



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

Issued by the Department of Transportation
On the Twenty-Second day of November, 2013

Alaska Airlines, Inc.

**Violations of 14 CFR Part 259 and
49 U.S.C. §§ 41712 and 42301**

Docket OST-2013-0004

Served November 22, 2013

CONSENT ORDER

This consent order concerns violations by Alaska Airlines, Inc., (Alaska) of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301. Specifically, the carrier failed to adhere to the assurance in its contingency plan for lengthy tarmac delays that the carrier would provide adequate food and water no later than two hours after an aircraft leaves the gate if the aircraft remains on the tarmac. This order directs Alaska to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301, and assesses the carrier \$30,000 in civil penalties.

Applicable Law

Pursuant to section 259.4 of the Department's rules, covered carriers, which include any U.S. certificated carrier conducting scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more seats, are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large hub, medium hub, small hub, and non-hub airport. Pursuant to section 259.4(b)(3), covered carriers are required to provide adequate food and water no later than two hours after the aircraft leaves the gate (in the case of departure) or touches down (in the case of arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security considerations preclude such service. Further, section 259.4(b)(7) of the rule requires each covered carrier to have sufficient resources to implement its contingency plan.

A covered carrier's failure to comply with the assurances required by section 259.4 and as contained in the carrier's contingency plan for lengthy tarmac delays constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.¹

Facts and Conclusions

Alaska is an air carrier as defined by 49 U.S.C. § 40102(a)(2)² that operates scheduled service at Philadelphia International Airport (PHL), a large hub airport, and that uses at least one aircraft having a design capacity of more than 30 passenger seats. Alaska has adopted a contingency plan for lengthy tarmac delays covering its scheduled passenger operations at PHL. This plan includes assurances that food and water will be stored on board all of its aircraft and will be provided to passengers within two hours of the beginning of a tarmac delay. An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on May 22, 2013, Alaska flight 33, scheduled to fly from PHL to Seattle-Tacoma International Airport (SEA), experienced a lengthy tarmac delay at PHL.³

The delay occurred during and after a severe thunderstorm in the Philadelphia area. Alaska flight 33 pushed back from the gate at 5:49 p.m., local time, and was thirtieth in the take-off line. During periods in which the aircraft was stopped on the taxiway, which lasted as long as twenty minutes, the captain permitted passengers and flight attendants to move about the cabin. Once the tarmac delay had lasted approximately 90 minutes, flight attendants served snacks and beverages to passengers seated in the first class cabin. However, by the time the tarmac delay had lasted 120 minutes, flight attendants had failed to serve snacks and water to all passengers seated in the coach cabin and advised passengers seated in the coach cabin that food and water were available "upon request" in the galley.

¹ In addition, the FAA Modernization and Reform Act, 49 U.S.C. § 42301, requires that carriers adhere to their tarmac delay contingency plans. 49 U.S.C. § 42301(e)(3).

² 49 U.S.C. § 40102(a)(2) defines an air carrier as "a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation."

³ Alaska flight 33 experienced a lengthy tarmac delay but was ultimately cleared for take-off after 2 hours and 57 minutes, and took-off seven minutes later. Prior to take-off, the pilots of flight 33 made three requests to air traffic control to return to a gate, which had been secured by Alaska's station personnel. However, air traffic control advised the pilot-in-command that returning to the gate in order to deplane passengers would significantly disrupt airport operations. Accordingly, we are not pursuing enforcement action under 14 CFR 259.4(b)(1) because the Enforcement Office determined that the air traffic control exception to the three-hour limit applied in this case.

In summary, despite having adequate snacks and water on board, Alaska failed to provide adequate food and water to all of the 160 passengers on flight 33 before the tarmac delay exceeded two hours. Alaska's failure to adhere to the terms of its contingency plan in this regard violated 14 CFR 259.4(b)(3) and 49 U.S.C. §§ 41712 and 42301(e)(3).

Mitigation

In mitigation, Alaska states that as soon as it learned that food and water were not distributed in accordance with the Department's rules, it acted quickly to apologize to the 160 affected passengers and offer compensation in the form of a \$100 discount. Alaska states that it also strengthened its policies and procedures to ensure that all of its operational divisions were made aware of the need to distribute food and water to every passenger during extended tarmac delays. While Alaska concedes that it did not complete a full food and beverage service, Alaska states that its crew walked the aisles with water, distributed food to passengers who requested it, and made clear to every passenger that food and water were available in the galleys or upon request. Alaska states that its flight attendants were unable to serve each passenger with a snack because the aircraft was "creeping" forward awaiting clearance to depart.

Alaska states that it takes compliance with the Department's consumer regulations seriously, including the extended tarmac delay regulations and guidelines. This is Alaska's first tarmac delay of over three hours. Alaska states that it is committed to ensuring the comfort and well-being of its passengers and providing the best possible customer service during mechanical, weather or air traffic control delays.

Decision

We view seriously Alaska's violation of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301. 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 Alaska failed to adhere to the assurance in its contingency plan for lengthy tarmac delays that the carrier provide adequate food and water to passengers no later than two hours after an aircraft leaves the gate (in the case of departure).

In order to avoid litigation, Alaska has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Alaska to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301, and assessing \$30,000 in compromise of potential civil penalties otherwise due and payable. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by Alaska and 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 Alaska Airlines, Inc., violated 49 U.S.C. § 42301(e)(3) and 14 CFR 259.4(b)(3) by failing to adhere to the assurance in its contingency plan for lengthy tarmac delays that the carrier would provide adequate food and water no later than two hours after an aircraft leaves the gate (in the case of departure);
3. We find that by engaging in the conduct described in ordering paragraph 2 above, Alaska Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Alaska Airlines, Inc., and all other entities owned or controlled by, or under common ownership and control with Alaska Airlines, Inc., its successors, affiliates, and assigns, to cease and desist from further violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301;
5. We assess Alaska Airlines, Inc., \$30,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of that amount, \$2,200 shall be due and payable within 30 days of the date of issuance of this order and \$12,800 shall be credited to Alaska Airlines, Inc., for travel vouchers that were provided to passengers of flight 33. The remaining amount, \$15,000, will become due and payable if, within one year of the date of issuance of this order, Alaska Airlines, Inc., violates the order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Alaska Airlines, Inc., may be subject to additional enforcement action for violation of this order; and
6. We order Alaska Airlines, Inc., to remit the payment assessed in paragraph 5, above, within 30 days of the issuance of this order. Payment shall be made through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Alaska Airlines, Inc., 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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