

U.S. DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Docket No. DOT-OST-2012-0028

Submission of U.S. Carrier and Airport Tarmac Delay Contingency Plans to Department of Transportation for Approval

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

ACTION: Notice.

SUMMARY: The FAA Modernization and Reform Act of 2012 requires covered U.S. carriers and U.S. airports to submit to the Secretary of Transportation for review and approval tarmac delay contingency plans on or before May 14, 2012. The U.S. Department of Transportation's Office of Aviation Enforcement and Proceedings (Enforcement Office) will be establishing an electronic submission system to enable covered airlines and airports to submit the required plans through the World Wide Web. The Enforcement Office plans to issue another notice within 45 days that will provide information on how covered carriers and airports can submit these required plans. Submissions of the plans should not be made prior to that date to ensure proper review and recording.

FOR FURTHER INFORMATION OR TO CONTACT: Livaughn Chapman, Jr., or Laura Jennings, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave., S.E., W-96-429, Washington, DC 20590-0001; Phone: (202) 366-9342; Fax: (202) 366-7152; Email: Livaughn.Chapman@dot.gov, or Laura.Jennings@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2012, President Obama signed the FAA Modernization and Reform Act of 2012 (the “Act”) into law. Among other things, the Act requires U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats, and operators of large hub, medium hub, small hub, or non-hub U.S. airports, to submit contingency plans for lengthy tarmac delays to the Secretary of Transportation for review and approval no later than May 14, 2012.

The requirements of the Act do not conflict with the Department’s existing tarmac delay rule (14 CFR Part 259). The Act also permits the Department to establish, as necessary, minimum standards for contingency plans. As such, the specific requirements of Part 259 remain in effect for U.S. carriers.

U.S. carrier contingency plans must contain a provision that a passenger shall have the option to deplane an aircraft and return to the airport terminal when there is an excessive tarmac delay (3 hours for domestic flights and 4 hours for international flights) at each large hub, medium hub, small hub, or non-hub U.S. airport at which they operate scheduled or public charter air service, with the following exceptions: (1) where an air traffic controller with authority over the aircraft advises the pilot in command that permitting a passenger to deplane would significantly disrupt airport operations; or (2) where the pilot in command determines that permitting a passenger to deplane would jeopardize passenger safety or security. The deplaning option must be offered to a passenger even if the flight in covered air transportation is diverted to a commercial airport other than the originally scheduled airport. Under the Act, U.S. carrier contingency plans must also contain a description of how the carrier will: (1) provide adequate

food, potable water, restroom facilities, comfortable cabin temperatures (a requirement not currently contained in DOT rules), and access to medical treatment for passengers onboard an aircraft when the departure of a flight is delayed or disembarkation of passengers is delayed; and (2) share facilities and make gates available at the airport in an emergency (another requirement not currently in DOT rules). Existing DOT rules require carriers to provide assurance that the plan has been coordinated with airport authorities (including terminal facility operators where applicable), U.S. Customs and Border Protection and the Transportation Security Administration at each U.S. large hub airport, medium hub airport, small hub airport and non-hub airport that the carriers serve, as well as their regular U.S. diversion airports.

Under the statute airport contingency plans must contain a description of how the airport operator, to the maximum extent practicable, will: (1) provide for the deplanement of passengers following excessive tarmac delays; (2) provide for the sharing of facilities and make gates available at the airport in an emergency; and (3) provide a sterile area following excessive tarmac delays for passengers who have not yet cleared U.S. Customs and Border Protection. DOT tarmac delay rules currently do not apply directly to airports.

The Enforcement Office intends to establish an electronic submission system, similar to the Department's current disability complaint reporting system, where covered airlines and airports will submit their required plans. The Enforcement Office is working to establish the necessary mechanisms to implement that system and plans to issue another notice within 45 days with detailed information on the submission process.

In defining the hub size of an airport, the Department uses the airport-specific thresholds published by the Department's Bureau of Transportation Statistics (BTS). A list of airport information for calendar year 2010 (the latest available data) is available on the FAA's website

at http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy10_primary_enplanements.pdf. In addition, a preliminary list of covered U.S. carriers provided by BTS can be found on the Department's Aviation Consumer Protection Division website at http://airconsumer.ost.dot.gov/SA_FlightDelays.htm. Any U.S. carrier or airport on the referenced air carrier or airport lists that believes that it is not covered by the statute and should not be on either list should notify one of the Department contacts listed above immediately. If any person, including any U.S. carrier or airport, believes that a carrier or airport is covered by the statute but does not appear on the appropriate list, that person should notify one of the Department contacts noted above immediately with that information.

The Enforcement Office's review of the contingency plans will concentrate on the statutory and existing regulatory requirements for such plans. However, carriers and airports are directed to the model contingency planning document, titled "Development of Contingency Plans for Lengthy Airline On-Board Ground Delays," that was developed by the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays for contingency planning guidance. See Docket No. DOT-OST-2007-0108-0124. This document can also be found at <http://airconsumer.dot.gov/publications/TarmacTFModelContingencyPlanningDocument.pdf>.

We also understand that the Airport Cooperative Research Program (ACRP) has developed some preliminary guidance materials in this area as well. Those materials can be found at <http://onlinepubs.trb.org/onlinepubs/acrp/docs/ACRP10-10.Update.10Dec2011.pdf>.

ISSUED THIS 24th DAY OF February, 2012, AT WASHINGTON D.C.

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings
U.S. Department of Transportation