



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

Issued by the Department of Transportation
On the Fifteenth day of January, 2014

Qantas Airways Limited

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

Docket OST 2014-0001

Served January 15, 2014

CONSENT ORDER

This consent order concerns violations by Qantas Airways Limited (Qantas) of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, the carrier failed to inform passengers on a flight delayed for a period at the gate with the door open that they had the opportunity to deplane as required under Part 259. This order directs Qantas 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.

Specifically, under section 259.4(b)(6), a carrier must provide an 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 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.

Facts and Conclusions

Qantas is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)¹ that operates scheduled service from Dallas/Fort Worth International Airport (DFW), a large hub airport, using at least one aircraft having a design capacity of more than 30 passenger seats. Qantas was scheduled to operate flight 008 from DFW to Brisbane International Airport on March 21, 2013. Flight 008, which was originally scheduled to depart at 10:00 p.m., pushed back from the gate at 10:41 p.m. However, after receiving a mechanical alert, the captain returned the aircraft to the gate to be serviced at 11:08 p.m. The aircraft remained at the gate for 1 hour and 7 minutes. Although the aircraft door was open during this time and the carrier states that passengers had the opportunity to deplane, none of the carrier's personnel, including the flight crew, announced to passengers that they had that opportunity. After the aircraft was refueled, the aircraft pushed back from the gate at 12:15 a.m. After receiving another mechanical alert, the captain returned the aircraft to the gate a second time, at 12:26 a.m. The aircraft door was opened again while it remained at the gate, but Qantas personnel again failed to advise passengers that they could deplane. The aircraft was at the gate for 2 hours and 2 minutes. The aircraft pushed back from the gate at 2:28 a.m., but the captain received yet another mechanical alert at 2:55 a.m. The captain decided to cancel the flight and passengers disembarked the aircraft at 3:05 a.m.

In response to an investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office), Qantas indicates 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 at a U.S. airport 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 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

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."

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 008. 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, Qantas was required to notify passengers that they could deplane the aircraft if they wished to do so. Qantas' failure to provide proper notification to passengers of the opportunity to deplane during both gate delays is a violation of both 14 CFR 259.4(b)(6) and 49 U.S.C. § 41712.

Mitigation

In mitigation Qantas states that it made every effort to accommodate the needs of the passengers from the time that Qantas Flight 8 left the gate on March 21, 2013, until the flight ultimately had to be canceled. Qantas explains that both the cockpit crew and the cabin crew kept passengers fully notified of the status of the flight at all times, including the two periods when the aircraft returned to the gate in order to address the engine alerts and to refuel. Qantas states that while the aircraft was at the gate, cell phone access, drinking water, and toilets were all available and that no medical assistance was requested. Qantas also states that during the second period that the aircraft was at the gate, the crew provided passengers with food and water.

Qantas recounts that during both returns of the aircraft to the gate, the Customer Service Manager, other cabin crew, and the Captain did walk-arounds of the cabins to maintain contact with the passengers and to answer questions. Qantas states that although no one expressed an interest in deplaning during the periods that the aircraft was at the gate, the doors to the aircraft were open and any passenger who wished to deplane would have been permitted to do so. Qantas notes that all indications were to the contrary—that the passengers' priority was for the flight to depart as soon as possible. Qantas also notes that it did not receive any complaints from passengers during the times that the aircraft was at the gate.

Qantas emphasizes that crew members made every attempt to minimize inconvenience to passengers and to get the flight underway within crew duty time limitations in order to avoid an overnight delay. Qantas points out that the crew prepared a flight plan for Auckland when the flight was unable to depart for Brisbane due to duty time limitations but that the flight nonetheless had to be canceled following the third engine alert since the crew time remaining was insufficient to complete a transpacific flight.

Qantas affirms its commitment to compliance with all of the Department's requirements, including the notification requirement at issue.

Decision

The Enforcement Office has carefully considered the information provided by Qantas, but continues to believe enforcement action is warranted. The Enforcement Office and Qantas have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Qantas consents to the issuance of this order to cease and desist from future violations of 14 CFR 259.4(b)(6) 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 Qantas 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 Qantas Airways Limited violated 14 CFR 259.4(b) by failing to properly notify passengers that they had the opportunity to deplane an aircraft while it was at the gate for a period with the door open as required by 14 CFR 259.4(b)(6);
3. We find that by engaging in the conduct described in ordering paragraph 2 above, Qantas Airways Limited engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Qantas Airways Limited and all other entities owned or controlled by, or under common ownership and control with Qantas Airways 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;
5. We assess Qantas Airways Limited \$90,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 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, Qantas Airways Limited violates this order's cease and desist or payment provision, in which case Qantas Airways Limited may become subject to additional enforcement action for any violation of the order; and

6. We order Qantas Airways 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 Qantas Airways 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:

BLANE WORKIE
Acting Assistant General Counsel for
Aviation Enforcement and Proceedings

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