

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

14 CFR PARTS 234, 244, 250, 253, 259, and 399

Docket No. DOT-OST-2010-0140

RIN No. 2105-AD92

Enhancing Airline Passenger Protections

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Department of Transportation is proposing 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; requiring carriers to include their contingency plans and customer service plans in their contracts of carriage; 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 proposing to take this action to strengthen the rights of air travelers in the event of oversales, flight cancellations and long delays, and to ensure that passengers have accurate and adequate information to make informed decisions when selecting flights. In addition, the Department is considering several measures, including banning the serving of peanuts on commercial airlines, to provide greater access to air travel for the significant number of individuals with peanut allergies.

The preliminary regulatory analysis suggests that the benefits of the proposed requirements exceed its costs, even without considering non-quantifiable benefits. This analysis, outlined in the table below, finds that the expected net present value of the rule for 10 years at a 7% discount rate is estimated to be \$61.6 million. At a 3% discount rate, the expected net present value of the rule is estimated to be \$75.7 million.

		Present Value (millions)
Total Quantified Benefits	10 Years, 7% discounting	\$87.6
	10 Years, 3% discounting	\$104.2
Total Quantified Costs	10 Years, 7% discounting	\$26.0
	10 Years, 3% discounting	\$28.5
Net Benefits	10 Years, 7% discounting	\$61.6
	10 Years, 3% discounting	\$75.7

A comparison of the estimated benefits and costs for each of the 11 proposed requirements is provided in the Regulatory Analysis and Notices section, along with information on additional benefits and costs for which quantitative estimates could not be developed.

DATES: Comments should be filed by [insert date that is sixty (60) days after publication in the *Federal Register*]. Late-filed comments will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Daeleen Chesley or Blane A. Workie, 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), daeleen.chesley@dot.gov or blane.workie@dot.gov (e-mail).

ADDRESSES: You may file comments identified by the docket number DOT-OST-2010-XXXX by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal Holidays
- Fax: (202) 493-2251.

Instructions: You must include the agency name and docket number DOT-OST-2010-XXXX or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, a business, a labor union, etc.). You may review DOT's

complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 *FR* 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

Pilot Project on Open Government and the Rulemaking Process: On January 21st, 2009, President Obama issued a Memorandum on Transparency and Open Government in which he described how "public engagement enhances the Government's effectiveness and improves the quality of its decisions" and how "knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge." To support the President's open government initiative, DOT plans to continue its partnership with the Cornell eRulemaking Initiative (CeRI) in a pilot project, Regulation Room, to discover the best ways of using Web 2.0 and social networking technologies to: (1) alert the public, including those who sometimes may not be aware of rulemaking proposals, such as individuals, public interest groups, small businesses, and local government entities, that rulemaking is occurring in areas of interest to them; (2) increase public understanding of each proposed rule and the rulemaking process; and (3) help the public formulate more effective individual and collaborative input to DOT. We anticipate, over the course of several rulemaking initiatives, that CeRI will use different Web technologies and approaches to enhance public understanding and participation, work with DOT to evaluate the advantages and disadvantages of these techniques, and report their findings and conclusions on the most effective use of social networking technologies in this area.

DOT and the Obama Administration are striving to increase effective public involvement in the rulemaking process and strongly encourage all parties interested in this rulemaking to visit

the Regulation Room website, www.regulationroom.org, to learn about the rule and the rulemaking process, to discuss the issues in the rule with other persons and groups, and to participate in drafting comments that will be submitted to DOT. A Summary of the discussion that occurs on the Regulation Room site and participants will have the chance to review a draft and suggest changes before the Summary is submitted. Participants who want to further develop ideas contained in the Summary, or raise additional points, will have the opportunity to collaboratively draft joint comments that will be also be submitted to the rulemaking docket before the comment period closes.

Note that Regulation Room is not an official DOT website, and so participating in discussion on that site is not the same as commenting in the rulemaking docket. The Summary of discussion and any joint comments prepared collaboratively on the site will become comments in the docket when they are submitted to DOT by CeRI. At any time during the comment period, anyone using Regulation Room can also submit individual views to the rulemaking docket through the federal rulemaking portal Regulations.gov, or by any of the other methods identified at the beginning of this Notice. For questions about this project, please contact Brett Jortland in the DOT Office of General Counsel at 202.421.9216 or brett.jortland@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2008, the Department published a Notice of Proposed Rulemaking (NPRM) on enhancing airline passenger protections. See 73 FR 74586 (December 8, 2008). After reviewing and considering the comments on the NPRM, on December 30, 2009, the Department published a final rule in which the Department 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. That rule took effect on April 29, 2010. See 74 FR 68983 (December 30, 2009).

In the preamble to the 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. The areas specifically mentioned as being under consideration were as follows: (1) DOT review and approval of contingency plans for lengthy tarmac delays ; (2) reporting of tarmac delay data; (3) standards for customer service plans; (4) notification to passengers of flight status changes; (5) inflation adjustment for denied boarding compensation; (6) alternative transportation for passengers on canceled flights; (7) opt-out provisions where certain optional services are pre-selected for consumers at an additional cost (e.g., travel insurance, seat selection); (8) contract of carriage venue designation provisions; (9) baggage fees disclosure; (10) full fare advertising; and (11) responses to complaints about charter service. This NPRM addresses most of those issues, as well as other matters that we believe are necessary to ensure fair treatment of passengers. We have described each proposal in this NPRM in detail below and invite all interested persons to comment.

Notice of Proposed Rulemaking

1. Tarmac Delay Contingency Plans

The Department’s final rule entitled “Enhancing Airline Passenger Protections,” which was published in the Federal Register on December 30, 2009 (74 FR 68983), requires, among other things, that U.S. carriers adopt tarmac delay contingency plans that include, at a minimum, the following: (1) an assurance that, for domestic flights, the U.S. carrier will not permit an

aircraft at a medium or large hub-airport to remain on the tarmac for more than three hours unless the pilot-in-command determines there is a safety-related or security-related impediment to deplaning passengers, or Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations; (2) for international flights that depart from or arrive at a U.S. airport, an assurance that the U.S. carrier will not permit an aircraft to remain on the tarmac for more than a set number of hours, as determined by the carrier in its plan, before allowing passengers to deplane, unless the pilot-in-command determines there is a safety-related or security-related reason precluding the aircraft from doing so, or Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations; (3) for all flights, an assurance that the U.S. 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 requirements preclude such service; (4) for all flights, an assurance of operable lavatory facilities, as well as adequate medical attention if needed, while the aircraft remains on the tarmac; (5) an assurance of sufficient resources to implement the plan; and (6) an assurance that the plan has been coordinated with airport authorities at all medium and large hub airports that the U.S. carrier serves, including medium and large hub diversion airports. The final rule also requires U.S. 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.

This NPRM proposes to strengthen the protections for consumers by making substantive changes in four areas: requiring foreign air carriers to adopt tarmac delay contingency plans, increasing the number of airports at which carriers must adhere to their plans to include U.S. small and non-hub airports, requiring carriers to coordinate their tarmac delay contingency plans with all U.S. airports they serve, and requiring carriers to communicate with passengers during tarmac delays. More specifically, the NPRM proposes 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 a tarmac delay contingency plan that includes minimum assurances identical to those currently required of U.S. carriers for the latter's international flights. As proposed, it would apply to all of a foreign carrier's flights to and from the U.S., 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. The NPRM also proposes to require that U.S. and foreign air carriers coordinate their contingency plans with all airports they serve (small and non-hub airports as well as the medium and large hub airports covered by the existing rule) and with the Transportation Security Administration (TSA) and U.S. Customs and Border Protection (CBP) for any U.S. airport that the carrier regularly uses for its international flights, including diversion airports.

Under the proposed rule, the tarmac delay contingency plans would cover operations at each U.S. large hub airport, medium hub airport, small hub airport and non-hub U.S. airport. Further, the NPRM proposes 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. The regulation would specify that the Department would consider failure to comply with any of the assurances that are required by this rule to be contained in a carrier's tarmac delay contingency plan to be an unfair and deceptive practice within the meaning of 49 U.S.C. §41712 and subject to enforcement action.

We are proposing these regulations because the Department believes that it is important to ensure that passengers on all international flights to and from the United States are afforded protection from unreasonably lengthy tarmac delays. As is the case under the existing rule for international flights of covered U.S. carriers, at this time, we intend to allow foreign carriers to develop and implement a contingency plan for lengthy tarmac delays that has more flexible requirements than those that apply to domestic flights with regard to the time limit to deplane passengers. Also, as in our initial rulemaking to enhance airline passenger protections, this limit will allow exceptions for considerations of safety, security and for instances in which Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations. It is worth noting that there are ongoing questions as to whether mandating a specific time frame for deplaning passengers on international flights is in the best interest of the public; a number of arguments have been presented for not imposing such a limit. Most international flights operate less frequently than most domestic flights, potentially resulting in much greater harm to consumers if carriers cancel these international flights (e.g., passengers are less likely to be accommodated on an alternate flight in a reasonable period of time). We ask interested persons to comment on whether any final rule that we may adopt should include 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. Commenters who support the adoption of a uniform standard should propose specific amounts of time and state why they believe these intervals to be appropriate.

We also seek comment on the cost burdens and benefits should the requirement to have a contingency plan be narrowed or expanded. For example, while we are proposing here 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., we invite 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 seek comment on whether 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. In addition, should coverage be further expanded to require U.S. airports to adopt tarmac delay contingency plans? Proponents of these or other alternative proposals should provide arguments and evidence in support of their position, as should opponents.

In the initial rulemaking to enhance airline passenger protections, we decided to implement a rule requiring certain U.S. carriers to coordinate their contingency plans with large-hub and medium-hub airports, as well as diversion airports that the carrier serves. Those airports are the only ones covered by the current rule. We are proposing to extend this requirement to small and non-hub airports and to require all covered carriers (U.S. and foreign) to coordinate their plans with each U.S. large hub airport, medium hub airport, small hub airport and non-hub U.S. airport that they serve as well as TSA and CBP. The Department believes 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 strongly believe that it is essential that airlines involve airports and appropriate Federal agencies in developing their plans to enable them to effectively meet the needs of passengers. As such, we are proposing to extend this rule to require covered carriers to coordinate their plans with each U.S. large hub airport, medium hub airport, small hub airport and non-hub U.S. airport to which they regularly operate scheduled passenger or public charter service.

As recommended by the Tarmac Delay Task Force, we are also proposing to require carriers to include CBP and TSA in their coordination efforts for any U.S. diversion airport which they regularly use. We believe this proposal is necessary, as it has come to the Department's attention on more than one occasion passengers on international flights were held on diverted aircraft for extended periods of time because there was no means to process those passengers and allow them access to terminal facilities. The Department of Homeland Security has advised this Department that, subject to coordination with CBP regional directors, passengers on diverted international flights may be permitted into closed terminal areas without CBP screening. We invite interested persons to comment on this proposal. What costs and benefits would result from this requirement? Is it workable to include small and non-hub airports served by a carrier? Should the rule be expanded to include other commercial U.S. airports (i.e., those with less than 10,000 annual enplanements)? We are soliciting comments from airlines, airports and other industry entities on whether there are any special operational concerns affecting such airports.

The Department has also given consideration to passengers' frustration with lack of communication by carrier personnel about the reasons a flight is experiencing a long tarmac

delay. It does 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. As such, the Department is proposing a rule requiring carriers to announce to passengers on covered flights every 30 minutes the reasons for the delay, and/or the operational status of the flight. We do not anticipate that a carrier's flight crews will know every nuance of the reason for the delay, but we do expect them to inform passengers of the reasons of which they are aware and to make reasonable attempts to acquire information about the reason(s) for that delay. We also invite 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 the door open. The Department's Office of Aviation Enforcement and Proceedings has previously explained that a tarmac delay begins when passengers no longer have an option to get off of the aircraft, which usually occurs when the doors of the aircraft are closed, and encouraged carriers to announce to passengers on flights that remain at the gate with the doors open that the passengers are allowed off the aircraft if that is the case. However, such an announcement is not explicitly required in the existing rule. We seek comment on the benefit to consumers of mandating such announcements. Commenters, including carriers and carrier associations, should also address any costs and/or operational concerns related to implementing a rule requiring such announcements.

2. Tarmac Delay Data

We are proposing to require all carriers that must comply with 14 CFR 259.4, which requires carriers to adopt contingency plans for lengthy tarmac delays, file tarmac delay data with the Department to the extent they are not already required to file such data pursuant to 14 CFR Part 234. Incidents of lengthy tarmac delays have captured much public attention in recent years and

have been the focus of considerable Department attention as well. On October 1, 2008, the Department's Bureau of Transportation Statistics (BTS) began collecting more detailed tarmac delay information from all U.S. carriers that file the "On-Time Flight Performance Report" (BTS Form 234) under 14 CFR Part 234, "reporting carriers". The data do not, however, provide a complete picture of tarmac delays, as the reporting carriers only submit data concerning their scheduled domestic flights as a function of their being required to report on-time performance data. These reporting carriers currently constitute the 16 largest U.S. carriers by scheduled-service passenger revenue, plus two carriers that voluntarily file the report. In addition, smaller U.S. carriers which are subject to the Department's contingency plan rule that was effective April 29, 2010, do not currently submit any tarmac delay data to the Department and foreign air carriers which we are proposing in this NPRM adopt tarmac delay contingency plans also do not submit tarmac delay data to the Department.

While a single incident of tarmac delay may be attributed to one or more causes, such as air traffic congestion, weather related delays, mechanical problems, and/or flight dispatching logistic failures, we believe that an initial and essential step toward finding solutions for the tarmac delay problem, whether by government regulations and/or through voluntary actions by the airlines, and monitoring the effect on consumers of lengthy tarmac delays, is to obtain more complete data on these incidents. Therefore, we are tentatively of the opinion that we should expand the pool of carriers that must file information with the Department regarding tarmac delays to U.S. carriers and foreign carriers that operate any aircraft originally designed with a passenger capacity of 30 or more passenger seats with respect to their operations at U.S. airports. The more complete picture of lengthy tarmac delays afforded by these new data will help establish a vital platform for the Department's future rulemaking and policy decision-making, for

FAA airport and air traffic control infrastructure and technology modification and improvement, and for system operating improvements and reform by the airline industry. Furthermore, the result of such analysis will provide the Department, the industry, and the public more precise data with which to compare tarmac delay incidents by carrier, by airport, and by specific time frame.

This rule as proposed would apply to all U.S. carriers that are covered by the Department's existing rule requiring tarmac delay contingency plans, as well as foreign carriers that we are proposing, in this NPRM, be required to adopt tarmac delay contingency plans (see proposed changes to 14 CFR 259.4). Thus, this proposal would cover tarmac delays at U.S. airports by all U.S. certificated and commuter carriers that operate any aircraft that originally designed to have a passenger capacity of 30 or more seats. It also would cover tarmac delays at U.S. airports by all foreign 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. We seek comment on whether we should limit the requirement to file tarmac delay data to U.S. and 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. Commenters should explain why they favor such a limitation and suggest alternate approaches to capturing tarmac delay data.

We note that using just one qualifying aircraft (*i.e.*, originally designed to have a passenger capacity of 30 or more passenger seats) will cause all of a U.S. carrier's flights to be covered by this rule. The same is true of a foreign carrier's flights that originate or terminate at a U.S. airport. For example, if a foreign carrier operates any aircraft to or from the U.S. that was originally designed to have a passenger capacity of 30 or more seats, all of its flight taking off or

landing at a U.S. airport, regardless of size of aircraft and seating capacity, will be subject to the reporting requirements of the proposed rule.

We are mindful of the costs associated with submitting data to the Department, especially in light of the relatively limited resources of smaller carriers and the relatively fewer flights to and from the U.S. by foreign carriers and we do not intend with this proposal to impose a comprehensive on-time reporting scheme, as exists for the largest U.S. carriers now covered by Part 234. With this concern in mind, using the Part 234 requirements as a model, we have narrowed the data fields we propose to be reported to those we believe are necessary for us to extract necessary tarmac delay information. In addition, we propose to require these tarmac delay data to be reported each month only with respect to tarmac delays of 3 hours or more.

We recognize that carriers subject to our new contingency plan rule that went into effect April 29, 2010, are required to retain for two years certain information regarding tarmac delays of 3 hours or more. We note that the reporting requirement proposed in this notice is separate and distinct from that information retention requirement, with a different purpose. Where that rule is focused on carrier compliance with consumer protection-related requirements and requires only that carriers retain the information for a limited period of time, we propose here that carriers report monthly a set of data regarding tarmac delays that will provide the Department more complete information on lengthy tarmac delays throughout the air transportation system in the U.S. The Department plans to publish a summary of this information in its Air Travel Consumer Report, a monthly publication product of the Department of Transportation's Office of Aviation Enforcement and Proceedings that is designed to assist consumers with information on the quality of services provided by airlines. We welcome suggestions from the public and the

industry on whether there are other means to further reduce the carriers' burden yet still effectively achieve the goal of this proposal.

3. Customer Service Plans

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. The rule also requires U.S. carriers to audit their plan annually and make the results of their audits available for the Department's review upon request.

This NPRM proposes to increase the protections afforded consumers in that recent final rule by requiring foreign air carriers to adopt, follow, and audit customer service plans and establishing minimum standards for what must be included in the customer service plans of all covered carriers (U.S. and foreign). We are proposing to cover foreign air carriers operating scheduled passenger service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more passenger seats. 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 ask interested persons to comment on whether the proposed requirement for foreign air carriers to adopt, follow and audit customer service plan should be narrowed in some fashion – e.g., should never apply to aircraft with fewer than 30 seats?

Each foreign carrier's plan would have to address the same subjects currently required of U.S. carriers in the Department's rule to enhance airline passenger protections. We are also proposing to require that foreign air carriers make the results of their audits of their customer service plans available for the Department's review upon request for two years following the date any audit is completed. A carrier's failure to adopt a customer service plan for its scheduled service, adhere to its plan's terms, audit its own adherence to its plan annually or make the results of its audits available for the Department's review upon request would be considered an unfair and deceptive practice within the meaning of 49 U.S.C. §41712 and subject to enforcement action.

A substantial number of air travelers fly to and from the United States on flights operated by foreign carriers, whether through a code-share arrangement or by directly arranging for that transportation. By requiring foreign carriers to adopt plans, audit their own compliance, and make the results of their audits available for us to review, we intend to afford consumers better protection on nearly all flights to and from the United States, not just those of the U.S. carriers to which the rule is currently applicable. The Department is soliciting comment on the costs and benefits associated with this requirement. We would like foreign carriers to comment on whether similar plans already exist, and if so, how they currently implement such plans.

The Department also proposes to require covered carriers' customer service plans meet minimum standards to ensure that the carriers' (U.S. and foreign) plans are specific and enforceable. The Department is concerned that many carriers' customer service plans are not specific enough for a consumer to have realistic expectations of the types of services a carrier will provide under its plan, or that some carriers may not be living up to their customer service commitments. Based on a review of existing customer service plans, the Department found that some carriers' plans do contain specifics regarding the type of services a consumer can expect (e.g. returning baggage by a specified time after the flight or holding reservations without charge for a specific period of time), while others carriers' plans are vaguely written making it difficult for a consumer to know how a carrier will address those subjects or whether a carrier has fulfilled its promises. As such, the Department believes establishing minimum standards for the plans will result in consumers being better informed and protected. As always carriers are free to set higher standards than those mandated by the Department. We also note that all of the subjects for which we are proposing to require a standard are already required to be included in the customer service plans for U.S. carriers (e.g. oversales/denied boarding compensation, refunds), which should minimize the burden on these carriers to comply with the proposed new requirement to establish standards for those subjects. In addition, when determining what minimum standards to apply to these plans, the Department reviewed customer service plans as currently implemented by a number of carriers, and chose the services already provided by some carriers that appear to be "best practices."

We seek comment on both the costs and benefits of requiring carriers to adopt these minimum standards. The minimum standards that we are proposing 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 for 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.

With regard to delivering baggage on time, we solicit 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 same or earlier flight than the passenger, delivered within 2 hours of the passenger's arrival). With regard to providing prompt refunds, we seek 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. The Department's Aviation Enforcement Office has issued notices in the past advising airlines that it would be an unfair and deceptive practice in violation of 49 USC 41712 for a carrier to apply its non-refundability provision in the event of a significant change in scheduled departure or arrival time, whether it be due to carrier action or a matter out of the carrier's control, including "acts of god." We request comment on the methodology for defining a significant delay in the event such a standard is adopted. Should the Department establish a bright line rule that any delay of 3 hours or more is a significant delay? Should the determination of whether a flight has been significantly delayed be based on the duration of the flight (e.g., is 3 hours a significant delay on flights of two hours or less and 4 hours a significant delay on flights of more than two hours)?

With respect to notifying passengers on board aircraft of delays, we seek 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. For example, we have

received complaints from passengers that their aircraft has returned to the gate less than three hours after departure for emergency or mechanical reasons but they were not advised that they could deplane. Carriers may feel the 3-hour tarmac delay limit has been tolled by such a gate return, but passengers feel they were not truly afforded the opportunity to deplane within the meaning of this rule.

As for the customer service commitment to provide prompt refunds where ticket refunds are due, we invite 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 optional fees 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). Irrespective of whether such a standard is included in a carrier’s customer service commitment, the Department would view a carrier’s failure to provide a prompt refund to a passenger of the ticket price and related optional fees when a flight is canceled to be an unfair and deceptive practice. We request comment as to whether it is workable to set minimum standards for any of the subjects contained in the customer service plans and invite 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 further invite comment or suggestions on the type of standards that should be set.

Although the subjects we are proposing that foreign air carriers address in their customer service plans are identical to those U.S. carriers already are required to include in their customer service plans, we request comment on whether any of these subjects would be inappropriate if applied to a foreign air carrier. Why or why not? Moreover, we seek comment on whether the Department should require that all airlines address any other subject in their customer service

plans. For example, should mandatory disclosure to passengers and other interested parties of past delays or cancellations of particular flights before ticket purchase be a new subject area covered in customer service plans? If so, what should be the minimum timeliness/ cancellation standard? In this regard, there is already a requirement for reporting carriers (i.e., the largest U.S. carriers) to post flight delay data on their websites and for their reservation agents to disclose to customers, upon request, the on-time performance code of a flight. Should more direct and mandatory disclosure be required, e.g., a required warning before the final purchase decision is made regarding chronically late or routinely canceled flights? We also seek comment on the appropriate minimum timeliness/ cancellation standard for U.S. carriers and foreign air carriers that do not report on time performance data to DOT if we were to adopt a requirement that airlines address notification to consumers of past delays or cancellation in their customer service plans.

4. Contracts of Carriage

The Department is proposing to adopt a rule requiring carriers (U.S. and foreign) to include their contingency plans and customer service plans in their contracts of carriage. We first proposed this requirement in the notice of proposed rulemaking on enhancing airline passenger protections which was published in the Federal Register on December 8, 2008. Ultimately, the Department decided not to require such incorporation at that time and instead strongly encouraged carriers to voluntarily incorporate the terms of their tarmac delay contingency plans in their contracts of carriage, as most major carriers had already done with respect to their customer service plans. The Department did require that each U.S. carrier with a website post its entire contract of carriage on its website in easily accessible form, including all updates to its contract of carriage. The Department also indicated that it would address this issue

in a future rulemaking and take into account, among other things, whether the voluntary incorporation of contingency plan terms had resulted in sufficient protections for air travelers.

The Department continues to believe that the airlines' incorporation of their contingency plans into their contracts of carriage is an important means of providing notice to consumers of their rights, since that information will then be contained in a readily available source. Carriers' contracts of carriage are generally posted online and must, by Department rule, be available at airports. Better informed consumers will further improve the Department's enforcement program as consumers are more likely to know of and report incidents where airlines do not adhere to their plans. Better consumer information will also create added incentive for carriers to adhere to their plans. Further, by placing the contingency plan terms in the U.S. selling carrier's contract of carriage both that carrier and its foreign code share partner carrier are responsible in an enforcement context for compliance, which we view as a beneficial aspect of this proposal. We also continue to be confident that we have the authority to require such incorporation based on our broad authority under 49 U.S.C. §41712 to prohibit unfair and deceptive practices, and under 49 U.S.C. § 41702 to ensure safe and adequate transportation, which clearly encompasses the regulation of contingency plans.

In the December 30, 2009, final rule to enhance airline passenger protections, we stated that we intended to closely monitor carriers' responses to our efforts in this regard and that we would not hesitate to revisit our decision in another rulemaking. As it appears that many carriers are choosing not to place their contingency plans and/or customer service plans in their contracts of carriage, or have little incentive to do so, and because we believe the incorporation of airline contingency plans in contracts of carriage to be in the public interest, we are again proposing the implementation of this requirement.

As stated previously, the Department recognizes that many passengers travel to and from the U.S. on flights operated by foreign carriers, and they should have adequate passenger protections on those flights. As such, we propose to include foreign carriers in the requirement for airlines to place their contingency plans and customer service plans in their contracts of carriage. The Department is seeking comment on whether the incorporation of the contingency plans and customer service plans in the contract of carriage gives consumers adequate notice of what might happen in the event of a long delay on the tarmac and/or of passengers' rights under carriers' customer service plans. As in the past, commenters should also 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? We are also soliciting comment on the proposal to extend this provision to foreign carriers.

5. Response to Consumer Problems

The recently issued final rule on enhancing airline passenger protections requires U.S. carriers that operate scheduled passenger service using any aircraft originally designed to have a passenger capacity of 30 or more seats to designate an employee to monitor the effects on passengers of flight delays, flight cancellations, and lengthy tarmac delays and to have input into decisions such as which flights are cancelled and which are subject to the longest delays. It also requires U.S. carriers to 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 and to acknowledge receipt of each complaint regarding its scheduled service to the complainant within 30 days of receiving it and to send a substantive response to each complainant within 60

days of receiving it. A complaint is defined 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 service.

This proposal would require a foreign air carrier that operates scheduled passenger service to and from the United States using any aircraft originally designed to have a passenger capacity of 30 or more seats to do the same for its flights to and from the U.S. We are proposing to extend these provisions to foreign carriers as the Department believes passengers should also be afforded adequate consumer protection when issues arise with delays or cancellations on flights to and from the U.S. operated by a foreign carrier, and should also have an avenue to file a complaint with a foreign carrier and to expect a timely and substantive response to that complaint. We invite interested persons to comment on this proposal. What costs and/or operational concerns would it impose on foreign carriers and what are the benefits to consumers? In particular, we are soliciting comments on any operational difficulties U.S. and foreign airlines may face in responding to consumer complaints received through social networking mediums such as Facebook or Twitter. Do airlines currently communicate to customers and prospective customers through social networking mediums?

6. Oversales

Part 250 establishes the minimum standards for the treatment of airline passengers holding confirmed reservations on certain U.S. and foreign carriers who are involuntarily denied boarding ("bumped") from flights that are oversold. In adopting the original oversales rule in the 1960s, the Civil Aeronautics Board (CAB), the Department's predecessor in aviation consumer matters, recognized the inherent unfairness to passengers if carriers were allowed to sell more confirmed seats than were available. To balance the inconvenience and financial loss to

passengers against the potential benefits brought about by a controlled overbooking system, i.e., achieving higher load factors, avoiding the losses caused by last-minute cancellations and no-shows, enabling more passengers to obtain a reservation on the flight of their choice, and ultimately reducing fares, the CAB prescribed a two-part oversales system: soliciting volunteers first, then involuntarily “bumping” passengers if there are not enough volunteers, with a minimum standard for denied boarding compensation (DBC). This system has been in effect for almost half a century and we believe that its basic structure remains sound.

In this NPRM, we propose to expand the rule’s applicability and add, modify and clarify certain elements of the rule as part of our continuing efforts to improve and perfect the system. Specifically, we are proposing to make five changes to Part 250: (1) increase the minimum DBC limits to take account of the increase in the Consumer Price Index (CPI) since 1978; (2) implement an automatic inflation adjuster for minimum DBC limits; (3) clarify that DBC must be offered to “zero fare ticket” holders who are involuntarily bumped; (4) require that a carrier verbally offer cash/check DBC if the carrier verbally offers a travel voucher as DBC to passengers who are involuntarily bumped; and (5) require that a carrier inform passengers solicited to volunteer for denied boarding about its principal boarding priority rules applicable to the specific flight and all material restrictions on the use of that transportation.

The last time the Department revised the minimum DBC amounts was in a proceeding that began in 2007 and concluded in 2008. Prior to that date, the DBC limits had not been revised since 1978. In that latest proceeding, because inflation had eroded the value of the \$200 and \$400 limits that were established in 1978, we considered various methods for calculating an increase in the minimum DBC limits (i.e., increasing the limits on denied boarding compensation based on the consumer price index (CPI) or on the increase in fare yields, doubling the current

limits, eliminating the limits so there would be no cap on denied boarding compensation payments). We settled on a rule under which an eligible passenger who encounters a delay of over one hour due to the involuntary denied boarding is entitled to compensation equal to either 100% of the passenger's one-way fare up to \$400, or 200% of the fare up to \$800, depending on the length of the delay caused by the involuntary denied boarding. Since May 2008 when the new rule was issued, despite these higher DBC amounts, we have seen an increase in involuntary denied boardings. Load factors are also increasing, making it less likely that "bumped" passengers are being conveniently accommodated on other flights. We are therefore concerned about whether the current rule adequately encourages carriers to seek volunteers to give up their seats and whether the minimum DBC amount adequately compensates those passengers that are involuntarily "bumped" from their flights.

Accordingly, we are proposing to revise the minimum DBC amounts to more accurately reflect inflation's effect on those amounts since 1978, the last year those amounts were raised before the most recent rule. We propose to do so by using the Consumer Price Index for All Urban Consumers (CPI-U), rounded to the nearest \$25, with the base of \$200/\$400 for the maximum DBC amounts in the year 1978. This would bring the maximum DBC amounts for involuntarily oversold passengers to \$650/\$1,300 as of January 1, 2010. In addition, we propose to add a provision to Part 250 that would provide for periodic adjustments to the minimum DBC limits using the CPI-U, similar to that applied to minimum baggage liability limits pursuant to 14 CFR Part 254. We believe these amendments will set up the most efficient method to ensure that the DBC minimum limits, and the monetary incentive for carriers to reduce involuntary denied boardings, remain current. Since the periodic adjustments would be the product of a

published mathematical formula, there would be no need to engage in a notice and comment rulemaking proceeding for each future adjustment.

We seek comments on whether the proposed increase in DBC minimum limits is called for and whether any such increase based on the CPI-U calculation is a reasonable basis for updating those limits or whether some other amounts would be more appropriate to adequately compensate passengers for the inconvenience and financial loss brought about by involuntary denied boarding. If not, by how much should the amounts be increased, if at all? We also ask for comment on whether we should completely eliminate minimum compensation limits and simply require that carriers base DBC to be paid to involuntarily bumped passengers on 100% or 200% of a passenger's fare, without limit, and/or whether the 100% and 200% rates need to be increased in line with the proposed increase in the \$400/\$800 compensation limits proposed above, perhaps to 200% and 400% of the passenger's fare, or higher. This would account for the fact that the actual cost for flying is likely to have increased while what is commonly referred to as the "fare" may not have increased as a result of the carriers' current practice of unbundling fares, i.e., charging extra for once-free amenities, e.g., checked baggage, food, preferred seats, etc.

We are also proposing to clarify that Part 250 applies to passengers who hold "zero fare tickets," e.g., passengers who "purchased" air transportation with frequent flyer mileage or airline travel vouchers, passengers who travel on so-called "free" companion tickets, or passengers who hold a "consolidator" ticket that does not display a monetary price. For the most part, these ticket holders have "paid" only government taxes and fees and, perhaps, carrier-imposed administrative fees for ticketing. In this regard, we propose to amend the definition of "confirmed reserved space" to specify that zero fare ticket holders have the same rights and

eligibility for DBC as any other passenger who used cash, check or credit card to purchase his or her airfare. Passengers with zero-fare tickets earned those tickets in some fashion, e.g. by exceeding a particular frequent-flyer threshold, agreeing to accept a travel voucher as settlement of a consumer claim or complaint, etc.

When these passengers are involuntarily denied boarding, they, like passengers who paid fully in money for the tickets, suffer inconvenience and/or financial losses. We propose that the basis for determining the amount of DBC due a passenger holding a zero fare ticket who is involuntarily bumped, i.e., the “passenger’s fare,” be the fare of the lowest priced ticket available (paid by cash, check, or credit card) for a comparable class of ticket on the same flight. For example, if an involuntarily bumped passenger used frequent flyer miles to obtain a confirmed, non-refundable roundtrip coach ticket having no restrictions, the basis for calculating the DBC amount due to that passenger would be the lowest fare that was available for a confirmed, roundtrip coach ticket on the same flight. Under this proposal, a carrier would be required to provide the same form of DBC to zero-fare passengers as to other passengers denied boarding involuntarily, i.e. cash or check, or a travel voucher of the passenger’s choice under the conditions described in existing section 250.5(b) if the passenger agrees. We seek comment not only on whether zero fare ticket holders should receive DBC under Part 250, but also on whether the cash method described above for calculating DBC to be paid such zero fare ticket holders is reasonable and would truly capture these passengers’ losses due to being bumped involuntarily to the same extent as for cash/check/credit ticket holders. This proposal is consistent with guidance DOT has given to carriers in the past.

A possible alternative to the above proposed method of compensation would be to allow carriers to compensate zero fare ticket holders using the same “currency” in which the tickets

were obtained. For instance, under this alternative an involuntarily bumped passenger who used frequent flyer miles to purchase a ticket would be eligible to be compensated with mileage, the currency used to obtain that flight. Under the current rule, this would amount to 100% or 200% of the amount of mileage that was used to purchase the ticket, plus a cash amount if appropriate to account for any taxes, fees and administrative costs paid to obtain the ticket. Similarly, involuntarily bumped passengers who used a voucher to purchase a ticket, in whole or in part, would be eligible to be compensated with a voucher worth 100% or 200% of the value of their original voucher, and an appropriate cash payment if a portion of the ticket was paid for in that manner. We also seek comment on any other alternative method of calculating DBC for zero fare ticket holders that would best quantify the financial loss and inconvenience to those passengers. How should the rule quantify the value of the remaining travel portion (either to the next stopover, or if none, to the final destination) if the DBC were to be paid with frequent flyer miles?

Another area that we believe needs further improvement is the disclosure provisions in our current oversales rule. These provisions were established because passengers deserve to know about the possibility, however remote, of an oversale occurring and because only a well-informed passenger can make a proper choice when faced with the option of volunteering to be bumped from a flight. We propose in this proceeding to reinforce required disclosures to ensure that passengers will be aware of their rights when making decisions regarding whether to volunteer for denied boarding and/or whether to accept a travel voucher in lieu of cash or a check as DBC if they are bumped involuntarily.

The existing required disclosures can be found in sections 250.2b 250.9 and 250.11. Section 250.2b(b) sets forth conditions and requirements that carriers must comply with when

soliciting volunteers on an oversold flight. Specifically, it requires that carriers inform each passenger who is solicited to volunteer to be bumped whether he or she is in danger of being involuntarily denied boarding and the compensation to which they would be entitled in that event. In addition, section 250.9 specifies the written explanation of DBC and boarding priorities that must be provided to passengers involuntarily oversold, which statement also must be provided to any person who requests it at any location a carrier sells tickets and at its boarding gates. Section 250.11 requires that carriers provide at each station they or their agents sell tickets a prescribed notice advising persons of their basic rights in an oversale situation and that they are entitled to detailed information upon request.

Despite these required disclosures, we are concerned that passengers may not be aware of their rights when making decisions regarding whether to volunteer for denied boarding and/or accept a travel voucher because of the manner in which carriers offer free or reduced air transportation. Agents often verbally advise passengers of the offer of a travel voucher and its amount. Although in the case of involuntarily bumped passengers, this offer must be accompanied by the written notice of the passenger's right to insist on DBC by cash or check, there currently is no express requirement that this notice be given verbally. We are concerned that these passengers who are verbally offered a travel voucher may not have time to read the written notice and are not in fact verbally told by an agent that they are entitled to compensation by cash or check. Likewise, they may not be adequately informed of any conditions or limitations placed on the vouchers they are receiving. Accordingly, we are proposing that in any case in which a carrier verbally offers an involuntarily bumped passenger free or reduced-rate air transportation as an alternative to cash DBC, it also must at the same time verbally advise that passenger of his or her right to insist on compensation by cash or check and the actual amount of

such compensation that would be due and of any conditions or restrictions applicable to the vouchers. This proposed requirement would not, if adopted, alter the carriers' responsibility to provide the written DBC notice required by section 250.9, nor would it require carriers in all instances to provide verbal advice to passengers. But as a practical matter, verbal exchanges between carrier agents and passengers in oversale situations are the quickest and easiest form of communication and consumers are entitled to a fair presentation of their options during such situations. Therefore, if a carrier chooses to offer a passenger DBC in a form other than cash or check and to do so verbally, under this proposal it must also verbally advise the passenger about the cash/check option.

Furthermore, we are proposing to prohibit carriers from offering or providing to volunteers solicited to be bumped, or to passengers involuntarily bumped, free or reduced-rate air transportation other than on an unrestricted basis, unless the carrier provides direct verbal notice to such passengers of any restrictions on such free or reduced rate air transportation. While the written notice required to be provided passengers under section 250.9 suggests that carriers must disclose material restrictions in any free or reduced rate compensation offered, the requirement is not specifically reflected in any section of the rule itself, a shortcoming that we believe should be remedied. We ask for comment on our proposals here as well as on whether there are any other forms of notice that might better inform passengers being requested to volunteer to be bumped, or those involuntarily bumped, of their rights and carriers' obligations.

The current disclosure rule does not define how the carriers should describe to passengers who are solicited to volunteer to be bumped the likelihood of being involuntarily denied boarding. In this NPRM, we propose to specifically require that carriers must inform the solicited passengers about their principal boarding priority rules applicable to the specific flight.

Hence, the passengers can apply the boarding priority rules to their situations and more accurately estimate the likelihood of their being involuntarily denied boarding. By “principal boarding priority rules” we are referring to procedures such as bumping passengers involuntarily based on their fare, on when they checked in, or on whether they held seat assignments. Carriers need not recite specialized priorities such as those for unaccompanied minors or passengers with disabilities except where those priorities apply to a particular passenger. This information is significant if a passenger is willing to give up his or her confirmed reserved space but could not determine whether to accept the volunteer compensation offer or to wait until he or she would be involuntarily bumped. For instance, if the carrier informs the passengers that it will use the check-in time as its principal boarding priority criterion, a passenger willing to give up his or her seat on the flight in exchange for a sufficiently large cash compensation amount may choose to reject the volunteer compensation offer if he or she checked in at the last minute, knowing that the chance of being denied boarding involuntarily is high and that being involuntarily bumped would require a higher amount of compensation in cash from the carrier.

Also material to the solicited passengers as decision makers is the availability of “comparable air transportation” provided to passengers who are involuntary denied boarding. Under the current DBC structure, if the passengers can reach their next stopover or, if none, their final destination within one hour of the planned arrival time of the original flight, the passengers are not required to be provided DBC. If the delay for a domestic flight is more than one hour but less than two hours (four hours for an international flight), the DBC rate is 100% of the passenger’s one-way fare. For delays that exceed this two/four hour timeframe, the DBC rate is 200% of the passenger’s one-way fare. Thus for a passenger who is considering rejecting the volunteer offer in hopes of receiving involuntary DBC, it is material to know how likely it is, if

involuntarily denied boarding, that the passenger's delay would exceed the one/two/four hour(s) limits. We seek comments on whether we should require this disclosure to every passenger the carrier solicits to volunteer and if so, what form, e.g., verbal or written, the disclosure should take.

We are also considering expanding the applicability of the oversales rule to the operations of U.S. certificated and commuter carriers and foreign carriers using aircraft originally designed for 19 or more seats. Currently, Part 250 applies to all U.S. certificated and commuter air carriers and foreign carriers with respect to specified scheduled flight segments using an aircraft originally designed to have a passenger capacity of 30 or more seats. We have concerns that many carriers use code-share partners for their connecting services to smaller points, some of whom operate aircraft with 19-29 seats. Such flight segments are not covered by Part 250, but are associated with the identity of a large carrier and many, if not most, are "fee for service" flights under the total control of the large carrier, which controls booking. Should we allow those flights to be oversold at all? If we do, should Part 250 be applicable in its entirety?

7. Full Fare Advertising

The Department is proposing to amend its rule on price advertising (14 CFR 399.84). The Department adopted this rule in 1984, pursuant to 49 U.S.C. § 41712 (formerly section 411 of the Federal Aviation Act), which empowers the Department to prohibit unfair and deceptive practices and unfair methods of competition in air transportation and its sale. The rule states that the Department considers any advertisement that states a price for air transportation that is not the total price to be paid by the consumer to be an unfair and deceptive practice in violation of 49 U.S.C. § 41712. However, the Department's enforcement policy regarding this rule has permitted certain government-imposed charges to be stated separately from this total price.

Under this policy, taxes and fees that are collected by a carrier on a per-person basis, are imposed by a government entity, and are not *ad valorem* in nature are allowed to be excluded from an advertised fare. The existence, nature, and amount of these additional taxes and fees must be clearly indicated where the airfare first appears in the ad, so that the consumer can easily calculate the total price to be paid. The Department has consistently prohibited sellers of air transportation from breaking out any other fee, including fuel surcharges, service fees, and taxes imposed on an *ad valorem* basis. This policy has been articulated in a number of industry letters and guidance documents; see <http://airconsumer.dot.gov/rules/guidance.htm>.

The Department is considering changing its enforcement policy concerning this rule to enforce the “full price advertising” provision of the rule as it is written and, consistent with longstanding Department enforcement policy, to clarify that the rule applies to ticket agents. This change in enforcement policy would also include a requirement that all advertisers include all mandatory fees in the advertised price. Given technological innovations and new methods of communication, carriers and ticket agents are finding new and creative ways to advertise airfares, some of which circumvent the spirit if not the letter of the full-price advertising rule and Department enforcement policy. Consumers now receive airfare solicitations through print advertisements, radio advertisements, internet advertisements, and solicitations sent directly to consumers via email newsletters, social networking websites, text messages, and applications designed for many different kinds of cell phones. The ease and speed of information sharing also allows airfare information to be presented to consumers in many different forms. Even in cases where those forms of advertising comply in a technical sense with our enforcement policy with regard to the full-price advertising rule, we are concerned that in many cases consumers are not easily able to determine the total cost of air transportation services or are deceived regarding

the true price. Accordingly, we believe consumers would be better served if we enforce our existing full-price rule as written and prohibit the practice of advertising fares that exclude any mandatory fees or surcharges, regardless of the source. In proposing this change in policy, we do not intend to foreclose carriers and ticket agents from advising the public in their fare solicitations about government taxes and fees, or other mandatory carrier- or ticket agent-imposed charges applicable to their airfares. However, we no longer see a useful purpose in presenting what purportedly are “fares” to consumers that do not include numerous required charges and, in our view only act to confuse or deceive consumers regarding the true full price and to make price comparisons difficult or improbable. Our objective is to ensure that consumers are not be deceived or confused about the total fare they must pay, which we believe can best be ensured by requiring that consumers be able to see clearly the entire price of the air transportation being advertised whenever a price is displayed rather than having to wade through a myriad of footnotes and/or hyperlinks regarding government taxes and fees and make the full-price calculation themselves to try to establish which among many displayed “fares” is the real fare or wait until the purchase screen to see the total fare.

The Department’s statutory authority under 49 U.S.C. § 41712 to prohibit unfair and deceptive practices and unfair methods of competition applies not only to air carriers but also to “ticket agents” which includes those persons other than a carrier “that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation.” 49 U.S.C. § 40102(a)(40). Although the Department’s full-price advertising rule applies on its face to direct and indirect air carriers as well as “an agent of either,” it has been the longstanding policy of the Department to consider ticket agents as defined in title 49 to be subject to that rule. The Department believes it appropriate to specifically name “ticket agents”

as being covered by the rule in order to ensure there is no confusion about their inclusion under the deceptive practice prohibitions of the rule.

Air transportation is unlike any other industry in that the Department has the sole authority to regulate airlines' fare advertisements by prohibiting practices that are unfair or deceptive. Congress modeled section 41712 on section 5 of the Federal Trade Commission (FTC) Act, 15 U.S.C.A. § 45, but by its own terms, that statute cannot be enforced by FTC against "air carriers and foreign air carriers," 15 U.S.C. § 45(a)(2). The States are preempted from regulating in this area (49 U.S.C. 41713, *see Morales v. Trans World Airlines*, 504 U.S. 374, 112 S.Ct.2031, 119 L.Ed.2d 157 (1992)). Thus, unlike advertising in other industries, where either the States or the FTC, or both, can take action against abusive practices, if we do not exercise our authority, consumers and competitors have no governmental recourse against advertising that is unfair or deceptive. Further, we do not believe that 49 U.S.C. § 41712 gives rise to a private right of action; *see Love v. Delta Air Lines*, 310 F.3d 1347 (11th Cir.2002), *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263 (10th Cir. 2004); *see also Alexander v. Sandoval* 532 U.S. 275, 286, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001).

The Department invites comments on its proposal to change its enforcement policy under section 399.84 from one of permitting limited exceptions to disclosing the full price in all advertising of air transportation and air tours to requiring disclosure of the full price to be paid by a consumer whenever a price is displayed, and its proposal to specify in the rule that it applies to "ticket agents." Specific questions on which the Department invites comments regarding this policy shift include how sellers of air transportation foresee this affecting the methods they use to advertise fares, how consumers view the proposed change, and the potential cost in changing

the current advertising structures that carriers and ticket agents have in place to ensure compliance with the current policy of the Department.

Additionally, the Department is considering adding two new paragraphs to the price advertising rule. We propose adding paragraph (b) which would codify the Department's current enforcement policy on each-way airfare advertising. Currently, the Department allows sellers of air transportation to advertise an each-way price that is contingent on a roundtrip ticket purchase, so long as the roundtrip purchase requirement is clearly and conspicuously disclosed in a location that is prominent and proximate to the advertised fare amount. This proposal would codify existing enforcement policy and would also preclude carriers from referring to such fares as "one-way" fares, which they are not. The Department invites interested persons to comment on adding this paragraph on each-way airfare advertising policy to the price advertising rule. The Department also invites comment on whether a rule similar to that proposed for each-way fare advertising disclosure should be applied to air/hotel packages that advertise a single price, but are sold at that price only on a double occupancy basis, i.e., where two people must purchase the package in order to obtain the advertised price.

The second provision the Department proposes to add to the price advertising rule in section 399.84 would prohibit so-called "opt-out" provisions in price advertising. The Department has noticed a trend lately in the air transportation industry to add fees for ancillary services and products to the total price of air transportation, which charges the consumer is deemed to have accepted unless he or she affirmatively opts out of the service and related charges. For example, carriers may allow a consumer to select a preferred seat or receive priority boarding status if he or she pays a predetermined fee. In some cases the optional services and accompanying charges for those services is pre-selected and added to the total fare

without the consumer affirmatively choosing those optional services or fees. This often is accomplished on a website through use of a small box that is pre-checked and must be “unchecked” by a consumer in order to avoid the charge. This can be deceptive depending on the layout of the webpage and instructions accompanying the service and charge. What can be even more problematic is that opt-out provisions are sometimes included on the same webpage as opt-in provisions, in which case it is much less likely that consumers will notice the opt-out nature of certain optional services that carry additional charges. The Department proposes adding a paragraph (c) to section 399.84 to prohibit such opt-out procedures.

Proposed paragraph (c) would provide that if a carrier offers optional services, the consumer must affirmatively opt in to accept and purchase that product or service before the price for that service can be added to the total airfare to be paid. No longer will carriers or ticket agents be allowed to require that a consumer opt out of purchasing such products or services in order to avoid being charged for them. The proposed rule, as part of the current full-price advertising rule, would also apply to carriers and ticket agents that advertise tours which include air transportation. Examples of such opt-out procedures the Department has seen in recent years include fees for travel insurance, rental cars, transfers between airports and hotels, priority boarding, premium seats, and extra legroom. Oftentimes the consumer does not realize that the ancillary services are included in the total price of the ticket due to the deceptive nature of such opt-out provisions. The Department asks interested persons to comment on adding the proposed subsection (c) to the existing price advertising rule. The Department would like to hear from both sellers of air transportation and consumers about the costs and benefits of prohibiting opt-out features.

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

With the increasing industry-wide trend to “unbundle” fares by charging fees for individual services provided in connection with air transportation, the Department has decided that there is a need to enhance protections for air travelers by establishing rules to ensure adequate notice of such fees for optional services to consumers. When booking air travel, consumers are not always made aware of the extra charges that a carrier may impose on them for additional services. Such charges may include services that traditionally have been included in the ticket price, such as the carriage of one or two checked bags, obtaining seat assignments in advance, in-flight entertainment, and in-flight food and beverage service. In fact, the Airline Tariff Publishing Company (ATPCO), which collects schedule and fare information from airlines for use in computerized reservation systems, has developed a list containing scores of ancillary charges in various categories. Due to what the Department feels is sometimes a lack of clear and adequate disclosure, consumers are not always able to determine the full price of their travel (the ticket price plus the price of additional fees for optional services) prior to purchase.

We also seek comment on the costs and benefits of requiring that two prices be provided in certain air fare advertising – the full fare, including all mandatory charges, as well as that full fare plus the cost of baggage charges that traditionally have been included in the price of the ticket, if these prices differ. We would regard charges for one personal item (e.g., a purse or laptop computer), one carry-on bag, and one or two checked bags as baggage charges that traditionally have been included in the price of a ticket. Should such a requirement for a second price, if adopted, be limited to the full fare plus the cost of baggage charges? Should the Department require carriers to include in the second price all services that traditionally have been included in the price of the ticket such as obtaining seat assignments in advance? Why or why not? In the alternative, the Department is considering requiring sellers of air transportation

to display on their websites information regarding a full price including optional fees selected by the passenger when a prospective passenger conducts a query for a particular itinerary. In other words, passengers would be able to conduct queries for their specific needs (e.g., air fare and 2 checked bags; air fare, 1 checked bag, and extra legroom). The benefit of this approach is that consumers would be able to more easily compare airfares and charges for their own particular itinerary and options. We invite comment on this approach, including its feasibility, as well as its costs to airlines and ticket agents.

The Department believes that effective disclosure of the optional nature of services and their costs would prevent carriers from imposing hidden fees on consumers and allow consumers to make better informed decisions when purchasing air travel. In 2008, the Department's Aviation Enforcement Office issued guidance concerning the disclosure of baggage fees to the public. *See, e.g., 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>. . We propose to codify this guidance and also cover in the rule notice of charges for services other than checked baggage.

More specifically, the Department is proposing to adopt three provisions in a proposed new 14 CFR 399.85. Proposed section 399.85 (a) would require carriers that maintain a website accessible to the general public to prominently disclose on the homepage of such website any increase in the fee for passenger baggage or any change in the free baggage allowance for checked or carry-on bags (e.g., size, weight, number). This could be done, for example, through direct, prominent notice or through a conspicuous notice of the existence of such fees in a hyperlink that takes the reader directly to an explanation of the carrier's baggage policies and

charges. The proposed rule would require this notice to remain on the homepage of the carrier's website for at least three months after the change is made. The Department invites interested persons to comment on this proposal, including whether the time period for displaying such changes on the homepage should be greater or less than three months. The Department also asks for comment on the best options for displaying such information to the public if it were to adopt a notice requirement.

Proposed section 399.85 (b) would require carriers that issue e-ticket confirmations to passengers to include information regarding their free baggage allowance and/or the applicable fee for a carry-on bag or the first and second checked bag on the e-ticket confirmation. By providing this information to consumers on the e-ticket confirmation — the document that confirms a passenger's travel on the carrier — passengers will be informed well before the flight date and arrival at the airport of the applicable baggage rules and charges. The Department believes that including this information on the e-ticket confirmation will permit passengers to avoid unexpected baggage charges to the extent possible and also save time at the airport for both passengers and carrier personnel because the passengers will be better informed about the baggage allowance and any charges to be incurred.

Proposed section 399.85 (c) would require carriers that have a website accessible to the general public to disclose all fees for optional services to consumers through a prominent link on their homepage that leads directly to a listing of those fees. Optional services include but are not limited to the cost of a carry-on bag, checking baggage, advance seat assignments, in-flight food and beverage service, in-flight entertainment, blankets, pillows, or other comfort items, and fees for seat upgrades. The Department feels that having all of the fees for optional services in one place for consumers to review will help ensure that consumers do not encounter such

charges unexpectedly and that they can more easily compare these charges among competing carriers. Additionally, disclosure as proposed will result in this important cost information being presented in a clear and concise form and reduce the prospect of delays at the airport and in-flight that can occur when the consumer is unaware of charges for optional services. The Department invites comments regarding the proposal to have full, complete disclosure of all fees for optional services on one web page, accessible to the consumer through a prominent hyperlink. In particular, we solicit comment on whether we should limit the requirement to disclose fees to “significant” fees for optional services, including comment on the definition of “significant fee” and whether it should be defined as a particular dollar amount. The Department seeks comment on the alternatives to the proposed link to the information on a carrier’s homepage, such as disclosure of these optional fees on e-ticket confirmations or elsewhere.

The Department is also considering requiring that carriers make all the information that must be made directly available to consumers via proposed section 399.85 available to global distributions systems (GDS) in which they participate in an up-to-date fashion and useful format. This would ensure that the information is readily available to both Internet and “brick and mortar” travel agencies and ticket agents so that it can be passed on to the many consumers who use their services to compare air transportation offers and make purchases. We invite comments on this proposal, including the present ability of carriers to meet this requirement, the potential costs of the requirement, including costs of developing new software or systems to deliver such information to GDS’s, if necessary, and the benefits of this requirement.

The proposed section 399.85 would apply to all U.S. and foreign air carriers that have websites accessible to the general public in the United States through which tickets are sold, as

well as to their agents. The Department invites comment on alternative proposals, including limiting the applicability of the proposed section 399.85 to all flights operated by U.S. carriers, U.S. and foreign carriers that operate any aircraft with sixty (60) or more seats, or U.S. and foreign carriers that operate any aircraft with thirty (30) or more seats. In addition, we invite comment on whether the rule should apply to all ticket agents, as defined in 49 U.S.C. §40102, which includes not just agents of carriers, but also others who, as a principal, “sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation.” Under proposed section 399.85, the Department would consider the failure of a carrier to give consumers appropriate notice about baggage fees and other optional fees to be an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

The Department is also seeking comment on the need for a special rule relating to the disclosure of fees and related restrictions in connection with code-share service. It has come to the Department’s attention that many carriers operating flights under a code-share agreement impose different fees and restrictions than those of the carrier under whose identity the service is marketed, notwithstanding the fact that as a condition for approval of international code-share services, the Department has as a matter of policy required that “the carrier selling such transportation (i.e., the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in the contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected.” *See, Notice of the Assistant General Counsel for Aviation Enforcement and Proceedings*, “Guidance on Airline Baggage Liability and Responsibilities of Code-Share Partners Involving International Itineraries,” <http://airconsumer.dot.gov/rules>, March 26, 2009. For example, they may have different free baggage allowances and different charges for extra pieces and overweight bags,

some may not allow unaccompanied minors while others do (perhaps subject to varying charges and various age restrictions), and some may not provide in-flight medical oxygen while others do (subject to different charges). We believe that, at a minimum, prospective customers for these code-share flights should be made aware of any significant differences between the ancillary services and fees of the carrier under whose identity their service was marketed and those of the carrier operating their flights. Comments are invited on whether such disclosure by ticketing/marketing carriers should be required through reservation agents, websites, or e-ticket confirmations or through each of those mechanisms. Further comment is invited on whether there are any ancillary services that should not be allowed to vary among code-share partners, e.g., the free baggage allowance or baggage fees. For example, Department policy provides 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 the ticketing carrier's rules take precedence. *See, e.g., Order 2009-9-20, Dockets OST-2008-0367 and 0370, "Agreements adopted by the Tariff Coordinating Conference of the International Air Transport Association relating to passenger baggage matters,"* September 30, 2009. Information on the cost of these proposals is invited.

9. Post-Purchase Price Increases

The Department is proposing a new section in 14 CFR Part 399 that would prohibit post-purchase price increases in air transportation or air tours by carriers and ticket agents. The seller of air transportation would be prohibited from raising the price after the consumer completes the purchase. Currently, the Department allows post-purchase price increases as long as any term that permits a carrier to increase the price after purchase is included in the conditions of carriage and the consumer receives direct notice of that provision on or with the ticket. *See* 14

CFR 253.7. The Department has found that some sellers of air transportation are abusing this rule by burying provisions purporting to permit them to raise the price in the contract of carriage or conditions of travel and merely providing the consumer a hyperlink to the contract of carriage or conditions of travel. The consumer is unaware of the potential for such increase until well after the purchase is made. Although we have not seen carriers resort to this problematic practice, we have often found this to be the case in the sale of tour packages that include air transportation, where an air tour operator will increase the price of an air tour before travel, ostensibly in order to pass along fuel surcharges or an increase in the price of a seat. Consumers are not made aware of the potential for a price increase at the time of purchase, and therefore are deceived when the increase is imposed and the seller uses the terms of the contract of carriage to justify an additional collection. Moreover, most airlines and tour operators will advertise and sell tickets or packages at a stated price nearly a year in advance of scheduled travel. We are tentatively of the opinion that it is patently unfair for a carrier or tour operator to advertise and sell air transportation at a particular price long before travel, with the caveat that they reserve the right to change the advertised price at any time before travel, and in any amount. The Department feels it is time to ban the practice of post-purchase price increases.

The Department invites interested parties to comment on this proposal and on several alternatives. As indicated above, the Department's primary proposal is an outright ban on post-purchase price increases. One alternative the Department is considering would be to allow post-purchase price increases, but only as long as the seller of air transportation conspicuously discloses to the consumer the potential for such an increase and the maximum amount of the increase, and the consumer affirmatively agrees to the potential for such an increase prior to purchasing the ticket. Another alternative would be to allow post-purchase price increases, with

full and adequate disclosure, that the consumer agrees to in advance of purchasing a ticket, but to prohibit price increases within thirty or sixty days of the first flight in a consumer's itinerary.

10. Flight Status Changes

We are proposing to require that certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues (reporting carriers) promptly notify passengers in the boarding gate area of changes to their domestic scheduled flights resulting from delays or cancellations, promptly update all domestic scheduled flight information under their control at airports regarding changes to the status of particular flights as a result of delays or cancellations and promptly update flight status details available on their websites and through their telephone reservation systems. "Domestic scheduled flight" for this purpose means a flight segment. For example, on a direct flight from Chicago to London with a stop in New York, the Chicago-New York segment would be covered by this requirement. The Department tentatively believes that the cost of requiring smaller carriers to provide this information outweighs the benefits to consumers in general in light of the fact that the operations of the reporting carriers account for nearly 90 percent of all domestic passenger enplanements. We ask for comment on whether the regulation should cover a greater number of carriers and operations, including operations of smaller U.S. carriers and/or international operations of U.S. and foreign carriers. What would be the cost or benefit of expanding coverage to those additional carriers?

It is important to passengers as well as persons dropping passengers off for outbound flights or meeting passenger on incoming flights to be kept informed on a timely basis of delays and/or cancellations affecting their flights in order to avoid unnecessary waits at, or pointless trips to, an airport. Passengers also need flight status updates as soon as they become available in order to make decisions about alternate travel plans. Carriers recognize the importance of

timely and accurate flight information, as evidenced by the fact that many of the largest U.S. carriers promise through their customer service plans to provide passengers all known information about delays and cancellations as soon as they become aware of the issue. Failures by carriers to provide timely or accurate flight status information not only inconvenience passengers and other members of the public but also can result in additional expenses to those persons.

Our proposals here are intended to provide additional measures to ensure that passengers and the general public know about flight delays and cancellations within a reasonable time so that they can, if possible, take steps to protect themselves and avoid unnecessary loss of time and expense. We are therefore proposing that carriers promptly notify passengers holding tickets or reservations on one of their flights as well as other interested parties about changes to a flight's status, i.e., delays and cancellations, which affect the planned operation of the flight by at least 30 minutes. Additional notifications would be required if any such delayed flight was further delayed by 30 minutes or more. By "promptly" we mean that a carrier must provide the required notification regarding the status of a flight as soon as possible but no later than 30 minutes after the carrier becomes aware or should have become aware of a change in the status of the flight due to a delay or cancellation. This requirement would apply to all the domestic scheduled flight segments that a reporting carrier "markets." For example, for a code-share flight this proposed notification requirement would be the responsibility of the carrier whose code is used, whether or not it is operated under a fee-for-service arrangement.

We note that many covered carriers already voluntarily provide flight status details via the proposed methods proposed in this notice (i.e., announcement in boarding area, websites, telephone reservation systems, airport display boards). In addition, most of the largest carriers

generally make efforts to notify passengers of changes to the status of their flights by permitting passengers to subscribe to flight status update services via various widely-used media, including computer-generated telephone/voicemail, text messages, and emails. This proposal to promptly notify passengers and other interested parties of changes to flights as a result of delays or cancellations would not impose upon carriers a requirement to offer passengers the opportunity to subscribe to such a service but would require carriers to the extent that they use this or other methods of communication to ensure that the flight status changes are promptly updated.

We seek comments on whether it is preferable to require carriers to provide prompt notification of flight status changes and leave it up to the carriers to determine how that notification is provided, or prescribe particular means by which carriers must communicate or must make available flight status updates. We ask for comment on the four proposed means of notification: an announcement in the boarding area, carriers' websites, carriers' telephone reservation systems, and airport displays under carriers' control. Commenters should support their opinions with as much detail as possible regarding the practicality, costs, and benefits of any standard they support or oppose. We also seek comment about the cost and benefit of flight status update services. It goes without saying that the quicker that changes to a flight's status can be provided to passengers, the more useful the information is likely to be. In addition to seeking comment on the need, in general, for this proposed notification requirement, we specifically ask for comment on whether the standard we propose - "30 minutes after the carrier becomes aware or should have become aware of a change in the status of a flight" - is a reasonable notification standard to apply in requiring carriers to pass along updates to passengers and to the public. Does it provide consumers sufficient lead time in most cases to act to protect themselves? If not,

why not, and could carriers be expected to meet a more stringent standard? Is the more stringent standard a reasonable standard for carriers to meet and, if not, why not?

In addition, we are proposing that notification be provided regarding any changes that affect the planned operation of a flight by at least 30 minutes. While shorter flight delays occur more frequently, we believe they are less likely to significantly disrupt expectations or travel plans. We ask for comment on whether this 30-minute standard is appropriate. Do consumers in most instances require notice of flight delays that are less than 30 minutes? Would changing the standard of delays to less than 30 minutes impose unreasonable burdens or costs on carriers that outweigh any benefits to the public? According to data from the Department's Bureau of Transportation Statistics (BTS), in calendar year 2009, approximately 10% of departure delays and 11% of arrival delays were over 30 minutes. The majority of scheduled domestic passenger flights depart or arrive 1 to 14 minutes after their scheduled departure and arrival times, respectively.

We note that the requirement to promptly update all domestic scheduled flight information under a carrier's control at airports would cover all communication methods that are under the control of a carrier at an airport. For example, flight information provided via electronic or other display boards at airport counters and departure gates would be covered. We are not proposing at this time that carriers establish new types of flight information outlets but this requirement, if made final, would apply to every type of outlet a carrier elects to use to provide flight information to the public at airports. With respect to flight status information outlets at an airport that are not under a carrier's control, e.g., flight arrival and departure displays that are under the control of an airport authority, a carrier's responsibility is limited to providing the updated flight information to the airport authority within the required 30 minutes.

11. Choice-of-Forum Provisions

The Department is proposing to amend 14 CFR Part 253, the Part that concerns notice of contract of carriage terms, by adding a new section to codify the policy of the Department's Aviation Enforcement Office that choice-of-forum provisions are unfair and deceptive when used to limit a passenger's legal forum to a particular inconvenient venue. Choice-of-forum provisions purport to designate the court or jurisdiction where any lawsuit against the carrier concerning the purchased air transportation must be brought. *See, e.g., Notice of the Assistant General Counsel for Aviation Enforcement and Proceedings, "Choice of Forum' Contract Provisions,"* <http://airconsumer.dot.gov/rules/19960715.htm> (July 15, 1996). It is the Department's view that for air transportation sold in the U.S., it would be an unfair or deceptive practice for the seller to attempt to prevent a passenger from seeking legal redress in any court of competent jurisdiction, including a court within the jurisdiction of the passenger's residence, provided that the carrier does business within that jurisdiction. Consumers should not be forced to litigate in a jurisdiction that could be thousands of miles from their United States residence. The Department believes that such narrow choice-of-forum provisions would operate as a limitation on the right of a consumer to bring legitimate and viable suits. We invite interested persons to comment on this proposal and on the use of such choice-of-forum provisions in contracts of carriage.

12. Peanut Allergies

The Department is considering several different measures to provide greater access to air travel for individuals with severe peanut allergies in light of the significant number of children diagnosed with peanut allergies, some of whom do not fly because of health concerns related to peanut service on aircraft. The Air Carrier Access Act (ACAA) prohibits

discrimination by U.S. and foreign air carriers against individuals with disabilities. The Department of Transportation defines an individual with a disability in 14 CFR Part 382 (Part 382), the regulation implementing the ACAA. An individual with a disability is any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Generally, a person with an allergy is not an individual with a disability. However, if a person's allergy is sufficiently severe to substantially limit a major life activity, then that person meets the definition of an individual with a disability. Part 382 states that major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Airline passengers with severe allergies to peanuts have a qualifying disability as defined in Part 382.

Part 382 requires airlines to change or make an exception to an otherwise general policy or practice to make sure that a passenger with a disability can take the trip for which he or she is ticketed unless the change would cause an undue burden on the airline or a fundamental alteration in its services. The Department has in the past told airlines that, based on this requirement, they must make reasonable accommodations for air travelers who are allergic to peanuts. Specifically, in August 1998 the Department's Aviation Enforcement Office sent an industry letter providing guidance on this issue. That letter suggested that, if given advance notice, providing a peanut-free buffer zone in the immediate area of a passenger with a medically-documented severe allergy to peanuts would be a reasonable accommodation for the passenger's disability, and would not constitute an undue burden on the airline.

After the issuance of the guidance letter, the Department was directed by Congress to cease issuing guidance on this subject or face a cutoff of funding for its Aviation Enforcement

Office. See, for example, section 346 of Public Law 106-69, (October 9, 1999)--“DOT and Related Agencies Appropriations Act, 2000,” which stated that none of the funds made available under that Act could be used to require or suggest that airlines provide peanut-free buffer zones or otherwise restrict the distribution of peanuts. This congressional prohibition was to remain in effect “until 90 days after submission to the Congress of a peer-reviewed scientific study that determined 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.” This specific congressional ban on our involvement in this issue has not appeared recently in any legislation. At this time, we are considering the following alternatives to provide greater access to air travel for individuals with severe peanut allergies: (1) banning the serving of peanuts and all peanut products by both U.S. and foreign carriers on flights covered by DOT’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 passenger has requested a peanut-free flight in advance. We seek comment on these approaches as well as the question of whether it would be preferable to maintain the current practice of not prescribing carrier practices concerning the serving of peanuts. We are particularly interested in hearing views on how peanuts and peanut products brought on board aircraft by passengers should be handled. How likely is it that a passenger with allergies to peanuts will have severe adverse health reactions by being exposed to the airborne transmission of peanut particles in an aircraft cabin (as opposed to ingesting peanuts orally)? Will taking certain specific steps to prepare for a flight (e.g., carrying an epinephrine auto-injector in order to immediately and aggressively treat an anaphylactic reaction) sufficiently

protect individuals with severe peanut allergies? Who should be responsible for ensuring an epinephrine auto-injector is available on a flight – the passenger with a severe peanut allergy or the carrier? Is there recent scientific or anecdotal evidence of serious in-flight medical events related to the airborne transmission of peanut particles? Should any food item that contains peanuts be included within the definition of peanut products (e.g., peanut butter crackers, products containing peanut oil)? Is there a way of limiting this definition?

13. Effective Date

We propose that any final rule that we adopt take effect 180 days after its publication in the Federal Register. We believe this would allow sufficient time for carriers to comply with the various proposed requirements. We invite comments on whether 180 days is the appropriate interval for completing these changes.

REGULATORY ANALYSES AND NOTICES

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

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 under that Order. The Regulatory Evaluation finds that the benefits of the proposal appear to exceed its costs, even without considering non-quantifiable benefits. The total present value of passenger benefits from the proposed requirements over a 10 year period at a 7% discount rate is \$87.59 million and the total present value of costs incurred by carriers and other sellers of air transportation over a 10 year period at a 7% discount

rate is \$25.98 million. The net present value of the rule for 10 years at a 7% discount rate is \$61.61 million.

Below, we have included a table outlining the projected costs and benefits of this rulemaking. We invite comment on the quantification of costs and benefits for each provision, as well as the methodology used to develop our cost and benefit estimates. We also seek comment on how unquantified costs and benefits could be measured. More detail on the estimates within this table can be found in the preliminary Regulatory Impact Analysis associated with this proposed rule.

Comparison of Requirement-Specific Benefits and Costs, 2010-2020
(discounted at 7%/year to 2010 \$ millions)

Requirement 1: Expand tarmac delay contingency plan requirements to smaller airports and require that foreign carriers have a tarmac delay contingency plan	Total
Estimated Quantified Benefits	\$1.99
Estimated Quantified Costs	\$3.24
Net Benefits	-\$1.25
<u>Unquantified Benefits:</u> <ul style="list-style-type: none"> • 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 towards Carriers 	
Unquantified Costs: <ul style="list-style-type: none"> • Increased Flight Cancellations • Increased Passenger Anxiety Associated with Potential Flight Cancellations 	
Requirement 2: Expand carriers' reporting tarmac delay info to DOT and require reporting by foreign carriers	Total
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	\$2.31
Net Benefits	not estimated
<u>Unquantified Benefits:</u> <ul style="list-style-type: none"> • Increased Efficiency of US DOT Oversight and Enforcement Office Operations • Improved Planning by Passengers 	

<ul style="list-style-type: none"> • Improved Management of Flight Delays • Improved Market Competition 	
Requirement 3: Establish of minimum standards for carriers' customer service plans and extend the customer service plan requirements to cover foreign carriers	
	Total
Estimated Quantified Benefits	\$6.25
Estimated Quantified Costs	\$8.58
Net Benefits	-\$2.33
<u>Unquantified Benefits:</u>	
<ul style="list-style-type: none"> • Decreased Confusion and Uncertainty Regarding Department's Requirements • Value of Improved Customer Service Based on Self-Auditing of Adherence to Customer Service Plans for Foreign Carriers • Improved Customer Good Will towards Carriers 	
Requirement 4: Require Incorporation of tarmac delay contingency plans and customer service plans into carrier contracts of carriage	
	Total
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	not estimated
Net Benefits	not estimated
<u>Unquantified Benefits:</u>	
<ul style="list-style-type: none"> • Decreased Occurrence of Customer Complaints • Improved Resolution of Customer Complaints 	
Requirement 5: Extend requirements for carriers to respond to consumer complaints to cover foreign carriers	
	Total
Estimated Quantified Benefits	\$0.00
Estimated Quantified Costs	\$1.82
Net Benefits	-\$1.82
<u>Unquantified Benefits:</u>	
<ul style="list-style-type: none"> • Decreased Occurrence of Conduct that Would Produce Complaints • Improved Resolution of Customer Complaints • Decreased Anger toward Carriers During Resolution of Complaints 	
Requirement 6: Changes in denied boarding compensation (involuntary bumping) policy: increase minimum compensation, add inflation adjustment, greater passenger information about policies	
	Total
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	\$0.66
Net Benefits	not estimated
<u>Unquantified Benefits:</u>	
<ul style="list-style-type: none"> • Decrease in Confusion Regarding Denied Boarding Compensation Provisions • More Accurate Compensation for those Denied Boarding 	

<ul style="list-style-type: none"> Decreased Resentment among Some Passengers Regarding Different Compensation Received 	
<p>Requirement 7: Require that carriers include taxes and fees in advertising (“full-fare advertising”) and prohibit use of sales provisions that require purchasers to opt out of add-ons such as trip insurance</p>	
	Total
Estimated Quantified Benefits	\$73.50
Estimated Quantified Costs	\$6.86
Net Benefits	\$66.64
<u>Unquantified Benefits:</u> <ul style="list-style-type: none"> Travelers Less Likely to Mistakenly Purchase Unwanted Services and Amenities Improved Market Competition Improved Customer Good Will Towards Carriers 	
<p>Requirement 8: Require carriers to disclose baggage and other optional fees on their websites</p>	
	Total
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	\$2.51
Net Benefits	not estimated
<u>Unquantified Benefits:</u> <ul style="list-style-type: none"> Decrease in Time at Check-in Avoidance of Unfair Surprise Improved Customer Good Will towards Carriers Improved Market Competition 	
<p>Requirement 9: Ban the practice of post-purchase price increases.</p>	
	Total
Estimated Quantified Benefits	\$5.83
Estimated Quantified Costs	not estimated
Net Benefits	not estimated
<u>Unquantified Benefits:</u> <ul style="list-style-type: none"> Improved Customer Good Will towards Carriers Avoidance of Unfair Surprise 	
<u>Unquantified Costs:</u> <ul style="list-style-type: none"> Inability to Increase Prices Based on Unanticipated or Changed Circumstances 	
<p>Requirement 10: Require prompt passenger notification of flight status changes (cancellations, delays, etc.) at the boarding gate area, on website and on telephone reservation systems.</p>	
	Total
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	not estimated
Net Benefits	not estimated
<u>Unquantified Benefits:</u> <ul style="list-style-type: none"> Reduced Passenger Anxiety 	

<ul style="list-style-type: none"> Greater Comfort and Certainty from Knowing that Information Will Be Available In Timely Manner 	
<u>Unquantified Costs:</u> <ul style="list-style-type: none"> Expense of Providing Notification 	
Requirement 11: Permit consumers to file suit wherever a carrier does business	Total
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	not estimated
Net Benefits	not estimated
<u>Unquantified Benefits:</u> <ul style="list-style-type: none"> Greater compliance with DOT regulations Improved Customer Good Will towards Carriers 	
<u>Unquantified Costs:</u> <ul style="list-style-type: none"> Need to Defend Suit in Location of Consumer's Choice 	
Requirements 1 -11: TOTAL	Total
Estimated Quantified Benefits	\$87.6
Estimated Quantified Costs	\$26.0
Net Benefits	\$61.6

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. The regulatory initiatives discussed in this NPRM would have some impact on some small entities, as discussed in the Initial Regulatory Flexibility Analysis.

The Initial Regulatory Flexibility Analysis determined that no more than 12 independently-owned small U.S. carriers operating at least one aircraft with 30 or more passenger seats but none with more than 60 passenger seats would have to comply with the proposed requirements relating to denied boarding compensation and lengthy tarmac delays. These 12 U.S. carriers and an additional 35 small U.S. carriers that only operate aircraft with

fewer than 30 seats would potentially have to comply with the requirements pertaining to full fare advertising (requirement to display full fares on websites and in print advertising and prohibition on opt-out provisions), disclosure of baggage and other fees, and prohibition on post-purchase price increases. The compliance costs associated with the full fare advertising requirements are estimated at \$6,000 or less per carrier. The estimated unit costs for complying with the other requirements are nominal.

The proposed initiatives may have a more substantial impact on small foreign carriers that provide scheduled service on flights to and from the U.S. using only aircraft with 60 or less passenger seats. There is only one small foreign carrier that operates service to and from the U.S. using aircraft with more than 29 but fewer than 61 seats. It would be required to comply with the proposed requirements described above for U.S. carriers of this size-class, as well as requirements relating to tarmac delay contingency plans, customer service plans, and customer problems/complaints (these requirements were instituted for covered U.S. carriers in a previous proceeding). Each of these sets of requirements may entail compliance costs of \$3,000 or more per-carrier, but only the requirement to develop and implement a compliant tarmac delay contingency plan is likely to involve single-year cost in excess of \$10,000 per carrier. There are also two small foreign carriers that operate service to and from the U.S. exclusively with aircraft that have fewer than 19 seats; these two carriers would potentially have to comply with the requirements pertaining to full fares advertising (requirement to display full fares on websites and in print advertising and prohibition on opt-out provisions), disclosure of baggage and other fees, and prohibition on post-purchase price increases. The per-carrier compliance costs for these two small foreign carriers are expected to be similar to those for U.S. carriers of the same size-class.

It may also be necessary for some small travel agencies and tour operators to revise air travel prices displayed in website and print media advertising to comply with the proposed requirements relating to full fare advertising of air fares. Costs for small firms to revise websites and update print media advertising are estimated at no more than \$3,000 each on a per-firm basis. Finally, a limited number of personnel at some small airports will incur time costs of a few hours on average to interact with carriers that are required to coordinate tarmac contingency plans with airport authorities. We invite comment to facilitate our assessment of the potential impact of these initiatives on small entities.

C. Executive Order 13132 (Federalism)

This Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This notice does not propose 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 notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the options on which we are seeking comment would 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

This NPRM proposes three new collections of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 49 U.S.C. 3501 et seq.). Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the Federal Register providing notice of the proposed collection of information and a 60-day comment period, and must otherwise consult with members of the public and affected agencies concerning the proposed collection.

The first collection of information proposed here is a requirement that foreign air carriers that operate scheduled passenger service to or from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats 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 second information collection is a requirement that any foreign air carrier that operates scheduled passenger service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 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.

The third 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 exceeding three hours or more, including diverted flights and cancelled flights. This requirement would apply to reporting carriers under 14 CFR Part 234 only with respect to their public charter service and international service. 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.

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: 0 to 1 hour per respondent.

Estimated Total Annual Burden: 15 hours and 25 minutes for all respondents.

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

2. *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 22 hours for all respondents.

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

3. *Requirement that carrier report certain tarmac delay data 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: 5 to 160 hours per respondent in the first year (average of 40 hours) and no more than 3 hours in subsequent years per respondent.

Estimated Total Annual Burden: 5,200 hours in the first year and no more than 390 hours in subsequent years for all respondents.

Frequency: One information set to submit per month for each respondent.

The Department invites 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. Comments submitted in response to this notice will be summarized or included, or both, in the request for OMB approval of these information collections.

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 2nd DAY OF JUNE, 2010, IN WASHINGTON, D.C.

/s/
Ray LaHood
Secretary of Transportation

List of Subjects

14 CFR Part 234, 14 CFR Part 250 and 14 CFR Part 259: Air Carriers, Consumer Protection, Reporting and Recordkeeping Requirements

14 CFR Part 244: Air Carriers, Consumer Protection, and Tarmac Delay Data

14 CFR Part 253: Air Carriers, Consumer Protection, and 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 proposes to amend title 14 CFR Chapter II as follows:

PART 234 – [AMENDED]

1. The authority citation for 14 CFR Part 234 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401 and 417.

2. Section 234.11 is revised to read as follows:

§234.11 Disclosure to consumers.

- (d) For each scheduled domestic flight segment, including domestic segments of a code-share flight operated by another carrier, a reporting carrier shall promptly provide to passengers who are ticketed or hold reservations, and to other interested persons information about a change in the status of a flight, defined for this purpose as cancellation of a flight or a delay of 30 minutes or more in the planned operation of a

flight, including additional delays of 30 minutes or more to flights for which notification has already been provided. This information must at a minimum be provided in the boarding gate area, via a carrier's telephone reservation system and on the homepage of a carrier's website.

- (1) With respect to any carrier that permits passengers to subscribe to flight status notification services, the reporting carrier shall 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 or should have become aware of a change in the status of a flight.
- (2) The reporting carrier shall incorporate such notification service commitment into its Customer Service Plan as specified in section 259.5 of this chapter.

(e) Each reporting carrier shall update all flight status displays and other sources of flight information that are under the carrier's control at airports with information on each flight delay of 30 minutes or more or flight cancellation, within 30 minutes after the carrier becomes aware or should have become aware of a change in the status of a flight.

3. A new part 244 is proposed to be added to read as follows:

PART 244—REPORTING TARMAC DELAY DATA

Sec.

244.1 Definitions

244.2 Applicability

244.3 Reporting of tarmac delay data

§ 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, 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.

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.

Certificated air carrier means a U.S. air carrier holding a certificate issued under 49 U.S.C. 41102 to conduct passenger service or holding an exemption to conduct passenger operation under 49 U.S.C. 40109.

Commuter air carrier means a U.S. commuter air carrier as described in 14 CFR § 298.3(b) that is authorized to carry passengers on at least five round trips per week on at least one route between two or more point according to a published flight schedule using small aircraft.

Covered carrier means a certificated carrier, a commuter carrier, or a foreign air carrier operating to and from or within the United States, conducting scheduled passenger service or public charter service with at least one aircraft originally designed to have a passenger 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.

Gate departure time is the instant when the pilot releases the aircraft parking brake after passengers have been boarded and aircraft doors have been closed. In cases where the flight returned to the departure gate before wheels-off time and departed a second time, the reportable gate departure time is the last gate departure time before wheels-off time. In cases of an air return, 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 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 means that the aircraft leaves the boarding gate only to return to a gate for the purpose of allowing passengers to disembark from the aircraft.

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) This part applies to U.S. certificated air carriers, U.S. commuter air carriers and foreign air carriers that operate passenger service to a U.S. airport with an aircraft originally

designed to have a passenger capacity of 30 or more seats. Carriers must report all passenger operations that experience a tarmac time of 3 hours or more at a U.S. airport.

- (b) If a U.S. or a foreign air carrier has no 3-hour tarmac times in a given month, it still must submit a monthly report stating there were no 3-hour tarmac times.
- (c) U.S. carriers that submit Part 234 Airline Service Quality Performance Report must only submit 3-hour tarmac information for public charter flights and international passengers flights as the domestic scheduled passenger flight information is already being collected in Part 234.

§ 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 and Statistics on a monthly basis, setting forth the information for each of its 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 of the end of each month and shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Statistics, 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 diverted flight
- (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 (a)(17) of this section must be provided for each subsequent diverted airport landing.

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

PART 250 – [AMENDED]

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

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

5. Section 250.1 is revised by deleting the last paragraph that defines “sum of the values of the remaining flight coupons” and adding a definition of confirmed reserved space as follows:

§ 250.1 Definitions

* * * * *

Confirmed reserved space, means space on a specific date 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”, (e.g., consolidator ticket that does not show a fare amount on the ticket, frequent-flyer award ticket, or ticket obtained using a travel voucher), 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.

* * * * *

6. Section 250.2 is revised to read as follows:

§ 250.2b Carriers to request volunteers for denied boarding.

(b) Every carrier shall advise each passenger solicited to volunteer for denied boarding, no later than the time the carrier solicits that passenger to volunteer, 1) whether he or she is in danger of being involuntarily denied boarding (in doing so, the carrier must fully disclose the boarding priority rules that the carrier will apply for that specific flight), and 2) the compensation the carrier is obligated to pay if the passenger is involuntarily denied boarding. If an insufficient number of volunteers come forward, the carrier may deny boarding to other passengers in accordance with its boarding priority rules.

(c) If a carrier offers free or reduced rate air transportation as compensation to volunteers, the carrier must disclose all material restrictions on the use of that transportation 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.

7. 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 to passengers denied boarding involuntarily from an oversold flight at the rate of 200 percent of the fare (including any surcharges and air transportation taxes) to the passenger's next stopover, or if none, to the passenger's final destination, with a maximum of \$1,300. However, the compensation shall be one-half the amount described above, with a \$650 maximum, if the carrier arranges for comparable air transportation [see section 250.1], or other transportation used by the passenger that, at the time either such arrangement is made, is planned to arrive at the airport of the passenger's next stopover, or if none, the airport of the passenger's final destination, not later than 2 hours after the time the direct or connecting flight from which the passenger was denied boarding is planned to arrive in the case of interstate air transportation, or 4 hours after such time in the case of foreign air transportation.

(b) Carriers may offer free or reduced rate air transportation in lieu of the cash due under paragraph (a) of this section, if (1) the value of the transportation benefit offered is equal to or greater than the cash payment otherwise required, (2) the carrier fully informs the passenger of the amount of cash compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash payment, and (3) the carrier fully

discloses all material restrictions on the use of such free or reduced rate transportation before the passenger decides to give up cash payment in exchange for such transportation.

(c) For the purpose of calculating the denied boarding compensation for a passenger with a “zero fare ticket”, the requirements in subsections (a), (b), and (c) apply. The fare paid by these passengers for purpose of this calculation shall be the lowest cash, check, or credit card payment charged for a comparable class of ticket on the same flight.

(d) The Department of Transportation will review the maximum denied boarding compensation amounts prescribed in this part every two years. The Department will use the Consumer Price Index for All Urban Consumers (CPI-U) as of July of each review year to calculate the revised maximum compensation amounts. The Department will use the following formula:

Current Denied Boarding Compensation 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 July 2010 when the inflation adjustment provision was added to Part 250.

8. Section 250.9 is revised to read as follows:

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

(c) In addition to furnishing passengers with the carrier’s written statement as specified in sections (a) and (b), 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 restrictions or conditions applicable to the free or

discounted transportation and that they are entitled to choose cash or check compensation instead.

PART 253 – [AMENDED]

9. 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.

10. Section 253.7 is revised to read as follows:

§253.7 Direct notice of certain terms

A passenger shall not be bound by any terms restricting refunds of the ticket price or imposing monetary penalties on passengers unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket.

11. Section 253.9 is revised to read as follows:

§ 253.9: Notice of Contract of Carriage Choice-of-Forum Provisions

The Department considers any contract of carriage provision containing a choice-of-forum clause that attempts to preclude a passenger from bringing a consumer-related claim against a carrier in any court of competent jurisdiction, including a court within the jurisdiction of the passenger's residence in the United States, provided that the carrier does business within that jurisdiction, to be an unfair and deceptive practice prohibited by 49 U.S.C. § 41712.

PART 259 – [AMENDED]

12. 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.

13. Section 259.2 is revised to read as follows:

§259.2 Applicability.

This rule 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 the 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, with the exception that §259.5 and §259.7 do not apply to charter service.

14. Section 259.3 is revised to read as follows:

§259.3. Definitions.

Certificated air carrier means a U.S. air carrier that holds a certificate issued under 49 U.S.C. §41102 to operate passenger service or an exemption from 49 U.S.C. §41102.

Commuter air carrier means a U.S. air carrier as established by 14 CFR §298.3(b) that 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.

Covered carrier means a certificated carrier, a commuter carrier, or a foreign air carrier operating to and from or within the United States, conducting scheduled passenger service or public charter service with at least one aircraft originally designed to have a passenger 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.

15. 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 large U.S. hub airport, medium hub airport, small hub airport and non-hub airport at which it operates 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 a set number of hours as determined by the carrier and set out in its contingency plan, 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 tarmac delay every 30 minutes while the plane is delayed, including the reasons for the tarmac delay;

(6) assurance of sufficient resources to implement the plan; and

(7) assurance that the plan has been coordinated with airport authorities 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;

(8) 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

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

(c) 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 subparagraph (b)(1), for aircraft to remain on the tarmac for international flights covered in subparagraph (b)(2), and for the trigger point for food and water covered in subparagraph (b)(3). 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 those flights that are first offered for sale after the plan's amendment.

(d) 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 at least 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 as contained in its Contingency Plan for Lengthy Tarmac Delays will be considered an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 that is subject to enforcement action by the Department.

16. 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 this 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) 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 section 374.3 of this chapter 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 Part 382 of this chapter and for 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 section 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 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, 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 section 259.7 of this chapter; and

(13) 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.

17. Section 259.6 is revised to read as follows:

§259.6 Contract of Carriage

(a) Each U.S. and foreign air carrier that is required to adopt a contingency plan for lengthy tarmac delays shall incorporate this plan into its contract of carriage.

(b) Each U.S. and foreign air carrier that is required to adopt a customer service plan shall incorporate this plan in its contract of carriage.

(c) Each U.S. and foreign air carrier that has a website shall post its entire contract of carriage on its website in easily accessible form, including all updates to its contract of carriage.

18. 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 carrier's website (if any), 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 receipt of each complaint regarding its scheduled service to the complainant within 30 days of receiving it and shall send a substantive 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.

PART 399—[AMENDED]

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

Authority: 49 U.S.C. § 40101 et seq.

20. Section 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 (e.g., a combination of air transportation and ground accommodations), or a tour component (e.g., a hotel stay) 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 separate charges included within the total price (e.g., taxes or a fuel surcharge) may be stated in fine print or through links or “pop ups” on websites, fares that exclude any required charges may not be displayed in advertising or solicitations.

(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 way 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. Each-way fares may not be referred to as “one-way” fares.

(c) When offering a ticket for purchase by a consumer, for passenger air transportation or for an air tour or air tour component, a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, may not include “opt-out” provisions for additional optional services in connection with air transportation, an air tour, or air tour component that will automatically be added to the purchase if the consumer takes no other action. The consumer must affirmatively “opt in” (i.e., agree) to such a fee for the services 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. A new 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, the carrier must promptly and prominently disclose any increase in its fee for carry-on or checked baggage and any change in the checked baggage allowance for a passenger on the

homepage of the carrier's website. Such notice must remain on the homepage for at least three months after the change becomes effective.

(b) 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. or foreign air carrier must include information regarding the free passenger's baggage allowance and/or the applicable fee for a carry-on bag and the first and second checked bag.

(c) If a U.S. or foreign air carrier has a website where it advertises or sells air transportation, on its website the carrier must disclose information on fees for optional services that are charged to a passenger purchasing air transportation. Such disclosure must be clear, with a conspicuous link from the air carrier's homepage to the fee disclosure. For purposes of this section, the term "optional services" is defined as any service the airline provides beyond the provision of 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, and seat upgrades.

(d) The Department considers the failure to give the appropriate notice described in paragraphs (a), (b), and (c) to be an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

22. A new section 399.87 is added to read as follows:

§ 399.87: Prohibition on Post-Purchase Price Increase

It is an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712 for any seller of scheduled air transportation, or of a tour or tour component that includes scheduled air transportation to increase the price of that air transportation to a consumer, including but not limited to increase in the price of the seat, increase in the price for the carriage of passenger

baggage, or increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer.