



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

Issued by the Department of Transportation
On the Second day of May, 2013

Air China Limited

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

Docket OST 2013-0004

Served May 2, 2013

CONSENT ORDER

This consent order concerns violations by Air China Limited (Air China) of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, the carrier failed to inform passengers on a flight delayed at the gate for a lengthy period of time of the opportunity to deplane. In addition, Air China failed to include certain assurances in its contingency plan for lengthy tarmac delays as required under Part 259. This order directs Air China to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712 and assesses the carrier \$90,000 in civil penalties.

Applicable Law

Pursuant to section 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

¹ On April 25, 2011, the Department issued new 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).

Specifically, under section 259.4(b)(6), a carrier must provide the assurance that the passengers on the delayed flight will be notified beginning 30 minutes after scheduled departure time and every 30 minutes thereafter that they have the opportunity to deplane from an aircraft that is at the gate or another disembarkation area with the door open if the opportunity to deplane actually exists. A carrier's failure to comply with the 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.

In addition, section 259.4 also requires covered carriers to provide ten assurances that are specified in section 259.4(b)(1)-(10). Furthermore, under section 259.6, each covered foreign carrier that has a website marketed to U.S. consumers, and that is required to adopt a contingency plan for lengthy tarmac delays, is required to post its current contingency plan on its website in easily accessible form.

Facts and Conclusions

Air China is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)² that operates scheduled service from John F. Kennedy International Airport (JFK), a large hub airport, using at least one aircraft having a design capacity of more than 30 passenger seats. Air China operated flight CA982 from JFK to Beijing Capital International Airport (PEK) on July 15, 2012. Flight CA982, which was scheduled to depart at 4:50 pm, pushed back from the gate at 4:45 pm. However, because of severe thunderstorms at JFK, the departure was delayed. After waiting on the tarmac for approximately an hour and a half, the captain determined that the aircraft needed to be refueled and flight CA982 returned to the gate at 6:40 pm. While at the gate, the aircraft doors remained open until 8:26 pm. Although the carrier states that passengers had the opportunity to deplane during this time, neither the carrier's flight crew, nor its agents, announced to passengers that they had the opportunity to deplane. The aircraft pushed back from the gate a second time at 8:26 pm. The aircraft experienced another delay of 2 hours and 25 minutes before it took off for Beijing at 10:51 pm.

In response to an investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office), Air China admits that it did not announce that passengers had the opportunity to deplane when the aircraft sat at the gate with its doors open while the aircraft was being refueled. The carrier states, however, that passengers were free to deplane during this time and it did not receive any requests from passengers to deplane.

Section 259.4(b)(2) requires carriers to provide passengers on international flights the opportunity to deplane before the flight has been on the tarmac for more than four hours. Section 259.4(b)(6) requires that carriers announce that passengers have the opportunity to deplane from an aircraft when the flight is delayed and the aircraft is at a gate or another disembarkation area with the door open if the opportunity to deplane actually

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."

exists. A tarmac delay begins when passengers no longer have the option to get off an aircraft, which usually occurs when the doors of the aircraft are closed. Section 259.4(b)(6) was promulgated to address the issue of when a tarmac delay has not yet begun, or the clock has stopped, because the doors are open at a gate or another disembarkation area, and yet passengers remain unaware that they have the option to deplane. Carriers are not required to provide passengers the opportunity to deplane in less than four hours, but if that opportunity does exist the rule requires that the carrier simply inform passengers of the option to deplane. The Department has encouraged carriers to also remind passengers that they are deplaning at their own risk and that the flight could depart at any time without them if that is in fact the case.

In sum, section 259.4(b)(6) is in place to address the precise incident that occurred on flight CA982. Beginning thirty minutes after the flight returned to the gate in which the opportunity to deplane existed and every thirty minutes thereafter until the doors closed, Air China was required to notify passengers that they could deplane the aircraft if they wished to do so. Air China's failure to provide proper notification to passengers of the opportunity to deplane is a violation of both 14 CFR 259.4(b)(6) and 49 U.S.C. § 41712.

In addition, as part of the investigation into this incident, the Enforcement Office reviewed Air China's contingency plan for lengthy tarmac delays posted on its website. The Enforcement Office discovered that the assurances specified in sections 259.4(b)(2)-(4) and 259.4(b)(6)-(10) were either misstated, incomplete, or completely absent from Air China's plan. Air China's failure to adopt the required assurances specified in 259.4(b)(2)-(4) and 259.4(b)(6)-(10) in its contingency plan for lengthy tarmac delays is a violation of 14 CFR 259.4(b) and 49 U.S.C. § 41712.

Mitigation

In mitigation, Air China emphasizes that the delayed departure of flight CA982 did not involve a "tarmac delay" within the meaning and scope of 14 CFR Part 259. Air China explains that during the time the aircraft waited for ATC takeoff clearance, passengers were advised by the crew every 30 minutes of the delay in takeoff clearance and the reason for the delay. Air China explains that, during these times, passengers were provided with food and beverages, the aircraft toilets were fully operational, and medical assistance was available, although no medical assistance was required or requested. Air China further states that while at the gate for refueling, food and beverages were provided and the "stores" were restocked for the flight to Beijing.

Air China candidly states that no "opportunity to disembark" announcements were made while the aircraft was at the gate for the limited purpose of necessary refueling. Air China explains that in the event that a passenger chooses to deplane and does not re-board the aircraft, that passenger's checked and unchecked baggage must be located and off-loaded for security reasons, which may take hours and may result in a further delay in the departure of the flight. Air China states that its overriding concern is for the safety and security of all passengers and crew members, that any passenger opting to deplane

would do so at his or her own risk, and that Air China would have discouraged any passenger from deplaning flight CA982 had they opted to do so. Air China states, however, that no passengers would have been forced to remain onboard the aircraft if they had insisted upon deplaning.

With respect to its contingency plan for lengthy tarmac delays, Air China states that promptly upon receiving advice from the Enforcement Office as to the deficiencies in Air China's plan, Air China revised the wording of its plan to comply with the Department's rules. Air China states that the deficiencies in its plan were the result of administrative error and were promptly corrected by Air China.

Air China states that it has always strived to cooperate with the Department's enforcement objectives and to comply with the Department's economic regulations, and it will continue to do so. In addition, Air China states that it has fully cooperated with the Department in its investigation of this matter and has taken appropriate corrective action.

Decision

The Enforcement Office has carefully considered the information provided by Air China, but continues to believe enforcement action is warranted. The Enforcement Office and Air China have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Air China consents to the issuance of this order to cease and desist from future violations of 14 CFR 259.4 and 49 U.S.C. § 41712, and to the assessment of \$90,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

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 Air China and other carriers.

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

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Air China Limited violated 14 CFR 259.4(b) by failing to properly notify passengers that they had the opportunity to deplane the aircraft while it was at the gate for a lengthy period with the door open as required by 14 CFR 259.4(b)(6);
3. We find that Air China Limited also violated 14 CFR 259.4(b) by failing to include the assurances in its contingency plan for lengthy tarmac delays that are required under 14 CFR 259.4(b)(2)-(4) and (6)-(10);

4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3 above, Air China Limited engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order Air China Limited and all other entities owned or controlled by, or under common ownership and control with Air China Limited its successors, affiliates, and assigns, to cease and desist from further violations of 14 CFR 259.4(b) and 49 U.S.C. § 41712;
6. We assess Air China Limited \$90,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 4 above. Of this total penalty amount, \$45,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining portion of any unpaid civil penalty shall become immediately due and payable if, within one year of the date of this order, Air China Limited violates this order's cease and desist or payment provision, in which case Air China Limited may become subject to additional enforcement action for any violation of the order; and
7. We order Air China Limited to pay the penalty 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 Air China Limited 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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