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United States Department of Transportation
Office of the Secretary
122 New Jersey Avenue, SE
Washington, D.C. 20590

Submitted electronically via www.regulations.gov

Re: Enhancing Airline Passenger Protections, Docket No. DOT-OST-2010-0140

Dear Sir or Madam:

On behalf of the New York State Consumer Protection Board (NYSCPB), I am pleased to submit comments on the Department of Transportation's (DOT) proposed rules entitled "Enhancing Airline Passenger Protections." We applaud DOT's continued efforts to enhance consumer protections for airline passengers and appreciate the opportunity to comment on the proposed rules.

The NYSCPB was established in 1970 pursuant to New York Executive Law Sections 552 and 553. It is the mission of the NYSCPB to protect, educate, and represent consumers. The NYSCPB is dedicated to initiating policy and formulating informational and educational outreach programs. Our Consumer Assistance Unit (CAU) responds to and resolves more than 16,000 complaints and inquiries a year on a variety of topics, including banking problems, credit card disputes, identity theft, product refunds and returns and airline travel.

These comments focus on issues that have been raised in consumer complaints and inquiries received by the NYSCPB.

Tarmac Delay Contingency Plans

The proposed rules would expand the pool of carriers that are required to adopt and adhere to tarmac contingency plans, which currently applies to U.S. airlines operating from medium or large hub-airports. Foreign air carriers operating to and from the United States with at least one aircraft with 30 or more passenger seats and carriers operating from small-hub and non-hub airports would be covered.

The NYSCPB, having received complaints from passengers who went for hours without food, water, working lavatories or medical assistance on delayed international flights, supports this broader application of the tarmac contingency plan requirement. Foreign carriers should be required to adopt a plan that provides for passengers to receive the same basic necessities that U.S. carriers are required to provide.



Additionally, from a passenger's perspective, being stuck for hours on a tarmac without food and water is no less onerous, inconvenient and unpleasant at a small airport than at a large one. The proposed rule would ensure that passengers are treated equally, fairly and humanely regardless of the size of the airport they are using.

Contract of Carriage

The proposed rules would require U.S. and foreign carriers to include their tarmac delay contingency plans and customer service plans in their contract of carriage. The NYSCPB supports this proposal, which would (i) give more information to consumers, and (ii) add a layer of enforceability to the carriers' plans - - since consumers would more readily know their rights.

Indeed, several consumers have called the NYSCPB to ask what the rule is if they encounter a tarmac delay, or if they experience a problem such as lost luggage. Their uncertainty about the applicable rule underscores the need for the carriers' plans to be spelled out in the contract of carriage.

Communicating With Passengers During Tarmac Delays

Experiencing a tarmac delay is frustrating for passengers, but according to complaints received by the NYSCPB, a carrier's failure to provide updated flight status information makes a bad situation much worse.

The NYSCPB has heard from passengers who reported being "trapped" on an airplane for hours at a time - - in one instance over *ten* hours - - without being provided with information about the status of the flight. For these passengers, being stuck on an airplane was certainly uncomfortable and inconvenient. However, it was the lack of updated flight information that the passengers found to be especially exasperating, annoying, dehumanizing and demoralizing.

Therefore, we strongly support the proposed rule that would require U.S. and foreign carriers to verbally inform passengers about the reasons for the delay, and the flight's operational status, every 30 minutes during a tarmac delay. Requiring carrier personnel to communicate with passengers during a tarmac delay would address the situation where passengers are left to wonder, in many instances, for hours about the status of their flight. The updated information would help defuse some of frustration, allow consumers to make alternative choices and reduce the anxiety that is felt by passengers during lengthy tarmac delays.

Flight Status Changes

A recurring theme of consumer complaints received by the NYSCPB has been dismay with carriers' failure to provide timely notification about flight status changes.

For example, consumers have made wasted trips to airports for flights that had already been canceled, sat at the boarding gate for hours without being provided with information about



when or if a flight would depart, missed the opportunity to make alternate travel arrangements, and incurred additional expenses after being stranded away from home for days due to a flight cancellation.

These consumers suffered great frustration, inconvenience, and in some instances, monetary loss. Yet, in many instances, these problems could have been avoidable if the carrier had provided timely information about flight status changes.

Thus, we support the proposal to require carriers to provide timely notice of flight status changes in a variety of ways. Specifically, carriers would be required to promptly notify passengers in the boarding gate area of delays or cancellations; promptly update all domestic flight information under their control at airports regarding changes to the status of flights as a result of delays or cancellations; promptly update flight status information on their websites and telephone reservation systems; and require ticket or gate agents to provide, upon request, up-to-date information on schedule changes.

The rules would not require carriers to offer passengers the opportunity to subscribe to flight status service updates via media such as computer-generated telephone voicemail, text messages, and e-mails. It would merely require carriers that voluntarily provide such a service to ensure that flight status changes are promptly communicated.

However, it is the NYSCP's position that the rules should require carriers to offer passengers the opportunity to subscribe to flight status service updates. Since consumers are rarely out-of-reach via electronic or telephonic means, this would be the quickest and most efficient means to communicate flight status information.

We note that "timely" notice is defined being as soon as possible but no later than 30 minutes after the carrier becomes aware, or should have become aware, of the change in flight status. We believe this is a good starting point, but would urge the DOT to consider a "no later than 20 minutes" requirement. This would not place an undue burden on the carriers. However, the quicker notification could be crucial in helping consumers to avoid the type of frustration, inconvenience and expense referenced above.

Additionally, this notice requirement should be applicable to all carriers, including international or foreign carriers as all air passengers deserve these updates.

Compensation for Flight Cancellation

Carriers are required to provide prompt ticket refunds when a flight is canceled, and their customer service plans must so provide. The DOT has invited comment on whether each carrier's customer service plan should also state that a refund will be issued for any optional fees charged to a passenger for the canceled flight (such as baggage fees and service charges for use of frequent flyer miles).

We believe that, as a matter of basic fairness and equity, a passenger of a domestic or



foreign airline should receive a full refund for all such optional fees if a flight is canceled. Accordingly, it is the NYSCPB's position that this requirement should be set forth in each carrier's customer service plan, so that it is a matter of record and accessible to consumers.¹

It is reassuring that the DOT has stated that, irrespective of whether such a standard is required in a carrier's customer service plan, the Agency would regard a carrier's failure to refund optional fees when a flight is canceled as an unfair and deceptive practice. Nonetheless, the standard should be spelled out in the customer service plan. If passengers do not know their rights, they may not know to complain if they do not receive a full refund, and DOT may not become aware that a violation occurred.

Baggage & Other Fees

The DOT proposed rules provide for greater Web site disclosure of baggage and other fees by U.S. and foreign air carriers. Further, the rules require disclosure of differences in code-share fees. With airlines continuing to assess charges for services that traditionally were included in the air fare, more robust and conspicuous disclosure of such fees is important for consumers who are looking to stretch their travel dollars by comparison shopping for the best deal or who seek a refund from their carrier. All separate fees should be listed through the wide variety of travel distribution channels in the interests of fairness and transparency.

Response to Consumer Problems

The proposed rules require U.S. and foreign carriers to make available the mailing address and e-mail or Web address of the designated department in the airline with which to file a complaint. Carriers are further required to acknowledge receipt of each complaint within 30 days of receiving it and to send a substantive response within 60 days of receiving it.

As an agency, which deals with thousands of consumer complaints and inquiries each year, the NYSCPB recognizes how helpful it is when businesses establish a designated complaint department. Otherwise, consumers often do not know where or how to submit a formal complaint to a business. In addition, this information is extremely helpful to our CAU staff, who are able to provide consumers with appropriate information on how to complain to specific businesses.

The NYSCPB has heard from consumers with serious complaints against foreign carriers. With the adoption of this rule, these consumers will know to whom to file a complaint and assert their rights. Moreover, the NYSCPB will be better able to direct consumers to the designated complaint departments established by the foreign carriers. Therefore, we support the proposal to expand this requirement to foreign carriers operating to and from the United States with at least one aircraft with 30 or more passenger seats.

¹ If, as proposed, the rules are amended to require the customer service plan to be included in the contract of carriage, consumers' access to this information will be further enhanced.



Conclusion

The NYSCPБ commends the DOT for its ongoing efforts to enhance airline passenger protections. By taking the actions recommended above, the DOT will further improve the air travel environment and experience for consumers.

Thank you for your consideration of our comments.

Very truly yours,



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