



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

Issued by the Department of Transportation
On the Thirty-First day of December, 2012

Copa Airlines, Inc.

**Violations of 14 CFR Parts 259 and 244 and
49 U.S.C. §§ 41712 and 41708**

Served December 31, 2012

Docket DOT-OST-2012-0002

CONSENT ORDER

This consent order concerns violations by Copa Airlines, Inc., (Copa) of 14 CFR Parts 259 and 244 and 49 U.S.C. §§ 41712 and 41708. Specifically, the carrier failed to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier (1) would not allow an aircraft to remain on the tarmac for more than four hours before allowing passengers an opportunity to deplane, and (2) would provide customers with food and water within two hours after the aircraft left the gate in the case of a tarmac delay. Moreover, Copa failed to include certain required assurances in its contingency plan for lengthy tarmac delays and failed to file 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 41708 and assesses the carrier \$150,000 in civil penalties.

Applicable Law

On April 25, 2011, the Department issued rules¹ designed to enhance protections for air travel consumers that, among other things, require “covered carriers,” which include

¹ 76 Fed. Reg. 23110 (April 25, 2011).

foreign air carriers that operate scheduled passenger service to or from the United States with at least one aircraft with a design capacity of 30 or more passenger seats, to adopt and adhere to contingency plans for lengthy tarmac delays² and customer service plans. These rules also require covered carriers to file data with the Department regarding lengthy tarmac delays. The effective date for these rules was August 23, 2011.

I. Contingency Plan for Lengthy Tarmac Delays

Pursuant to section 259.4 of the Department's rules (14 CFR 259.4), foreign air carriers that operate scheduled passenger service or public charter service to and from the U.S.³ 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. The rule requires covered carriers to provide ten assurances that are specified in the rule at section 259.4(b)(1)-(10). 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 an easily-accessible form.

For an international flight, which is at issue here, section 259.4(b)(2) requires covered carriers to provide an assurance that they will not permit an aircraft to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane, with 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 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. Furthermore, section 259.4(b)(3) requires covered carriers, for all flights delayed on the tarmac, to provide adequate food and potable 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. An air carrier's failure to comply with the assurances required by Part 259 and 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 On April 25, 2011, the Department issued new rules that expanded the requirements of what must be included in contingency plans for lengthy tarmac delays. *See* 76 Fed. Reg. 23110 (April 25, 2011).

³ According to 14 CFR 259.2, Part 259 does not apply to foreign carrier charters that operate to and from the United States if no new passengers are picked up in the United States.

II. Reporting Tarmac Delay Data

Section 244.3 of the Department's regulations require certain air carriers to file Bureau of Transportation Statistics (BTS) Form 244 "Tarmac Delay Report" with the Office of Airline Information on a monthly basis. The data are then 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.⁴ The ATCR data in question are used for a number of purposes, including by the traveling public to choose among transportation options, by the Department as a basis for conducting enforcement investigations, and by carriers as a basis for making advertising claims regarding the quality of their service compared to other carriers. It is imperative, therefore, that ATCR data be accurate. Violations of section 244.3 also constitute violations of 49 U.S.C. § 41708.

Facts and Conclusions

Copa is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)⁵ that operates scheduled service from John F. Kennedy International Airport (JFK), a large hub airport, using at least one aircraft having a design seating capacity of more than 30 passenger seats. Copa's contingency plan states that for the carrier's international flights to and from the U.S., "Copa Airlines will not allow an aircraft to remain on the tarmac at a U.S. airport for more than four hours before providing passengers an opportunity to get off board." Copa further states that the exceptions to this policy are, "if the pilot in command determines that there is a safety related or security related reason, and the aircraft can't leave its position on the tarmac to let passengers deplane" or if air traffic control "advises the pilot in command that returning to the gate to let passengers deplane would disrupt airport operations." Copa's plan also states that it will provide customers with "snack food and drinking water no later than two hours after the aircraft leaves the gate" in the case of departure unless the pilot in command determines that there is a safety or security issue with providing such service.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that Copa flight 831 was scheduled to depart JFK on June 22, 2012, at 3:05pm EDT, and arrive at Panama Tocumen Airport (PTY) at 8:38pm EDT. However, inclement weather conditions occurred in the New York metropolitan area which led to congestion and traffic on the tarmac and runways at JFK. Flight 831 pushed back from

⁴ See *Air Travel Consumer Report*, available at <http://airconsumer.dot.gov>.

⁵ 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."

the gate at 3:50pm EDT. The flight crew began serving beverages at 4:50pm EDT. As a result of the inclement weather, the aircraft sat on the tarmac for one hour and fifteen minutes before the captain of flight 831 determined that refueling would be required to meet the flight plan. At 5:30pm EDT, the captain relocated the aircraft to a remote position on the tarmac to begin refueling, which continued until 6:45pm EDT. Passengers were kept aboard the aircraft during this time and were neither given the opportunity to deplane nor provided with food service.

After refueling was complete, the captain, not having received any information from Air Traffic Control of further delays, positioned the aircraft on the taxiway to await clearance for take-off. Passengers were offered meals at 7:30pm EDT while awaiting clearance for take-off.

The captain was unable to confirm a possible departure time with Air Traffic Control so, as the crew aboard the aircraft was close to timing out, the captain decided to postpone the flight. Passengers were given the opportunity to deplane at 9:24pm EDT, five hours and thirty-four minutes after the aircraft left the gate. Flight 831 departed JFK at 5:28am EDT on June 23, 2012, and arrived at PTY at 10:10am EDT.

In summary, the Enforcement Office found that Copa failed to provide passengers with an opportunity to deplane before the tarmac delay exceeded four hours and that Copa made no attempt to provide snack food to passengers within two hours after flight 831 left the gate. Copa's failure to adhere to the terms of its contingency plan in this regard violated sections 259.4(b)(2) and 259.4(b)(3) and 49 U.S.C. § 41712.

In addition, as part of the investigation into this incident, a review of Copa's contingency plan for lengthy tarmac delays, posted on its website, revealed that the required assurances specified in sections 259.4(b)(6)-(10) were absent from the contents of its plan. Pursuant to section 259.4(b)(6), a carrier must provide an assurance that passengers on a delayed flight on the tarmac will receive notifications 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. Section 259.4(b)(7) requires a carrier to provide an assurance that it will maintain sufficient resources to implement the plan. Finally, sections 259.4(b)(8)-(10) state that a carrier must provide assurance that its contingency plan for lengthy tarmac delays has been coordinated with airport authorities, U.S. Customs and Border Protection, and the Transportation Security Administration at each large U.S. hub airport, medium hub airport, small hub airport and non-hub airport that the carrier serves, as well as its regular U.S. diversion airports that the carrier regularly uses for its international flights. Copa's failure to adopt all of the required assurances in its contingency plan for lengthy tarmac delays is a violation of 14 CFR 259.4(b) and 49 U.S.C. § 41712.

As a final matter, Copa also failed to file BTS Form 244 "Tarmac Delay Report" with the Department's Bureau of Transportation Statistics' Office of Airline Information covering

flight 831. The Department only learned of the tarmac delay experienced by flight 831 after reviewing two complaints it received from consumers aboard flight 831 alleging that they had experienced lengthy tarmac delays and that Copa had failed to provide food until several hours into the tarmac delay. After the Enforcement Office initiated an investigation of the circumstances surrounding the lengthy tarmac delay, the Enforcement Office discovered that Copa had failed to file the required report with the Department. Had it not been for the consumer complaints the Department received, Copa may have never provided information regarding the tarmac delay experienced by flight 831 as required by Part 244. Copa's failure to file its tarmac delay report for flight 831 is a violation of 14 CFR 244.3 and 49 U.S.C. § 41708.

Mitigation

In mitigation, Copa states that it takes very seriously its responsibility to comply with all of the Department's requirements, including the Department's tarmac delay rules. Copa states that it has an excellent record overall of compliance with DOT regulations, and regrets the unfortunate failures detailed in this order. Copa concedes that it failed to strictly comply with the requirements of the Department's tarmac delay rules in connection with flight 831 on June 22, 2012, and failed to timely file the related tarmac delay report. Copa, however, points out that the temperature in the aircraft was at all times maintained at comfortable levels, lavatories were working and accessible to passengers, and Copa crew members acted in a very courteous and professional manner. In addition, Copa states that where possible, it provided ground transportation and meal vouchers to affected passengers once they deplaned.

Copa also states that upon being made aware of its failure to strictly comply with the Department's tarmac delay rules as outlined in this order, the airline undertook immediate and comprehensive steps to ensure strict compliance in the future. Copa states that the steps it has taken include the following: (i) updating its crew and ground personnel training and operational manuals and procedures; (ii) formulating internal procedures to ensure compliance with reporting requirements in the future; (iii) working with airport authorities, suppliers and local employees at relevant airports to ensure that adequate sources of snacks and drinks will be available in case of any future events; (iv) updating the Copa website to comply in all respects with the informational requirements of Part 259; and (v) stressing the importance of compliance with the Department's tarmac delay rules at local, regional and pan-regional meetings of its operations staff and senior management.

Decision

We view seriously Copa's violation of 14 CFR Parts 259 and 244 and 49 U.S.C. §§ 41712 and 41708. 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 Copa 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 four hours without providing passengers an opportunity to deplane and that passengers would be provided with food no later than two hours after the aircraft left the gate. Copa forced a total of 143 passengers on flight 831 to remain on the tarmac for more than five hours without the opportunity to deplane. In addition, Copa forced those passengers to remain on the plane for nearly four hours before providing those passengers with food. Copa also failed to include all of the assurances required by section 259.4 in its contingency plan for lengthy tarmac delays. Finally, Copa failed to file with the Department BTS Form 244 setting forth the required information surrounding the tarmac delay experienced by flight 831.

In order to avoid litigation, Copa has agreed to settle this matter with the Enforcement Office and enter into this consent order, which directs Copa to cease and desist from future similar violations of 14 CFR Parts 259 and 244 and 49 U.S.C. §§ 41712 and 41708, and assesses \$150,000 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 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 Copa Airlines, Inc., violated 14 CFR 259.4(b)(2) by failing 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 at a U.S. airport for more than four hours without providing passengers an opportunity to deplane;
3. We find that Copa Airlines, Inc., violated 14 CFR 259.4(b)(3) by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would provide food no later than two hours after the aircraft left the gate in the case of departure;
4. We find that Copa Airlines, Inc., violated section 259.4(b) by failing to include all of the required assurances in its contingency plan for lengthy tarmac delays;
5. We find that by engaging in the conduct described in ordering paragraphs 2, 3 and 4, above, Copa Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;

6. We find that Copa Airlines, Inc., violated 14 CFR Part 244 by failing to file a BTS Form 244 with the Department setting forth the information surrounding the tarmac delay experienced by flight 831;
7. We find that by engaging in the conduct and violations described in ordering paragraph 6, above, Copa Airlines, Inc., violated 49 U.S.C. § 41708;
8. We order Copa Airlines, Inc., and all other entities owned or controlled by, or under common ownership and control with Copa Airlines, Inc., its successors, affiliates, and assigns, to cease and desist from further violations of 14 CFR Parts 259 and 244 and 49 U.S.C. §§ 41712 and 41708;
9. We assess Copa Airlines, Inc., \$150,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 7 above. Of this total penalty amount, \$75,000 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, Copa Airlines, Inc., violates this order's cease and desist or payment provision, in which case Copa Airlines, Inc., may become subject to additional enforcement action for any violation of the order; and
10. We order Copa Airlines, Inc., 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 Copa 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:

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