

Client Bulletin

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DOT Proposes Extension of Tarmac Delay Reporting Requirements to Foreign Air Carriers and Increase in Denied Boarding Compensation

On June 2, 2010, the United States Department of Transportation (DOT) proposed new consumer protections for air travelers. Among the proposals were increased denied boarding compensation, adoption and publication on foreign carriers' websites of a customer service plan and prohibition of post ticket purchase price increases for such items as baggage, fuel surcharges and seat prices. Most controversial, and most important to foreign air carriers, is the proposed expansion to foreign airlines' operations at U.S. airports of DOT rules that impose a three hour limit for airline tarmac delays for domestic flights.

The proposed rule would require foreign carriers to adopt contingency plans, similar to those required of domestic air carriers, detailing procedures for dealing with tarmac delays at any U.S. airport to which a foreign air carrier operates. Tarmac delays are defined as the holding of an aircraft on the ground either before or after landing with no opportunity for the passengers to deplane. While on domestic flights a carrier cannot permit, with certain exceptions, an aircraft to remain on the tarmac for more than three hours before allowing passengers to deplane, there is no specific time period beyond which a foreign air carrier must permit its passengers to debark. Under the proposed new rules, the time period is to be determined by each foreign air carrier and must be set forth in the carrier's contingency plan which must be published on its website.

The foreign air carrier must afford the passenger an opportunity to deplane the aircraft unless the pilot in command determines that there is a safety or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers, or if air traffic control advises the pilot in command that returning to the gate or another disembarkation point, such as a hardstand, would significantly disrupt airport operations.

Even if the foreign carrier operating an international flight does not deplane passengers, it must provide adequate food and potable water no later than two hours after the aircraft leaves the gate or touches down if the aircraft remains on the tarmac, subject to the proviso that the pilot in command may determine that the provision of food and potable water poses safety or security concerns. In all situations, the foreign air carrier must assure operable lavatory facilities as well as adequate medical attention while the plane remains on the tarmac. The crew also is required to notify the passengers at least every thirty minutes while the plane is delayed, including the reason for the tarmac delay.

The proposed CFR amendment also requires the foreign air carrier to coordinate its contingency plan with the U.S. Customs and Border Protection (CBP) and the Transportation Security Administration (TSA) at each airport to which the foreign air carrier operates, including diversion airports. This latter requirement is particularly important since there have been several instances where, due to adverse meteorological conditions, a foreign air carrier is required to go to a diversion airport, only to have its passengers confined to the aircraft for several hours because CBP or TSA officials refuse deplaning because of the absence of adequate CBP or TSA personnel on duty.

Each foreign air carrier is required to maintain information for two years following any tarmac delay that lasts at least three hours and must report to the DOT the tarmac delay data on a monthly basis in each situation in which the flight incurred a tarmac delay of three hours or more.

The proposed revised denied boarding compensation rules would increase the maximum denied boarding compensation by tying it to the consumer price index. In cases where a passenger is involuntarily denied boarding due to an oversold flight, the compensation would be 200% of the fare, with a maximum of \$650, if the airline arranges for comparable air transportation which gets the passenger to the next stopover or destination within two hours. That amount is doubled to \$1,300 if the passenger cannot get to his next stopover or destination within four hours. For foreign air transportation, the \$650 amount is due in the event that the passenger arrives at his destination or stopover within four hours. In short, the amount of \$1,300 will be due as denied boarding compensation unless the airline can get the passenger to his or her destination or stopover in two hours for domestic transportation or four hours for foreign air transportation.

A proposed amendment to 14 CFR § 259.5 requires, in the name of consumer protection, each foreign air carrier to adopt a customer service plan which needs to be incorporated into its contract of carriage and posted on its website. The customer service plan requires the foreign air carrier to provide information about the following areas of service:

1) The offering of the lowest fare available on the carrier's website at the ticket counter; 2) notifying consumers about known delays, cancellations and diversions; 3) on time delivery of baggage; 4) cancellation of reservations without a penalty for at least 24 hours after the reservations are made; 5) prompt ticket refunds; 6) proper accommodation of passengers with disabilities; 7) meeting customers' needs during lengthy tarmac delays; 8) handling of bumped passengers; 9) disclosure of cancellation policies and frequent flyer rules; 10) ensuring responsiveness to customers' complaints; and 11) identification of services

to mitigate passenger inconvenience resulting from flight cancellations and misconnections.

Since April of this year, domestic air carriers have been required to post on their websites their policies with respect to extended tarmac delays and the contingency plans adopted by each carrier. This same requirement, assuming that the notice of proposed rulemaking takes effect, will be applicable to foreign air carriers. The proposed rules will be published in the Federal Register shortly and there is a 60 day period for foreign air carriers, or any other interested parties, to submit their comments on the proposal. This means that any comments submitted by foreign carriers should be directed to the DOT by early August.

Following the adoption of a final rule by the DOT, it is anticipated that the new rules would take effect 180 days after their publication in the Federal Register.

Should you wish any further information concerning the foregoing, any assistance in preparing contingency plans or assistance in preparing any comments to the DOT on the proposed new consumer protection rules, please feel free to contact us at the address shown below.



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