



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

Issued by the Department of Transportation
On the Fourteenth day of November, 2011

**American Eagle Airlines, Inc.
Violations of 14 CFR Part 259
and 49 U.S.C. § 41712**

Served: November 14, 2011

Docket OST-2011-0003

CONSENT ORDER

This consent order concerns violations of 14 CFR Part 259 and 49 U.S.C. § 41712 involving the failure by American Eagle Airlines, Inc. (American Eagle) to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit a domestic flight to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane. This order directs American Eagle to cease and desist from future similar violations of Part 259 and section 41712 and assesses the carrier \$900,000 in civil penalties.

Applicable Law

Pursuant to section 259.4 of the Department's rules (14 CFR 259.4), U.S. certificated and commuter air carriers that operate scheduled passenger service or public charter service 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 and medium hub U.S. airport at which they operate scheduled or public charter air service.¹ For domestic flights, which are at issue here, the rule requires covered U.S. carriers to provide assurance that they will not permit an aircraft to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane, with

¹ Effective August 23, 2011, this provision was extended to also cover small hub and non hub airport operations.

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 also 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.

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 3 hours in the case of domestic flights without the opportunity to deplane, the Office of Aviation Enforcement and Proceedings (Enforcement Office) takes the position that a separate violation occurs 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

American Eagle is an air carrier as defined by 49 U.S.C. § 40102(a)(2)² that operates scheduled service into Chicago O'Hare International Airport (ORD), a large hub airport, using at least one aircraft having a design seating capacity of more than 30 passenger seats. American Eagle has adopted a contingency plan for lengthy tarmac delays covering its scheduled operations at ORD. American Eagle's contingency plan stipulates that for the carrier's domestic flights, each customer will have the opportunity to deplane before the tarmac delay exceeds three hours. In addition, as part of its specific contingency plan for ORD, American Eagle has in place a "Drop and Go" procedure for offloading passengers during gate congestion situations. Pursuant to American Eagle's "Drop and Go" plan, aircraft are brought into a gate and the passengers and their carry-on or valet bags are offloaded. The flight crews then take the aircraft back out to a holding area until the congestion issue has been resolved, and the aircraft are thereafter brought back to gates for boarding later flights.

An investigation by the Enforcement Office revealed that on May 29, 2011, 608 passengers were delayed on the tarmac on 15 inbound American Eagle flights at ORD for more than three hours in violation of 14 CFR 259.4(b)(1). See the table below:

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."

	Flight	Departed From	Total Tarmac Delay (Min.)	Minutes >3 Hrs (180 Min.)	# OF PAX
1	3873	El Paso, TX (ELP)	225	45	31
2	4122	Tri-Cities, TN (TRI)	223	43	41
3	4185	Cleveland, OH (CLE)	215	35	5
4	4168	Richmond, VA (RIC)	211	31	47
5	4230	Wichita, KS (ICT)	203	23	31
6	3765	Denver, CO (DEN)	201	21	63
7	3709	Atlanta, GA (ATL)	196	16	53
8	4143	Buffalo, NY (BUF)	192	12	49
9	4173	Wichita, KS (ICT)	190	10	39
10	4315	Cleveland, OH (CLE)	189	9	14
11	3705	Washington, DC (DCA)	189	9	63
12	3919	Little Rock, AR (LIT)	185	5	42
13	4031	Manhattan, KS (MHK)	185	5	30
14	4215	Nashville, TN (BNA)	183	3	50
15	4164	Columbus, OH (CMH)	183	3	50
TOTAL					608

During the early morning hours of May 29, 2011, ORD experienced fog, low visibility, and low ceilings. Weather conditions changed from fog and low ceilings to thunderstorm activity at approximately 3:30 p.m. The weather conditions prompted Air Traffic Control to institute ground stops, arrival delays and gate holds between 5:20 a.m. and 3:20 p.m. The ORD ramp closed on three separate occasions due to lightning between 10:42 a.m. and 3:50 p.m. The duration of each ramp closure was approximately 40 minutes. However, after 3:30 p.m., weather conditions improved and visual flight rules (VFR) conditions existed for the remainder of the day. Because of the weather conditions and ATC programs, American Eagle's Systems Operation Control (SOC) cancelled 126 flights between 6:00 a.m. and 1:00 p.m.

After the ramp reopened and the ATC programs were terminated at 3:20 p.m., American Eagle continued to operate flights into ORD, even though the carrier's airplanes were not departing from gates as planned. The aircraft that were occupying the gates were scheduled to operate revenue flights later in the afternoon or in the evening. Consequently, arriving American Eagle aircraft were forced to hold at various waiting areas around the airfield.

In many instances, the airplanes that were parked at the American Eagle gates were not departing because American Eagle's crews were not available to operate the flights. In fact, many of those crew members were onboard aircraft that were being held at various locations around the airfield at ORD on inbound flights because of the lack of available American Eagle gates. At some point between 3:50 p.m. and 4:00 p.m., American Eagle's SOC issued a company ground stop of all ORD arrivals. However, by 4:00 p.m.

a gridlock situation had already begun to develop at the American Eagle ramp, and each hour thereafter the situation got progressively worse in terms of arrivals exceeding departures.

Even though the delay situation had been steadily deteriorating since 4:00 p.m., as late as 8:05 p.m., the ORD American Eagle Tower Manager on Duty incorrectly continued to believe that the delay situation was still manageable and communicated that belief to American Eagle's System Operations Control Manager. At 8:30 p.m., American Eagle finally activated its "Drop and Go" contingency plan and began to clear two gates to implement the procedure. However, by that point in time, all 15 of the aircraft that eventually experienced three-plus hour tarmac delays were already on the ground, most for some time, holding at various locations on the airfield at ORD.

American Eagle indicated to the Enforcement Office that it chose not to deplane passengers on holding aircraft remotely on the airfield via airport busses because the carrier did not want to expose passengers to high noise and a poorly lit environment. However, the carrier admits that by the time it considered the possibility of utilizing airport busses to offload passengers, the coordination time for the bussing operations would have put the waiting flights beyond the three hour limit. By 9:00 p.m., American Eagle had cleared two gates for use in the "Drop and Go" procedure. Nonetheless, 15 flights remained on the tarmac in excess of three hours before deplaning passengers.

In summary, the Enforcement Office found that American Eagle's overly optimistic estimation of its ability to handle the number of flights it chose to operate into ORD and its poor planning of its crew and gate resources caused 608 passengers to remain on aircraft in excess of three hours without the opportunity to deplane. Furthermore, the Enforcement Office also believes that American Eagle's failure to implement in a timely manner its "Drop and Go" procedure, and its failure early in the incident to request assistance deplaning passengers remotely by bus from the Chicago Department of Aviation, contributed significantly to the carrier's inability to deplane the 15 flights by the three-hour mark. This failure by American Eagle to adhere to the terms of its contingency plan by failing to offer each passenger the opportunity to deplane within three hours of arrival violates 14 CFR 295.4 and 49 U.S.C. § 41712.³

Mitigation

In mitigation, American Eagle states that it takes very seriously its responsibility to comply with all of the Department's requirements, including the recently adopted tarmac delay rule. American Eagle notes that it fully cooperated with the Department's investigation of the event in question. Although multiple flights were involved, American Eagle contends that this was a single incident that occurred on a single afternoon as a result of a single adverse weather system affecting O'Hare airport.

³ This order also closes our investigation of a single tarmac delay incident that occurred at JFK International Airport on May 26, 2011, involving American Eagle flight 4305, on which 34 passengers were forced to remain onboard the aircraft for 3 hours and 12 minutes without the opportunity to deplane.

According to the carrier, while any extended tarmac delay is regrettable, the delays here, as shown in the Department's chart, ranged from 3 minutes to 45 minutes over the three-hour limit, or an average tarmac delay of approximately 18 minutes. Seven of the 15 flights (almost half) experienced tarmac delays of between 3 and 9 minutes over the limit. American Eagle states that since this occurrence, it has exhaustively investigated the circumstances surrounding the event and has conducted extensive additional training of its employees, with a particular focus on flights destined to ORD on days involving inclement weather, in order to minimize the chances of a recurrence. The company also states that its contingency plan for responding to off-schedule operations has been updated to improve internal communication and ensure decisions are made sooner in a delay situation. In addition, the carrier contends that new technology will provide real-time information about the exact location of aircraft on the field, enabling more accurate decision-making. American Eagle states that it has compensated passengers it has been able to contact with vouchers for future flights and with AAdvantage miles. American Eagle states that the value of the compensation it has paid to date is almost \$150,000, or an average of \$250 per passenger. American Eagle argues that it has not experienced any tarmac delays in violation of the rule other than on the single date of May 29, 2011. American Eagle also points out that this is the first consent order that the Department has ever issued against it for violations of consumer protection regulations, which is a compliance record that few other carriers can claim. Finally, American Eagle states that it does not agree that the Department has statutory authority to assess civil penalties for violations of the tarmac delay rules 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 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 a domestic flight to remain on the tarmac for more than three 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 American Eagle failed to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit a domestic flight to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane. By its actions, the carrier forced a total of 608 passengers on 15 flights to remain on the tarmac for more than three hours without the opportunity to deplane in violation of 14 CFR Part 259 and 49 U.S.C. § 41712.

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 Part 259 and section 41712, and assessing \$900,000 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 American Eagle, as well as by other carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

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. 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 a domestic flight to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane. By its actions, the carrier forced a total of 608 passengers on 15 flights to remain on the tarmac at Chicago O'Hare International Airport on May 29, 2011, for more than three hours without the opportunity to deplane;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, American Eagle Airlines, Inc. has engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. American Eagle Airlines, Inc. and all other entities owned or controlled by American Eagle Airlines, Inc., 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. American Eagle Airlines, Inc. is assessed \$900,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above payable as follows:
 - (a) \$650,000 shall be payable within 30 days after the service date of this order; and
 - (b) The remaining \$250,000 shall be payable on December 1, 2013, less any amount credited, as set forth below, for refunds, as well as vouchers and frequent flyer miles provided to passengers that may be used to acquire transportation on American Eagle Airlines, Inc./American Airlines, Inc. flights, subject to the following conditions:
 - i) Vouchers shall be credited at 80 percent of their face value;
 - ii) Frequent flyer mileage shall be credited at \$.02 per mile awarded;
 - iii) Refunds shall be credited at their cash value;

- iv) The refunds, vouchers, and mileage must have been given to passengers on the flights covered by this order or for other flights that experienced tarmac delays after the service date of this order, provided that those other flights do not involve violations of the tarmac delay rule;
 - v) By November 1, 2013, American Eagle Airlines, Inc. shall submit a detailed accounting supporting its claim for credits accompanied by a sworn statement from a company officer attesting to the accuracy of the accounting and the claim; and
 - vi) The Office of Aviation Enforcement and Proceedings notifies American Eagle Airlines, Inc. of the acceptability of the credit request; and
6. Penalty payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions. Failure to pay the penalty as ordered will subject American Eagle Airlines, Inc. to the assessment of interest, penalty and collection charges under the Debt Collection Act and possible enforcement action for failure 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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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