communication channels between passengers and carriers through the tour operators.

With respect to the means of notification, many commenters from the

consumer side urge the Department to mandate all four methods (*i.e.*, at gate boarding areas, on airport display boards that are under carrier's control, and through carriers' website and telephone reservation systems). The New York State Consumer Protection Board also recommends that we require carriers to offer passengers the opportunity to subscribe to flight status service updates via voicemail and electronic media. Industry commenters, however, argue that the Department should provide carriers flexibility in choosing what means they use. ATA specifically requests that the Department not require any new technology or program that is not currently implemented by the carriers.

ATA raises concern that our proposal on flight status change notification may conflict with the Federal Communication Commission (FCC)'s Telephone Consumer Protection Act rule. In a March 2010 NPRM, the FCC proposed to require consumers' prior written consent for prerecorded calls, eliminating the exemption for parties that have already established business relationships (75 FR 13471, March 22, 2010). If adopted, the FCC rule would prohibit carriers from leaving prerecorded telephone messages concerning flight delays and cancellations with any passengers from whom carriers do not have prior written consent.

Regarding the proposed timeliness standard, the New York State Consumer Protection Board states that the 30-minute standard is good but urges the Department to adopt a more stringent standard that requires notification to be provided "no later than 20 minutes" after the carrier is aware or should have become aware of the flight status change. Other commenters from the consumer side generally welcome the 30-minute standard as being reasonable and not too burdensome to the carriers. Among the carriers and carrier associations that commented on this proposal, there is little objection to the "30 minutes after the carrier becomes aware" requirement. However, most of those commenters are concerned about the "30 minutes after the carrier should have become aware of the flight status change" standard. IATA asks the Department to clarify the meaning of this standard, and ATA argues that this is a subjective standard that makes compliance difficult. Southwest Airlines supports ATA's position and states that this standard is too vague and is likely to be inconsistently applied and enforced.

Regarding the proposal that notification should be provided to

passengers for any flight delays that are expected to last for 30 minutes or more, both consumers and carrier commenters are supportive of this standard. ATA also recommends that the Department require the airports to update display boards under the airports' control every 30 minutes when a flight's status changes. ASTA supports ATA's position and states that it is important that the information provided by the carriers and airports be current in order to avoid passenger confusion.

*DOT Response:* The final rule requires U.S. and foreign carriers conducting scheduled passenger service to and from the U.S. with any aircraft with 30 or more seats to make information available to passengers and other interested parties about a change in flight status. It is important for passengers as well as persons dropping passengers off for outbound flights or meeting passengers on incoming flights to stay informed on a timely basis of delays, diversions or cancellations affecting their flights in order to avoid unnecessary waits at, or pointless trips to, an airport. The need for, and importance of timely notification regarding flight delays, diversions and cancellations exists whether it is a U.S. or foreign carrier operating the flight and whether it is a non-reporting or reporting carrier operating the flight. On code-shares, the final rule leaves it up to the carriers to determine whether the marketing or operating carrier will provide the required notification about change in flight status. We expect that foreign carriers and non-reporting U.S. carriers will work with their code-share reporting-carrier partners, most of which already have the necessary systems in place, to comply with the notification requirements contained in this final rule. For enforcement purposes, the Department's Aviation Enforcement Office will hold both the code-share marketing carrier and the operating carrier responsible, jointly and severally, for failure to comply with this rule.

The final rule mandates that the flight status notifications be provided through the four methods proposed: at the boarding gate area, on carriers' websites, through carriers' telephone reservations systems, and by airport display boards that are under the carriers' control. If an airport-controlled display system accepts flight status updates from carriers, covered carriers must furnish this information to that airport within the timeframes provided in this rule. We do not believe mandating all four methods is burdensome to carriers as it is our opinion that these four methods represent the most common ways used

by carriers to communicate with passengers and other interested parties who seek and obtain information about the status of the schedules for their flights.

These varied flight status notification methods make it more likely that passengers and other interested parties will be able to access this information when they need it. For example, individuals who do not have access to the Internet may call a carriers' reservation telephone system to learn about delays, cancellations, or diversions. Notification at the airports through the airport display boards and in the boarding gate area is also essential when passengers are already at the airports. Regarding notification at the boarding gate area, the responsibility of a carrier to notify passengers does not begin until the gate is staffed for the specific flight in question. With respect to notification provided through carriers' telephone reservation systems, we clarify that such notification is only required upon the request by a consumer.

In addition to these four methods, we are also requiring carriers that offer passengers the opportunity to subscribe to a flight status update service to ensure that required information is provided promptly and accurately. We note that many carriers already have in place subscription services for passengers to receive flight status notifications through various widely used media, including computer-generated telephone/voicemail, text messages and emails. To the extent such services are offered to the public, this final rule requires that the notifications be delivered to the passenger by whatever means is available to the carrier and of the passenger's choice within 30 minutes after the carrier becomes aware of a change in the status of a flight. We do not believe, as asserted by some commenters, that applying this standard will dissuade carriers from voluntarily providing such subscription services for fear of the potential enforcement consequences. We are confident that market forces and competition will continue to be the driving force for carriers to improve the quality of their customer care.

In response to ATA's concern that the Department's flight status notification requirement may conflict with the FCC's rule, the Department wishes to provide the following clarification. The Department has submitted comments on the FCC's rulemaking, requesting the FCC to maintain its current "established business relationship" exemption to the extent necessary to permit carriers to notify their customers of flight status

changes through telephone messages without obtaining each customer's prior written consent. To the extent FCC adopts a final rule as it proposed, the Department does not see a direct conflict between the FCC rule and our rule. In this final rule, we do not require carriers to call each passenger on the affected flight to notify them about the flight status change. Likewise we do not mandate subscription services. Therefore, if carriers choose to provide subscription services, they could either eliminate the voice message choice from the choices of contact available to subscribers, or obtain the subscribers' written consent at the time of subscription.

Most carriers that commented on the proposals objected to the "30 minutes after the carrier should have become aware of flight status change" standard for notifying consumers about the flight irregularity, arguing that it is vague and subjective. The Department agrees with the concerns expressed that this standard may become challenging to comply with and enforce. Therefore, we are removing the "should have become aware" standard from the final rule. With respect to the "30 minutes after the carrier becomes aware" standard, we believe further clarification is necessary. For enforcement purpose, we consider that the carrier has become aware of the flight status change as soon as the carrier's system operation control center (SOCC) or equivalent facility, if it goes by another name, learns of it. We recognize that carriers cancel, delay and divert flights based on information from many sources, both internal as well as from third parties, such as FAA and airports. Whatever the source of information leading to the decision for a flight status change, it is the carrier's sole responsibility to distribute the information, within 30 minutes, to the downstream operational staff, such as webmasters, airport station managers, reservation system managers, and gate agents. A carrier has an affirmative duty at all times to keep track of flight status changes and maintain open channels of communication. We consider it an unfair and deceptive practice when the carrier's failure to obtain and pass on to consumers up-to-date and accurate information is caused by the carrier's own procedural shortcomings.

Much less contested is our proposed standard that carriers notify passengers and other interested parties regarding flight delays of 30 minutes or more. Many consumer and industry commenters agree that this is a reasonable standard that strikes a balance between providing the most useful and accurate update to the

passengers and the costs incurred by the carriers associated with providing such information. Consequently, the final rule maintains this standard. We emphasize that this is a minimum standard and carriers are free to and urged to provide notification about briefer delays, as many already have done for their subscription services.

Under the final rule, the "30 minutes after the carrier becomes aware of the flight status change" standard also applies to any information updates provided to passengers who have already received previous notification regarding the status change of their flights. We disagree with some commenters' contention that updating flight status change every 30 minutes if the flight is delayed again is not necessary if it is close to the scheduled departure time and passengers are already at the airport. This information is important for passengers whose flights downline depend on the schedule of aircraft used for the flight experiencing the irregularity, as well as for persons who may be meeting passengers on the affected flight. Finally, we note that the Department does not directly have the authority to require airports to provide flight status information to consumers as some commenters suggested.

#### 11. Choice-of-Forum Provisions

*The NPRM:* The Department proposed to codify the policy of the Department's Aviation Enforcement Office that choice-of-forum provisions are unfair and deceptive for air transportation sold in the U.S. when used to limit a passenger's legal forum to a particular inconvenient venue. The proposed rule would specifically permit consumers to file suit where they live provided that the carrier does business within that jurisdiction. The Department requested comments on this proposal and on the use of such choice-of-forum provisions in contracts of carriage.

*Comments:* Consumer groups and individual consumers support this proposal. Flyersrights.org, while supporting the proposal, does not think the proposal goes far enough to address the real barrier to legal relief for consumers in court, which they say is Federal preemption of state laws. ATA and most carriers support this proposal, most noting that they do not have such restrictive choice-of-forum provisions in their contracts of carriage. Spirit Airlines opposes this provision. Spirit believes small carriers should not have to face the costs and burdens associated with litigating complaints in jurisdictions far from their headquarters location. IATA and IACA, in addition to

many foreign airlines, expressed concerns about this provision's applicability to foreign airlines and interference with European rules governing the forum for claims. The Air Transport Association of Canada does not feel the use of choice-of-forum restrictions should be banned and feels that making clear the forum in which consumers must litigate consumer complaints is helpful to consumers.

*DOT Response:* The Department has decided to adopt the rule as proposed, *i.e.*, to prohibit a U.S. carrier from including language in its contract of carriage precluding a passenger from bringing a consumer-related claim involving a domestic flight against the carrier in any court of competent jurisdiction. The Department feels that if a carrier reaches out to do business in a particular jurisdiction, *i.e.*, reaches out to solicit business within that jurisdiction, and sells tickets in a jurisdiction, then it is fair and reasonable to expect that the carrier can defend itself against litigation brought by a consumer who resides in that jurisdiction. The cost of this proposal is minimal, as most U.S. carriers already face litigation throughout the United States. As a point of clarification, the forum for consumer claims related to travel on international flights to or from the United States is governed by the Montreal Convention or Warsaw Convention, depending on the type of flight and its origination/destination. Additionally this change does not apply to charter flights. The choice of forum for charter flights can be addressed in the individual contracts between the charter operator and the participant.

#### 12. Peanut Allergies

*The NPRM:* In the NPRM, the Department described various measures to provide greater access to air travel for individuals with severe peanut allergies. The Department solicited comment on several alternatives to accommodate air travelers with severe peanut allergies including (1) banning the serving of peanuts and all peanut products by both U.S. and foreign carriers on flights covered by the Department's disability rule; (2) banning the serving of peanuts and all peanut products on all such flights where a passenger with a peanut allergy is on board and has requested a peanut-free flight in advance; or (3) requiring a peanut-free buffer zone in the immediate area of a passenger with a medically documented severe allergy to peanuts if the passenger has requested a peanut-free flight in advance. The Department asked several questions associated with accommodating passengers who have a

severe peanut allergy on flights. For instance, we asked about the likelihood of a person with a severe allergy experiencing a serious adverse health reaction due to exposure to airborne peanut particles onboard an aircraft. The Department asked about steps a person with a severe peanut allergy could take to prepare for a flight. We also asked about how we should define a peanut product if we chose to take action on the issue.

*Comments:* Most of the comments regarding accommodations for persons with peanut allergies were from individual consumers who favor a total ban on peanuts and peanut products on aircraft, including peanut products that other passengers bring on board aircraft. Most of these consumers either suffer from a peanut allergy or are related to someone with an allergy. A smaller number of individual commenters oppose any ban on peanut products while others support prohibiting carriers from serving peanuts or peanut products on aircraft. Commenters who oppose a ban on peanut and peanut products as well as commenters who favor only a service ban on peanut and peanut products contend that a total ban on peanuts and peanut products is impractical and unenforceable because there is no way to stop passengers from bringing peanut products into the cabin. There was also disagreement as to whether peanut-free flights or peanut buffer zones are a viable option. Many commenters assert that neither peanut-free flights nor peanut buffer zones are a feasible option since the peanut protein could be present in the buffer zones or on the 'peanut free' flight as residue from previous flights. These consumers state that it is unreasonable to expect, and unlikely, that a carrier would thoroughly clean the aircraft between each flight to ensure that all peanut residue is removed from the cabin.

The peanut trade organizations, led by the American Peanut Council (APC), Peanut & Tree Nut Processors Association (PTNPA) and the Western Peanut Growers Association (WPGA), oppose any Department action that would limit the availability of peanuts on commercial aircraft. All three organizations point out the Department is restricted from issuing any regulation regarding the service of peanuts on aircraft per Public Law 106–69, which is discussed below. APC also states that research indicates that a severe anaphylactic reaction to peanuts can only occur when there is oral ingestion.

The Food Allergy & Anaphylaxis Network (FAAN) states that the scientific literature does not, at this

time, address whether a passenger would have a severe adverse reaction by being exposed to airborne peanut particles but notes that airborne reactions have been anecdotally reported. FAAN, and other allergy support organizations, believe that the most practical solution is for carriers not to serve packaged peanut snacks on flights. FAAN acknowledges that many carriers, both U.S. and foreign, are already taking this approach. FAAN is opposed to the creation of "buffer zones" as it believes that to be effective the seats in a buffer zone would need to be peanut-free for all flights on a particular aircraft.

Twenty-five members of the U.S. House of Representatives submitted a joint letter expressing their opposition to any ban on peanuts and peanut products and requesting that the Department not proceed with a rulemaking or any other anti-peanut measures pending the completion of a peer-reviewed study as described in Public Law 106–69. Senator Christopher Dodd also commented, stating that a complete ban on peanuts and tree nuts would be the most direct solution but that this step is drastic in nature and impractical. Senator Dodd suggests that DOT encourage a focus on further education and training for airline employees regarding passengers with peanut allergies as well as a consistent application of policies by individual airlines.

ATA, the Air Transport Association of Canada, and IACA are against a ban on peanuts, stating that carriers cannot ensure that other passengers will not bring their own peanut products on board for consumption. ATA and IACA also state that carriers have adopted their own policies and procedures to handle accommodations for peanut allergies. In general, individual carriers have deferred this topic to their respective trade organizations. However, some carriers such as Southwest and Delta point out that they already have voluntarily adopted policies regarding buffer-zones for peanut allergy sufferers. Some foreign carriers, such as Lufthansa, Air France and KLM, state that a service ban on peanut products is not efficient and would create increased burdens and costs for airlines. Additionally Lufthansa points out that the creation of a service ban on peanut products could give a passenger the false impression that the flight is totally safe and free of peanuts.

*DOT Response:* On June 25, 2010, DOT published a clarification notice stating that the Department will comply with the requirements of the Department of Transportation and

Related Agencies Appropriations Act of 2000, Public Law 106–69—Oct. 9, 1999. This law states:

Hereafter, none of the funds made available under this Act, or any other Act, may be used to implement, carry out, or enforce any regulation issued under section 41705 of title 49, United States Code, including any regulation contained in Part 382 of title 14, Code of Federal Regulations, or any other provision of law (including any Act of Congress, regulation, or Executive order or any official guidance or correspondence thereto), that requires or encourages an air carrier (as that term is defined in section 40102 of title 49, United States Code) to, on intrastate or interstate air transportation (as those terms are defined in section 40102 of title 49, United States Code)—(1) provide a peanut-free buffer zone or any other related peanut-restricted area; or (2) restrict the distribution of peanuts, until 90 days after submission to the Congress and the Secretary of a peer-reviewed scientific study that determines that there are severe reactions by passengers to peanuts as a result of contact with very small airborne peanut particles of the kind that passengers might encounter in an aircraft.

At this time, given the provisions of Public Law 106–69, the Department will decline to take action due to a lack of the peer-reviewed study referred to in the law.

### 13. Effective Date of Rule

*The NPRM:* In the NPRM, we proposed that the final rule take effect 180 days after its publication in the **Federal Register**. We stated that we believe 180 days would allow sufficient time for carriers to comply with the various proposed requirements and invited comment on whether 180 days is the appropriate interval for completing the changes.

*Comments:* We received few comments on the effective date of the final rule. Among carrier and carrier association commenters, RAA states that its members need a minimum of 180 days to implement the new rule. On the consumer side, AAPR supports the Department's 180-day proposal. FlyersRights.org and its supporters suggest that the effective date should be no longer than 120 days after the final rule's publication date. CTA believes the rule should become effective 120–150 days after the publication date so it will become effective before the summer travel season starts. One consumer stated that 180 days is reasonable for implementing most items but carriers may need additional time for some of the proposed changes.

*DOT Response:* Based on our experience in implementing the December 2009 final rule, which became effective on April 29, 2010, we believe that 120 days is sufficient for

U.S. and foreign carriers to implement the various requirements in this final rule, with the exception of the requirements pertaining to full-fare advertising. The new full fare advertising requirements will not take effect until 180 days after the publication of this final rule in the **Federal Register** to mitigate the costs of print advertising revision by reducing the amount of advertising slated for use that will have to be pulled. We are imposing a 120-day effective date for the other requirements in the final rule to enable consumers to begin benefiting from these requirements as soon as possible.

**Regulatory Analyses And Notices**

*A. Executive Order 12866 (Regulatory Planning and Review), DOT Regulatory Policies and Procedures, and Executive Order 13563 (Improving Regulation and Regulatory Review)*

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) and is consistent with the requirements in both orders. Executive Order 13563 refers to nonquantifiable values, including equity and fairness. This rule promotes such values by improving transparency, and by preventing unexpected charges to

passengers. The final Regulatory Evaluation concludes that the monetized benefits of the final rule exceed its monetized costs, even without considering non-quantifiable benefits. The expected present value of monetized passenger benefits from the final rule over a 10 year period using a 7% discount rate is estimated at \$45.0 million and the expected present value of monetized costs incurred by carriers and other sellers of air transportation to comply with the final rule over a 10 year period using a 7% discount rate is \$30.7 million. The present value of monetized net benefits over a 10 year period at a 7% discount rate is \$14.3 million.

Below, we have included a table outlining the costs and benefits of the requirements in this final rule. A copy of the final Regulatory Evaluation has been placed in the docket.

**COMPARISON OF REQUIREMENT-SPECIFIC BENEFITS AND COSTS, 2012–2021**

[Discounted at 7 percent annually to 2012 \$ millions]

	Total
Area 1: Expansion of tarmac contingency plan requirements and extension of EAPP1 requirements to cover foreign carriers:	
Monetized Benefits .....	\$1.2
Monetized Costs .....	3.0
Monetized Net Benefits .....	-1.8
Additional unquantifiable benefits and costs that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	
Improved Management of Flight Delays	
Decreased Anxiety With Regard to Flying	
Reduced Stress Among Delayed Passengers and Crew	
Improved Overall Carrier Operations	
Improved Customer Good Will Toward Carriers	
Additional Gate Return Costs Incurred by Carriers	
Time Required for Airport/Terminal Authorities, CBP/TSA to Coordinate Plans	
Area 2: Expanded tarmac delay reporting and application to foreign carriers:	
Monetized Benefits* .....	0.0
Monetized Costs .....	0.8
Monetized Net Benefits .....	-0.8
Additional unquantifiable benefits that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	
Increased Efficiency of US DOT Oversight and Enforcement Office Operations	
Improved Management of Flight Delays	
Area 3: Establishment of minimum standards for customer service plans (CSPs) and extension of EAPP1 Final Rule Areas to cover foreign carriers:	
Monetized Benefits .....	7.7
Monetized Costs .....	7.4
Monetized Net Benefits .....	0.3
Additional unquantifiable benefits that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	
Decreased Confusion and Uncertainty Regarding Department CSP Requirements	
Improved Customer Service From Foreign Carrier Self-Auditing of Adherence to CSPs	
Improved Customer Good Will Toward Carriers	
Area 4: Foreign carrier posting of tarmac delay contingency plans, CSPs, and contracts of carriage on websites:	
Monetized Benefits* .....	0.0
Monetized Costs .....	1.0
Monetized Net Benefits .....	-1.0
Additional unquantifiable benefits that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	
Decreased Occurrence of and Improved Resolution of Customer Complaints	
Area 5: Extension of EAPP1 Final Rule Areas for carriers to respond to consumer complaints to cover foreign carriers:	
Monetized Benefits .....	0.0
Monetized Costs .....	1.9
Monetized Net Benefits .....	-1.9
Additional unquantifiable benefits that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	

COMPARISON OF REQUIREMENT-SPECIFIC BENEFITS AND COSTS, 2012–2021—Continued

[Discounted at 7 percent annually to 2012 \$ millions]

	Total
Decreased Anger Toward Carriers During Resolution of Complaints	
Area 6: Changes in denied boarding compensation (DBC) requirements:	
Monetized Benefits* .....	0.0
Monetized Costs .....	1.0
Monetized Net Benefits .....	-1.0
Additional unquantifiable benefits and costs that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	
Decreased Confusion Regarding DBC Provisions	
Decreased Resentment Among Some Passengers Regarding Different Compensation Received	
Programming and Training Costs for Foreign Carriers	
Area 7: Full-fare advertising and prohibition on opt-out provisions:	
Monetized Benefits .....	29.0
Monetized Costs .....	6.8
Monetized Net Benefits .....	22.2
Additional unquantifiable benefits that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	
Travelers Less Likely to Mistakenly Purchase Unwanted Services and Amenities	
Improved Customer Good Will Toward Carriers	
Area 8: Expanded disclosure of baggage and other optional fees:	
Monetized Benefits* .....	0.0
Monetized Costs .....	7.9
Monetized Net Benefits .....	-7.9
Additional unquantifiable benefits that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	
Decreased Time at Check-in	
Improved Customer Good Will Toward Carriers	
Area 9: Limitations on post-purchase price increases:	
Monetized Benefits .....	7.2
Monetized Costs .....	1.1
Monetized Net Benefits .....	6.1
Additional unquantifiable benefits that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	
Improved Customer Good Will Toward Carriers	
Area 10: Prompt passenger notification of flight status changes:	
Monetized Benefits* .....	0.0
Monetized Costs* .....	0.0
Monetized Net Benefits .....	0.0
Additional unquantifiable benefits that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	
Greater Comfort and Certainty From Knowing That Information Will Be Available in Timely Manner	
Area 11: Limitations on venue provisions in contracts of carriage:	
Monetized Benefits* .....	0.0
Monetized Costs* .....	0.0
Monetized Net Benefits .....	0.0
Additional unquantifiable benefits and costs that are directly or indirectly related to this rulemaking, which result in benefits that the Department has determined justify the costs:	
Improved Customer Good Will Toward Carriers	
Reduced Costs for Consumers to File/Adjudicate Claims	
Increased Costs for Carriers to Settle/Adjudicate Claims	
Requirement Areas 1–11 Total:	
Monetized Benefits .....	45.0
Monetized Costs .....	30.7
Monetized Net Benefits .....	14.3

\* Monetized estimates could not be developed from the information available on the record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. Our analysis identified a total of 50 small U.S. air carriers (*i.e.*, carriers that provide air transportation exclusively with aircraft that seat no more than 60

passengers), 50 small airports (*i.e.*, privately-owned airports that have annual revenues of no more than \$7 million or publicly-owned airports owned by jurisdictions with less than 50,000 inhabitants), as many as 11,625 small travel agencies (*i.e.*, travel agencies with no more than \$3.5 million in annual revenues) and as many as 2,720 small tour operators (*i.e.*, tour operators with no more than \$7.0 million in annual revenues) potentially

affected by the requirements of the final rule. While most regulation of the air transportation sector is concerned with carriers, certain elements of this final rule impose new requirements on small travel agents and tour operators. Small U.S. carriers will need to comply with additional requirements relating to coordination of tarmac contingency plans, reporting tarmac delays, specific customer service plan provisions, denied boarding compensation,

advertising of air fares, and disclosure of baggage and other optional fees. Small travel agents and tour operators will have to comply with the requirements relating to advertising of air fares, disclosure of baggage and other optional fees, and pre-purchase disclosures on price increases.

The Department believes that the economic impact will not be significant for a number of reasons. First, most small U.S. air carriers operate passenger service exclusively with aircraft that have fewer than 30 seats. The requirements relating to tarmac contingency plans, reporting tarmac delays, specific customer service plan provisions, and denied boarding compensation will not apply to these carriers. In addition, the per-carrier and per-ticket agent compliance costs estimated in the final regulatory analysis for the remaining requirements are very small—less than \$17,000 per affected small carrier operating aircraft with between 30 and 60 seats, less than \$4,500 per small carrier operating aircraft with fewer than 30 seats, and about \$3,500 per small travel agent or tour operator with online booking capability to achieve compliance during the first year the final rule takes effect and no more than a few hundred dollars to maintain compliance in subsequent years. On the basis of this examination, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. A copy of the Final Regulatory Flexibility Analysis has been placed in docket.

#### C. Executive Order 13132 (Federalism)

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule does not include any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

#### D. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”).

Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

#### E. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB). Before OMB decides whether to approve those proposed collections of information that are part of this final rule and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collection information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to: Department of Transportation, Office of Aviation Enforcement and Proceedings, Office of the General Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. OST may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. OST intends to renew current OMB control numbers for the three new information collection requirements resulting from this rulemaking action. The OMB control number, when renewed, will be announced by separate notice in the **Federal Register**.

The ICRs were previously published in the **Federal Register** as part of NPRM (75 FR 32318, June 8, 2010) and the Department invited interested persons to submit comments on any aspect of each of these three information collections, including the following: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be

collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information.

The final rule contains three new information collection requirements. The first is a requirement that foreign air carriers that operate passenger service (scheduled and charter) to or from the U.S. using any aircraft with 30 or more seats collect and retain for two years the following information about any ground delay that lasts at least three hours: the length of the delay, the precise cause of the delay, the actions taken to minimize hardships for passengers, whether the flight ultimately took off (in the case of a departure delay or diversion) or returned to the gate; and an explanation for any tarmac delay that exceeded 3 hours. The Department plans to use the information to investigate instances of long delays on the ground and to identify any trends and patterns that may develop. The assumptions upon which the calculations for this requirement are based as well as the information collection burden hours have changed. We have increased our estimate for the maximum number of tarmac delays that a single carrier may experience.

The second is a requirement that U.S. carriers and foreign carriers that operate any aircraft originally designed to have a passenger capacity of 30 or more seats report monthly tarmac delay data to the Department with respect to their operations at a U.S. airport for any tarmac delay of three hours or more, including diverted flights. This requirement would apply to reporting carriers under 14 CFR part 234 only with respect to their public charter service and international service, as reporting carriers already submit tarmac delay data to the Department for their domestic scheduled passenger service. The Department plans to use this information to obtain more precise data to compare tarmac delay incidents by carrier, by airport, and by specific time frame, for use in making future policy decisions and developing rulemakings. We have modified the information collection burden hours for this requirement because carriers are not required to file negative reports as proposed in the NPRM. Covered carriers will only need to submit the report if one or more flights experience delays that exceed 3 hours.

The third is a requirement that any foreign air carrier that operates scheduled passenger service to and from the U.S. using any aircraft with 30 or more seats adopt a customer service plan, audit its adherence to the plan annually, and retain the results of each audit for two years. The Department

plans to review the audits to monitor carriers' compliance with their plans and take enforcement action when appropriate. Although we have made some modest changes to the customer service plan requirements from what was proposed in the NPRM, these changes do not impact the assumption upon which the calculations for retaining the results of each audit are based. The information collection burden hours have increased slightly as our estimate of the number of carriers covered by this requirement has changed.

For each of these information collections, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

1. *Requirement to retain for two years information about any ground delay that lasts at least three hours.*

*Respondents:* Foreign air carriers that operate passenger service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats.

*Estimated Annual Burden on Respondents:* A maximum of 54 hours per respondent.

*Estimated Total Annual Burden:* 2,226 hours for all respondents.

*Frequency:* One information set to retain per three hour plus tarmac delay for each respondent.

2. *Requirement that carrier report certain tarmac delay data for tarmac delays exceeding 3 hours to the Department on a monthly basis.*

*Respondents:* U.S. carriers that operate passenger service using any aircraft with 30 or more seats, and foreign air carriers that operate passenger service to and from the United States using any aircraft originally designed to have a passenger capacity of 30 or more seats.

*Estimated Annual Burden on Respondents:* 0.5 to 10 hours per domestic respondent and 0.5 to 4.5 hours per foreign respondent.

*Estimated Total Annual Burden:* 134 4 hours for all respondents.

*Frequency:* One information set to submit per month for each respondent that experiences a tarmac delay of more than 3 hours at a U.S. airport.

3. *Requirement that carrier retain for two years the results of its annual self-audit of its compliance with its Customer Service Plan.*

*Respondents:* Foreign air carriers that operate scheduled passenger service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats.

*Estimated Annual Burden on Respondents:* 15 minutes per year for each respondent.

*Estimated Total Annual Burden:* A maximum of 25 hours and 15 minutes for all respondents.

*Frequency:* One information set to retain per year for each respondent.

#### F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

Issued this 18th day of April 2011, in Washington, DC.

**Ray LaHood,**  
*Secretary of Transportation.*

#### List of Subjects

##### 14 CFR Parts 250 and 259

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

##### 14 CFR Part 244

Air carriers, Consumer protection, Tarmac delay data.

##### 14 CFR Part 253

Air carriers, Consumer protection, Contract of carriage.

##### 14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

For the reasons set forth in the preamble, the Department amends 14 CFR Chapter II as follows:

- 1. Add part 244 to read as follows:

#### **PART 244—REPORTING TARMAC DELAY DATA**

Sec.

244.1 Definitions.

244.2 Applicability.

244.3 Reporting of tarmac delay data.

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

##### **§ 244.1 Definitions.**

*Arrival time* is the instant when the pilot sets the aircraft parking brake after arriving at the airport gate or passenger unloading area. If the parking brake is not set, record the time for the opening of the passenger door. Also, for purposes of section 244.3 carriers using a Docking Guidance System (DGS) may record the official "gate-arrival time" when the aircraft is stopped at the appropriate parking mark.

*Cancelled flight* means a flight operation that was not operated, but was listed in an air carrier or a foreign air carrier's computer reservation system

within seven calendar days of the scheduled departure.

*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. 40109.

*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 passenger seating capacity of 30 or more seats.

*Diverted flight* means a flight which is operated from the scheduled origin point to a point other than the scheduled destination point in the carrier's published schedule. For example, a carrier has a published schedule for a flight from A to B to C. If the carrier were to actually fly an A to C operation, the A to B segment is a diverted flight, and the B to C segment is a cancelled flight. The same would apply if the flight were to operate from A to an airport other than B or C.

*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.

*Gate departure time* is the instant when the pilot releases the aircraft parking brake after passengers have boarded and aircraft doors have closed. In cases where the flight returned to the departure gate before wheels-off time and departs a second time, the reportable gate departure time for purposes of this Part is the last gate departure time before wheels-off time. In cases of a return to the gate after wheels-off time, the reportable gate departure time is the last gate departure time before the gate return. If passengers were boarded without the parking brake being set, the reportable gate departure time is the time that the last passenger door was closed. Also, the official "gate-departure time" may be based on aircraft movement for carriers using a Docking Guidance System (DGS). For example, one DGS records gate departure time when the aircraft moves more than 1 meter from the appropriate parking mark within 15 seconds. Fifteen

seconds is then subtracted from the recorded time to obtain the appropriate "out" time.

*Gate Return time* means the time that an aircraft that has left the boarding gate returns to a gate or other position at an airport for the purpose of allowing passengers the opportunity to disembark from the aircraft.

*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 total enplanements in the United States.

*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.

#### § 244.2 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to U.S. certificated air carriers, U.S. commuter air carriers and foreign air carriers that operate passenger service to or from a U.S. airport with at least one aircraft that has an original manufacturer's design capacity of 30 or more seats. Covered carriers must report all passenger operations that experience a tarmac time of 3 hours or more at a U.S. airport.

(b) For foreign air carriers that operate charter flights from foreign airports to U.S. airports, and return to foreign airports, and do not pick up any new passengers in the U.S., the charter flights are not flights subject to the reporting requirements of this part.

(c) U.S. carriers that submit Part 234 Airline Service Quality Performance Reports must submit 3-hour tarmac delay information for public charter flights and international passenger flights to or from any U.S. large hub airport, medium hub airport, small hub airport and non-hub airport. These carriers are already required to submit such information for domestic scheduled flights to or from U.S. large hub airports under art 234 of this chapter. These carriers that are covered by part 234 need only submit information for flights with tarmac delays of more than 3 hours under this part 244 for domestic scheduled

passenger flights to or from any U.S. medium hub airport, small hub airport and non-hub airport to the extent they do not report such information under 14 CFR 234.7.

#### § 244.3 Reporting of tarmac delay data.

(a) Each covered carrier shall file BTS Form 244 "Tarmac Delay Report" with the Office of Airline Information of the Department's Bureau of Transportation Statistics on a monthly basis, setting forth the information for each of its covered flights that experienced a tarmac delay of three hours or more, including diverted flights and cancelled flights on which the passengers were boarded and then deplaned before the cancellation. The reports are due within 15 days after the end of the month during which the carrier experienced any tarmac delay of three hours or more. The reports shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Information, and shall contain the following information:

- (1) Carrier code
- (2) Flight number
- (3) Departure airport (three letter code)
- (4) Arrival airport (three letter code)
- (5) Date of flight operation (year/month/day)
- (6) Gate departure time (actual) in local time
- (7) Gate arrival time (actual) in local time
- (8) Wheels-off time (actual) in local time
- (9) Wheels-on time (actual) in local time
- (10) Aircraft tail number
- (11) Total ground time away from gate for all gate return/fly return at origin airports including cancelled flights
- (12) Longest time away from gate for gate return or canceled flight
- (13) Three letter code of airport where flight diverted
- (14) Wheels-on time at diverted airport
- (15) Total time away from gate at diverted airport
- (16) Longest time away from gate at diverted airport
- (17) Wheels-off time at diverted airport

(b) The same information required by paragraph (a)(13) through (17) of this section must be provided for each subsequent diverted airport landing.

#### PART 250—OVERSALES

■ 2. The authority citation for 14 CFR Part 250 continues to read as follows:

**Authority:** 49 U.S.C. chapters 401, 411, 413 and 417.

■ 3. Section 250.1 is amended by removing the definition of "sum of the values of the remaining flight coupons" and "comparable air transportation," revising the definition for "confirmed reserved space," and adding a definition for "alternate transportation," "class of service," "fare," and "zero fare ticket" to read as follows:

#### § 250.1 Definitions.

\* \* \* \* \*

*Alternate transportation* means air transportation with a confirmed reservation at no additional charge, operated by a carrier as defined below, or other transportation accepted and used by the passenger in the case of denied boarding.

\* \* \* \* \*

*Class of service* means seating in the same cabin class such as First, Business, or Economy class, or in the same seating zone if the carrier has more than one seating product in the same cabin such as Economy and Premium Economy class.

*Confirmed reserved space* means space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger, including a passenger with a "zero fare ticket," and which the carrier or its agent has verified, by appropriate notation on the ticket or in any other manner provided therefore by the carrier, as being reserved for the accommodation of the passenger.

*Fare* means the price paid for air transportation including all mandatory taxes and fees. It does not include ancillary fees for optional services.

\* \* \* \* \*

*Zero fare ticket* means a ticket acquired without a substantial monetary payment such as by using frequent flyer miles or vouchers, or a consolidator ticket obtained after a monetary payment that does not show a fare amount on the ticket. A zero fare ticket does not include free or reduced rate air transportation provided to airline employees and guests.

■ 4. Section 250.2b is amended by adding paragraph (c) to read as follows:

#### § 250.2b Carriers to request volunteers for denied boarding.

\* \* \* \* \*

(c) If a carrier offers free or reduced rate air transportation as compensation to volunteers, the carrier must disclose all material restrictions, including but not limited to administrative fees, advance purchase or capacity restrictions, and blackout dates applicable to the offer before the passenger decides whether to give up his or her confirmed reserved space on

that flight in exchange for the free or reduced rate transportation.

■ 5. Section 250.5 is revised to read as follows:

**§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.**

(a) Subject to the exceptions provided in § 250.6, a carrier to whom this part applies as described in § 250.2 shall pay compensation in interstate air transportation to passengers who are denied boarding involuntarily from an oversold flight as follows:

(1) No compensation is required if the carrier offers alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if none, the airport of the passenger's final destination not later than one hour after the planned arrival time of the passenger's original flight;

(2) Compensation shall be 200% of the fare to the passenger's destination or first stopover, with a maximum of \$650, if the carrier offers alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if none, the airport of the passenger's final destination more than one hour but less than two hours after the planned arrival time of the passenger's original flight; and

(3) Compensation shall be 400% of the fare to the passenger's destination or first stopover, with a maximum of \$1,300, if the carrier does not offer alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if none, the airport of the passenger's final destination less than two hours after the planned arrival time of the passenger's original flight.

(b) Subject to the exceptions provided in § 250.6, a carrier to whom this part applies as described in § 250.2 shall pay compensation to passengers in foreign air transportation who are denied boarding involuntarily at a U.S. airport from an oversold flight as follows:

(1) No compensation is required if the carrier offers alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if not, the airport of the passenger's final destination not later than one hour after the planned arrival time of the passenger's original flight;

(2) Compensation shall be 200% of the fare to the passenger's destination or first stopover, with a maximum of \$650, if the carrier offers alternate transportation that, at the time the arrangement is made, is planned to

arrive at the airport of the passenger's first stopover, or if not, the airport of the passenger's final destination more than one hour but less than four hours after the planned arrival time of the passenger's original flight; and

(3) Compensation shall be 400% of the fare to the passenger's destination or first stopover, with a maximum of \$1,300, if the carrier does not offer alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if not, the airport of the passenger's final destination less than four hours after the planned arrival time of the passenger's original flight.

(c) Carriers may offer free or reduced rate air transportation in lieu of the cash or check due under paragraphs (a) and (b) of this section, if—

(1) The value of the transportation benefit offered, excluding any fees or other mandatory charges applicable for using the free or reduced rate air transportation, is equal to or greater than the cash/check payment otherwise required;

(2) The carrier fully informs the passenger of the amount of cash/check compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash/check payment; and

(3) The carrier fully discloses all material restrictions, including but not limited to, administrative fees, advance purchase or capacity restrictions, and blackout dates applicable to the offer, on the use of such free or reduced rate transportation before the passenger decides to give up the cash/check payment in exchange for such transportation.

(d) The requirements of this section apply to passengers with "zero fare tickets." The fare paid by these passengers for purposes of calculating denied boarding compensation shall be the lowest cash, check, or credit card payment charged for a ticket in the same class of service on that flight.

(e) The Department of Transportation will review the maximum denied boarding compensation amounts prescribed in this part every two years except for the first review, which will take place in 2012 in order to put the reviews specified in this section on the same cycle as the reviews of domestic baggage liability limits specified in 14 CFR 254.6. The Department will use any increase in the Consumer Price Index for All Urban Consumers (CPI-U) as of July of each review year to calculate the increased maximum compensation amounts. The Department will use the following formula:

(1) Current Denied Boarding Compensation limit in section 250.5(a)(2) multiplied by (a/b) rounded to the nearest \$25 where:

a = July CPI-U of year of current adjustment  
b = the CPI-U figure in August, 2011 when the inflation adjustment provision was added to Part 250.

(2) The Denied Boarding Compensation limit in § 250.5(a)(3) shall be twice the revised limit for § 250.5(a)(2).

(f) In addition to the denied boarding compensation specified in this part, a carrier shall refund all unused ancillary fees for optional services paid by a passenger who is voluntarily or involuntarily denied boarding. The carrier is not required to refund the ancillary fees for services that are provided with respect to the passenger's alternate transportation.

■ 6 . In § 250.9, the section heading and paragraph (b) are revised and paragraph (c) is added to read as follows:

**§ 250.9 Written explanation of denied boarding compensation and boarding priorities, and verbal notification of denied boarding compensation.**

\* \* \* \* \*

(b) The statement shall read as follows:

**Compensation for Denied Boarding**

If you have been denied a reserved seat on (name of air carrier), you are probably entitled to monetary compensation. This notice explains the airline's obligation and the passenger's rights in the case of an oversold flight, in accordance with regulations of the *U.S. Department of Transportation*.

**Volunteers and Boarding Priorities**

If a flight is oversold (more passengers hold confirmed reservations than there are seats available), no one may be denied boarding against his or her will until airline personnel first ask for volunteers who will give up their reservation willingly, in exchange for compensation of the airline's choosing. If there are not enough volunteers, other passengers may be denied boarding involuntarily in accordance with the following boarding priority of (name of air carrier): (In this space the carrier inserts its boarding priority rules or a summary thereof, in a manner to be understandable to the average passenger.)

**Compensation for Involuntary Denied Boarding**

If you are denied boarding involuntarily, you are entitled to a payment of "denied boarding compensation" from the airline unless:

(1) you have not fully complied with the airline's ticketing, check-in and reconfirmation requirements, or you are not acceptable for transportation under the airline's usual rules and practices; or

(2) you are denied boarding because the flight is canceled; or

(3) you are denied boarding because a smaller capacity aircraft was substituted for safety or operational reasons; or

(4) on a flight operated with an aircraft having 60 or fewer seats, you are denied boarding due to safety-related weight/balance restrictions that limit payload; or

(5) you are offered accommodations in a section of the aircraft other than specified in your ticket, at no extra charge (a passenger seated in a section for which a lower fare is charged must be given an appropriate refund); or

(6) the airline is able to place you on another flight or flights that are planned to reach your next stopover or final destination within one hour of the planned arrival time of your original flight.

**Amount of Denied Boarding Compensation**

*Domestic Transportation*

Passengers traveling between points within the United States (including the territories and possessions) who are denied boarding involuntarily from an oversold flight are entitled to: (1) No compensation if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover not later than one hour after the planned arrival time of the passenger's original flight; (2) 200% of the fare to the passenger's destination or first stopover, with a maximum of \$650, if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than two hours after the planned arrival time of the passenger's original flight; and (3) 400% of the fare to the passenger's destination or first stopover, with a maximum of \$1,300, if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than two hours after the planned arrival time of the passenger's original flight.

0 to 1 hour arrival delay.	No compensation.
1 to 2 hour arrival delay.	200% of one-way fare (but no more than \$650).
Over 2 hours arrival delay.	400% of one-way fare (but no more than \$1,300).

*International Transportation*

Passengers traveling from the United States to a foreign point who are denied boarding involuntarily from an oversold flight originating at a U.S. airport are entitled to: (1) No compensation if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover not later than one hour after the planned arrival time of the passenger's original flight; (2) 200% of the fare to the passenger's destination or first stopover, with a maximum of \$650, if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than four hours after the planned arrival time of

the passenger's original flight; and (3) 400% of the fare to the passenger's destination or first stopover, with a maximum of \$1,300, if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than four hours after the planned arrival time of the passenger's original flight.

0 to 1 hour arrival delay.	No compensation.
1 to 4 hour arrival delay.	200% of one-way fare (but no more than \$650).
Over 4 hours arrival delay.	400% of one-way fare (but no more than \$1,300).

*Alternate Transportation*

"Alternate transportation" is air transportation with a confirmed reservation at no additional charge (by any scheduled airline licensed by DOT), or other transportation accepted and used by the passenger in the case of denied boarding.

**Method of Payment**

Except as provided below, the airline must give each passenger who qualifies for involuntary denied boarding compensation a payment by cash or check for the amount specified above, on the day and at the place the involuntary denied boarding occurs. If the airline arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment shall be sent to the passenger within 24 hours. The air carrier may offer free or discounted transportation in place of the cash payment. In that event, the carrier must disclose all material restrictions on the use of the free or discounted transportation before the passenger decides whether to accept the transportation in lieu of a cash or check payment. The passenger may insist on the cash/check payment or refuse all compensation and bring private legal action.

**Passenger's Options**

Acceptance of the compensation may relieve (name of air carrier) from any further liability to the passenger caused by its failure to honor the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.

(c) In addition to furnishing passengers with the carrier's written statement as specified in paragraphs (a) and (b) of this section, if the carrier orally advises involuntarily bumped passengers that they are entitled to receive free or discounted transportation as denied boarding compensation, the carrier must also orally advise the passengers of any material restrictions or conditions applicable to the free or discounted transportation and that they are entitled to choose a check instead (or cash if that option is offered by the carrier).

■ 7. Section 250.10 is revised to read as follows:

**§ 250.10 Report of passengers denied confirmed space.**

Every reporting carrier as defined in § 234.2 of this chapter and any carrier that voluntarily submits data pursuant to § 234.7 of this chapter shall file, on a quarterly basis, the information specified in BTS Form 251. The reporting basis shall be flight segments originating in the United States. The reports are to be submitted within 30 days after the end of the quarter covered by the report. The calendar quarters end March 31, June 30, September 30 and December 31. "Total Boardings" on Line 7 of Form 251 shall include only passengers on flights for which confirmed reservations are offered. Data shall not be included for inbound international flights.

**PART 253—NOTICE OF TERMS OF CONTRACT OF CARRIAGE**

■ 8. The authority citation for 14 CFR Part 253 continues to read as follows:

**Authority:** 49 U.S.C. 40113; 49 U.S.C. Chapters 401, 415 and 417.

■ 9. Section 253.7 is revised to read as follows:

**§ 253.7 Direct notice of certain terms.**

A carrier may not impose any terms restricting refunds of the ticket price, imposing monetary penalties on passengers, or raising the ticket price consistent with § 399.87 of the chapter, unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket.

■ 10. Section 253.10 is added to read as follows:

**§ 253.10 Notice of contract of carriage choice-of-forum provisions.**

No carrier may impose any contract of carriage provision containing a choice-of-forum clause that attempts to preclude a passenger, or a person who purchases a ticket for air transportation on behalf of a passenger, from bringing a claim against a carrier in any court of competent jurisdiction, including a court within the jurisdiction of that passenger's residence in the United States (provided that the carrier does business within that jurisdiction).

**PART 259—ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS**

■ 11. The authority citation for 14 CFR Part 259 continues to read as follows:

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

■ 12. Section 259.2 is revised to read as follows:

**§ 259.2 Applicability.**

This part applies to all the flights of a certificated or commuter air carrier if the carrier operates scheduled passenger service or public charter service using any aircraft originally designed to have a passenger capacity of 30 or more seats, and to all flights to and from the U.S. of a foreign 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.

■ 13. Section 259.3 is revised to read as follows:

**§ 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.

■ 14. Section 259.4 is revised to read as follows:

**§ 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 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 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.

■ 15. Section 259.5 is revised to read as follows:

**§ 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 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;

(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.

■ 16. Section 259.6 is revised to read as follows:

**§ 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

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.

■ 17. Section 259.7 is revised to read as follows:

**§ 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 networking 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.

■ 18. Section 259.8 is added to read as follows:

**§ 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.

**PART 399—STATEMENTS OF GENERAL POLICY**

■ 19. The authority citation for 14 CFR Part 399 continues to read as follows:

*Authority:* 49 U.S.C. 40101 *et seq.*

■ 20. Effective October 24, 2011, § 399.84 is revised to read as follows:

**§ 399.84 Price advertising and opt-out provisions.**

(a) The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (i.e., a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component. Although charges included within the single total price listed (e.g., government taxes) may be stated separately or through links or "pop ups" on websites that display the total price, such charges may not be false or misleading, may not be displayed prominently, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

(b) The Department considers any advertising by the entities listed in paragraph (a) of this section of an each-way airfare that is available only when purchased for round-trip travel to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless such airfare is advertised as "each way" and in such a manner so that the disclosure of the round-trip purchase requirement is clearly and conspicuously noted in the advertisement and is stated prominently and proximately to the each-way fare amount. The Department considers it to be an unfair and deceptive practice to advertise each-way fares contingent on a round-trip purchase requirement as "one-way" fares, even if accompanied by prominent and proximate disclosure of the round trip purchase requirement.

(c) When offering a ticket for purchase by a consumer, for passenger air transportation or for a tour (i.e., a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) that must be purchased with air transportation, a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, may not offer additional optional services in connection with air transportation, a tour, or tour component whereby the optional

service is automatically added to the consumer's purchase if the consumer takes no other action, i.e., if the consumer does not opt out. The consumer must affirmatively "opt in" (i.e., agree) to such a service and the fee for it before that fee is added to the total price for the air transportation-related purchase. The Department considers the use of "opt-out" provisions to be an unfair and deceptive practice in violation of 49 U.S.C. 41712.

■ 21. Section 399.85 is added to read as follows:

**§ 399.85 Notice of baggage fees and other fees.**

(a) If a U. S. or foreign air carrier has a website accessible for ticket purchases by the general public in the U.S., the carrier must promptly and prominently disclose any increase in its fee for carry-on or first and second checked bags and any change in the first and second checked bags or carry-on allowance for a passenger on the homepage of that website (e.g., provide a link that says "changed bag rules" or similarly descriptive language and takes the consumer from the homepage directly to a pop-up or a place on another webpage that details the change in baggage allowance or fees and the effective dates of such changes). Such notice must remain on the homepage for at least three months after the change becomes effective.

(b) If a U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent has a website accessible for ticket purchases by the general public in the U.S., the carrier or agent must clearly and prominently disclose on the first screen in which the agent or carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can see these baggage fees. An agent may refer consumers to the airline websites where specific baggage fee information may be obtained or to its own site if it displays airlines' baggage fees.

(c) On all e-ticket confirmations for air transportation within, to or from the United States, including the summary page at the completion of an online purchase and a post-purchase email confirmation, a U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent that advertises or sells air transportation in the United States must include information regarding the passenger's free baggage allowance and/or the applicable fee for a carry-on bag and the first and second checked bag. Carriers must provide this information in text form in the e-ticket confirmation. Agents may provide this information in

text form in the e-ticket confirmations or through a hyperlink to the specific location on airline websites or their own website where this information is displayed. The fee information provided for a carry-on bag and the first and second checked bag must be expressed as specific charges taking into account any factors (e.g., frequent flyer status, early purchase, and so forth) that affect those charges.

(d) If a U.S. or foreign air carrier has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier must prominently disclose on its website information on fees for all optional services that are available to a passenger purchasing air transportation. Such disclosure must be clear, with a conspicuous link from the carrier's homepage directly to a page or a place on a page where all such optional services and related fees are disclosed. For purposes of this section, the term "optional services" is defined as any service the airline provides, for a fee, beyond passenger air transportation. Such fees include, but are not limited to, charges for checked or carry-on baggage, advance seat selection, in-flight beverages, snacks and meals, pillows and blankets and seat upgrades. In general, fees for particular services may be expressed as a range; however, baggage fees must be expressed as specific charges taking into account any factors (e.g., frequent flyer status, early purchase, and so forth) that affect those charges.

(e) For air transportation within, to or from the United States, a carrier marketing a flight under its identity that is operated by a different carrier, otherwise known as a code-share flight, must through its website disclose to consumers booked on a code-share flight any differences between its optional services and related fees and those of the carrier operating the flight. This disclosure may be made through a conspicuous notice of the existence of such differences on the marketing carrier's website or a conspicuous hyperlink taking the reader directly to the operating carrier's fee listing or to a page on the marketing carrier's website

that lists the differences in policies among code-share partners.

(f) The Department considers the failure to give the appropriate notice described in paragraphs (a) through (e) of this section to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

■ 22. Section 399.87 is added to read as follows:

**§ 399.87 Baggage allowances and fees.**

For passengers whose ultimate ticketed origin or destination is a U.S. point, U.S. and foreign carriers must apply the baggage allowances and fees that apply at the beginning of a passenger's itinerary throughout his or her entire itinerary. In the case of code-share flights that form part of an itinerary whose ultimate ticketed origin or destination is a U.S. point, U.S. and foreign carriers must apply the baggage allowances and fees of the marketing carrier throughout the itinerary to the extent that they differ from those of any operating carrier.

■ 23. Section 399.88 is added to read as follows:

**§ 399.88 Prohibition on post-purchase price increase.**

(a) It is an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 for any seller of scheduled air transportation within, to or from the United States, or of a tour (i.e., a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, to increase the price of that air transportation, tour or tour component to a consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, or an increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer.

(b) A seller of scheduled air transportation within, to or from the United States or a tour (i.e., a combination of air transportation and

ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, must notify a consumer of the potential for a post-purchase price increase due to an increase in a government-imposed tax or fee and must obtain the consumer's written consent to the potential for such an increase prior to purchase of the scheduled air transportation, tour or tour component that includes scheduled air transportation. Imposition of any such increase without providing the consumer the appropriate notice and without obtaining his or her written consent of the potential increase constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

■ 24. Section 399.89 is added to read as follows:

**§ 399.89 Disclosure of potential for price increase before payment.**

Any seller of scheduled air transportation within, to or from the United States, or of a tour (i.e., a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, must notify a consumer of the potential for a price increase that could take place prior to the time that the full amount agreed upon has been paid by the consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, an increase in an applicable fuel surcharge, or an increase in a government-imposed tax or fee and must obtain the consumer's written consent to the potential for such an increase prior to accepting any payment for the scheduled air transportation, or tour or tour component that includes scheduled air transportation. Imposition of any such increase without providing the consumer the appropriate notice and obtaining his or her written consent to the potential increase constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

[FR Doc. 2011-9736 Filed 4-20-11; 8:45 am]

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