



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

**Issued by the Department of Transportation
on the 24th day of August 2023**

**Compañía Panameña de Aviación, S.A., d/b/a
Copa Airlines**

**Violations of 14 CFR Parts 259 and 244 and
49 U.S.C. § 41712**

Docket DOT-OST-2023-0001

Served August 24, 2023

CONSENT ORDER

This consent order concerns violations by Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines (Copa) of 14 CFR Parts 259 and 244, and 49 U.S.C. § 41712. Specifically, Copa failed to adhere to the assurance in its contingency plan for lengthy tarmac delays that it will not remain on the tarmac for a lengthy period of time without deplaning passengers. Copa also failed to file timely the required tarmac delay written report and the required on-time performance information for a lengthy tarmac delay with the Department of Transportation (Department). This order directs Copa to cease and desist from future similar violations of 14 CFR Parts 259 and 244 and 49 U.S.C. § 41712 and assesses the carrier \$130,000 in civil penalties.

Applicable Law

Pursuant to 14 CFR 259.4(a), foreign air carriers 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 at which they operate or market scheduled or public charter air service. For international flights, 14 CFR 259.4(c)(2) requires covered carriers to provide a passenger on a flight experiencing a tarmac delay at a U.S. airport the opportunity to deplane before the tarmac delay exceeds four hours in duration subject to the following exceptions: (1) for departing flights, the flight begins to return to a suitable disembarkation point no later than four hours after the main aircraft door is closed in order to deplane passengers; (2) the pilot-in-command determines that deplaning passengers at a suitable disembarkation point would jeopardize passenger safety or security, or there is a safety-related or

security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers (e.g., weather, a directive from an appropriate government agency, etc.); or (3) Air Traffic Control (ATC) advises the pilot-in-command that returning to the gate or another disembarkation point in order to deplane passengers would significantly disrupt airport operations. A carrier's failure to adhere to the assurances in its contingency plan in violation of 14 CFR 259.4(a) also constitutes a violation of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair or deceptive practices.

Because the purpose of section 259.4 is to protect individual passengers from being forced to remain on the aircraft for more than four hours in the case of international flights without being provided the opportunity to deplane, the Office of Aviation Consumer Protection (OACP) takes the position that 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.

In addition, 14 CFR 259.4(g) requires covered carriers to submit to OACP a written description of each flight it operates that experiences a tarmac delay of more than three hours (for domestic flights) and four hours (for international flights) at a U.S. airport no later than 30 days after the tarmac delay occurs. Furthermore, 14 CFR 244.3 requires a covered carrier to file BTS Form 244, "Tarmac Delay Report," with the Department's Bureau of Transportation Statistics (BTS) setting forth the information for each of its covered flights that experienced an excessive tarmac delay of more than three hours for a domestic flight and more than four hours for an international flight at a U.S. Airport, including diverted flights¹ and cancelled flights. The Tarmac Delay Report is due within 15 days after the end of any month during which the carrier experienced the excessive tarmac delay. The data in the report are published and made available to the public in a useable format in the Department's monthly Air Travel Consumer Report (ATCR), which, among other things, lists all regularly scheduled international flights with tarmac delays of four hours or more. Violations of sections 259.4(g) and 244.3 also constitute violations of 49 U.S.C. § 41712.

Facts and Conclusions

Copa is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)² that operates scheduled service to John F. Kennedy International Airport (JFK), among other U.S. airports, using at least one aircraft having a design capacity of more than 30 passenger seats. Copa has a tarmac delay contingency plan that states, "Copa Airlines will not allow an aircraft to remain on the tarmac at a U.S. airport for more than four hours before allowing passengers to get off board," with specific exceptions permitted by law.

¹ 14 CFR 259.4(d) provides, "[f]or the purposes of this section, a diverted flight is treated as an arriving flight up to the point that an opportunity to deplane is provided to passengers. Once an opportunity to deplane is provided, the diversion is treated as a departing flight."

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."

An investigation by OACP revealed that on January 16, 2022, Copa flight 488, traveling from Tocumen International Airport (PTY) to Washington Dulles International Airport (IAD), experienced a lengthy tarmac delay after it diverted to JFK. Flight 488 landed at JFK at 12:16 pm EST, refueled at a hardstand location approximately one and a half hours after arrival, and then waited to depart. Approximately two hours and 45 minutes into the tarmac delay, the captain of flight 488 decided not to depart due to severe crosswinds at JFK. Flight 488 continued to wait for an opportunity to depart; during the entirety of the delay passengers were not provided the opportunity to deplane despite Copa having the ability to deplane passengers at the airport. At 5:04 pm EST, four hours and 48 minutes into the tarmac delay, Copa decided to cancel flight 488, and all passengers deplaned the aircraft at 5:10 pm EST. In total, the 123 passengers on Copa flight 488 experienced a tarmac delay of four hours and 54 minutes.

After receiving a passenger complaint, on February 10, 2022, OACP contacted Copa to inquire about the alleged tarmac delay. Copa waited until April 2, 2022, almost three months after the delay occurred, to provide OACP with a written description of the tarmac delay. In addition, Copa did not report the delay experienced by flight 488 to BTS until July 2022.

Based on our investigation, none of the exceptions in 14 CFR 259.4(c)(3) apply to the delay experienced by Copa flight 488. As such, by failing to provide passengers on flight 488 an opportunity to deplane before the tarmac delay exceeded four hours in duration, Copa failed to adhere to the terms of its contingency plan and violated of 14 CFR 259.4(a) and (c)(2). In addition, Copa violated 14 CFR 259.4(g) by failing to timely submit a written description of the tarmac delay to OACP and 14 CFR 244.3 by failing to timely file the required Tarmac Delay Report with BTS. Furthermore, by violating 14 CFR Parts 259 and 244 in this instance, Copa also violated 49 U.S.C. § 41712.

Response

In response, Copa states that it takes seriously its obligation to comply with the Department's tarmac delay rules. Copa states that on the night in question, its System Operations Control Center (SOCC), flight crew, and U.S. airport teams made, in Copa's view, what they believed to be appropriate decisions for the safety, comfort, and convenience of IAD-bound passengers diverted to JFK due to weather.

Copa explains that its SOCC, flight crew, and airport personnel felt they could continue the flight to its original destination in a timely manner. Copa states that surface congestion at JFK, and an over fueling of the aircraft diverted its attention away from the lengthening tarmac delay. Copa further states that it then sought to allow passengers the option to deplane at JFK or continue on the same aircraft, but Customs and Border Protection would only accept a complete offloading of the aircraft.

Copa states that the timing of its decisions during the tarmac delay at JFK, which were adversely affected by these events and technical problems with communications, caused the airline to fall short of the Department's standards in this case. Copa states that the disruption to its workforce caused by the COVID-19 pandemic led to a decreased familiarity with, and understanding of, those standards. As a result, Copa states that it has taken corrective action to enhance and begin

earlier its real-time review of tarmac delays, to retrain its SOCC and U.S. airport personnel, and to remind flight and cabin crews systemwide of their obligations in this important area.

Finally, Copa states that it respectfully disagrees with OACP's determination that civil penalties for excessive tarmac delays may be assessed on a per passenger basis, asserting instead that the statute provides for assessment on a per-flight basis. Nevertheless, Copa has agreed to this settlement in the interest of avoiding litigation.

Decision

OACP views seriously Copa's violations of 14 CFR Parts 259 and 244 and 49 U.S.C. § 41712. Accordingly, after carefully considering all the facts in this case, including those set forth above, OACP believes that enforcement action is warranted. In order to avoid litigation, Copa consents to the issuance of this order to cease and desist from future violations of 14 CFR Parts 259 and 244 and 49 U.S.C. § 41712, and to the assessment of \$130,000 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 against future similar unlawful practices by Copa 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, on January 16, 2022, Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines violated 14 CFR 259.4(a) and (c)(2) 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;
3. We find that Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines violated 14 CFR 259.4(g) by failing to submit a written description of the tarmac delay within 30 days of the event to the Department;
4. We find that Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines violated 14 CFR 244.3 by failing to file timely a BTS Form 244, Tarmac Delay Report, with the Department;
5. We find that by engaging in the conduct described in ordering paragraphs 2-4 above, Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;

6. We order Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines and its successors and assigns to cease and desist from further violations of 14 CFR Parts 259 and 244 and 49 U.S.C. § 41712;
7. We assess Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines \$130,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of that amount, \$65,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$65,000 will become due and payable if, within one year of the date of the issuance of this order, Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines may be subject to additional enforcement action for violation of this order;
8. We order Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 7, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Compañía Panameña de Aviación, S.A., d/b/a Copa Airlines 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:

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Office of Aviation Consumer Protection

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