

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, DC**

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**Answers to Frequently Asked Questions Concerning the Enforcement of the Final
Rule on Enhancing Airline Passenger Protections**

I. Overview

1. What are the main provisions of the final rule on enhancing airline passenger protections?

- Requires U. S. carriers to adopt contingency plans for lengthy tarmac delays that include provisions for adequate food and water within 2 hours and deplaning of passengers within 3 hours;
- Requires U. S. carriers to post contracts of carriage, contingency plans, and customer service plans on their web sites;
- Requires U. S. carriers to respond to consumer problems;
- Defines chronically late flights and deems the holding out of such flights to be unfair and deceptive in violation of 49 U.S.C. 41712;
- Requires U. S. carriers to publish information on flight delays on their websites;
- Requires U. S. carriers to adopt customer service plans and audit their own compliance with their plans; and
- Prohibits U. S. carriers from retroactively applying any material amendment to their contracts of carriage that has significant negative implications for consumers.

2. When will these passenger protections become effective?

The final rule on enhancing airline passenger protections becomes effective on April 29, 2010. The Department extended for 60 days the compliance date of a provision in the rule that requires large airlines to publish detailed flight delay information on their websites. June flight delay information must now appear at those carriers' websites by the end of July. The date for compliance with all other provisions of the "Enhancing Airline Passenger Protections" final rule remains April 29, 2010.

The Department has received requests for temporary exemptions from a provision in the rule that requires U.S. carriers to allow passengers to deplane after three hours on the tarmac for domestic flights, and after more than a set number of hours on the tarmac as determined by a U.S. carrier for international flights, with certain exceptions for safety, security, or Air Traffic Control-related reasons. The exemption requests concern operations at John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR), LaGuardia Airport (LGA), and Philadelphia International Airport (PHL) during the time runway construction on JFK's Runway 13R/31L is expected to be under way. The exemption requests from the tarmac delay requirements are currently pending with the Department.

3. What is the Department's authority to require airlines to comply with the provisions of this rule?

The Department has broad rulemaking powers under 49 U.S.C. 40113 to prescribe regulations, standards, and procedures related to air travel. The Department also has authority under 49 U.S.C. 41712 to prohibit unfair and deceptive practices and unfair methods of competition by airlines and ticket agents and authority under 49 U.S.C. 41702 to ensure safe and adequate transportation by airlines.

4. What is the maximum fine that can be assessed against airlines by the Department for violations of 49 U.S.C. 41712 (unfair and deceptive trade practices) and related rules such as the requirements pertaining to lengthy tarmac delays?

Large airlines are subject to a maximum civil penalty of \$27,500 per violation. \$2,500 is the maximum civil penalty that can be assessed against small entities or individuals for similar violations. Each day a violation continues is a separate violation for penalty purposes. See 49 U.S.C. 46301 and 14 CFR Part 383. The Department's Aviation Enforcement Office considers a number of factors in determining the civil penalty it would seek in an enforcement proceeding (e.g., harm caused by the violations, alleged violator's compliance disposition, economic condition, and ability to pay, how long the violations continued, the strength of the case).

II. Tarmac Delay Contingency Plans (14 CFR 259.4)

5. Which carriers must have contingency plans for lengthy tarmac delays?

The rule requires a U.S. carrier operating passenger service (scheduled or charter) using any aircraft with a design capacity of 30 or more passenger seats to adopt a contingency plan for lengthy tarmac delays. The requirement to develop and implement contingency plans would apply to all aircraft of those carriers, including those with fewer than 30 seats.

6. Do the tarmac delay requirements apply to a foreign air carrier that participates in a code-sharing arrangement with a U.S. carrier?

Generally, the rule does not apply to foreign air carriers. However, if the contingency plan for lengthy tarmac delays is part of the selling U.S. carrier's contract of carriage, both the U.S. carrier and its foreign code share partner are responsible in an enforcement context for complying with the all of the provisions in the contingency plan, including deplaning passengers on an international flight after a set number of hours on the tarmac as determined by the U.S. carrier.

7. Which airports must be covered by the contingency plans adopted by U.S. carriers?

A U.S. carrier must have a contingency plan at each medium and large hub airport at which it operates. A large hub airport means an airport accounting for at least 1.00 percent of the total enplanements in the United States. A 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.

8. How many large hub airports are there? How many medium hub airports?

According to the Department's Bureau of Transportation Statistics (BTS) data, in calendar year 2008 (latest available data), there were 28 large hub airports and 41 medium hub airports. Those large hub airports are: ATL, BOS, BWI, CLT, DCA, DEN, DFW, DTW, EWR, FLL, HNL, IAD, IAH, JFK, LAS, LAX, LGA, MCO, MIA, MSP, ORD, PHL, PHX, SAN, SEA, SFO, SLC and TPA. Those medium hub airports are: ABQ, ANC, AUS, BDL, BNA, BUF, BUR, CLE, CMH, CVG, DAL, HOU, IND, JAX, MCI, MDW, MEM, MHT, MKE, MSY, OAK, OGG, OKC, OMA, ONT, ORF, PBI, PDX, PIT, PVD, RDU, RNO, RSW, SAT, SDF, SJC, SJU, SMF, SNA, STL and TUS. Note that for purposes of this rule, in defining whether airports are large or medium hub airports, the Department uses the airport-specific enplanement thresholds published by BTS and does not aggregate airport enplanement data on a community basis as is done for other purposes. This information is expected to be updated in mid-2010 to reflect calendar year 2009 enplanements.

9. What must be included in the contingency plans?

- Assurance carrier will not permit aircraft to remain for more than 3 hours on the tarmac for domestic flights without providing passengers an opportunity to deplane, subject to safety, security and Air Traffic Control (ATC)-related reasons;
- Assurance carrier will not permit aircraft to remain on the tarmac after more than a set number of hours as determined by a U.S. carrier for international flights without providing passengers an opportunity to deplane, subject to safety, security, or ATC-related reasons;
- Assurance of food and water for passengers after 2 hours without a chance to deplane, unless safety or security considerations preclude such service;
- Assurance of operable lavatory facilities while on the tarmac, and adequate medical attention if needed;
- Assurance of sufficient resources to carry out the plan; and
- Assurance of coordination with airport authorities at all medium and large hub airports, including medium and large hub diversion airports.

10. When does the time limit begin for a tarmac delay?

A tarmac delay begins when passengers no longer have the option to get off of the aircraft, which usually occurs when the doors of the aircraft shut. However, if an aircraft is at the gate with the doors open, and passengers are not allowed off the aircraft, the time limit would start at the point when passengers were no longer permitted to deplane.

11. Is a carrier in compliance with the requirement in the tarmac delay rule to provide passengers an opportunity to deplane after three hours for domestic flights if the aircraft begins the process of returning to the gate or another disembarkation point at the three hour mark?

No. A carrier must give passengers an opportunity to deplane at the three-hour mark. It is not sufficient for a carrier to begin the process of returning to the gate or another disembarkation point at that time.

12. When does the clock stop ticking or restart?

For purposes of calculating a tarmac delay, the clock stops ticking or restarts when passengers are given the opportunity to get off the aircraft, which usually occurs when the aircraft arrives at a gate or another disembarkation point and the door(s) opens. If a gate is not available, passengers may be allowed off the airplane while on the tarmac via stairs and escorted to the terminal, e.g., by walking or shuttle bus.

13. For a departure delay, if the aircraft is not allowed to "remain on the tarmac" longer than three hours without providing passengers an opportunity to deplane, does this mean that it must return to the gate, even if just momentarily, to let passengers off but can then return to the tarmac or taxiway?

Yes. The aircraft must return to the gate or another disembarkation point before 3 hours elapses for domestic flights and within the number of hours as determined by a U.S. carrier for international flights if passengers have not been provided the opportunity to deplane unless there is a safety, security or ATC reason not to do so. Once the aircraft returns to the gate or another disembarkation point and passengers are permitted to deplane, a carrier may decide to continue the flight's operation immediately, reschedule it for a later time, or cancel the flight. When the plane returns to the gate, any passenger who wishes must have the chance to deplane, after which the carrier may continue the flight with those passengers who decide not to deplane. Of course, once the flight leaves the gate again, the three-hour clock begins anew. In other words, the passengers who decided not to deplane must be given another opportunity to deplane if the aircraft is subsequently delayed on the tarmac for another three hours.

14. On a departure delay, is a flight required to return to the terminal to deplane passengers within the 3-hour limit if it appears the flight may be next in line for take-off or passengers do not want to return to the terminal?

Regarding the "next in line" issue, carriers must take into account the time needed to taxi back to the gate or other disembarkation point in order to comply with the 3-hour time limit. All facts involving a given situation, including a carrier's decisions, and when it made them, will be taken into account in determining whether an actionable violation of the rule occurred. Regarding the desire of passengers to wait out a delay that may extend past the 3-hour limit, carriers have always been able to poll passengers regarding whether or not they would like to return to the gate in the event of a long tarmac delay and the rule does not change this fact. The Department deliberated on whether to include a requirement to poll passengers but determined that it may not be practicable to require polling in every case. However, in the event of a question about compliance with the rule, we have the discretion to consider the totality of the circumstances and would take into account all matters brought to our attention, such as **all** passengers agreeing to forego their right to deplane.

15. What type of services are the carriers required to provide passengers in the event of a lengthy tarmac delay?

A carrier must 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 safety or security considerations preclude such service. Carriers are also required to provide operable lavatory facilities, as well as adequate medical attention if needed, while the aircraft remains on the tarmac.

16. What does the Department consider to be “adequate food?”

A granola bar and bottle of water or similar snack would be adequate. We do not expect carriers to serve full meals, but we do expect them to have or obtain adequate supplies of food and drinking water for all passengers on board the aircraft during the delay, and to provide portions that are sufficient to serve an individual (e.g. an individual pack of snack food, a full 12-16 ounce bottle or serving of water).

17. How does the requirement to have an operable lavatory impact a carrier that operates aircraft with a single lavatory where the minimum equipment list (MEL) standard allows for the lavatory to be inoperable for a short period of time under certain circumstances? How does this requirement impact aircraft that are not equipped with a lavatory?

The Department’s Aviation Enforcement Office interprets the requirement for an operable lavatory during a lengthy tarmac delay not to apply to an aircraft that is not equipped with a lavatory or is allowed by MEL standards to operate without an operable lavatory, so long as appropriate notice is provided to passengers about the unavailability of a lavatory before a flight. Failure to provide adequate notice could result in enforcement action under 14 CFR Part 382, relating to disabled air travelers, and 49 U.S.C. 41702, relating to adequate air service. The requirement for an operable lavatory does not mean that a U.S. carrier will need to install a lavatory on aircraft that are not equipped with a lavatory. The rule speaks of “maintaining” and “servicing” aircraft lavatories; the requirement for an operable lavatory while the aircraft remains on the tarmac applies to aircraft that are already equipped with a lavatory. As stated earlier in this FAQ, the tarmac delay provisions of the rule apply to all aircraft of any U.S. carrier that has any aircraft with 30 or more seats, including aircraft operated by such a carrier that have fewer than 30 seats. Virtually all commercial aircraft with 30 or more seats are equipped with a lavatory. Although a few carriers covered by this rule may operate aircraft with fewer than 30 seats in addition to operating larger aircraft, the number of such carriers and aircraft is very small as is the number of passengers transported annually on those aircraft with fewer than 30 seats.

18. Are there other requirements the carrier must comply with to deal with lengthy tarmac delays?

Yes. A carrier must assure that it has sufficient resources to carry out the plan and that it will coordinate with airport authorities at all medium and large hub airports that the carrier serves, including medium and large hub diversion airports.

19. Does the rule take into account operational, safety-related or security-related impediments to deplaning passengers during certain lengthy tarmac delays?

Yes. The rule includes an exception for instances where there is a safety or security impediment to deplaning passengers or Air Traffic Control advises the pilot that permitting the passengers to disembark would significantly disrupt airport operations.

20. Who is authorized to make a determination that there is a safety or security impediment to deplaning passengers during a lengthy tarmac delay?

The pilot-in-command is responsible for determining that there is a safety-related or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers. In making this determination, the pilot may rely on information provided by his or her own operations personnel and third parties, such as airport personnel or government agencies.

21. What does the Department consider an ATC-related tarmac delay that could “significantly affect airport operations?”

What constitutes a significant disruption will vary due to many factors, including: runway configurations, available taxi routes, traffic volume and complexity, active runway crossings, weather, and so forth. It is worth noting that at the vast majority of airports an aircraft returning to a gate or another disembarkation point would never significantly disrupt airport operations.

Each air traffic facility is developing local procedures pertaining to tarmac delay handling that consider the following: (1) operational complexity, such as the competing demand of other surface operations to and from other arrival and/or departure runways and ramp areas, including general aviation, cargo, and military aircraft; (2) safety concerns, such as runway crossing requirements; (3) repositioning to alternate deplaning locations, if applicable; (4) taxiway/runway closures and/or airport construction; and (5) what constitutes a “significant disruption” of service at that location in order to accommodate a tarmac delay aircraft.

Examples of what may constitute a “significant disruption” of service at a location in order to accommodate a tarmac delay aircraft include: (a) accommodating an aircraft desiring to taxi due to the 3 hour tarmac rule would require airborne holding that would result in reportable arrival delays; (b) utilizing an active runway to taxi, precluding the use of that runway for arrivals or departures would result in reportable arrival and/or departure delays; (c) taxiing tarmac delay aircraft would result in placing other aircraft in jeopardy of violating the 3 hour tarmac rule; (d) displacement of other departure aircraft to accommodate the tarmac delay aircraft would increase their departure delays by more than an additional 15 minutes, or (e) interrupting an arrival event that would result in diversions, holding three or more aircraft to accommodate the taxi of a tarmac delay aircraft to the ramp, gate or alternate deplaning area.

22. What is the process for advising ATC of a tarmac-delayed flight?

The pilot-in-command of a tarmac-delayed aircraft is responsible for notifying the local air traffic control facility that action is requested to comply with the 3 hour tarmac rule. The request should be made in a timely manner so as to ensure compliance with the rule and reflect local operating conditions such as available taxiways or other aircraft movements. ATC is not responsible for ensuring operator compliance or for tracking the time individual flights are delayed. The request for action or clearance from the pilot-in-command to ATC should include the reason, such as “tarmac-related delay,” and the time by which the aircraft must be airborne or deplane passengers.

23. What is the FAA/ATC role with regard to tarmac-delayed flights?

The FAA has issued directives to air traffic personnel pertaining to tarmac delay requests. These directives include a requirement to provide the requested service as soon as operationally practicable or advise the pilot-in-command that the requested service cannot be accommodated because it would create a significant disruption of air traffic operations.

24. The rule requires carriers to coordinate their plans with “diversion” airports. Which diversion airports are expected to be included in this process?

We expect carriers to work with large- and medium-hub airports to which they regularly divert aircraft when an irregular operation exists.

25. What type of coordination is a carrier expected to have with an airport? What if the airport chooses not to be involved in that coordination?

We expect carriers to share their plans with appropriate airport personnel so that the airport knows what to expect, and what may be expected of the airport, in the event the contingency plan is implemented . We suggest that a carrier retain information pertinent to its efforts to coordinate with the airport authority to facilitate any review of such information by the Department and help demonstrate compliance with the rule. Our office is working with the FAA to encourage airports and airlines to work together when coordinating these plans. Carriers should notify the Department’s Aviation Enforcement Office if any airport refuses to be involved in that coordination.

26. On a departure delay, what are carriers’ responsibilities to passengers once an aircraft returns to the gate?

After an aircraft returns to the gate, the decision whether to re-board passengers and operate the same aircraft or to cancel the flight is an operational matter left to the carrier. The carrier does have a responsibility to follow any policy and procedures in its contract of carriage for rebooking passengers and providing amenities and refunds.

27. How will the Department know if a carrier is following through with its plan and adequately providing for passengers in the event of a lengthy tarmac delay?

We will investigate certain tarmac delay incidents immediately after they occur. In addition, we have a specific record retention requirement that will allow us to look back for a two-year period and determine both the cause of the delay and whether the carrier adequately met its passengers’ needs during the incident.

28. What type of information does the Department expect a carrier to retain regarding reasons for lengthy tarmac delays?

The rule requires carriers to retain information on the specific causes for the tarmac delay and the types of services provided to its passengers during the delay. The carrier must retain information regarding 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 or returned to the gate, and an explanation for any tarmac delay that exceeded 3 hours.

29. Does the Department expect carriers to retain the information in a certain format?

While the rule does not specify the format in which records must be retained, the Enforcement Office has developed a list of potential categories regarding reasons for on-board departure delays, on-tarmac arrival delays, and diversions, as well as a list of codes that the carriers may find useful when retaining information on flights with long on-board delays. We have included the lists and codes below.

On-Board Departure Delays	
DD1A	Severe weather - Limited or temporarily stopped take-offs
DD1B	Severe weather - Hold on flight departure due to weather en route or at destination
DD1C	Severe weather - Deicing
DD1D	Severe weather - Lightning on ground, other weather-related safety issues

DD2	Crew flight time limitations
DD3	Flight moved from gate sooner than desired to accommodate an incoming flight
DD4	Other (not flight crew) carrier staff or equipment shortages
DD5	Aircraft mechanical issues
DD6	Additional time to taxi back to gate and/or losing position in queue due to gate return
DD7	Lack of available gates for taxi back and deplaning
DD8	Other carrier-related issues not specified elsewhere
DD9	Airport or ATC (Air Traffic Control) outages (not security related)
DD10	Airport equipment issues (radar, runway lights, etc)
DD11	Ramp and/or taxiway congestion and/or general ground flow issues
DD12	Airport, runway and/or taxiway physical conditions (including insufficient deicing equipment/availability, snow on runways, etc)
DD13	General airport congestion not elsewhere specified (including a large number of unexpected diverted flights arriving and straining resources)
DD14A	Security related - Affecting entire airport (such as airport shutdown)
DD14B	Security related - Affecting multiple flights but not entire airport
DD14C	Security related - Targeted to specific flight
DD14D	Security related - Other
On-Board Arrival Delays	
DA1	Severe weather
DA2	Carrier staff or equipment shortages
DA3	Lack of available gates
DA4	Other carrier-related issues
DA5	Airport or ATC outages (not security related)
DA6	Airport equipment issues (radar, runway lights, etc)
DA7	Ramp and/or taxiway congestion and/or general ground flow issues
DA8	Airport, runway and/or taxiway physical conditions (including insufficient deicing equipment/availability, snow on runways, etc)
DA9	General airport congestion not elsewhere specified
DA10	Security related (except those due to lack of sufficient CBP personnel)
DA11	Limited international gates and/or limited CBP personnel to process international passengers
Diversions Delays	
DV1A	Severe weather - At arrival airport
DV1B	Severe weather - En route
DV2	Congestion at arrival airport
DV3	Crew or carrier staff limitations or shortages
DV4A	Non-weather related closure of arrival airport - due to Security
DV4B	Non-weather related closure of arrival airport - due to Lateness at night
DV4C	Non-weather related closure of arrival airport - due to Other
DV5	ATC dictated, not elsewhere specified
DV6	Other

30. How does the Department expect a carrier to prove it received an ATC instruction to remain on the tarmac?

A carrier can provide the Department with documentation such as written or electronic records and/or pilot notes, or any relevant audio recordings. Of course, a carrier is free to provide us with any “evidence” it may have regarding that carrier’s attempt to comply with the rule. Additionally, in order to determine a carrier’s compliance with the rule, the Enforcement Office and the FAA will exchange information regarding the event, as necessary.

31. Is it correct that the tarmac delay rule does not apply to operations at small- and non-hub airports?

Since the inclusion of small- and non-hub airports in the tarmac delay rule was not proposed for public comments early during the rulemaking process in the rule on enhancing passenger protections that is effective April 29, 2010, it could not be covered in the final rule. However, carriers are still under a general obligation to provide adequate service to consumers and not to engage in unfair and deceptive practices against consumers and the Aviation Enforcement Office intends to pursue egregious tarmac delay conduct at small- and non-hub airports where it determines that conduct violates the prohibitions of 49 U.S.C. 41712 on unfair and deceptive practices or those of 49 U.S.C. 41702 that require safe and adequate service for air travelers. It should be noted that the vast majority of passengers travel to and from large- and medium-hub airports.

III. Carriers’ Adherence to Customer Service Plans (14 CFR 259.5)

32. Which carriers must comply with the requirement to adopt and adhere to their customer service plans?

This rule applies to all the flights of a U.S. carrier if the carrier operates scheduled passenger service using any aircraft with a design capacity of 30 or more passenger seats. It applies to all of a covered U.S. carrier’s flights, both domestic and international, including those involving aircraft with fewer than 30 seats if the carrier operates any aircraft with 30 or more passenger seats.

33. Do the requirements pertaining to customer service plans apply to a foreign air carrier that participates in a code-sharing arrangement with a U.S. carrier?

Generally, the requirements pertaining to customer service plans do not apply to foreign air carriers. However, if the customer service plan is part of the selling U.S. carrier’s contract of carriage, both the U.S. carrier and its foreign code-share partner are responsible in an enforcement context for complying with all of the provisions in the customer service plan.

34. Does the rule specify consumer protection requirements that carriers must follow as part of their customer service plans?

The rule effective April 29, 2010, does not dictate specific rules to be included in carrier customer service plans but it does require that U.S. carriers adopt customer service plans and that those plans address the 12 subjects below. Other DOT rules do cover some of these subjects, e.g., accommodating the needs of disabled air travelers and oversale situations.

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 long on-aircraft delays;
8. Handling "bumped" passengers with fairness and consistency in the case of oversales;
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 it provides to mitigate passenger inconveniences resulting from cancellations and misconnects.

34. How will the Department ensure that carriers are complying with their customer service plans?

The rule requires each carrier to audit its adherence to its plan annually and retain the results of its audit for two years following the date any audit is completed. These audit results must be provided upon request to the Department, including its Aviation Enforcement Office, for review.

IV. Posting of Contracts of Carriage, Customer Service Plans and Tarmac Delay Contingency Plans on Websites (14 CFR 259.6)

35. Which carriers are required to post copies of their contracts of carriage, customer service plans and tarmac delay contingency plans on their websites?

The requirement to post contracts of carriage as well as customer service plans and tarmac delay contingency plans applies to all U.S. carriers that are required to adopt such plans, which are carriers that operate any aircraft with 30 or more seats, and that have a website.

36. What type of “updates” to a carrier’s contract of carriage, contingency plans and/or customer service plans is a carrier required to post on its website?

The Department expects a carrier to post the latest version of these documents on its website, but the carrier should provide notice to its passengers that prior versions of these documents are available upon request.

V. Response to Consumer Problems (14 CFR 259.7)

37. Which carriers must comply with the requirement to respond to consumer problems?

All U.S. carriers that operate scheduled passenger service using any aircraft with a design capacity of 30 or more passenger seats must respond to consumer problems as required by the rule.

38. In what way must carriers respond to consumer problems?

The rule generally requires carriers to respond to consumer problems concerning scheduled flights by having an employee monitor the effects of irregular flights on consumers; providing information to consumers on how to file a complaint with the carrier and sending a substantive response to a written complaint within 60 days of receipt.

39. Is a carrier required to respond to a consumer’s complaint if that complaint is filed using Facebook or Twitter?

Under section 259.7(c), a carrier is required to respond to all written complaints concerning a difficulty or a problem which a person experienced when using or attempting to use an airline’s services. Because complaints received through Facebook or Twitter are written complaints, section 259.7(c) would apply to such complaints. However, as a matter of enforcement policy, the Department’s Aviation Enforcement Office will not take action against carriers that do not respond to complaints sent through Twitter or posted on their Facebook wall so long as: (1) the carriers’ Twitter page and Facebook page clearly indicate that it will not reply to such complaints, and (2) on that page the carrier directs the consumer to the mailing address and e-mail or website location for filing written complaints. The office is adopting this policy because, upon further review of the purpose and use of Twitter and postings on the wall of Facebook, the Aviation Enforcement Office believes that the word “written” in the definition of a complaint was not intended to apply to such social networking sites but rather to refer to the traditional one-on-one methods of text communication (e.g. a letter, email, printed complaint form, or internet complaint form). With respect to the email component of Facebook, a carrier must respond to consumer complaints sent to its Facebook email account and the Aviation Enforcement Office will take action against carriers that fail to do so. The requirement for airlines to respond to all written complaints exists even if a passenger does not submit the complaint directly to the designated department in the airline where complaints should be filed. We expect that a passenger complaint sent to the wrong office or department at an airline, such as a complaint sent to an airline’s Facebook email account, would be expeditiously forwarded by the carrier’s staff to the appropriate office within the airline. The Department plans to address the issue of complaints sent to airlines through social networking sites more fully in a rulemaking to be initiated in the near future.

[Note: Revised April 28, 2010]

VI. Delay Data on Carriers' Websites (14 CFR 234.11)

40. Which carriers must comply with the requirement to display flight delay data on websites?

The largest U.S. carriers (i.e., carriers that account for at least 1 percent of domestic scheduled passenger revenues) must post the following information for each domestic flight for which schedule information is available on their websites, including domestic code-share flights, for the most recent calendar month for which the carrier has reported on-time performance data to the Department: the percentage of arrivals that were on time, the percentage of arrivals that were more than 30 minutes late, with special highlighting if the flight was more than 30 minutes late more than 50 percent of the time, and the percentage of flight cancellations if 5 percent or more of the flight's operations were canceled.

41. When delay data for a flight that is operated by a covered carrier's domestic code-share partner is available on that carrier's website, can the on-time display on the covered carrier's website refer consumers to the operating carrier's website for this data?

Yes, a covered carrier may use a link that sends consumers directly (in one click) to the page in the operating carrier's website that contains the data on delays and cancellations for that flight.

42. Carriers sometimes drop a particular flight from their schedules and add a "new flight" that may operate around the same time as the flight that is dropped. What is a "new flight" for the purpose of complying with the requirement to post flight delay data on a carrier's website?

Delay data will not be posted on websites for "new flights," i.e., flights with no recent on-time performance history. New flight means a flight added to a carrier's schedule to operate in a specific origin-destination city pair and not scheduled to depart within 30 minutes of any discontinued flight that was contained in the carrier's published schedules for the same city pair during the previous month. See 14 CFR 234.2.

43. In what manner must a carrier post the flight delay information?

Carriers must show all the required delay data in the initial listing of flights or by a prominent hyperlink on the page with the initial listing of flights that takes the consumer directly (in one click) to the required information.

44. What type of "special highlighting" is acceptable for flights that are more than 30 minutes late more than 50% of the time?

Special highlighting is a way of making certain information on a screen stand out. For example, changing the color to red for flights that are more than 30 minutes late more than 50% of the time would be an acceptable means of complying with this requirement. Other means of complying could involve significant differences in font or text size. Determinations as to whether the relevant information in the screen adequately stands out would need to be made on a case-by-case basis.

45. When will consumers be able to find flight delay data on carriers' websites?

The first time carriers must load the flight delay information into their internal reservation systems and onto their websites is between July 20 and 23, 2010 for June data. Passengers can expect to see flight delay information on the websites of the largest U.S. carriers at that time.

VII. Chronically Delayed Flights (14 CFR 399.81)

46. Which carriers are affected by the chronically-delayed flight provision in the final rule?

The largest U.S. carriers (i.e., carriers that account for at least 1 percent of domestic scheduled passenger revenues) are affected by the chronically-delayed flight provision.

47. How does the Department calculate what is a single flight for its chronically delayed flights investigations?

For purposes of determining whether a flight is chronically delayed, all of a carrier's flights that are operated in a given city-pair market whose scheduled departure times are within 30 minutes of the most frequently occurring scheduled departure time are considered to be one single flight.

48. What is the first month that enforcement action can be taken against a carrier for continuing to schedule a chronically delayed flight?

The rule prohibiting carriers from continuing to schedule a chronically delayed flight is effective April 29, 2010. In January 2010, carriers were informed that, if they continued holding out flights which were chronically delayed for more than four consecutive one-month periods beginning with January 2010 on-time data, they would be subject to enforcement action under the rule for engaging in an unfair and deceptive practice. In other words, if during May 2010 a carrier continues to schedule a flight that has been chronically late since January 2010 the carrier will be subject to enforcement action.

VIII. Retroactive Changes to Contracts of Carriage (14 CFR 253.9)

49. How does the prohibition on retroactive changes protect consumers?

The provision against retroactive changes to contracts of carriage prevents U.S. carriers from making changes to their contracts of carriage that significantly negatively impact people who have already bought tickets. For example, if a carrier's fee for the first piece of checked baggage is \$20 at the time of purchase, a carrier cannot charge that passenger more than \$20 to check the bag when he or she checks in for the flight, even if the carrier has raised its baggage fee and incorporated its new fee into its contract of carriage.

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