



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

Issued by the Department of Transportation
On the Twenty-Third day of July, 2013

American Eagle Airlines, Inc.

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

Served: July 23, 2013

Docket OST-2013-0004

CONSENT ORDER

This consent order concerns violations by American Eagle Airlines, Inc., (American Eagle) of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, the carrier failed to adhere to the assurance in its contingency plan for lengthy tarmac delays that the carrier would not allow an aircraft to remain on the tarmac for more than three hours for domestic flights before providing passengers an opportunity to deplane. This order directs American Eagle to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712 and assesses the carrier \$200,000 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.¹ Specifically, under section 259.4(b)(1), carriers must provide assurances that they will not permit domestic flights to remain on the tarmac for more than three hours before allowing passengers to deplane. Additionally, pursuant to section 259.4(b)(2), carriers must provide assurances

¹ On April 25, 2011, the Department issued a set of rules designed to enhance protection for air travel consumers that, among other items, expanded the requirements under the Department's rule on contingency plans for lengthy tarmac delays. 76 Fed. Reg. 23110 (April 25, 2011).

that for international flights, carriers will not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours before allowing the passengers to deplane. Section 259.4 includes two exceptions to the three-hour and four-hour rules: (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.

An air 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. § 41712.²

Facts and Conclusions

American Eagle is an air carrier as defined by 49 U.S.C. § 40102(a)(2)³ that operates scheduled service at Dallas-Fort Worth International Airport (DFW), a large hub airport, and that uses at least one aircraft having a design capacity of more than 30 passenger seats. American Eagle has adopted a contingency plan for lengthy tarmac delays covering its scheduled passenger operations at DFW. An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on December 25, 2012, ten American Eagle flights, eight inbound and two outbound, experienced lengthy tarmac delays at DFW.

These delays occurred during and after an unexpectedly severe winter weather event in the Dallas-Fort Worth area on December 25, 2012. Although light snow fall, with no ice, had been predicted for DFW since the early morning hours that day, ice pellets fell for fifteen minutes beginning at 1:22 p.m.⁴ This ice fall was followed by heavy snow that lasted until approximately 6:00 p.m. In anticipation of the inclement weather American Eagle canceled many flights and once it became apparent that the weather was worse than expected, American Eagle canceled or diverted several hundred flights. Complicating the challenging weather situation on the ground at DFW was the fact that several of American Eagle's deicing trucks unexpectedly failed, resulting in very reduced deicing capacity. At 2:23 p.m., American Eagle's System Operations Control (SOC) issued a ground stop. The arriving flights, not affected by the ground stop, combined with the departing flights that had to return to the gate because of extended deicing times, resulted in all of American Eagle's gates being occupied. In response, American Eagle contacted

² In addition, the FAA Modernization and Reform Act, 49 U.S.C. § 42301, requires that carriers adhere to their tarmac delay contingency plans.

³ 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."

⁴ All times are Central Standard Time (CST).

DFW to seek additional space to park its inbound flights and to request assistance with bussing. The carrier also implemented a towing operation to remove aircraft from American Eagle gates and initiated a remote deplaning operation.

Of the ten flights that experienced lengthy tarmac delays, seven domestic flights and one international flight fell within the two aforementioned exceptions to the rule and are not subject to this order. On the other hand, the Enforcement Office has determined that American Eagle violated the Department's tarmac delay rule in connection with the two remaining flights that experienced lengthy tarmac delays. Those incidents, which are detailed below, are the subject of this order.

Flight 2720, from Sioux Falls Regional Airport (FSD) to DFW, landed at DFW at 2:48 p.m., shortly after the ground stop was instituted at 2:23 p.m. Flight 2720 was not assigned a gate until 5:30 p.m., and no attempt to move the aircraft already located on that gate was made until 5:40 p.m., giving American Eagle just eight minutes to remove one aircraft and park another to avoid violating the applicable 3-hour tarmac delay limit during winter weather conditions. Because the wheels of the aircraft parked at the gate were frozen, the gate was not made available for flight 2720 to park until 6:20 p.m. The aircraft ultimately arrived at the gate at 6:36 p.m., when passengers deplaned. As a result, 42 passengers remained on board the aircraft for 3 hours and 48 minutes before being given an opportunity to deplane.

Flight 3361, from Baton Rouge Metropolitan Airport (BTR) to DFW, landed at DFW at 3:29 p.m. The aircraft was not dispatched to a hardstand until 6:00 p.m., 2 hours and 31 minutes into the tarmac delay. The aircraft did not park at that hardstand until 7:00 p.m., already in violation of the tarmac delay rule. Passengers ultimately deplaned at 8:01 p.m. As a result, 37 passengers remained on board the aircraft for 4 hours and 32 minutes before being given an opportunity to deplane.

In summary, the Enforcement Office found that American Eagle failed to provide an opportunity to deplane before the tarmac delay for two domestic flights, flights 2720 and 3361, exceeded three hours. Those flights carried 79 passengers. American Eagle's failure to adhere to the terms of its contingency plan in this regard violated 14 CFR 259.4(b)(1) and 49 U.S.C. § 41712.

Mitigation

In mitigation, American Eagle states that it takes very seriously its responsibility to comply with all of the Department's requirements, including the tarmac delay rule. American Eagle also notes that it fully cooperated with the Department's investigation of the flights in issue. American Eagle states that it took all reasonable precautions to address forecasted winter storm conditions for December 25, 2012, including performing routine deicing truck maintenance and even precautionary testing of the trucks the day before the storm (and specifically in anticipation of the forecasted storm), conducting significant preplanning sessions for storm impacted operations, canceling flights that

would have operated during the hours of the forecasted storm, canceling additional flights (totaling 235 afternoon operations) when icing conditions occurred, and subsequently issuing a ground stop order for all American Eagle flights at DFW. Nevertheless, according to the carrier, the two American Eagle flights addressed in this order were unavoidably incapable of being deplaned within the allowable three hour time limit. However, the delays in question were experienced in the face of weather at DFW that was not accurately predicted as to its severity. What was forecast to be a thunderstorm and later snow event was in fact, according to the carrier, a significant icing event that hampered the ability of the carrier, even with its precautionary efforts including canceling scheduled Christmas Day flights, to deplane aircraft at DFW within the prescribed time. American Eagle states that with respect to all of the American Eagle delayed flights that it provided either AAdvantage miles or vouchers for future travel for those passengers American Eagle could make contact with after the fact. Finally, American Eagle does not agree that the Department has statutory authority to assess civil penalties for violations of the tarmac delay rule on a per passenger basis, but rather has concluded that penalties may only be imposed on a per flight basis. However, in the interest of settling this matter without engaging in protracted litigation, and without conceding or waiving its legal position on the question of the scope of the Department's civil penalty authority, American Eagle has agreed to this compromise settlement.

Decision

We view seriously American Eagle's violation of 14 CFR Part 259 and 49 U.S.C. § 41712. We note that this is not the first time that the Department has found significant violations of the tarmac delay rule by American Eagle that warranted enforcement action. Violations covered in this order also violate the cease and desist provisions of the order issued in connection with the earlier action.⁵ 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 American Eagle failed to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an aircraft to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane.

In order to avoid litigation, American Eagle has agreed to settle this matter with the Enforcement Office and enter into this consent order directing American Eagle to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assessing \$200,000 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 American Eagle and other carriers.

⁵ On November 14, 2011, the Department issued a consent order against American Eagle (Order 2011-11-13) for violations of the tarmac delay rule involving fifteen inbound flights that exceeded the three-hour rule at Chicago O'Hare International Airport (ORD) on May 29, 2011.

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 American Eagle Airlines, Inc., violated 14 CFR 259.4(b)(1) and Order 2011-11-13 by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an aircraft conducting a domestic flight to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, American Eagle Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order American Eagle Airlines, Inc., and all other entities owned or controlled by American Eagle Airlines, Inc., its successors, and assigns, to cease and desist from further violations of 14 CFR Part 259 and 49 U.S.C. § 41712;
5. We assess American Eagle Airlines, Inc., \$200,000 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 this total penalty amount, \$100,000 shall be due and payable within thirty (30) days of the date of the issuance of this order. The remaining portion of the civil penalty amount, \$100,000, shall become due and payable immediately if, within one year of the date of issuance of this order, American Eagle Airlines, Inc., violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case American Eagle Airlines, Inc., may be subject to additional enforcement action for violation of this order; and
6. We order American Eagle 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 American Eagle 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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