

charters that operate to and from the United States if no new passengers are picked up in the United States.

[Docket No. DOT-OST-2010-0140, 76 FR 23163, Apr. 25, 2011]

§ 259.3 Definitions.

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

Commuter air carrier means a U.S. carrier that has been found fit under 49 U.S.C. 41738 and is authorized to carry passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule using small aircraft as defined in 14 CFR 298.2.

Covered carrier means a certificated carrier, a commuter carrier, or a foreign air carrier operating to, from or within the United States, conducting scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more seats.

Foreign air carrier means a carrier that is not a citizen of the United States as defined in 49 U.S.C. 40102(a) that holds a foreign air carrier permit issued under 49 U.S.C. 41302 or an exemption issued under 49 U.S.C. 40109 authorizing direct foreign air transportation.

Large hub airport means an airport that accounts for at least 1.00 percent of the total enplanements in the United States.

Medium hub airport means an airport accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States.

Non-hub airport means an airport with 10,000 or more annual enplanements but less than 0.05 percent of the country's annual passenger boardings.

Small hub airport means an airport accounting for at least 0.05 percent but less than 0.25 percent of the total enplanements in the United States.

Tarmac delay means the holding of an aircraft on the ground either before

taking off or after landing with no opportunity for its passengers to deplane.

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§ 259.4 Contingency Plan for Lengthy Tarmac Delays.

(a) *Adoption of Plan.* Each covered carrier shall adopt a Contingency Plan for Lengthy Tarmac Delays for its scheduled and public charter flights at each U.S. large hub airport, medium hub airport, small hub airport and non-hub airport at which it operates or markets such air service and shall adhere to its plan's terms.

(b) *Contents of Plan.* Each Contingency Plan for Lengthy Tarmac Delays shall include, at a minimum, the following:

(1) For domestic flights, assurance that the covered U.S. air carrier will not permit an aircraft to remain on the tarmac for more than three hours before allowing passengers to deplane unless:

(i) The pilot-in-command determines there is a safety-related or security-related reason (e.g. weather, a directive from an appropriate government agency) why the aircraft cannot leave its position on the tarmac to deplane passengers; or

(ii) Air traffic control advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.

(2) For international flights operated by covered carriers that depart from or arrive at a U.S. airport, assurance that the carrier will not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours before allowing passengers to deplane, unless:

(i) The pilot-in-command determines there is a safety-related or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers; or

(ii) Air traffic control advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.

(3) For all flights, assurance that the carrier will provide adequate food and

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potable water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security considerations preclude such service;

(4) For all flights, assurance of operable lavatory facilities, as well as adequate medical attention if needed, while the aircraft remains on the tarmac;

(5) For all flights, assurance that the passengers on the delayed flight will receive notifications regarding the status of the delay every 30 minutes while the aircraft is delayed, including the reasons for the tarmac delay, if known;

(6) For all flights, assurance that the passengers on the delayed flight will be notified beginning 30 minutes after scheduled departure time (including any revised departure time that passengers were notified about before boarding) and every 30 minutes thereafter that they have the opportunity to deplane from an aircraft that is at the gate or another disembarkation area with the door open if the opportunity to deplane actually exists;

(7) Assurance of sufficient resources to implement the plan; and

(8) Assurance that the plan has been coordinated with airport authorities (including terminal facility operators where applicable) at each U.S. large hub airport, medium hub airport, small hub airport and non-hub airport that the carrier serves, as well as its regular U.S. diversion airports;

(9) Assurance that the plan has been coordinated with U.S. Customs and Border Protection (CBP) at each large U.S. hub airport, medium hub airport, small hub airport and non-hub airport that is regularly used for that carrier's international flights, including diversion airports; and

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

(c) *Code-Share Responsibility.* The tarmac delay contingency plan of the carrier under whose code the service is

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marketed governs, if different from the operating carrier, unless the marketing carrier specifies in its contract of carriage that the operating carrier's plan governs.

(d) *Amendment of plan.* At any time, a carrier may amend its Contingency Plan for Lengthy Tarmac Delays to decrease the time for aircraft to remain on the tarmac for domestic flights covered in paragraph (b)(1) of this section, for aircraft to remain on the tarmac for international flights covered in paragraph (b)(2) of this section, and for the trigger point for food and water covered in paragraph (b)(3) of this section. A carrier may also amend its plan to increase these intervals (up to the limits in this rule), in which case the amended plan shall apply only to departures that are first offered for sale after the plan's amendment.

(e) *Retention of records.* Each carrier that is required to adopt a Contingency Plan for Lengthy Tarmac Delays shall retain for two years the following information about any tarmac delay that lasts more than three hours:

(1) The length of the delay;

(2) The precise cause of the delay;

(3) The actions taken to minimize hardships for passengers, including the provision of food and water, the maintenance and servicing of lavatories, and medical assistance;

(4) Whether the flight ultimately took off (in the case of a departure delay or diversion) or returned to the gate; and

(5) An explanation for any tarmac delay that exceeded 3 hours (*i.e.*, why the aircraft did not return to the gate by the 3-hour mark).

(f) *Unfair and deceptive practice.* A carrier's failure to comply with the assurances required by this rule and contained in its Contingency Plan for Lengthy Tarmac Delays will be considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 that is subject to enforcement action by the Department.

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§ 259.5 Customer Service Plan.

(a) *Adoption of Plan.* Each covered carrier shall adopt a Customer Service