

# Client Alert

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## DOT Tarmac Delay Regulations Extended to Foreign Carriers

On April 18, 2011, the Department of Transportation (DOT) issued a final rule expanding regulations pertaining to tarmac delays, denied boarding compensation, customer service plans, and fare advertising which extended to foreign carriers many passenger service requirements imposed on U.S. domestic carriers last year.

### A. Tarmac Delays

Foreign air carriers must establish a Tarmac Delay Contingency Plan setting forth the number of hours the carrier will permit an aircraft to remain on the tarmac at a U.S. airport before allowing passengers to deplane. Foreign carriers also must provide passengers with food and water in the event the aircraft remains on the tarmac for two or more hours and must provide operable lavatories and medical attention while the aircraft remains on the tarmac, irrespective of the length of the delay. In no instance may an international flight remain on the tarmac at a U.S. airport for more than four hours, subject to the above-mentioned exceptions. The only exceptions are if the pilot determines that safety or security reasons prevent the aircraft from leaving the tarmac to deplane passengers, or in the event air traffic control advises that returning to the gate would significantly disrupt airport operations.

Foreign carriers also must create and retain records regarding tarmac delays lasting more than three hours to include the length and cause of the delay, whether the flight ever departed, actions taken to minimize “hardships” to passengers, such as provision of food, water, and medical assistance, and maintenance of lavatories and an explanation if passengers were not permitted to deplane.

All carriers must coordinate their tarmac delay contingency plans with Customs and Border Protection (CBP) and the Transportation Security Administration (TSA), update passengers every 30 minutes during a tarmac delay of the status of the flight and the reason for the delay, allow passengers to deplane if the aircraft is at the gate or another disembarkation area with the door open (and advise them they may do so) and submit a monthly report to the DOT regarding the occurrence of tarmac delays of three or more hours. Finally, in the case of a code-share flight, the plan of the carrier under whose code the service is marketed will govern a passenger’s transportation, unless the marketing carrier specifies in its contract of carriage that the operating carrier’s plan governs.

### B. Customer Service Plans

Foreign carriers now must adopt a “Customer Service Plan” that addresses offering customers the lowest fares available, notifying customers about delays, cancellations, and diversions; timely delivery of baggage; accommodating passengers’ needs during tarmac delays and in “bumping cases”; and ensuring quality customer service. Carriers also must conduct audits of their compliance with their plans and maintain the results for two years. Tarmac delay contingency plans, customer service plans and contracts of carriage must be posted on airline websites. Carriers also must inform consumers how to file a complaint with the carrier on its website and on e-ticket confirmations, and must adhere to strict guidelines for acknowledging and responding to customer complaints.

### C. Baggage Delivery

The new regulations also establish standards all carriers must meet with respect to some of the issues addressed in their customer service plans.

One notable new standard relates to timely delivery of baggage and requires that carriers reimburse passengers for any fee paid to transport baggage which was later lost, make reasonable efforts to return mishandled baggage within 24 hours and compensate passengers for reasonable expenses incurred as a result of the delay, subject to the liability limitations set forth in existing regulations and treaties.

#### **D. Denied Boarding Compensation**

The new regulations also increase minimum denied boarding compensation (DBC) limits from \$400/\$800 (depending on the length of the delay), to \$650/\$1,300 or 200%/400% of the fare, whichever is less. The lower figures apply if the alternate transportation arrives at the next stopover or destination within two hours of the planned arrival for domestic transportation, or four hours for international transportation where the passenger is denied boarding at a U.S. airport. DBC also must be offered to “zero fare ticket” holders (*e.g.*, holders of frequent flyer award tickets) who are involuntarily bumped. The Rule also implements automatic inflation adjustments of the minimum limits every two years.

#### **E. Full Fare Advertising**

The DOT also has modified its policies related to enforcement of Rules pertaining to full fare advertising. The Rule states that the advertised price for air transportation must be the entire price to be paid by the customer and no longer permits carriers to state government-imposed taxes and fees separately from the advertised price.

#### **F. Baggage Fees and Allowances**

The Rule also requires that carriers prominently display on their website any increase in the fee for baggage or any change to the free baggage allowance for checked or carry-on baggage for at least three months after the increase or change. Additionally, the Rule requires that carriers list on e-ticket confirmations any free baggage allowance and any applicable fees for the first and second checked baggage and any fees for carry-on bags.

#### **G. Optional Services Fees**

Finally, carriers must maintain webpages linked to their homepages that list all fees for optional services, such as checked or carry-on baggage, seat assignments, telephone reservations, meals, and on-board entertainment. Further, a carrier that markets a code-share flight operated by a different carrier must disclose on its website any differences between the two carriers’ fees for optional services.

The Rules are scheduled to take effect on August 23, 2011, except for the new Rules regarding full fare advertising, which will take effect on October 24, 2011.



If you have any questions or would like further information on this subject, please contact:

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