



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

**Issued by the Department of Transportation
on the 15th day of May, 2024**

**Concesionaria Vuela Compania de Aviacion
S.A.P.I. de C.V. d/b/a Volaris**

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

Docket DOT-OST-2024-0001

Served May 15, 2024

CONSENT ORDER

This consent order concerns violations by Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris (Volaris) of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, Volaris failed to adhere to the assurances 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 and will provide food to passengers within two hours after the start of a tarmac delay. This order directs Volaris to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712 and assesses the carrier \$300,000 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 (for international flights) 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. In addition, 14 CFR 259.4(c)(4) requires covered carriers to provide adequate food and potable water no later than two hours after the start of the tarmac delay, unless the pilot-in-command determines that safety or security considerations preclude such service. A carrier's failure to adhere to the assurances in its contingency plan for tarmac delays in violation of 14 CFR 259.4 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, 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.

Facts and Conclusions

Volaris is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)¹ that operates scheduled service to several U.S. airports using at least one aircraft having a design capacity of more than 30 passenger seats. Volaris has a tarmac delay contingency plan that states, “[w]e will not permit our aircraft to remain on the tarmac at a U.S. airport for more than four hours before allowing passengers to deplane.” In addition, subject to specific exceptions permitted by law, Volaris’ plan also states, “at U.S. airports, we will provide passengers with adequate food and potable water no later than two hours after the aircraft...touches down (in the case of an arrival or a diversion unless the pilot-in-command determines that safety or security considerations preclude such service.”

Volaris Flight 5892—August 17, 2021

An investigation by OACP revealed that on August 17, 2021, Volaris flight 5892 traveling from Miguel Hidalgo y Costilla International Airport (GDL) to Dallas Fort Worth International Airport (DFW), experienced a lengthy tarmac delay when it was diverted to George Bush Intercontinental Airport (IAH). Flight 5892 landed at IAH at 2:28 pm CDT and blocked into gate D5 soon thereafter to refuel and await clearance to depart for DFW. While at the gate, Volaris did not provide passengers on board the flight an opportunity to deplane because Volaris intended flight 5892 to depart IAH. At 3:53 pm, flight 5892 repositioned to a hardstand location where it continued to await clearance to depart for DFW. At approximately 6:00 pm, flight 5892 requested to return from the hardstand to a gate and was ultimately assigned gate D7 but did not make any movement towards the gate after receiving the new gate assignment. At 6:49 pm, four hours and 21 minutes into the delay, flight 5892 sought authorization to depart to DFW. At 7:10 pm, four hours and 42 minutes into the delay, flight 5892 abandoned its efforts to depart, but, gate D7 was reassigned to a different flight. Ultimately, Volaris blocked into gate D5 at 7:58 pm, and all passengers began to disembark the aircraft at 8:00 pm. In total, 157 passengers on flight 5892 experienced a tarmac delay of five hours and 32 minutes.

¹ 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.”

Volaris Flight 826—July 23, 2022

An investigation by OACP revealed that on July 23, 2022, Volaris flight 826 traveling from Mexico City Airport (MEX) to Chicago O'Hare International Airport (ORD) experienced a lengthy tarmac delay when it was diverted to St. Louis Lambert International Airport (STL), where it landed at 6:15am CDT. Shortly after landing, flight 826 taxied to a hardstand location to refuel in preparation for departure to ORD. Beverages were provided 30 minutes into the tarmac delay, but food was not provided; instead, Volaris offered to sell food to passengers on board flight 826. Flight 826 requested a gate at 9:36 am CDT, three hours and 21 minutes into the delay, and Volaris was assigned to gate E29 at 9:50 am. However, at 9:55 am, three hours and 40 minutes into the delay, flight 826 attempted to obtain a release to depart STL. At 10:01 am, Volaris acknowledged that it had not received arrival clearance from ORD and abandoned its efforts to depart STL. At 10:06 am, three hours and 51 minutes into the delay, flight 826 confirmed with STL that it would utilize gate E29 and prepared to move toward its assigned gate. Flight 826 arrived at gate E29 at 10:40 am, and all passengers began to disembark the aircraft at 10:50 am. In total, 167 passengers on flight 826 experienced a tarmac delay of four hours and 35 minutes.

Based on our investigations, none of the exceptions in 14 CFR 259.4(c)(3) apply to the tarmac delays experienced by flights 5829 and 826. As such, by failing to provide passengers on those flights an opportunity to deplane before the tarmac delays exceeded four hours in duration, Volaris failed to adhere to the terms of its contingency plan and violated 14 CFR 259.4(a) and (c)(2) in both instances. In addition, Volaris failed to adhere to its contingency plan and violated 14 CFR 259.4(a) and (c)(4) when it failed to provide passengers on board flight 826 with food more than two hours after the start of the tarmac delay. By violating 14 CFR 259.4 in these instances, Volaris also violated 49 U.S.C. § 41712.

Response

In response, Volaris states that it takes very seriously its responsibility to comply with all of the Department's requirements, including the tarmac delay rule. Volaris contends that a series of events outside of its control combined to cause the tarmac delays of both flight 5829 and flight 826.

With respect to flight 5892, Volaris states that this flight was one of 23 aircraft diverted to IAH on August 17, 2021, due to severe weather at DFW. Volaris believes this significantly added to the ground congestion at the airport, making it difficult to obtain airport resources in a timely manner.

Volaris states that Flight 5892 landed at 2:28pm and blocked into gate D5 at 2:56 pm. Volaris states that when refueling finished at 3:42 pm, flight 5892 was informed that it must move off gate D5 to a hard stand while it waited to depart. Volaris states that after being unable to re-depart for DFW, flight 5892 made multiple requests to be removed from the hardstand, but was not towed off the hardstand until 7:53 pm.

Volaris believes it made every effort to return to the gate to deplane passengers, and that the tarmac delay experienced by flight 5892 was the result of the airport's failure to reassign it another gate when requested and failures on the part of the airport ground service provider.

With respect to flight 826, Volaris states that this flight incurred significant service provider delays from the moment it landed in STL.² Volaris believes it acted reasonably based upon the information it was receiving from the FAA during the tarmac delay, and believes that completing the trip to ORD would have been a better result for passengers than deplaning in STL and incurring significant delays. Volaris contends that it acted in the best interests of passengers at all times, and that as soon as it knew it could not depart for ORD, it took steps to deplane passengers.

Volaris respectfully disagrees with OACP's view that a separate violation occurs for each passenger onboard flights 5892 and 826 and believes that the applicable statutes provide for violations to be assessed on a per flight basis. However, in the interest of resolving this proceeding without litigation, Volaris has agreed to this compromise settlement.

Decision

OACP views seriously Volaris' violations of 14 CFR Part 259 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, Volaris consents to the issuance of this order to cease and desist from future violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and to the assessment of \$300,000 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 Volaris 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 Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris violated 14 CFR 259.4(a) and (c)(2), as described above, 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 Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris violated 14 CFR 259.4(a) and (c)(4) by failing to provide food to passengers during a tarmac delay no later than two hours after the start of the tarmac delay experienced by flight 826;
4. We find that by engaging in the conduct described in ordering paragraph 2 and 3 above, Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;

² Volaris does not provided scheduled air service to STL.

5. We order Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris and its successors and assigns to cease and desist from further violations of 14 CFR 259.4 and 49 U.S.C. § 41712;
6. We assess Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris \$300,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of that amount, Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris shall pay \$150,000 as follows:
 - a. \$50,000 shall be due and payable within 90 days of the issuance date of this order,
 - b. \$50,000 shall be due and payable within 150 days of the issuance date of this order, and
 - c. \$50,000 shall be due and payable within 210 days of the issuance date of this order.

The remaining \$150,000 will become due and payable if, within one year of the date of the issuance of this order, Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris may be subject to additional enforcement action for violation of this order;

7. We order Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris to pay the assessed penalty in accordance with the installment plan described in paragraph 6 above³ through Pay.gov to the account of the U.S. Treasury. Payment shall also be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Concesionaria Vuela Compania de Aviacion S.A.P.I. de C.V. d/b/a Volaris 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:

MAEGAN L. JOHNSON
Senior Attorney
Office of Aviation Consumer Protection

An electronic version of this document is available at
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³ Paragraph 7 of this order has been amended from the version of the order published in the docket on May 15, 2024, to reflect that the civil penalty payments are due in accordance with the installment plan described in paragraph 6.