

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

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January 11, 2012**

**Answers to Frequently Asked Questions Concerning the Enforcement of the Second
Final Rule on Enhancing Airline Passenger Protections (EAPP #2)**

[Note: This document includes updated questions and answers to the FAQs covering EAPP #1 published on April 28, 2010, and that are amended by this second rule to enhance airline passenger protections. New FAQs will be added to the document when completed.]

I. Overview

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

The following chart summarizes the rule's main provisions:

Subject	Final Rule
<u>Tarmac Delay Contingency Plans</u>	<ul style="list-style-type: none">• Requires foreign air carriers operating to or from the U.S. with at least one aircraft with 30 or more passenger seats to adopt and adhere to tarmac delay contingency plans.• Requires U.S. and foreign air carriers to not permit an international flight to remain on the tarmac at a U.S. airport for more than four hours without allowing passengers to deplane subject to safety, security, and ATC exceptions.• Expands the airports at which airlines must adhere to the contingency plan terms to include small hub and non-hub airports, including diversion airports.• Requires U.S. and foreign carriers to coordinate plans with Customs and Border Protection (CBP) and the Transportation Security Administration (TSA).• Requires notification regarding the status of delays every 30 minutes while aircraft is delayed, including reasons for delay, if known.• Requires notification of opportunity to deplane from an aircraft that is at the gate or another disembarkation area with door open if the

	<p>opportunity to deplane actually exists.</p>
<p><u>Tarmac Delay Data</u></p>	<ul style="list-style-type: none"> • Requires all carriers that must adopt tarmac delay contingency plans to file data with the Department regarding lengthy tarmac delays.
<p><u>Customer Service Plans</u></p>	<ul style="list-style-type: none"> • Requires foreign air carriers that operate scheduled passenger service to and from the U.S. with at least one aircraft with 30 or more passenger seats to adopt, follow and audit customer service plans. • Establishes standards for the subjects U.S. and foreign air carriers must cover in customer service plans. Examples include: <ul style="list-style-type: none"> • delivering baggage on time, including reimbursing passengers for any fee charged to transport a bag if the bag is lost; • where ticket refunds are due, providing prompt refunds including refund of optional fees charged to a passenger for services that the passenger was unable to use due to an oversale situation or flight cancellation; and • 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 if the reservation is made one week or more prior to a flight's departure date .
<p><u>Posting of Customer Service Plans and Tarmac Delay Contingency Plans</u></p>	<ul style="list-style-type: none"> • Requires foreign carriers to post their required contingency plans, customer service plans, and contracts of carriage on their websites as is already required of U.S. carriers.
<p><u>Response to Consumer Problems</u></p>	<ul style="list-style-type: none"> • Expands the pool of carriers that must respond to consumer problems to include foreign air carriers operating scheduled passenger service to and from the U.S. with at least one aircraft with 30 or more passenger seats (i.e., monitor the effects of irregular flight operations on consumers; inform consumers how to file a complaint with the carrier, and provide substantives responses to consumer complaints within 60 days).
<p><u>Oversales</u></p>	<ul style="list-style-type: none"> • Increases the minimum denied boarding compensation limits to

	<p>\$650/\$1,300 or 200%/400% of the one-way fare, whichever is smaller.</p> <ul style="list-style-type: none"> • Implements an automatic inflation adjuster for minimum DBC limits every 2 years. • Clarifies that DBC must be offered to “zero fare ticket” holders (e.g., holders of frequent flyer award tickets) who are involuntarily bumped. • Requires that a carrier verbally offer cash/check DBC if the carrier verbally offers a travel voucher as DBC to passengers who are involuntarily bumped. • Requires that a carrier inform passengers solicited to volunteer for denied boarding about all material restrictions on the use of transportation vouchers offered in lieu of cash.
<p><u>Full Fare Advertising</u></p>	<ul style="list-style-type: none"> • Enforces the full fare advertising rule as written (i.e., ads which state a price must state the full price to be paid). Carriers currently may exclude government taxes/fees imposed on a per-passenger basis. • Clarifies the rule’s applicability to ticket agents. • Prohibits carriers and ticket agents from advertising fares that are not the full fare and imposes stringent notice requirements in connection with the advertisement of “each-way” fares available for purchase only on a round-trip basis. • Prohibits opt-out provisions in ads for air transportation.
<p><u>Baggage and Other Fees and Related Code-Share Issues</u></p>	<ul style="list-style-type: none"> • Requires U.S. and foreign air carriers to disclose changes in bag fees/allowances on their homepage for three months, to include information regarding the free baggage allowance. • Requires carriers (U.S. and foreign) and ticket agents to include on e-ticket confirmations information about the free baggage allowance and applicable fees for the first and second checked bag and carry-on but allows ticket agents, unlike carriers, to do so through a hyperlink. • Requires carriers (U.S. and foreign) and ticket agents to inform passengers on the first screen on which the ticket agent or carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can go to see these baggage fees.

	<ul style="list-style-type: none"> • Requires U.S. and foreign air carriers to disclose all fees for optional services to consumers through a prominent link on their homepage. • Requires that the same baggage allowances and baggage fees apply throughout a passenger's journey. • Requires the marketing carrier to disclose on its website any difference between its optional services and fees and those of the carrier operating the flight. Disclosure may be made through a hyperlink to the operating carriers' websites that detail the operating carriers' fees for optional services, or to a page on its website that lists the differences in policies among code-share partners.
<u>Post-Purchase Price Increases</u>	<ul style="list-style-type: none"> • Bans the practice of post-purchase price increases in air transportation or air tours unless the increase is due to an increase in government-imposed taxes or fees and only if the passenger was provided full disclosure of the potential for the increase and affirmatively agreed to the potential for such an increase prior to purchase. • Requires any seller of scheduled air transportation to notify a consumer of the potential for a price increase for the scheduled air transportation prior to the time that the full amount agreed upon has been paid by the consumer and to obtain the consumer's written consent to the potential for such an increase prior to accepting any payment, including a partial payment.
<u>Flight Status Changes</u>	<ul style="list-style-type: none"> • Requires U.S. and foreign air carriers operating scheduled passenger service with any aircraft with 30 or more seats to notify consumers through whatever means is available to the carrier for passengers who subscribe to the carrier's flight status notification services, in the boarding gate area, on a carrier's telephone reservation system and on its website of delays of 30 minutes or more, cancellations and diversions within 30 minutes of the carrier becoming aware of a change in the status of a flight.
<u>Choice-of-Forum Provisions</u>	<ul style="list-style-type: none"> • Prohibits U.S. and foreign air carriers from limiting a passenger's forum to pursue litigation to a particular inconvenient venue

2. When will these passenger protections become effective?

Most provisions in the second final rule on enhancing airline passenger protections (EAPP #2) become effective on August 23, 2011. The Department delayed the effective date from August 23, 2011, to January 24, 2012, for requirements pertaining to baggage fees, post purchase price increases, flight status changes and holding a reservation without payment for twenty-four hours. The Department also delayed the effective date from October 24, 2011, to January 24, 2012, for requirements pertaining to full fare advertising. The effective date remains August 23, 2011, for all the others requirement in the final rule.

II. Reporting Tarmac Delay Data (14 CFR Part 244)

1. When is the first tarmac delay report due? Must a covered carrier include any reportable tarmac delay that occurred between August 1, 2011, and August 22, 2011, in the first report?

The first tarmac delay report is due on or before October 17, 2011. This report must include data for any reportable tarmac delay incident that occurred between August 23, 2011, and September 30, 2011. If you do not have any reportable tarmac delay incident during this period, or your Part 234 report already includes data for that incident, you do not need to file a report under Part 244. Tarmac delay incidents that occurred before August 23, 2011, are not to be reported under Part 244.

2. What is a “reportable tarmac delay”? When does the 3-hour clock start to run?

A reportable tarmac delay is a tarmac delay at a large, medium, small, or non-hub U.S. airport that lasts for more than three hours. The 3-hour limit begins when passengers no longer have the option to get off of the aircraft, which usually occurs when the doors of the aircraft are closed. However, if an aircraft is at the gate with the doors open, and passengers are not allowed off the aircraft, the time limit would start at the point when passengers were no longer permitted to deplane. If the flight that experienced the reportable tarmac delay is reported under the Airline Service Quality Reports required by 14 CFR Part 234, the data for that flight should be reported under Part 234 instead of Part 244.

In the final rule, we state that covered carriers should file Part 244 reports for any reportable tarmac delay of “**three hours or more.**” This standard is inconsistent with the tarmac delay contingency plan requirements under Part 259 and the existing reporting requirements of the Department’s Bureau of Transportation Statistics (BTS), both of which use a “**more than three hours**” standard. We intend to correct this inconsistency in a future rulemaking to make it clear that carriers do not need to file a report for a tarmac delay of exactly three hours. In the meantime, as a matter of enforcement policy, we will accept reports under Part 244 that meet the “**more than three hours**” criteria. For additional information, please refer to BTS Accounting and Reporting Directive No. 303A, issued on August 12, 2011.

3. On a flight operated under a code-share or wet lease arrangement, who has the duty to file a Part 244 tarmac delay report — the marketing carrier or the operating carrier?

With respect to code-share arrangement, we state in the preamble that it is up to the code-share partners to decide who has the responsibility to file the report. Based on each carrier’s resources and ability, it may be more convenient for a foreign carrier to have its U.S. code-share partner file the reports, but the Department will not dictate which carrier must file the report and we will hold both marketing and operating carriers legally responsible if data for reportable tarmac delays are not timely or accurately filed. Consistent with the BTS reporting directive noted above in question #1, we will apply the same principle to other joint service operations, such as wet lease services and substitution of services.

III. Oversales (14 CFR Part 250)

- 1. If a passenger purchased a ticket before August 23, 2011, but the travel will not commence until on or after August 23, 2011, do the new Part 250 provisions (e.g., DBC formula and limits) apply if that passenger is bumped involuntarily?**

The new Part 250 provisions apply to any flight that commences on or after August 23, 2011, even if the ticket for that travel was purchased before that date.

- 2. Does the Department's definition for "zero fare tickets" include free or reduced-rate travel vouchers that carriers provide to ticket agents as incentives based on their volume of sales?**

Discounted or free travel earned by ticket agents through a carrier's wholesale/retail incentive programs (e.g., incentives earned based on the volume of an agent's sales of the airline's tickets) are deemed internal to the industry, similar to the free or discounted travel vouchers offered to airline employees. Air transportation obtained by these travel agents or ticket agents are not considered "zero fare tickets" and therefore the DBC rule does not apply.

- 3. Does the Department consider a ticket offered to the public through an auction or a raffle drawing in a charity event a "zero fare ticket" for denied boarding compensation purposes?**

Yes. Although the recipients of these tickets sometimes may not pay anything in exchange for these tickets, carriers do gain publicity and establish public goodwill from offering these tickets. In addition, there is an expectation by the recipients of the tickets that they are like any other ticket and the recipients may incur other expenses associated with the travel or the expectation of the travel. These passengers should be, and are, protected by the DBC rules. Carriers may not impose conditions on those tickets that preclude the application of DBC rule.

- 4. What is a "substantial monetary payment" as referred to in the definition of "zero fare ticket"?**

A "zero fare ticket" is a ticket acquired without substantial monetary payment. The word "zero" should not be construed literally because a ticket that carries a partial monetary payment could still qualify as a "zero fare ticket." To determine whether the monetary payment is substantial we focus on various factors such as the total market value of the ticket, the service(s) acquired with each kind of consideration, and the proportion of the value acquired with each kind of consideration in comparison to that total value. For example, if a passenger used frequent flier miles to obtain a ticket and paid cash for the requisite administrative fee, that ticket is still a "zero fare ticket." On the other hand, if the passenger paid cash for a coach class ticket and used frequent flier miles to upgrade to a business class seat, that ticket will not be considered a "zero fare ticket." In the latter example, when calculating DBC for that passenger the base fare should be the one-way fare for that coach ticket. However, if the carrier did not provide business class service on the alternate flight, it must credit the frequent flier miles used for the upgrade back to the passenger's account.

- 5. When calculating the base fare for DBC for a "zero fare ticket", should carriers use the lowest fare ever offered to the public on the same flight as the base fare?**

When calculating the base fare for DBC for a zero fare ticket holder, carriers must use an amount no lower than the lowest cash, check, or credit card payment *charged* for the same class of service on the same flight, i.e., paid by a passenger. If there was a lower fare available but no purchase at that price was ever made, the carrier may not use that lower fare as the base for calculating DBC.

- 6. Must a carrier offer “zero fare ticket” holders DBC by cash or check at the airport following an involuntary denied boarding? If the carrier is unable to determine the lowest cash, check or credit card payment for a ticket in the same class of service on the bumped passenger’s original flight at the airport, how can the carrier present to the bumped passenger meaningful options between DBC based on cash/check vs. travel vouchers?**

To the extent feasible, a carrier should offer a bumped zero fare ticket holder DBC by cash or check at the airport following the involuntary denied boarding. If the carrier is unable to do so at that time, our rule allows the carrier up to 24 hours after the denied boarding occurs (or by the next business day if the denied boarding occurs on a Friday or a day before a federal holiday) to send a check by mail or other means to the passenger. If the carrier wishes to offer the passenger a travel voucher as an alternative to DBC, it must do so at the same time it makes the cash/check offer, by including in the same mailing a travel voucher with clear disclosure of any material restrictions, and instructing the passenger to mail back the check should he or she wish to accept the travel voucher offer.

- 7. What are “unused ancillary fees” referred to in section 250.5(f) that a carrier must refund to passengers who are denied boarding involuntarily?**

“Unused ancillary fees” are any ancillary fees for optional services paid by a passenger who is denied boarding (either voluntary or involuntary) where the services covered by the fees were not received on the alternate transportation provided the bumped passenger. For example, if a passenger paid \$25 for a checked bag, and the bag was transported on the alternate flight that has the same baggage fee without additional cost to the passenger, the baggage transportation service is ultimately used by the passenger and the carrier does not need to refund the baggage fee. On the other hand, if the passenger paid \$10 for extra leg room on the original flight, and did not receive the extra leg room on the alternative flight, that \$10 fee must be refunded.

- 8. If an involuntarily bumped passenger is put on a flight of another carrier, and the passenger as to pay more for ancillary services on the alternative flight, is the first carrier responsible for the additional fees? What if the second carrier’s ancillary fees are less than that of the first carrier?**

In order to limit its DBC liability, a carrier must offer alternate transportation, in the form of “air transportation” with a confirmed reservation at *no additional charge* to the passenger, or in the form of other transportation accepted and used by the passenger. We consider the transportation of baggage a part of the “air transportation” of the bumped passenger. If this passenger must pay more for his or her substitute air transportation (including baggage), then this passenger has not received “alternate transportation” as defined in Part 250 and consequently is entitled to the 400% denied boarding compensation rate. If the second carrier’s fees for checked or carryon baggage are higher than the first carrier’s charges, the first carrier must cover the difference or the passenger would be entitled to the maximum DBC (e.g., 400% of one-way fare up to \$1,300). If the second carrier’s baggage charges are lower than those of the first carrier, the first carrier must refund the difference. With respect to other ancillary fees such as food, beverage, seat selection, and in-flight entertainment, because they are not considered part of the “air transportation,” the first carrier would not be responsible for any additional charges that the second carrier may impose. To the extent the first carrier had collected fees for such optional services from the passenger in advance of the flight from which

he or she is bumped and those services are not applicable to the alternate transportation (e.g., the alternate transportation is on another carrier or on the same carrier but not available on the alternate aircraft), a carrier must refund those fees to the bumped passenger.

9. Must a carrier disclose any additional ancillary fees that a passenger will pay on an alternative flight when offering such flight to a passenger (either a volunteer or an involuntarily bumped passenger)?

As a general matter, a carrier does not need to disclose to a bumped passenger any fee for which it assumes responsibility. For example, as discussed above in response to question #9, in an involuntary denied boarding situation, because the carrier that bumped the passenger from its flight is responsible for any additional baggage fees charged by the second carrier, the first carrier does not need to disclose such difference in fees to the passenger. For other ancillary fees, in a voluntary denied boarding situation, a carrier must disclose any ancillary fees the passenger may have to pay (and any fee difference, if applicable) so the passenger can make an informed decision about whether to volunteer.

10. When a carrier verbally offers travel vouchers to passengers that are solicited to be volunteers, does the carrier have to verbally disclose all material restrictions for the use of the travel vouchers?

According to 14 CFR § 250.9(c), when a carrier verbally offers a travel voucher as DBC to a passenger who is *involuntarily* denied boarding, the carrier must verbally disclose all material restrictions for the use of that travel voucher. In the preamble of the rule, we discussed extensively the reason for applying such a requirement to both involuntary and voluntary denied boarding situations. However, inadvertently, the rule text in 14 CFR 250.2b(c) does not specify the “verbal” disclosure requirement applicable to voluntarily denied boarding. Therefore, we are not requiring that when the carrier verbally offers vouchers to a potential volunteer, it must *verbally* disclose any material restrictions on the use of such vouchers. However, if verbal disclosure is not provided, written disclosure of material restrictions must be included in the voucher solicitation documents that the carrier hands to any volunteers. Under section 250.2b(c), when offering travel vouchers to prospective volunteers, the carrier must disclose all material restrictions on the vouchers “*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 (emphasis added).” We will consider addressing this matter in a future rulemaking to reflect our intent as discussed in the preamble.

11. Must a carrier verbally describe all material restrictions on a travel voucher in detail when verbally offering such voucher to each passenger who is involuntarily denied boarding?

We are mindful that in an involuntary denied boarding situation, the gate agents are often under tremendous time pressure to resolve the oversales situation as well as handle the boarding process. Thus, the carrier is not required to give each individual who is denied boarding involuntarily a personal presentation. The disclosure briefing can be conducted in a group setting with all passengers involuntarily denied boarding present. The description of the material restrictions can be general as long as the passengers are aware of the nature of each restriction. For example, a sentence like the following can be used: “The number of seats on each flight for which these travel vouchers can be used is limited, the vouchers cannot be transferred to another person, and they expire in two years.”

12. If a carrier decides that it will not verbally make a travel voucher offer to a bumped passenger at all, how can the carrier communicate with the passenger regarding what options he or she has?

If a carrier does not want to make any verbal offer at all, it can simply put all offers (including cash or check DBC and the travel voucher option) and restrictions associated with those offers in writing and verbally inform the passenger that he or she has been involuntarily denied boarding and has certain options. Then the carrier can hand over the written notice and statements to the passenger and request that the passenger review the material and advise the agent of his/her choices.

13. With respect to the revised written statement in 14 CFR 250.9 that a carrier must provide to bumped passengers, and to any other interested person upon request at an airport, may a foreign air carrier that solely markets and operates international flights to and from the United States edit the text of the statement to omit the text that solely deals with denied boarding compensation for domestic flights?

Yes. On August 5, 2011, the Department issued a notice that permits a foreign air carrier to omit the “Domestic Transportation” portion of the “Amount of Denied Boarding Compensation” section of the written explanation, and requires that the remainder of the written explanation must be the verbatim text of the notice that appears in 14 CFR 250.9.

The Notice is available at <http://airconsumer.ost.dot.gov/>.

IV. Tarmac Delay Contingency Plans (14 CFR 259.4)

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

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

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

A covered U.S. and foreign carrier must have a contingency plan covering each large, medium, small and non-hub airport at which it operates. A large hub airport means an airport accounting for at least 1.00 percent of the total enplanements in the United States. A medium hub airport means an airport accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States. A small hub airport means an airport accounting for at least 0.05%, but less than 0.25% of the total enplanements in the United States. A non hub airport means an airport accounting for enplanements of more than 10,000 passengers but less than 0.05% of the total enplanements in the United States. Information about airport sizes is available at http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/categories/.

3. How many large, medium, small, and non-hub airports are there?

According to the Department’s Bureau of Transportation Statistics (BTS) data, in calendar year 2009 (latest available data), there were 29 large hub airports, 36 medium hub airports, 72 small hub, and 231 non hub airports. A list of airport information, including name, location, and size is available on the web at http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy09_cs_enplanements.pdf. Note that for purposes of this rule, in defining the hub size of an airport, the Department uses the airport-specific enplanement thresholds published by BTS and does not aggregate airport enplanement data on a community basis as is done for other purposes.

4. What must be included in the contingency plans?

- Assurance that a U.S. carrier will not permit aircraft to remain for more than three hours on the tarmac for domestic flights without providing passengers an opportunity to deplane, subject to safety, security and Air Traffic Control (ATC)-related exceptions;
- Assurance that a U.S. or foreign carrier will not permit aircraft to remain on the tarmac for more than four hours for international flights without providing passengers an opportunity to deplane, subject to safety, security, or ATC-related reasons;
- Assurance of food and water for passengers after 2 hours without a chance to deplane, unless safety or security considerations preclude such service;
- Assurance of operable lavatory facilities while on the tarmac, and adequate medical attention if needed;
- Assurance of sufficient resources to carry out the plan;
- Assurance of coordination with airport authorities (including terminal facility operators where applicable) at all large, medium, small, and non-hub airports, including diversion airports;
- Assurance of coordination with Customs and Border Protection (CBP) and the Transportation Security Administration (TSA) at all large, medium, small and non-hub airports, including diversion airports;
- Assurance that passengers on the delayed flight will receive notifications regarding the status of the delay every 30 minutes while the aircraft is delayed; and
- Assurance that the passengers on the delayed flight will be notified beginning 30 minutes after the scheduled departure time 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.

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

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

6. Should carriers record the door closing time in order to keep track of the “clock” for purposes of a lengthy tarmac delay?

There is no requirement in the tarmac delay rule that a carrier record the door closing time. What is important to note, however, is that the clock on a tarmac delay during departure starts running from — and thus carriers should keep track of — the last time that passengers had an opportunity to deplane, which could be when the door is closed or even before the door has been closed if passengers have been boarded but the aircraft does not push back and, despite the doors remaining open, the passengers are not provided the opportunity to deplane. In the event that the Department determines it necessary to investigate an incident

involving a lengthy tarmac delay, we expect that carriers will have adequate information to provide a timeline of events.

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

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

- 8. For a departure delay, is a flight required to return to the terminal to deplane passengers within the 3-hour (domestic flight) or 4-hour (international flight) limit if it appears the flight may be next in line for take-off or passengers do not want to return to the terminal?**

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

- 9. If a carrier offers passengers the opportunity to deplane consistent with this rule and the flight subsequently prepares to depart again, does the carrier have to re-board passengers or wait for passengers that chose to deplane?**

No, but should the carrier choose not to do so, we recommend that a carrier advise any passenger who desires to deplane that the flight may or will leave without him or her.

- 10. For a departure delay, what are carriers' responsibilities to passengers once an aircraft returns to the gate?**

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

amenities and refunds. A carrier is not required to re-board a passenger who chooses to deplane the aircraft. We encourage carriers to announce to deplaning passengers that the flight will or may leave without him/her.

11. Does a carrier have to offload checked bags for passengers who opt to deplane because of tarmac delays?

We are not requiring carriers to do so. However, entities such as CBP, TSA, or a foreign government may have rules requiring deplaned passengers' luggage to be off-loaded along with the passenger and carriers should check with those entities for their requirements. We do recommend that, even in the absence of any government requirement to off-load luggage, carriers do so if circumstances permit.

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

Yes. A carrier must assure that it has sufficient resources to carry out the plan and that it will coordinate with airport authorities, CBP, and TSA at all large, medium, small, and non-hub airports that the carrier serves, including diversion airports. A carrier must also make announcements every 30 minutes regarding the status of the delay and of the opportunity to deplane, where applicable.

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

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

14. How can a carrier demonstrate that it has adequately coordinated its tarmac delay contingency plan with airports authorities (including terminal operators where applicable), CBP and TSA?

We expect carriers to provide the appropriate government personnel/office or airport authority with a copy of its contingency plan and to ask those entities to advise it on the adequacy of the plans, as related to that agency's responsibilities. We suggest that a carrier retain evidence of its efforts to coordinate with the airport authority (including terminal facility operators where applicable), CBP, and TSA to facilitate any review of such information by the Department and help demonstrate compliance with the rule.

15. Does a carrier have an obligation to coordinate its contingency plan with Fixed Base Operators (FBOs) or another carrier that may assist with deplaning passengers that experience a lengthy tarmac delay?

The rule does not require a carrier to coordinate its plans with such entities, but the Department recommends that carriers do so in the event that such an entity may be able to assist with an incident involving a lengthy tarmac delay (e.g., deplaning passengers, providing ground handling services). Evidence of such coordination will also assist the Department in determining if a carrier is meeting the requirement that it has “sufficient resources to implement the plan.”

16. The rule requires that a carrier notify passengers about the status of a delay every 30 minutes while the aircraft is delayed. What if at the end of a 30 minute period the aircraft is in taxi mode, a time during which the flight deck crew members are concerned with other matters that would prevent them from making public announcements? Would the carrier be excused from complying with the rule under that scenario?

To the extent FAA rules prohibit extraneous conversations by flight crew, they need not make the public announcements. For example, a carrier may be able to make announcements while holding in a queue on an active taxi way, but not while actively taxiing or waiting for takeoff clearance at the front of the line if FAA rules prohibit such activity.

- 17. The rule requires that passengers on a delayed flight receive notification regarding the status of the delay every 30 minutes while the aircraft is delayed. Does this requirement primarily apply to arrival delays? Was the Department’s intent to require an announcement to be made 30 minutes from the time the aircraft touched down if it is delayed getting into a gate?**

The requirement to make public announcements at 30-minute intervals applies to both inbound and outbound tarmac delays.

- 18. Does the requirement to notify passengers on a delayed flight 30 minutes after scheduled departure time and every 30 minutes thereafter that they have the opportunity to deplane apply only to passengers onboard an aircraft (as opposed to those still in the terminal)?**

This requirement applies only to passengers aboard an aircraft after they have been boarded but before the aircraft closes its doors. This rule covers situations where after the boarding process, a flight will sit at the gate for a lengthy period of time with the door open and passengers, particularly passengers in the rear of the aircraft, have no idea whether they are free to deplane. All passengers should be told they can deplane if that is the case. If after all passengers are boarded, the doors remain open but passengers are not free to deplane, the tarmac delay clock is running.

- 19. Did the Department intend for the clock to start based on the time of scheduled departure, as that scenario could result in carriers having to announce to passengers that they have the opportunity to deplane while passengers are still boarding?**

The rule specifies that the 30-minute period begins after scheduled departure time “(including any revised departure time that passengers were notified about prior to boarding).” Since the carrier has discretion to announce any changed departure time at the gate either before or during boarding, the first announcement regarding deplaning should be within 30 minutes of that last announced departure time.

- 20. In the event of a lengthy tarmac delay on a code-share flight, which carrier is responsible for implementation of the plan?**

Generally, the plan of the carrier under whose code the service is 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.

- 21. Is a carrier required to retain certain information “about any tarmac delay that lasts more than three hours,” even for a tarmac delay on an international flight that lasts more than three hours but less than the allowed four hours?**

Yes. The requirement that carriers retain data for tarmac delays lasting more than three hours is the same for domestic and international flights. In addition to desiring to have consistent data for both types of operations, the Department plans to use this information to determine the effect of lengthy tarmac delays and its rules on consumers and carriers.

V. Carriers' Adherence to Customer Service Plans (14 CFR 259.5)

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

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

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

The rule effective August 23, 2011 requires that covered U.S. and foreign carriers adopt customer service plans and that those plans address the 12 subjects below. The rule also sets forth minimum standards for each of those subjects. Other DOT rules cover some of these subjects, e.g., accommodating the needs of disabled air travelers, meeting customers' essential needs, and oversale situations.

1. Offering the lowest fare available and notifying the consumer that the fare may be available elsewhere, if that is the case;
2. Notifying consumers of known delays, cancellations, and diversions;
3. Delivering baggage on time, including making reasonable efforts to return mishandled baggage within twenty-four hours;
4. Allowing reservations to be held or cancelled for at least twenty-four hours without penalty if the reservation is made one week or more prior to a flight's departure;
5. Providing prompt ticket refunds, including refunding fees charged for optional services if a passenger was unable to use those services due to an oversale situation or a flight cancellation;
6. Properly accommodating disabled and special-needs passengers, including during tarmac delays;
7. Meeting customers' essential needs during long on-aircraft delays;
8. Handling "bumped" passengers with fairness and consistency in the case of oversales;
9. Disclosing cancellation policies, frequent flyer rules, aircraft seating configuration, and lavatory availability;
10. Notifying consumers in a timely manner of changes in their travel itineraries;
11. Ensuring responsiveness to customer complaints; and
12. Identifying the services it provides to mitigate passenger inconveniences resulting from cancellations and misconnects.

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

The rule requires each carrier to audit its adherence to its plan annually and retain the results of its audit for two years following the date any audit is completed. These audit results must be provided upon request to the Department, including its Aviation Enforcement Office, for review. We encourage carriers to use the audit to monitor their own level of compliance with the provisions of the rule.

4. Is a carrier required to inform a consumer where he or she can find the lowest fare that may be available?

Airlines are required to disclose that the lowest fare offered by the carrier may be offered by the carrier elsewhere if this is the case. Whether or not carriers are required to state where the fare may be found (e.g., website or airport ticket counter) depends on the nature of a given carrier's business model. For example, in many cases, a carrier's lowest fare may be purchased through any of its outlets, with the exception of occasional sales that may only be found elsewhere, e.g., via Twitter or on its website, in which case it will be sufficient for carriers to provide notice to consumers by stating, on their telephone reservations systems and at airport ticket counters, that "lower fares may be available via our website" (or Twitter, as the case may be). On the other hand, the fares of some carriers are for the most part lower if purchased at their airport ticket counters, as opposed to being purchased via the Internet or through a telephone reservation agent, due to carrier-imposed fees associated with the website or telephone purchases. In those cases, carriers should advise consumers on their website and during calls to their reservations center, that "lower fares generally are available" through purchases at airport ticket counters. The notice should be provided either at the outset of the communication (e.g., during the initial recording in telephone reservation calls) or commensurate with a fare solicitation or quote (e.g., the first web page on which a fare is stated). This notice requirement does not apply to lower fares for a carrier's flights that may be available from a source other than the carrier itself, e.g. from a consolidator.

5. If the airline delivers a passenger's bag a week late (e.g. after a passenger has arrived home from vacation), must it refund any bag fee that this passenger had paid?

The Department's rule does not require a refund of baggage fees in the event of a delay in delivery of the bag. A carrier must reimburse passengers for fees charged to transport a bag only if that bag is lost. Carriers should note, however, that under the Department's baggage liability rule, 14 CFR Part 254, carriers are responsible for provable direct or consequential damages resulting from loss, damage, or delay in delivery of luggage, up to certain limits.

6. In the case of a lost bag, do the airlines have a specific amount of time to find it before the mandatory refund on the checked-bag fee kicks in?

We have not defined "lost" for purposes of the new rule mandating a refund of the baggage fee for lost bags, just as we have never defined the term "loss" for our long-standing rule stating that carriers are responsible for damages occasioned by loss, damage, or delay in delivery of luggage, up to certain limits. However, if a carrier unreasonably refuses to consider a bag to be lost after it has been missing for a considerable period of time, it could be subject to enforcement action for violating the statutory prohibition against unfair and deceptive practices.

7. At what point is a carrier required to hold a reservation and fare for 24 hours without payment or to permit the consumer to cancel without penalty?

A carrier is not required to hold a reservation and fare without payment or to permit the purchaser to cancel without penalty on reservations made less than a week prior to that flight's scheduled departure time. This rule does apply if a consumer makes the reservation one week or more prior to a flight's scheduled departure.

8. Does a carrier have to offer a consumer the opportunity to either “hold a reservation for 24-hours without payment” or to “cancel a reservation within 24 hours without penalty?”

No, a carrier is not required to offer both options. But if a carrier accepts reservations without payment, it must allow the consumer to cancel the reservation within 24 hours without penalty, and if the carrier requires payment with a reservation, it must allow the consumer to cancel the payment and reservation within 24 hours and receive a full refund.

9. Does the requirement to allow a consumer to hold a reservation without payment or cancel without penalty for 24 hours apply to ticket agents?

No. This requirement stems from the customer service plans covered carriers are required to follow and does not apply to ticket agents, although to maintain equivalent customer service levels agents may wish to apply the same or similar procedures.

10. What are some examples of situations where “optional fees” must be refunded to a passenger under section 259.5(b)(5)?

If a passenger pays for a seat with more leg room (e.g. economy plus) on one flight and then he or she is bumped and placed on an aircraft where that type of seat is not provided to that passenger, the carrier must refund the fee the passenger paid for the seat upgrade. Another example of where the rule would require a refund would be where a passenger paid to be able to choose a seat but, due to a flight irregularity or bumping situation, was unable to use the service for which he or she had paid.

11. Are carriers required by section 259.5(b)(9) to disclose on their own websites the cancellation policies, frequent flyer rules, aircraft seating configuration and lavatory availability of code-share partners? If so, may this be done by a hyperlink to the code-share partner's website?

No. The customer service plan requirements in section 259.5 apply only to the scheduled flights operated by the selling carrier and not the flights operated by its code-share partners.

12. What does the Department mean by notifying passengers “in a timely manner” of a change in their itinerary?

The phrase “in a timely manner” depends on the circumstances of the passenger involved. In general, the closer in time to a passenger's scheduled flight an itinerary change occurs, the earlier a passenger should be notified. For example, the phrase must be read in conjunction with section 259.8, which requires that all passengers be notified about a change in the status of a flight within 30 minutes after the carrier becomes aware of any such change. A carrier must notify passengers of the change within 30 minutes if that flight is scheduled to occur in the next seven days. For travel itinerary changes involving passengers whose flights are scheduled more than a week in the future, notification should be provided to the passengers as soon as practical. In such circumstances, if notification is made less than 48 hours after the carrier becomes aware of such change, we would consider the notification to be timely.

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

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

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

2. The rule (259.6(b)) requires each U.S. air carrier with a website and each foreign air carrier that has a website marketed to U.S. consumers and that is required to adopt a customer service plan to post that plan on its website. As the customer service provisions regarding placing a 24-hour hold on reservations (259.5(b)(4)) and notifying consumers of known delays, cancellations, and diversions (259.8) are not effective until January 24, 2012, is a carrier required to post the entire customer service plan on its website by August 23, 2011?

Carriers are required to post on their websites by August 23, 2011, only those provisions that are effective as of that date. Since the two provisions noted above are not effective until January 24, 2012, it is not necessary for a carrier, either foreign or U.S., to post them on their websites until that time. Should an air carrier choose to do so, it can add a “placeholder” for those provisions, advising consumers of the date on which those provisions become effective.

3. How does the Department define “marketed to U.S. consumers” for purposes of determining when a provision of the rule is applicable to a foreign carrier (e.g., 259.6 and 259.7)?

The Department has not defined this term specifically, but will make the determination on a case-by-case basis. Among the things we will look for when evaluating whether a site is marketed to U.S. consumers are 1) if the website is in English, 2) if tickets are sold in U.S. dollars, 3) if it lists flights to or from the U.S., 4) whether sales are blocked for customers with U.S. addresses or telephone numbers, and 5) even if a site is in a language other than English, if the site is marketed toward a particular segment of the U.S. market (e.g., website in Spanish and geared toward consumers in Miami).

VII. Response to Consumer Problems (14 CFR 259.7)

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

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

2. Where does the employee designated to monitor the effects of irregular flight operations on passengers need to be located and what is the Department’s intent regarding her or his function?

The employee designated to monitor the effects of irregular flight operations on passengers does not need to be located in the United States as long as he or she has the ability to provide input to company personnel

regarding any flight delay at issue. Nor does the carrier need to hire a new employee to perform this task. The requirement is intended to ensure that passenger interests are considered by carriers when making decisions on irregular flight operations. The rule does not require that the designated employee be available to speak with passengers.

- 3. Section 259.7(b) requires a carrier to make information available to a consumer regarding where to file a complaint about its scheduled service on all e-ticket confirmations. Is it acceptable for a carrier to provide the consumer with two separate receipts (e.g., one containing payment information and one containing itinerary information), as long as the carrier provides the required information in one of the e-ticket confirmations?**

A carrier may provide a consumer with separate receipts covering payment information and itinerary information, but the information about where to file a complaint must be located on the e-ticket confirmation that provides information regarding the passenger's itinerary and ticket number. The Department would view a document containing information such as a passenger's name and credit card information as a receipt for payment, rather than a "confirmation" for purposes of the rule.

- 4. How does the Department define "substantive response" in section 259.7(c)?**

By "substantive response" we mean a response that addresses the specific problems about which the consumer has complained. This type of response often results in a resolution of the complaint. We are also clarifying that by "complaint" we mean 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 and that contains sufficient information for the carrier to identify the passenger.

- 5. How should a carrier address a consumer's concerns when there are multiple issues in the complaint?**

When an individual complains in writing about more than one issue, the rule requires carriers to respond substantively to each specific allegation. For example, in the event of an incident involving a lengthy tarmac delay incident, if a passenger were to allege that a carrier held passengers onboard an aircraft without the opportunity to deplane for more than three hours on a domestic flight and also did not provide passengers with food and water, the rule would require the carrier to address substantively both the length of delay complaint and the food and water complaint. A carrier's failure to address substantively either of those complaints would violate the rule.

- 6. Does a carrier need to send a "final" reply within 60 days?**

No, for difficult cases involving complex issues a carrier can provide a substantive response to the passenger within 60 days based on what the carrier knows at that time, continue its investigation, if necessary, and send a final reply once the investigation is complete.

- 7. The Department requires that acknowledgments and substantive responses to passenger complaints must be in writing. Some carriers have a practice of calling certain complainants to address the issues. Does this practice satisfy the requirements of this provision?**

As a matter of policy, the Enforcement Office will not pursue enforcement action for telephone replies if the carrier retains a record of the conversation(s), including the name of the carrier employee, the name of the individual that the employee spoke with, the date and time of the call, and a summary of the substance of the

conversation sufficient to permit a reviewer to determine whether the principal issues in the complaint were addressed as required by the rule. By rule such records must be retained by the carrier for at least three years, the record-retention period for consumer complaints as specified in 14 CFR 249.20. However, if the carrier calls a passenger who had submitted a written complaint and during the call the complainant requests a written reply, the carrier should comply with the request or face possible enforcement action.

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

No, under section 259.7(d), a carrier is not required to respond to all written complaints concerning a difficulty or a problem which a person experienced when using or attempting to use an airline’s services on its social networking site. However, if the social networking site is not intended to be a vehicle for written consumer complaints, the carrier must clearly indicate on that website’s primary page that it will not reply to consumer complaints on that site and the carrier must direct consumers to the carrier’s mailing address and e-mail or website location for filing written complaints.

VIII. Notifying Passengers of Flight Status Changes (14 CFR 259.8)

1. What are the differences in the various 30-minute thresholds and deadlines under Part 259 in the new rules?

14 CFR 259.4 sets forth provisions that carriers must comply with during a lengthy tarmac delay and there are two provisions that contain a 30-minute time limit. According to 14 CFR 259.4(b)(5), after the passengers have boarded the aircraft and before the aircraft takes off (departure tarmac delay) or after the aircraft has landed and before the passengers are permitted to deplane (arrival tarmac delay), carriers are required to make announcements every 30 minutes while the delay continues in order to notify passengers of the status of the delay, and to provide the reason for the delay, if known. Pursuant to 14 CFR 259.4(b)(6), if after the passengers have boarded the aircraft for departure the aircraft remains at the gate with its doors open, carriers must notify passengers that they may still deplane, if that is the case, starting at least 30 minutes after the scheduled departure time, and every 30 minutes thereafter. In the absence of such notice, the Enforcement Office could consider the tarmac-delay clock to be running.

In contrast, the various notification requirements set forth in 14 CFR 259.8 relate to notifying passengers and the public about flight irregularities of *all* types, including cancellations, diversions, and delays that are over 30 minutes (not only tarmac delays). The notifications under this section must be provided within 30 minutes after a carrier becomes aware of any such change to the flight status.

2. Do the notification requirements in 14 CFR 259.8 apply to all flight schedule changes that occur before the scheduled departure?

As a matter of enforcement policy, the Enforcement Office will enforce section 259.8 only with regard to flight status changes that occur within 7 days of the scheduled date of the flight in question.

As stated in the preamble, the main purpose of this rule is to avoid unnecessary waits at, or pointless trips to, an airport. Flight cancellations or changes in departure or arrival time that occur far in advance of the date of departure are more likely to have much less impact on the passengers’ and other persons’ schedules and planning than changes that occur closer to departure time. The Enforcement Office considers flight changes outside of the 7-day time period to be “schedule changes” that amount to “changes in a travel itinerary” to

which section 259.5(b)(10) applies. Under that provision, carriers must provide “timely” notice, which we interpret to mean “as soon as practicable.” The itinerary change notification provision would also apply to schedule changes not covered by the 30-minute notification rule (e.g., flight number changes involving no time changes and changes involving earlier arrival or departure times.)

3. How is the “seven-calendar-day” time period computed?

To determine the seven-calendar-day period for a particular flight, carriers should start from the midnight on the date of the scheduled operation, counting backwards seven full calendar days. For instance, if a flight’s scheduled departure time is at 2:00 p.m. on August 7, the seven-calendar-day span will start at 12:01 a.m. on August 1. Under this scenario, for example, notice must be provided in accord with section 259.8 of any changes in flight status, such as a flight cancellation or change in departure time of 30 minutes or more that occurs after 12:01 a.m. on August 1. Any flight status change that occurs before 12:01 a.m. on August 1 would be considered a “travel itinerary change” for which reasonably timely notice must be provided.

4. Does the “seven-calendar-day” timeframe apply to all mandatory means of notification (i.e., boarding gate area, airport display, carrier’s website and telephone reservation system)?

The notification requirements of section 259.8 apply to any notification means by which a carrier is providing schedule information regarding that flight at the time of the status change. For example, in the absence of displays under a carrier’s control at the boarding gate, notification at the boarding gate area is not required until the boarding gate is staffed for the affected flight, which may be several hours before departure time on the date of the scheduled operation.

Notification via an airport display is not required until the information for the affected flight begins to appear on that media, usually on the day of the scheduled operation, or the night before for an early morning operation.

For notification through a carrier’s telephone reservation system, carriers must update the system with any known flight status changes according to the “within 30 minutes after the carrier becomes aware of a flight status change” standard for any status changes that occur within the seven calendar day timeframe.

Any schedule information that a carrier has on its website must be updated to reflect a flight status change (i.e., cancellation, diversion, or delay of 30 minutes or more). This must be accomplished within 30 minutes of the time the carrier becomes aware of the change in the case of flights within the seven-calendar-day timeframe, and in a timely manner in the case of flights operating beyond the seven-calendar-day timeframe. Such schedule information includes, for example, a general schedule database that can be queried to produce information for a specific flight and date, as well as a “flight status” or similar feature where the carrier offers schedule status for a timeframe of several days (for example, a “yesterday-today-tomorrow” format or “yesterday- today- tomorrow- the day after tomorrow” format). A carrier is not required to implement such flight status or schedule information services on its website nor to expand the time span it currently has in place regarding flight status or schedule information.

5. Does the requirement in 14 CFR 259.8 apply to flight status changes that occur after the flight departed on time (e.g., tarmac delay after landing at the destination airport)?

Yes. The requirements of section 259.8 cover flight status changes, including diversions and arrival delays that occur after a flight has departed.

6. Does the requirement in 14 CFR 259.8 apply to any flight status changes involving departures earlier than shown in the schedule?

No, but it would be considered to be an itinerary change requiring timely notification under 14 CFR 259.5(b)(10).

7. How does the Department interpret the “timely” standard when applying the requirement regarding notification of travel itinerary change under 14 CFR 259.5(b) (10)?

The term “timely” in section 259.5(b)(10) means “as soon as practicable.” In any event, a notification that takes place more than 48 hours after the carrier becomes aware of such change would likely not be viewed as timely.

8. For a passenger who purchased his or her ticket from a travel agent or other ticket agent, if the carrier has no contact information for that passenger on record is the carrier still responsible for providing travel itinerary change notifications as required by 14 CFR 259.5(b)(10)?

No, but we would expect the carriers to notify the agencies through which the tickets were purchased.

9. How do carriers comply with the notification requirement for telephone reservation systems?

A carrier must implement a mechanism within its telephone reservation system for any person to call and inquire about the status of a specific flight. The flight status change notification can be provided by an automated system or a live person. The carrier does not need to set up a separate telephone number for the notification service and the telephone number does not have to be a toll-free number.

10. Under the new rule, a carrier is required to provide notification to subscribers of flight status notification systems within 30 minutes after the carrier learns of the flight status change. How may a carrier avoid upsetting a customer who subscribed to receive live phone call updates when the flight status change occurs during the middle of the night?

A carrier is not required to provide notification subscription services that include notification by live phone calls. If a carrier chooses to provide such service, it may avoid unnecessary “midnight” phone calls by prescribing a “blackout” time period during which all live phone calls will be suspended. The carrier should provide conspicuous disclosure to subscribers about the blackout time period at the time of subscription, and the notification must be provided to all subscribers by telephone calls as soon as practical after the blackout period ends.

11. What are the specific requirements regarding updating flight status change information that has already been provided to the passengers and other interested parties?

If there are further changes to a flight for which a status change has previously been provided, carriers must provide updated information consistent with the requirements of section 259.8. The update notification must be provided through all mandatory methods.

12. Who has the duty to provide flight status change notification for a flight operated under a code-share arrangement?

The final rule leaves it up to the carriers to determine whether the marketing or operating carrier will provide the required notification about the change of flight status. For enforcement purpose, the Department will hold both carriers responsible for failure to comply with the rule.

13. If a carrier is expecting a “rolling delay” situation caused by bad weather or air traffic congestion, how can the carrier comply with the notification requirement yet avoid prematurely notifying passengers of any expected delay that ultimately fails to materialize?

Carriers are required to notify passengers and others of any “known” delay, diversion, and cancellation. We do not consider that a carrier has become aware of a delay or cancellation when the carrier is still in the process of determining whether such a change may occur. Furthermore, when providing notification to passengers of any known status change, carriers are free to add a remark that, as with all schedules, flight status may change again, and encourage the passengers and other persons to check back with the carrier.

IX. Price Advertising and Opt-out Provisions (14 CFR 399.84)

1. To whom does the full fare rule apply?

Section 399.84 applies to U.S. and foreign air carriers and ticket agents that advertise in the U.S., including via the internet, for air transportation within, to or from the United States and U.S. and foreign tour operators that advertise in the U.S. including via the internet tours with air transportation within, to or from the United States. The Enforcement Office will look at a number of factors such as whether the fares are displayed in U.S. dollars and whether sales can be made to persons with addresses or telephone numbers in the U.S. to determine if an advertisement via the internet is being marketed to the general public in the U.S. and thus occurred in the U.S. The Enforcement Office does not intend to apply the rule to advertising that takes place solely outside the United States and is not directed at consumers in the U.S.

2. When is the new section 399.84 effective?

The effective date for the entire new section 399.84 is January 26, 2012. However, the Enforcement Office will continue to enforce the existing price advertising rule as it has in the past until that date. Information on how the Enforcement Office has been enforcing section 399.84 and related enforcement orders are detailed elsewhere on this website.

[Note: Revised January 11, 2012]

3. Under section 399.84(a), sellers of air transportation must state the entire price to be paid by a passenger, including government-imposed taxes and fees and mandatory carrier- or agent-imposed fees, but the rule does permit a separate statement of such fees if they are not “prominent.” What are acceptable methods of breaking out the taxes and fees as permitted by this section? What does “prominent” mean?

Under the full fare rule, a seller of air transportation must always list the total price to be paid by the consumer, inclusive of all taxes, fees, and other mandatory charges. Because several commenters to the proposed rule expressed an interest in informing the consumer of the source of the total price, so that the consumer can see the base fare as well as the taxes and fees, the Department decided to include a provision permitting a seller of air transportation to break-out these charges while still displaying the total price to be

paid by the consumer. A separate statement of these taxes and fees, however, must not be false or misleading, must be provided on a per-passenger basis and must accurately reflect the cost of the charge to the carrier, and may not be displayed prominently. The purpose of the rule is to ensure consumers are not misled regarding the total cost of the purchase.

“Prominent” under this rule means that the break-out of per-person charges cannot be in a more prominent place on a web page or in a print advertisement than the advertised total fare. For example, the break-out cannot be at the top of the page, ahead of the total price. The total price should be in larger font. The break-out of charges should not have special highlighting that sets it apart and makes it more prominent than the total price (e.g., bold font, underlined, or italicized).

4. What website advertisements are covered by the full fare rule? Are only websites marketed to United States consumers covered?

As outlined in the answer to question number 1, above, advertisements marketed to United States consumers for air transportation within, to or from the U.S. are covered by the rule. With regard to the marketing of fares via websites, the Enforcement Office will look at a variety of factors to determine if a website is marketed to United States consumers, including but not limited to whether the website is in English, whether the seller of air transportation displays prices in U.S. dollars, whether the seller uses banner advertisements or highlights special deals for flights to or from the United States, and whether the seller has an option on its website that differentiates sites or pages designed for U.S. and for other consumers.

5. How can a carrier display frequent-flyer award ticket costs when the consumer must “pay” in miles and separately pay for taxes and fees?

In the case of an award ticket, the full fare would be the total amount of miles a consumer needs to redeem an award ticket plus any monetary amount the consumer must pay in order to redeem the award ticket. Therefore, the mileage amount and the cash amount must be in equal prominence in the display, as they are both components of the full fare. The monetary amount must include any mandatory charge that the carrier imposes in order to redeem the award amount, including service/processing charges, taxes, and fees.

6. How can a tour package that includes airfare be advertised when the taxes and fees will vary based on the passenger’s selected origin city?

The Enforcement Office foresees two alternatives for print advertisements and Internet banner advertisements that advertise a tour package that includes an air component. First, the seller could advertise the total price from a specific city with disclosure that the advertisement applies to tour packages that originate in that specific gateway city and that prices from other cities are higher or “may differ.” Alternatively, a tour operator could list a range of prices, but the range must be accurate and reflect the full price from the various cities. This means that the lowest price advertised must be an actual total price for an actual origin-destination and must be available for purchase in reasonable quantities.

7. How can a carrier or agent that advertises airfares on a per-leg basis comply with the rule? (e.g., consumers are offered separate lists of departure flights and return flights, and they select a departure flight first and then a return flight, and then at the bottom of the screen a total price is displayed.)

The rule requires that wherever a seller of air transportation advertises a fare, that fare must be the full fare the consumer pays inclusive of taxes, fees, and mandatory charges. Therefore, if a seller decides to advertise airfares on a per-leg basis, the fare displayed for each leg must be the full price for the leg, including all taxes, fees and mandatory charges applicable to that leg, and state prominently that “prices are quoted for each leg of travel but are only available for a roundtrip purchase.” A carrier could also choose not to display any price until a consumer chooses an outbound flight and a return flight.

8. Does the new rule allow for minor variations in advertised prices to account for currency exchange rate fluctuations? This question applies in the context of post-purchase price increases as well.

Yes. Longstanding Enforcement Office policy allows for such minor variations, as long as they are adequately disclosed to the consumer and are actual variations based on the currency exchange rate. This latitude continues to be permitted under the new rule.

9. Does the new section 399.84(a) apply to government taxes and fees applicable to transportation that are not collected by the airline? For example, some countries have a departure tax that is payable at the airport directly to a government official or government agent. Would carriers or ticket agents be required to include these types of taxes and fees in the advertised fare amount?

The new section 399.84(a) applies only to taxes and fees collected by the seller of the air transportation. This rule does not apply to government taxes and fees that the seller does not collect. Taxes and fees that the seller does not collect are not required to be included in the advertised fare. Nevertheless, as we have in the past, we continue to advise sellers of air transportation that it is in their best interest and the best interests of their customers to provide their customers notice of any such charges that are known, in order to avoid confusion and complaints.

10. If a carrier chooses to disclose the total amount of taxes included in the advertised price, must that disclosure include the phrase "including September 11th Security Fee of up to \$10?"

The Enforcement Office will not require separate disclosure of the September 11th Security Fee if the total price of the air transportation is presented as required by the rule and the amount of taxes and fees disclosed is stated as a total amount (e.g., “Fare includes \$35 in government taxes/fees”). We would require that the statutorily-mandated description of the September 11th Security Fee be used, however, if the carrier separately states the amount of that fee (e.g., \$100 fare + \$3.80 segment fee + \$4.50 PFC + \$2.50 September 11th Security Fee). Carriers should note that these answers apply to the Enforcement Office’s enforcement policy under 49 U.S.C. § 41712 and they may wish to check with TSA regarding that agency’s policies regarding disclosure of the September 11th Security Fee.

11. If a carrier chooses not to make a separate disclosure of the amount of taxes included in the advertised price, must the advertisement or solicitation nonetheless include a reference to the "September 11th Security Fee" in some manner? If the answer is yes, can DOT provide some guidance as to how that disclosure should be made?

The Enforcement Office will not require a reference to this fee if government taxes/fees are not separately stated. Carriers should note that these answers apply to the Enforcement Office’s enforcement policy under 49 U.S.C. § 41712 and they may wish to check with TSA regarding that agency’s policies regarding disclosure of the September 11th Security Fee.

12. Is it acceptable to present mileage award ticket advertisements in a “from” or “starting at” format (e.g. “from 35,000 miles + \$200”)?

Yes, “from” or “starting at” advertisements for mileage award tickets are acceptable so long as the “from” refers to the mileage amount. In the Enforcement Office’s view, the currency of frequent flyer tickets is primarily mileage, meaning the consumer on the frequent flyer search path is looking to use mileage to acquire a ticket, not looking primarily to see what the monetary fee is. In a situation where the consumer’s choices would be traveling for 35,000 miles + \$200, or 60,000 miles + \$100, or 75,000 + \$10, the offer can be stated as “from 35,000 miles + \$200.” An alternative that would allow the lowest monetary cost to be presented first would be to present the offer as a range, showing both the “lowest” and “highest” cost to consumers in the range in terms of miles, for example, “from 75,000 + \$10 to 35,000 + \$200 or vice versa,” so long as both the miles and monetary amounts are stated.

X. Baggage Issues and Fees (14 CFR 399.85)

Questions regarding Section 399.85(a)

1. Does the requirement in section 399.85(a) to promptly and prominently disclose on a website’s homepage any increase in fees for carry-on or first and second checked bag and any change in the carry-on or first and second checked bag allowance for a passenger apply to ticket agents or only carriers?

It applies only to U.S. and foreign carriers with websites marketed towards the general public in the U.S. In section 399.85(a) and 399.85(b), the final rule inadvertently refers to websites “accessible” in the United States. It was the Department’s intent, and it remains our intention as a matter of enforcement policy, to apply these provisions to websites marketed towards U.S. consumers (language that is used elsewhere in the rule). The incorrect reference to websites that are “accessible for ticket purchases by the general public in the U.S.” will be corrected.

2. What is the effective date for section 399.85(a)?

Section 399.85(a) became effective on August 23, 2011.

3. If a carrier already has a link on its homepage to baggage information, is that link sufficient as long as the baggage information is updated when any changes to carry-on, first and second checked bag allowance and fees are made?

No, the required link about a change in these baggage allowances or fees must be descriptive, e.g., “changed bag rules,” and link directly to a pop-up or the specific location on another webpage that describes the changes in bag allowance and/or fees and the effective dates of the changes.

4. If the increase in fees for carry-ons and first and second checked bags and the change in allowance is minor and would not impact a significant number of passengers, can a carrier remove the link on its homepage in less than 3 months?

No, the link to the page or window disclosing changes to the carrier's baggage fees or allowance must remain on the carrier's homepage for at least 3 months if it impacts the general public in the U.S. To the extent the information is only applicable to a limited number of passengers, the link can be specific and descriptive about the change, e.g., "Changed baggage allowance on flights to Mexico and the Caribbean."

5. **Is it acceptable to provide multiple links to changes to baggage information so that the consumer can select the link that they are interested in (e.g., a link to baggage information, a link to changed carry-on, first and second bag allowance and fees, and a link to other changes in baggage fees)?**

As long as the links are adequately descriptive and a consumer can link "directly" (i.e., in one click and no scrolling) to the changed carry-on, first and second bag allowance and fee information, multiple links would be acceptable. However, the information should not be provided in such a manner that the consumer must "click through" multiple pages to arrive at the page that has information regarding changed fees or allowances.

6. **Is a link to a page or window that only describes any changes to carry-on, first and second bag allowance and fees sufficient even if it does not provide the carrier's complete rules regarding baggage fees and allowances?**

Section 399.85(a) only requires disclosure of any increases in fees and changes in baggage allowance for carry-ons and first and second checked bags, but under section 399.85(d), a carrier is required to provide a conspicuous link from the homepage directly to a page that lists the fees for all optional services, including baggage. If information regarding any increase in fees and changes in baggage allowance for carry-on, first and second bags is on the same webpage as all other baggage allowance and fees information, the link on the homepage to those changes must take a consumer directly to those changes and not simply to the page containing the carrier's complete baggage rules and fees.

Questions regarding Section 399.85(b)

7. **Section 399.85(b) requires U.S. and foreign carriers, agents of either, and ticket agents that advertise or sell air transportation in the United States and maintain a website to clearly and prominently disclose, on the first screen where a fare quotation for a specific itinerary is provided, that additional airline fees for baggage may apply and where consumers can see these baggage fees. Does this rule apply to carrier or agent websites available in the U.S. but not marketed to U.S. consumers?**

The websites of U.S. and foreign carriers, agents of either, and ticket agents that are marketed to U.S. consumers should have the required information and disclosures if those carriers or ticket agents advertise or sell air transportation in the United States. To the extent that carriers and ticket agents to whom this rule applies maintain, in addition to their website(s) that are marketed to U.S. consumers, any websites that are not marketed to U.S. consumers but can be accessed from the United States, it is sufficient to have the required information and disclosures on only the website marketed to U.S. consumers. In section 399.85(a) and 399.85(b), the final rule incorrectly refers to websites "accessible" in the United States but, as stated above in the response to question one, the Department plans to amend this language to refer to websites marketed towards United States consumers — language that is used elsewhere in the rule — and in the meantime we shall apply the latter language as a matter of enforcement policy. Indicia of whether a website is marketed to U.S. consumers include, but are not limited to, whether the website is in English, whether the seller of air transportation displays prices in U.S. dollars, whether the seller uses banner advertisements or

highlights special deals for flights to or from the United States, and whether the seller has an option on its website that differentiates sites or pages designed for U.S. and for other consumers.

8. What is the effective date for section 399.85(b)?

Section 399.85(b) is effective on January 24, 2012.

9. Are ticket agents required to provide links to carrier websites for baggage fee information?

Ticket agents that have their own websites marketed toward U.S. consumers that provide fare quotes must comply with section 399.85(b). These ticket agents are free to do this by referring consumers to the website of the appropriate airline, although they are not required to do so. If they do not provide a link to a carrier website, ticket agents must display baggage fee information on their own websites and it must remain complete and reasonably accurate at all times. To the extent ticket agents direct passengers to a chart, they should direct or link the passenger to the correct carrier on the chart and not require the passenger to scroll down through a lengthy list of carriers and rules. Additionally, where a passenger's itinerary involves flights operated by more than one carrier (e.g., codeshare or interline service), the ticket agent must provide information to that passenger about the baggage allowance and fees that will apply to the passenger's transportation pursuant 14 CFR 399.87.

10. Is a summary of baggage fees sufficient under section 399.85(b) or is it necessary to provide all possible baggage fees?

Under section 399.85(b) carriers and ticket agents must state that baggage fees may apply and state where specific baggage fee information may be obtained in response to a specific itinerary request from a consumer. Section 399.85(b) does not limit the obligation to provide baggage fee information to a summary or to a certain type of bag fee. Nevertheless, as a matter of enforcement policy we would not take action against ticket agents for providing more limited baggage information in recognition of the fact that ticket agents would have a harder time compiling the information regarding all baggage charges for all carriers for which they sell tickets and putting the information into a usable and consumer-friendly format. More specifically, the Enforcement Office would not pursue enforcement action against ticket agents who provide information regarding the standard checked baggage allowance (including size and weight limitations), the standard allowance (and fee, if applicable) for carry-on baggage, and the standard fee for the first and second checked bag, along with the information that additional discounts may apply depending on flyer-specific factors (e.g., frequent flyer status, military, credit card used for purchase, early purchase over the internet, etc.).

11. Is the disclosure provided by ticket agents in search results limited to the cost of a carry-on bag and first and second checked bag or do agents have to disclose size and weight limitations as well?

Please see the answer to question number ten, above. An agent must disclose the standard size and weight limits for baggage and that the fact that excess and overweight baggage charges may apply.

12. If a ticket agent provides a summary page of baggage information based on the information it gathers and a carrier does not provide real-time updates to its agents, will an agent face enforcement action?

The Department will consider the facts on a case-by-case basis. For example, we do not anticipate real-time updates by ticket agents where carriers themselves have not made the information readily available. However, if the information on an agent's website is outdated by several weeks or is not updated on a routine basis, the agent's summary would not be compliant with the rule.

13. Some ticket agents advertise and sell air transportation for hundreds of different carriers. Does a ticket agent have the option to provide its own summary page for certain carriers and link to the websites of other carriers?

It may be easier for ticket agents to obtain the information for their largest-volume carriers but, for other carriers for which they do not sell as many tickets, it may be easier to provide a link. A ticket agent may use hyperlinks to some carriers' websites and summarize other carriers' information so long as the information is accurate.

14. Do the rules regarding disclosure of ancillary fee information, including baggage allowances and fees, require that ancillary fee information be displayed in online booking systems in connection with flight schedules and fares that are not accessible to the general public, e.g., fares available through corporate travel offices?

No. The rules regarding display of ancillary fee information, including baggage allowances and fees, only apply to displays of flight schedules and fares that are available to the general public. With respect to flight displays that are not available to the general public, an online booking tool is not required to display ancillary fee information as it is for publicly available service. Similarly, if an online booking tool makes certain information available only to certain groups of individuals, those displays that are not available to the general public are not required to display ancillary fee information like a publicly available display.

For example, if an online booking tool provides limited access to displays of flight schedules and fares that are only available to a specific group with special access, such as airline employees, or a company's employees pursuant to a carrier's contract with that company, the requirement to display ancillary fee information does not apply to those limited access displays. However, in the case of tours that are available for purchase by the public, even if a limited segment of the public, such as an alumni group or similar organization, those displays must comply with the rules regarding the display of ancillary fee information, including baggage allowance and fees, even if the transportation can only be purchased by the group in question.

15. Ticket agents are permitted to refer consumers to an airline website or the ticket agent's own website for the baggage information disclosures required under sections 399.85(b) and 399.85(c). May ticket agents provide a hyperlink to a third party website that provides the baggage information disclosures required under these two provisions?

As a matter of enforcement policy, we would not take action against ticket agents that provide a hyperlink to a third-party website that provides the baggage information disclosures required under sections 399.85(b) and 399.85(c). However, it remains the ticket agent's responsibility to (1) identify for the passenger the carrier whose baggage fees/rules apply and (2) ensure that the information provided by the third party website is accurate. Ticket agents will be held responsible if inaccurate information is provided to consumers.

To the extent that a ticket agent is unable to identify the applicable baggage allowances and fees for an interline itinerary, a code-share itinerary involving international flights, or a code-share itinerary involving

domestic flights of different mainline carriers, the Enforcement Office, for a six month period, would not pursue enforcement action against the ticket agent if it identifies through a hyperlink or in text form the baggage information of the carrier whose code appears on the first segment, or if that carrier is not required to file a tariff, the first carrier whose code appears on the passenger's ticket that does file such tariffs. The ticket agent would also be expected to reimburse upon request any passenger that was not charged the same bag fees throughout his/her itinerary if that resulted in the passenger being overcharged. *See* Order Denying the Petition to delay the effective date of 14 CFR 399.85(c) and 399.87, Order Number 2012-1-2 (January 6, 2012) (provides similar flexibility to carriers in complying with sections 399.85(c) and 399.87).

- 16. In connection with the requirement in section 399.85(b) to display airlines' baggage fees, would a ticket agent or carrier be in compliance with this requirement if they display information regarding sporting equipment, pets as baggage, and other special baggage on a separate webpage accessible by hyperlink from the webpage containing information regarding carry-on, first, and second checked bags?**

Yes, it is acceptable for a ticket agent or carrier to provide information regarding special baggage such as sporting equipment, pets as baggage, etc. on a separate webpage from the webpage containing information regarding carry-on and first and second checked bags if the disclosure that additional baggage information is available by hyperlink is clear and prominent.

- 17. Under section 399.85(b), are carriers and ticket agents required to provide disclosure if there is no fee for carry-on baggage?**

Yes, carriers and ticket agents must provide baggage allowance information for carry-on baggage even when there is no fee (e.g., state that one carry-on item and one personal item are free), including information about size or weight limitations for the carry-ons.

Questions regarding Section 399.85(c)

- 18. When must U.S. and foreign carriers, agents of either, and ticket agents begin including information regarding the passenger's free baggage allowance and/or the applicable fees for a carry-on bag and the first and second checked bag on e-ticket confirmations for air transportation within, to or from the United States as set forth in section 399.85(c)?**

Section 399.85(c) is effective on January 24, 2012.

- 19. Is it acceptable for a carrier to simply list the carrier's standard baggage fees or to provide a range for carry-on, first and second checked bag fees on the e-ticket confirmation?**

No, neither is acceptable. A carrier must provide specific information to consumers about all the factors that cause the fee for a carry-on bag and the first and second checked bag to vary so passengers can determine for themselves the fees that would apply to them.

A range is not sufficiently specific. For example, it would not be sufficient for a carrier to state that the fee for the first checked bag ranges from \$0 to \$50. However, it would be acceptable for the carrier to state that the fee for the first checked bag would be \$0 for its elite frequent flyer passengers or those who purchased their ticket with a specified credit card, \$25 for passengers who pay for baggage online, and \$50 for those passengers who pay at the airport.

Carriers are encouraged to provide individualized baggage charge information to passengers but this is not required by the rule.

20. On e-ticket confirmations, are ticket agents required to provide specific baggage information by providing a link to a carrier's website, or is it acceptable for a ticket agent to link to a display page on the ticket agent's website?

Under section 399.85(c), a ticket agent is required to provide specific baggage information on the e-ticket confirmation but may provide the information in text format or through a hyperlink to the specific location on airline websites or their own website where this information is displayed. However, as a matter of enforcement policy and for the reasons explained above, we would not take action against a ticket agent that does not provide specific baggage information on the e-ticket confirmation for carry-on and first and second checked bag so long as the ticket agent provides information regarding the standard first and second checked bag allowance (including size and weight limitations), the standard allowance (and fee, if applicable) for carry-on baggage, and the standard fee for the first and second checked bag, along with the information that additional discounts may apply depending on flyer-specific factors (e.g., frequent flyer status, military, credit card used for purchase, early purchase over the internet, etc.).

21. Are carriers or ticket agents responsible for providing information on e-ticket confirmations regarding baggage fees on code-share or interline itineraries?

Under section 399.85(c), both ticket agents and carriers are responsible for providing correct, specific baggage allowance and fee information on e-ticket confirmations sufficient for consumers to determine the allowances and fees that apply to their travel, including travel on code-share and interline itineraries. Under section 399.87, the baggage allowances and fees that apply at the beginning of an itinerary must apply throughout. Therefore, any disclosure under section 399.85(c) must take into account the fees that apply to that itinerary pursuant to section 399.87.

As a matter of enforcement policy, we would not take action against ticket agents for not providing specific baggage allowance and fee information for code-share or interline itineraries so long as the standard baggage allowance (including size and weight limits) and fees for carry-on and first and second bag for the passenger's code-share or interline itinerary is provided on the e-ticket confirmation and it includes information regarding additional factors, e.g., frequent flyer status, credit card used for purchase, early purchase over the internet, etc., that may apply.

22. To the extent a ticket agent or carrier makes a passenger's flight information accessible to the passenger via an online account after the booking, is the ticket agent or carrier required to display baggage allowance and fee information on the online account page(s) that contain the customer's flight information?

No, the requirement only applies to the summary page at the end of a purchase and the e-ticket confirmation emailed to the consumer.

22a. Do the provisions of section 399.85(c) apply to transactions that occur in a foreign country on a website that is not directed towards US consumers?

Under section 399.85(c), once a consumer has bought air transportation within, to or from the United States, baggage information must be provided to the consumer by the seller of air transportation on any e-ticket confirmation, to include any summary page at the completion of an online purchase and any post-purchase

email confirmation. Several non-U.S. air carriers have raised concerns about the cost to comply with this section with respect to re-programming websites that have the capability of selling air transportation to or from the U.S. but that are not directed towards U.S. consumers. After reviewing the matter, the Enforcement Office has, as a matter of policy, decided to limit the application of section 399.85(c) to websites marketed towards U.S. consumers. This enforcement policy interpretation aligns section 399.85(c) with sections 399.85(a) and 399.85(b) and addresses concerns raised by non-U.S. carriers and ticket agents with respect to their websites directed only to the general public outside of the U.S. The Enforcement Office believes that this enforcement policy still achieves the goal of 399.85(c) which is to ensure that U.S.-based consumers are not surprised by baggage fees at the airport at the beginning of their journey.

- 23. Section 399.85(c) requires ticket agents to disclose passenger baggage information “in text form in the e-ticket confirmation or through a hyperlink to the specific location on carrier websites or their own website where this information is displayed.” May a ticket agent comply with this requirement by providing a hyperlink to a table on the ticket agent’s own website from which consumers can directly access the precise location on the airline website where the information is maintained?**

As a matter of enforcement policy, we would not take action against ticket agents that provide baggage information in the e-ticket confirmation through a hyperlink that takes the passenger to a table displaying hyperlinks to baggage information for a list of carriers as long as (1) the ticket agent identifies for the passenger the carrier whose baggage fees/rules apply to that passenger’s itinerary and (2) the list of carriers includes an alphabetical hyperlinked list/index at the top of the screen so consumers can quickly find the airline they need and link to the airline website where the information is maintained. For example, at the beginning of the list of carriers could appear the 26 letters of the alphabet, each letter being a link to the page where consumers would find carriers that have names that begin with that letter.

In limited circumstances (i.e., interline itineraries, code-share itineraries involving international flights, and code-share itineraries involving domestic flights of different mainline carriers), the Enforcement Office, for a six month period, would not pursue action against a ticket agent if it identifies the carrier whose baggage fees/rules apply to that passenger’s itinerary by providing a link to the baggage information of the carrier whose code appears on the first segment that is required to file tariffs with the Department as discussed in question 15 in section 399.85(b) above. The ticket agent would also be expected to reimburse upon request any passenger that was not charged the same bag fees throughout his/her itinerary if that resulted in the passenger being overcharged. *See* Order Denying the Petition to delay the effective date of 14 CFR 399.85(c) and 399.87, Order Number 2012-1-2 (January 6, 2012) (provides similar flexibility to carriers in complying with sections 399.85(c) and 399.87).

- 24. Do the disclosure requirements of section 399.85(c) apply to tickets for transportation between two foreign points that have a stopover or connection in the United States? Do the disclosure requirements of section 399.85(c) apply to a ticket sold for an itinerary that does not involve the U.S. but that is modified during irregular operations to include a stop in the U.S.?**

The disclosure requirements of section 399.85(c) apply to air transportation within, to or from the U.S. purchased from a website marketed to U.S. consumers. We would not consider a flight between two foreign points with a technical stop in the U.S., for example for fuel, or a journey that includes a stop in the U.S. due to irregular operations to be air transportation within, to or from the U.S. for purposes of this section. Conversely, a flight between two foreign points that includes a stopover or connection in the U.S. is air transportation within, to or from the U.S. As a matter of enforcement policy, we would not take action against a company for not providing baggage information on e-ticket confirmations for an itinerary for air

transportation that includes a stopover or connection in the U.S. if the passenger is not charged a bag fee when departing the U.S.

Example 1: A passenger's itinerary is Hong Kong to London via a connection in Los Angeles. In Los Angeles the passenger departs the aircraft and walks or is transported through a sterile area to her connecting flight without claiming any checked luggage, clearing customs, or rechecking any luggage. Section 399.85(c) would not apply.

Example 2: A passenger's itinerary is Hong Kong to London, with a stopover in Los Angeles. The passenger departs the aircraft in Los Angeles, claims any luggage, and clears customs. Two days later, the passenger checks in at Los Angeles for her continuing flight to London. Section 399.85(c) would apply only if the passenger is charged a bag fee in Los Angeles.

Questions regarding Section 399.85(d)

- 25. Does the requirement in section 399.85(d) to prominently disclose on a website the fees for all optional services that are available to a passenger purchasing air transportation apply to ticket agents?**

No, ticket agents are not required to disclose carriers' fees for all optional services on their websites. However, a ticket agent is subject to the requirements in sections 399.85(b) and (c) to provide information about baggage fees on the first screen in which it offers a fare quotation for a specific itinerary and in e-ticket confirmations. Ticket agents are free to satisfy these requirements by linking to the appropriate airline web page where this information is available or its own web page if it displays the relevant airline baggage fees.

- 26. When is section 399.85(d) effective?**

Section 399.85(d) became effective on August 23, 2011.

- 27. On the web page referred to in section 399.85(d), can fees (other than baggage fees) be disclosed in a range?**

Yes, fees for optional services (other than baggage) may be disclosed as a range. Examples of optional fees that may be listed as a range are: advance seat selection; in-flight beverages, snacks, or meals; pillows and blankets and similar amenities; internet access; seat upgrades, etc.

Questions regarding Section 399.85(e)

- 28. What is the effective date of the requirement in section 399.85(e) that a marketing/ticketing carrier disclose through its websites to consumers booked on a code-share flight any differences between its optional services and related fees and those of the carrier operating the flight?**

Section 399.85(e) became effective on August 23, 2011.

- 29. If a carrier code-shares with many different carriers, is the marketing carrier responsible for disclosing the differences between its optional services and fees and those of each of its code-share partners?**

Yes. The marketing carrier must disclose the differences between its optional services and related fees and those of each of its code-share partners. The disclosure may be through a notice of the differences on the marketing carrier's website. That notice could provide a hyperlink taking the reader directly to each operating carrier's fee listing, or to a page on the marketing carrier's website that lists the differences in policies among code-share partners. For example, the marketing carrier can provide an explanatory statement that the operating carrier's optional services and fees apply to flights operated by a code-share partner, provided that the marketing carrier also lists each code-share partner and provides a hyperlink to the page on the operating carrier's website that lists its optional services and fees.

30. To the extent that there are no differences in optional services and fees, does the carrier have to disclose that fact?

If there are no differences in services or fees, there is no requirement to disclose the lack of difference.

Questions regarding section 399.87

31. What is the effective date of the requirement that U.S. and foreign carriers apply the baggage allowances and fees that apply at the beginning of a passenger's itinerary throughout his or her entire itinerary as set forth in section 399.87?

Section 399.87 is effective on January 24, 2012.

32. Does Section 399.87 apply to multiple-ticket itineraries in which there is not a single PNR?

In the case of a passenger itinerary composed of more than one ticket, the rule does not require a downline carrier to apply the baggage allowances or fees of the first carrier if the flight of the first carrier is on a separate ticket from the other flights.

Example 1: Passenger books a round trip ticket on Carrier A from Dallas to New York, returning to Dallas and books a separate round trip ticket on Carrier B from New York to Paris, returning to New York. Because those are two separate tickets, the passenger is subject to Carrier A's baggage fees and allowances for flights operated by Carrier A and to Carrier B's baggage fees and allowances on the flights operated by Carrier B.

When there is a single ticket, one set of baggage allowances and fees apply throughout the itinerary, as discussed below.

33. How is the rule applied to domestic single-ticket interline and code-share itineraries?

Example 2 (domestic interline): Passenger books a ticket from Miami, with a stopover in Washington, continuing to New York, and returning to Miami via New York. The ticket indicates the operating carrier's code and flight number for each segment. Carrier A operates the Miami-Washington and New York-Miami segments, and Carrier B operates the Washington-New York segment. The baggage allowances and fees of Carrier A, the first operating carrier, apply throughout the itinerary.

Example 3 (domestic code-share): As in example 2, Carrier A operates the Miami-Washington and New York-Miami segments, and Carrier B operates the Washington-New York segment. However, Carrier B's code and flight number are shown on the ticket for the Miami-Washington and Washington-New York segments, and Carrier A's code and flight number are shown for the New York-Miami segment. Because the

first flight is a code-share and Carrier B is the marketing carrier for that flight, Carrier B will determine the baggage allowances and fees that apply throughout the passenger's itinerary.

[Note: Revised January 11, 2012]

34. On a domestic itinerary with multiple carriers, which carrier's baggage rules apply if there is a stopover?

The baggage allowances and fees that apply at the beginning of a passenger's itinerary apply to the entire itinerary, regardless of whether there are any stopovers in the itinerary.

35. The Department has accepted, with some conditions, the "most significant carrier" (MSC) methodology set forth in IATA Resolution 302. Does section 399.87 permit carriers to use the MSC methodology to determine which carrier's baggage rules apply to international single-ticket interline and code-share itineraries?

The section 399.87 requirement that U.S. and foreign carriers apply the baggage allowances and fees that apply at the beginning of a passenger's itinerary throughout his or her entire itinerary does not prohibit carriers from using the "most significant carrier" (MSC) methodology for international flights set forth in IATA Resolution 302, as conditioned by DOT Order 2009-9-20, to determine which carrier's baggage rules apply to international itineraries. However, as is the case with all IATA resolutions, Resolution 302 is not binding on IATA or non-IATA carriers.

Accordingly, if the first segment of a ticket is not a code-share flight, then the airline operating that segment determines the baggage fees and allowances that apply throughout that passenger's journey/itinerary. If the first segment of a ticket is a code-share flight, then the marketing carrier for that segment determines the baggage allowances and fees that would apply on all the remaining flights on that ticket.

The carrier for the first flight on the ticket is free to apply the MSC approach, as conditioned by DOT. In that event, the MSC carrier's baggage allowances and fees apply to all segments on that ticket, including the first segment. Note, however, that whatever methodology the carrier follows to determine the applicable baggage allowance and fees, the baggage information must be disclosed in a number of different ways --- on the first screen where a fare quotation for a specific itinerary is provided as required in section 399.85(b), on e-ticket confirmations as required in section 399.85 (c), and on the website where fees for optional services are listed as required in section 399.85(d).

Example 4 (international interline): Passenger books a ticket from Dallas, changing planes in New York, with a stopover in Amsterdam, continuing to Madrid, and returning to Dallas via Amsterdam and New York, with no stopovers on the return. The ticket indicates the operating carrier's code and flight number for each segment (there are no code-shares).

- Dallas-New York segment is operated by Carrier A (outbound and return)
- New York – Amsterdam segment is operated by Carrier B (outbound and return)
- Amsterdam-Madrid segment is operated by Carrier C (outbound and return)

The first carrier (Carrier A), has the option to use the MSC methodology to determine which carrier's baggage allowance and fees to apply. If Carrier A chooses to apply the MSC methodology, as conditioned, Carrier B's baggage allowances and fees would apply for the entire itinerary. The MSC in this example would be Carrier B, the carrier operating across the Atlantic. Alternatively, Carrier A could choose to apply

its own, and not the MSC, baggage allowances and fees, and those would apply for the entire itinerary. The Enforcement Office reminds carriers that section 399.87 does not relieve carriers of their obligations under tariff filing rules and regulations. Therefore, in determining what fee applies at the beginning of a journey, a carrier must be mindful of all rules and regulations that cover that passenger's ticketed journey.

[Note: Revised January 11, 2012]

Example 5 (international code-share): Same as example 4, except that Carrier B's code and flight number are shown on the ticket for the Dallas to New York segment.

Carrier B, as the marketing carrier whose code appears on the ticket for the first segment, has the option to use the MSC methodology, as conditioned by DOT, to determine which carrier's baggage allowance and fees to apply. The baggage allowances and fees determined by Carrier B would apply to the entire itinerary regardless of whether it applied an MSC methodology.

Example 6 (international interline, no connections or stopovers): Passenger books a roundtrip interline ticket from Dallas to London. On the outbound leg, Carrier A operates and markets the flight. On the return leg, Carrier B operates and markets the flight. Carrier A will determine the baggage allowances and fees that apply throughout the passenger's itinerary. As stated above, section 399.87 does not relieve carriers of their obligations under tariff filing rules and regulations. Therefore, if there is a conflict regarding applicable tariff rules to a ticket described in this example, carriers should update their filed tariffs.

[Note: Example 6 added January 11, 2012]

36. In many parts of the world small carriers that do not file tariffs with the US government are "feeding" passengers onto flights operated by a larger carrier with transatlantic or transpacific routes. Those small carriers generally have not filed a tariff or in any other way "identified" their baggage rules to the U.S. government. Could such a carrier whose code and flight number was shown on the first segment of a passenger's ticket on an international itinerary decide not to use the MSC methodology to determine which baggage allowance and fees to apply and instead apply its own baggage policy?

The Department of Transportation permits but does not require carriers to use the MSC methodology set forth in IATA Resolution 302, as conditioned by DOT, and section 399.87 does not limit carriers to baggage rules that are contained in tariffs that have been filed with, or have been "identified" to, the U.S. government. The carrier whose flight number and code is on the ticket for the first flight is responsible for determining which carrier's baggage rules to apply. It is the marketing or selling carrier's responsibility to ensure that it has the relevant baggage information and discloses which baggage rules apply in instances such as those outlined in the question. Specifically, the carrier selling the ticket must provide proper disclosure regarding baggage allowances and fees to the consumer.

To the extent that carriers are marketing or selling itineraries that include flights on other carriers, the carriers presumably have a commercial relationship, such as a ticketing and baggage agreement, and are jointly responsible for sharing information regarding the baggage rules that will apply to those itineraries and ensuring that passengers are not charged additional or higher baggage fees than those that were disclosed at the time of sale.

36a. Certain inquiries to the Department have expressed an understanding that all baggage general rules must be filed with and approved by the Department and that a marketing carrier cannot

apply a policy that is not in its own tariff. If a passenger’s first carrier does not file baggage rules or tariffs with the Department, is a downline carrier that does file baggage rules and tariffs with the Department required to apply the baggage fees and rules of the first carrier, which may use a baggage rule system that is not permitted for transportation to or from the U.S. (such as a free baggage allowance that is based exclusively on weight)?

Although the Department as a general matter does not actively “approve” the content of tariff rules and carriers that do not provide transportation to or from a U.S. point with their own aircraft, and whose codes are not listed on a flight to or from a U.S. point, are not required to file tariffs with the Department, this does not relieve the airlines from adhering to tariff filing requirements. See 49 U.S.C. 41510¹

Therefore, as a matter of enforcement policy, for purposes of section 399.87, if a passenger’s journey begins at a foreign point, on an airline that does not file tariffs in the U.S., then downline carriers are not required to follow that carrier’s baggage rules. The first carrier on such a passenger’s itinerary that satisfies the tariff filing requirements outlined in 49 U.S.C. 41510 et seq. as well as 14 CFR Part 221 would be the carrier to determine the baggage allowances and fees that apply, and downline carriers would have to follow that carrier’s baggage rule. Again, section 399.87 does not relieve carriers of their obligations under tariff filing rules and regulations.

Example: International interline passenger is flying from Phuket to Los Angeles via connections in Bangkok and San Francisco. Carrier A (which does not serve any U.S. point, and does not file tariffs in the U.S.) is providing service from Phuket to Bangkok and Carrier B (which serves multiple U.S. points and, as part of its tariff filings with DOT, has filed general baggage rules) is providing service from Bangkok to San Francisco. Carrier C is providing service from San Francisco to Los Angeles. The three flights are on the same ticket. Carrier A, despite being the carrier whose code appears on the first segment, should not determine the baggage allowance/fee for the passenger’s itinerary as it does not file tariffs with the Department. Carrier B is the first carrier whose code appears on the ticket and files a tariff and would determine the baggage allowance/fee for the passenger’s itinerary. Carrier C would be bound by Carrier B’s determination. On the return flight from Los Angeles to Bangkok, Carrier C which provides services from Los Angeles to San Francisco must apply the baggage allowance (and fee if any) that Carrier B applied on the original Bangkok to San Francisco leg.

Carrier A should also apply the same baggage fee/allowance as the one set by Carrier B. In circumstances where Carrier A does not apply the same baggage fee/allowance, all the carriers on the ticket are jointly responsible for failing to comply with section 399.87 as the same baggage allowances and fees would not have applied throughout a passenger’s journey as required. As a matter of enforcement policy, because we may not be able to pursue enforcement action against Carrier A, we would likely pursue action against the validating carrier, i.e., the carrier that is the issuing carrier for the ticket or whose ticket stock is used for the transaction, if that carrier is on the ticket, whether that carrier is Carrier B or Carrier C. The validating carrier has an interline ticketing agreement with all the carriers on the ticket and we would expect that carrier not to put on the same ticket airlines that will not work with the other carriers on the ticket to ensure the same baggage fee/allowance applies throughout a passenger’s journey.

[Note: Revised January 11, 2012]

¹ The Enforcement Office will pursue enforcement action against a carrier that does not comply with its tariff when there is clear evidence of (1) a pattern of direct consumer fraud or deception, (2) invidious discrimination, or (3) violations of the antitrust laws. It has been the office’s longstanding enforcement policy to decline to prosecute instances of noncompliance with tariff obligations that result in benefits to consumers absent clear evidence of such violations. The Enforcement Office will also pursue enforcement action against carriers that apply tariffs that are inconsistent with DOT rules.

37. In the case of a carrier that charges a baggage “handling” fee, may the carrier charge the fee regardless of which carrier’s baggage fee rules apply and must that fee be disclosed?

All fees for baggage, including “handling” fees, are treated the same under the rule. All baggage fees are subject to the disclosure requirements in section 399.85. In addition, the requirement in section 399.87 to apply the baggage fee that applies at the beginning of a passenger’s itinerary to all of the remaining flights includes any baggage “handling” fees.

38. Are there disclosure requirements regarding taxes on baggage fees?

Government-imposed taxes on baggage fees are subject to the disclosure requirements in section 399.85(b) and (c) and must be disclosed whenever they apply. If the tax and fee would apply on a passenger’s journey, for example, where a passenger is flying from Mexico City to Houston, with a return flight, and the tax would apply on the passenger’s first flight from Mexico City to Houston, that tax needs to be disclosed. One acceptable method of disclosure would be to note the airline’s regular “base fee,” then note that the first leg would be subject to the additional tax, and list the amount of that tax. Moreover, since the transportation of passenger baggage involves air transportation, any fees stated for that air transportation must be the full price to be paid by the passenger, including taxes, for the checked bag.

[Note: Revised on January 11, 2012]

39. Some carriers’ baggage fees vary based on the currency of the flight’s departure city. For example, the checked bag fee may be \$25.00 for flights originating in the United States and €25.00 for flights originating in the European Union.

Charging the bag fee in different currencies depending on a passenger’s departure city is permitted but the fee applied at the beginning of the passenger’s itinerary (or its close equivalent in another currency) must apply throughout. In the example above, the carrier is not permitted to charge a fee that is higher than the \$25.00 fee that applies for U.S.-originating passengers on the passenger’s return flight from Europe. Similarly, carriers are not permitted to charge a fee that is higher than the €25.00 fee that applies for a Europe-originating passenger on that passengers return flight from the U.S. In each case, the carrier could collect the fee for the return flight in the national currency at the point of check-in, converted at the current exchange rate from the fee applied at the beginning of the passenger’s itinerary.

40. Does the rule apply to excess, oversize, and special baggage fees, in addition to standard checked baggage fees?

Yes. One carrier’s allowance and fees, including excess and oversize and special baggage fees, must apply for the entire itinerary.

41. Can a passenger be charged an additional bag fee when that passenger adds a bag during the journey or adds more items to his/her bag making the bag an overweight bag (e.g., a passenger has a stopover and checks an additional bag for the next segment)? If yes, which carrier’s baggage fee applies?

Yes. A passenger can be charged for an additional bag or a bag that has become overweight because of additional items being placed in the bag. The baggage rules selected by the first carrier (the marketing carrier in the case of a code-share on the first flight) would apply. The purpose of the rule is to ensure

passengers are not surprised by higher fees or more restrictive allowances part of the way through their journey; therefore, the same carrier rules that apply at the beginning of the journey apply throughout the journey including fees for an additional or overweight bag. The purpose of the rule would not be served if consumers were expected to know all airlines' baggage rules, e.g., to understand that if they purchased items on their journey and checked an additional bag, they would have to pay a different carrier's bag fee.

42. On a domestic itinerary with more than one leg each way, is there a limit to the number of times a carrier can charge a baggage fee, for example, if the passenger re-checks a bag after a stopover?

The rule does not prevent a carrier from charging a baggage fee each time the baggage is re-checked for domestic itineraries.

43. On an international itinerary, is there a limit to the number of times a carrier can charge baggage fees in the event of a stopover?

On round-trip international itineraries, industry practice and carriers' filed tariffs often apply baggage fees one time in each direction, even if there are stopovers; however, section 399.87 does not prohibit carriers from charging an additional baggage fee in the event of a stopover, provided that the passenger is notified of multiple charges at the time of fare quote and ticketing, as required by section 399.85. That said, if a carrier's contract of carriage, filed tariff, or published policy is to charge baggage fees only one time in each direction on international itineraries, then it must comply with its own policy. If a carrier that currently charges baggage fees once per direction changes its policy, it must re-file its tariff rules and alter its website disclosures. Failure to comply with the terms of a contract of carriage, filed tariff, and/or published policy to the disadvantage of a consumer could be considered to be an unfair and deceptive practice under 49 U.S.C. § 41712.

44. In instances in which a passenger is eligible for reduced or waived baggage fees on one segment of a journey but is not eligible for the same reduced or waived baggage fees on a different segment of the same journey that is operated by another carrier, which carrier's baggage fees apply? For example, a passenger may have premium frequent flyer status on one carrier and not pay any fees for baggage when traveling on that carrier but that frequent flyer status may not carry over to other carriers. Another example would be a passenger traveling in different classes of service on different segments of a journey who is eligible for reduced or waived baggage fees when traveling in a premium class on one segment of the journey but not on a non-premium segment, whether or not the entire journey is on one carrier.

It is up to the carriers to coordinate among themselves to determine whether, based on the passenger's eligibility for reduced or waived baggage fees for one or more segments of an itinerary, the reduced or waived baggage fees apply to the entire itinerary. The carriers are jointly responsible for sharing information regarding the baggage allowances and fees that will apply to those itineraries and coordinating among themselves to ensure that passengers are provided accurate information about the baggage allowances and fees that will apply to their itinerary and ensuring that passengers are not charged additional or higher baggage fees than those that were disclosed at the time of sale. For example, a carrier could change its frequent flyer rules to make clear that the free baggage allowance only applies when all of the flights on a passenger's itinerary are operated by that carrier with no code-share or interlining. Alternatively a carrier can make clear that the baggage fee waiver is provided only on certain segments as a courtesy.

- 45. If a carrier's normal charge for a passenger transporting two checked bags would be \$75, but a passenger who is an elite level frequent flier is entitled to transport those two bags for free, and during the elite level frequent flier's journey there is an irregular operation situation, and the carrier places the passenger on another carrier where the passenger is not a frequent flier, is the new carrier required to transport the two bags for free?**

No, the new carrier is not required to transport the two bags for free. However, the ticketed carrier must give the passenger the option of waiting for transportation on the ticketed carrier and continuing his or her travel on the ticketed carrier with no charge for the bags.

- 46. Does section 399.87 apply to passengers who have a connection or stopover in the United States, but whose ultimate ticketed origin and destination are not in the U.S.?**

Section 399.87 would not apply to passengers who do not have an ultimate ticketed origin or destination point within the U.S. Therefore, section 399.87 would not apply to passengers whose tickets merely include a connection or stopover in the U.S.

- 47. How are taxes for baggage treated under section 399.87? Does the base baggage fee have to be the same throughout a passenger's journey or does the total baggage fee (including taxes) have to be the same throughout the passenger's journey?**

The "base" baggage fee has to be the same throughout the passenger's journey. For purposes of section 399.87, the Enforcement Office does not consider a tax to be part of the "base fee." Of course, if a carrier collects a tax on a baggage fee the carrier must disclose that tax, per section 399.85 (and 399.84).

- 48. Does the requirement in section 399.87 to apply the same baggage allowances and fees throughout a passenger's itinerary mean that the same exact fee needs to apply even for checked portions of a shorter duration? For example, if a carrier charges for each checked segment of an international flight, must the charge for each checked segment be the same or could the rules change if the second checked segment is shorter than the first?**

The same allowances (and fees, if any) that applied at the beginning of a passenger's itinerary apply throughout that passenger's entire itinerary. Nevertheless, section 399.87 does not prevent a carrier as a courtesy from charging a lower fee on a downline or return flight if the carrier chooses to do so.

- 49. Does section 399.87 apply to carry-on baggage policies? Does section 399.87 apply to bags other than a passenger's first and/or second checked bags?**

Section 399.87 applies to all baggage allowances and fees, including carry-on baggage policies and policies related to checked items beyond the first and second checked bags.

Questions regarding baggage rules in post-ticketing situations:

- 50. If a carrier makes changes to a passenger's itinerary after a passenger books a flight — for example, if there is an equipment downgrade and the replacement aircraft has a reduced checked and/or carry-on baggage allowance — how can a carrier comply with sections 399.85 and 399.87?**

A carrier cannot apply a reduced allowance or charge higher baggage fees after a ticket is purchased. To change the applicable baggage rules post-purchase would violate the post-purchase changes provision of 14 CFR 399.88. In the situation described above, a carrier must accommodate a passenger's baggage at no additional cost. For example, if the substitute equipment cannot accommodate a passenger's carry-on bag that would have been accommodated without charge in the overhead bin of the aircraft originally scheduled for the flight and the bag must be checked, the carrier may not charge the passenger to check the bag. Similarly, if safety reasons (e.g., weight restrictions) prevent a passenger's baggage from being accommodated on the passenger's flight, then the carrier should transport the baggage on another flight, but may not charge an additional fee for such transportation.

Although a carrier may not charge additional baggage fees in the situations outlined above, a carrier may provide post-purchase notice regarding size and weight restrictions, so that passengers may plan accordingly. For example, passengers may be provided with advance notice when there has been a post-purchase equipment downgrade and the replacement aircraft has a reduced carry-on baggage allowance so that passengers have the opportunity to pack fewer or smaller carry-on bags, or make similar adjustments. However, any such advance notice should make clear to passengers that they will only be charged in accordance with the originally applicable baggage fees. For example, if a large carry-on bag would have been permitted without a fee before the equipment downgrade but after the downgrade it must be checked, the notice should make clear that the large carry-on bag will be carried as checked baggage for no additional fee.

51. If a passenger requests post-purchase itinerary changes that affect the applicable baggage rules, e.g., the passenger requests an itinerary change that results in a different first carrier, can the carrier change the applicable baggage fees, and is the carrier required to notify the passenger?

Yes to both questions. The baggage allowances and fees applicable to the new itinerary may be applied, as this is a passenger-driven change in the itinerary. Additionally, the consumer must be informed about the change in baggage fees that will result from his or her voluntary change in itinerary.

XI. Post-Purchase Price Increases (399.88 and 399.89)

1. What entities are covered by the sections 399.88 and 399.89?

Both sections 399.88 and 399.89 apply to U.S. and foreign carriers and ticket agents (including travel agents) that sell scheduled air transportation within, to or from the United States and tour operators that sell tours with scheduled air transportation as a component within, to or from the United States.

2. When are sections 399.88 and 399.89 effective?

Both sections 399.88 and 399.89 are effective on January 24, 2012.

3. Certain entities subject to this rule, especially tour operators, note that currently payment is often accepted over the telephone, and an email or receipt is subsequently sent to the consumer. When a transaction occurs over the telephone, how can a seller of scheduled air transportation comply with the requirement in the new sections 399.88 and 399.89 that written consent of the consumer be obtained in order to pass along a post-purchase price increase?

Section 399.88 prohibits an increase in the price of air travel or an air tour after a consumer has fully paid. This section allows a limited exception for an increase in government taxes and fees if a consumer is notified of the potential for such an increase and gives his or her written consent to such an increase prior to full payment of the purchase price.

Section 399.89 deals with price increases in air transportation for consumers who have not paid the full amount (e.g., consumers who have paid a deposit to reserve an air tour). Section 399.89 allows increases prior to the time of full payment as long as the potential for such an increase is clearly disclosed to the consumer and the consumer consents to such an increase in writing prior to accepting any payment.

If the seller of scheduled air transportation does not pass on an increase to consumers who purchase over the telephone, then written consent is not needed. However, if the seller wishes to pass on an increase to a consumer who pays over the telephone, the seller must obtain the consumer's written consent. As a matter of enforcement policy, the following methods of obtaining consent would be considered to be equivalent to obtaining a written consent and would be acceptable to the Enforcement Office.

- a) If a seller chooses to record a reservation telephone call with a consumer in which the disclosure for a potential increase is clear and unambiguous and the consumer's oral consent is also clear and unambiguous, the Enforcement Office would consider that to be an equivalent alternative to the written consent requirement and would not take enforcement action in such a case if a post-purchase price increase is imposed. In this scenario, the consumer must consent in advance to such a recording, and the seller must maintain records of the recording to show that it received the consent of the consumer (or have the consumer repeat the consent once the recording begins).
- b) A seller may take a passenger's payment information over the telephone after explaining to the passenger that the reservation will be held, without charging for the payment, for a specified period of time (e.g., 72 hours, 7 days) until written consent to a potential increase is received. The seller can release the reservation after the specified period of time if the written consent is not received.
- c) A seller may take a passenger's payment information over the telephone, after explaining that the credit card will be charged immediately, but that the reservation will be canceled and the charge will be automatically credited (refunded) if written consent is not received within a specified short time period (e.g., 72 hours, 7 days).

4. Sections 399.88 and 399.89 state that a seller of scheduled air transportation must notify a consumer of the potential for a price increase that can take place before departure and must obtain the consumer's written consent to the potential for such an increase prior to purchase. Does this mean that sellers must obtain this written consent even if it is their policy not to pass along such increases?

No. If a given seller does not pass along such increases, there is no "potential for a price increase" and consequently the seller need not request or obtain the consumer's written consent to such increases. This policy can be applied on a passenger-specific basis, e.g., a seller can solicit written consent from all of its customers and would comply with the rule so long as the seller applied any subsequent increase only to those customers who have appropriately consented to such increase.

5. Section 399.88(b) states that in order to pass along a post-purchase price increase due to an increase in a government-imposed tax or fee, a seller must "obtain the consumer's written consent to the potential for such an increase prior to purchase of the scheduled air

transportation, tour or tour component that includes scheduled air transportation.” What should a carrier do if a government-imposed tax or fee increases after purchase and the increase is implemented just before the passenger travels?

So long as the seller has obtained the passenger’s written consent to pass along any such increase, the seller may collect the increase in taxes from the consumer. If not, the seller may not impose the new government taxes/fees and must “swallow” those charges.

6. How can a tour operator who sells packages to consumers via a third-party agent obtain written consent when it does not have contact information for the passengers or the means to obtain the written consent?

It is important to note that, in all cases where a tour package including scheduled air transportation is sold, including those sold through an agent, a passenger’s consent must be obtained in order for the tour operator to collect any price increase from a passenger permitted by the rules. No such consent is required if the operator does not intend to pass through to the consumer any price increase. The relationship between a particular tour operator and any particular agent that sell its tours is a commercial matter between those companies. Accordingly, the Enforcement Office cannot describe all methods by which compliance with the rule can be effected. However, the following are examples of how written consent required by DOT rules may take place in a transaction involving a third-party agent.

- a) The tour operator could make the written consent a mandatory part of selling the tour package, i.e., include the consent language in every package sold, and require the agent, who presumably is in direct contact with the consumer, to obtain the consent as a condition of each sale.
- b) A tour operator could accept payment information from the agent, but inform the agent that the passenger’s reservation is being held for a specified period of time and the credit card will not be processed until the agent obtains the written consent of the passenger. Under this arrangement, neither the operator nor the agent can charge the credit card or collect any money until the consent is received by the tour operator.
- c) A similar acceptable “reservation hold arrangement” would permit the agent to take a passenger’s payment information, after explaining that the credit card will be charged immediately, but that the reservation will be canceled and the charge will be automatically credited (refunded) if written consent is not received by the agent within a short specified time period (e.g., 72 hours, 7 days).
- d) As a matter of enforcement policy, a seller may take a passenger's payment information over the telephone, provided (1) the consumer is first informed of, and orally consents to, the price increase policy over the telephone during the reservation process; (2) the seller immediately documents such consent in the customer's sales record, noting the date and time and to whom that consent was provided; (3) the consumer is immediately furnished with an invoice or written confirmation of the purchase (at the consumer's option either by email, fax, or regular postal mail) that clearly and prominently explains the price increase policy and documents the consumer's consent to that policy; (4) the consumer is provided at least seven calendar days from receipt of the invoice or confirmation to withdraw the consent and cancel the purchase, in which case the seller must provide a full refund within seven calendar days from the date that the seller receives the consumer’s cancellation; (5) the consumer is advised of this cancellation right during the telephone transaction and in the invoice or confirmation provided under paragraph (d)(3) above; and (6) in the event of a dispute over whether notice has been provided to the consumer in accord with the requirements above and the seller does not have proof of timely and accurate delivery to

the consumer of the invoice or confirmation document provided under paragraph (d)(3) above, the seller may not charge the price increase to the consumer.

[Note: Revised January 11, 2012]

7. Does section 399.88(a) prohibit an increase in the price of ancillary services an airline may charge to a passenger? What if the ancillary services are not purchased at the same time as the ticket?

The Department has decided to revisit the issue of whether it should prohibit post-purchase price increases for all services and products not purchased with the ticket, or whether it is sufficient to prohibit post-purchase price increases for baggage-related charges that traditionally have been included in the price of the ticket. See <http://regs.dot.gov>. Until that rulemaking is concluded, the Enforcement Office will not pursue enforcement action against carriers that increase fees for ancillary services and products that were not purchased with the air transportation, other than baggage charges that traditionally have been included in the price of the ticket. See Guidance on Price Increases of Ancillary Services and Products not Purchased with the Ticket (December 28, 2011) at <http://airconsumer.dot.gov>.

[Note: Revised January 11, 2012.

8. Does the prohibition on post-purchase price increases in section 399.88(a) apply in the situation where a carrier mistakenly offers an airfare due to a computer problem or human error and a consumer purchases the ticket at that fare before the carrier is able to fix the mistake?

Section 399.88(a) states that it is an unfair and deceptive practice for any seller of scheduled air transportation within, to, or from the United States, or of a tour or tour component that includes scheduled air transportation within, to, or from the United States, to increase the price of that air transportation to a consumer after the air transportation has been purchased by the consumer, except in the case of a government-imposed tax or fee and only if the passenger is advised of a possible increase before purchasing a ticket. A purchase occurs when the full amount agreed upon has been paid by the consumer. Therefore, if a consumer purchases a fare and that consumer receives confirmation (such as a confirmation email and/or the purchase appears on their credit card statement or online account summary) of their purchase, then the seller of air transportation cannot increase the price of that air transportation to that consumer, even when the fare is a “mistake.”

A contract of carriage provision that reserves the right to cancel such ticketed purchases or reserves the right to raise the fare cannot legalize the practice described above. The Enforcement Office would consider any contract of carriage provision that attempts to relieve a carrier of the prohibition against post-purchase price increase to be an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

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