



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
On the Nineteenth day of September, 2012

Pakistan International Airlines Corporation

**Violations of 49 U.S.C. § 41712
and 14 CFR Part 259**

Docket OST-2012-0002

Served September 19, 2012

CONSENT ORDER

This consent order concerns violations of 14 CFR Part 259 and 49 U.S.C. § 41712 involving the failure of Pakistan International Airlines Corporation (PIA) to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane. This order directs PIA to cease and desist from future similar violations of Part 259 and section 41712 and assesses the carrier \$150,000 in civil penalties.

Applicable Law

Pursuant to section 259.4 of the Department's rules (14 CFR 259.4), foreign air carriers that operate scheduled passenger service or public charter service to and from the U.S. using any aircraft with a design capacity of 30 or more passenger seats are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large, medium, small, and non hub U.S. airport at which they operate scheduled or public charter air service.¹ For an international flight, which is at issue here, the rule requires covered carriers to provide assurance that they will not permit an aircraft to remain on the

¹ According to 14 CFR 259.2, Part 259 does not apply to foreign carrier charters that operate to and from the United States if no new passengers are picked up in the United States.

tarmac for more than four hours without providing passengers an opportunity to deplane, with the following exceptions: (1) where the pilot-in-command determines that an aircraft cannot leave its position on the tarmac to deplane passengers due to a safety-related or security-related reason (e.g. weather, a directive from an appropriate government agency, etc.); and (2) where Air Traffic Control (ATC) advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations. For all covered flights delayed on the tarmac, carriers must provide adequate food and water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival), unless the pilot-in-command determines that safety or security requirements preclude such service. Carriers must ensure that lavatory facilities are operable and medical attention is provided if needed while the aircraft remains on the tarmac. Carriers must also ensure that they have sufficient resources to carry out their contingency plans, and that their plans have been coordinated with airport authorities (including terminal facility operators), U.S. Customs and Border Protection (CBP) and the Transportation Security Administration (TSA) 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.

An air carrier's failure to comply with assurances required by Part 259 and as contained in its contingency plan for lengthy tarmac delays is considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712. Because the purpose of section 259.4 is to protect individual passengers from being forced to remain on aircraft for more than four hours in the case of international flights without the opportunity to deplane, a separate violation is considered to have occurred for each passenger who is forced to remain on board an aircraft for longer than the set amount of time without the opportunity to deplane. Pursuant to 49 U.S.C. § 46301, violations of 14 CFR Part 259 or 49 U.S.C. § 41712 subject a carrier to civil penalties of up to \$27,500 per violation.

Facts and Conclusions

PIA is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)² that operates scheduled service into John F. Kennedy International Airport (JFK), a large hub airport, using at least one aircraft having a design seating capacity of more than 30 passenger seats. Washington Dulles International Airport (IAD), a large hub airport, serves as a regular diversion airport for PIA. PIA has adopted a contingency plan for lengthy tarmac delays covering its diversion operations into IAD. PIA provided a copy of its tarmac delay plan to the CBP, TSA and Metropolitan Washington Airports Authority officials at IAD on August 23, 2011, in an effort to coordinate the carrier's plan with those entities. PIA's contingency plan stipulates that for the carrier's international flights to and from the U.S., PIA will not permit an aircraft to remain on the tarmac for more than four hours before allowing passengers to deplane unless: (1) The pilot-in-command determines there is a safety-related or security-related reason why the aircraft cannot leave its

² 49 U.S.C. §40102(a)(21) defines a foreign air carrier as "a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation."

position on the tarmac to deplane passengers; or (2) Air Traffic Control advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.

An investigation by Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on October 29, 2011, 233 passengers were delayed on the tarmac for four hours and forty-seven minutes in violation of 14 CFR 259.4(b)(2), when PIA flight 711, traveling from Manchester Airport (MAN) in England to JFK, diverted to IAD.

On October 29, 2011, an early winter weather event occurred in the Northeast causing significant equipment outages at JFK and Newark International Airport (EWR) and major Air Traffic Control issues throughout the Northeast United States. PIA flight 711 was scheduled to arrive at JFK at 3:27 pm on October 29. However, flight 711 was unable to land at JFK as planned due to interruptions in JFK's Instrument Landing System (ILS) equipment. Consequently, Air Traffic Control instructed flight 711 to remain in a holding pattern for 20 minutes and then extended the holding pattern for an additional 20 minutes. The captain of flight 711 attempted to divert to PIA's principal diversion airport, Boston's Logan International Airport (BOS); however, BOS was unable to accommodate the flight, as it was already handling a large volume of international diversions from JFK.

At approximately 3:55 pm, the captain of flight 711 decided to divert to IAD due to the limited amount of fuel remaining onboard the aircraft, and landed at IAD at 4:28 pm. After landing at IAD, flight 711 was instructed to park at a remote aircraft bay/de-icing pad. According to PIA, the diversion to IAD was intended for refueling purposes only; however, the carrier notes that refueling was delayed due to increased demand for fuel by other diverted traffic from JFK and flight 711's remote parking location, which necessitated the use of fuel trucks that had to cross active taxiways in order to reach the aircraft to deliver the fuel.

Although the captain and first officer were able to safely deplane the aircraft via air stairs in order to conduct external safety inspections of the aircraft, PIA indicated that it believed that deplaning passengers via air stairs may have been unsuitable due to the inclement weather, as well as the number of passengers requiring wheelchairs and the number of small children on board. However, PIA made no other attempts to deplane passengers on flight 711 by any other means (e.g., via a gate or mobile airport lounge) or to solicit assistance from the airport operator in deplaning because, according to PIA, the passengers did not indicate a desire to deplane during the tarmac delay. PIA also never contacted CBP at IAD to inquire about deplaning passengers.

In summary, the Enforcement Office found that PIA did not adhere to the terms of its contingency plan and failed to provide passengers an opportunity to deplane before the tarmac delay exceeded four hours. This failure by PIA to adhere to the terms of its contingency plan by failing to offer each passenger the opportunity to deplane within four hours of arrival violates 14 CFR 295.4 and 49 U.S.C. § 41712.

Mitigation

In mitigation, PIA states that the tarmac delay at issue was exacerbated by several regrettable events outside the airline's direct control, including, but not limited to, an unusually early winter storm in the Northeast, instrument landing system disruptions at JFK, the inability of BOS to accommodate flight 711's diversion, a sudden and unexpected diversion to IAD (an airport that is not a PIA principal diversion airport, much less an airport where PIA operates or markets scheduled service), and delays in ground services at IAD, significantly hampering the prompt refueling of flight 711.

Nevertheless, PIA believes it acted in the best interests of its passengers during the tarmac delay, seeking to minimize inconvenience and ensure passengers arrived at their scheduled destination at the earliest opportunity. PIA maintains that the flight crew endeavored to ensure that passengers were kept comfortable and updated throughout the tarmac delay. In this regard, PIA notes that food and beverage services were provided, passengers were free to move about the cabin, flight crew made regular announcements regarding the reasons for the delay as well as efforts to depart, all lavatories remained operable and no passengers required medical assistance during the delay. PIA further submits that it has not received a single consumer complaint regarding the tarmac delay at issue and is unaware of any such complaints filed with the Department.

Decision

We view seriously PIA's failure, in violation of 14 CFR Part 259 and 49 U.S.C. § 41712, to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an international flight to remain on the tarmac for more than four hours without providing each passenger an opportunity to deplane. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Department finds that PIA failed to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane. By its actions, the carrier forced a total of 233 passengers on flight 711 to remain on the tarmac for more than four hours without the opportunity to deplane in violation of 14 CFR Part 259 and 49 U.S.C. § 41712.

In order to avoid litigation, PIA, without admitting or denying the violations described above, has agreed to settle this matter with the Enforcement Office and enter into this consent order directing PIA to cease and desist from future similar violations of Part 259 and section 41712, and assessing \$150,000 in compromise of potential civil penalties otherwise due and payable. We believe that this assessment is appropriate and serves the public interest. It represents an adequate deterrent to future noncompliance with 14 CFR Part 259 and 49 U.S.C. § 41712 by PIA, as well as by other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Pakistan International Airlines Corporation has violated 14 CFR 259.4 by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane. By its actions, the carrier forced a total of 233 passengers on flight 711 to remain on the tarmac at Washington Dulles International Airport on October 29, 2011, for more than four hours without the opportunity to deplane;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, Pakistan International Airlines Corporation has engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. Pakistan International Airlines Corporation and all other entities owned or controlled by Pakistan International Airlines Corporation its successors and assignees are ordered to cease and desist from further violations of 14 CFR 259.4 and 49 U.S.C. § 41712;
5. We assess Pakistan International Airlines Corporation a compromise civil penalty of \$150,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of this total penalty amount, \$75,000 shall be due and payable in 24 equal installments of \$3,125 each, on the first day of each month beginning with November 2012, and ending with October 2014. The remaining portion of the civil penalty amount, \$75,000, shall become due and payable immediately if Pakistan International Airlines Corporation violates this order's cease and desist provision before November 1, 2014, or fails to comply with this order's payment provisions; and
6. We order Pakistan International Airlines Corporation to pay the compromise civil penalty assessed in ordering paragraph 5, above, in accordance with the payment schedule. Payments shall be made through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Pakistan International Airlines Corporation to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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