



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

Issued by the Department of Transportation
on the 12th day of April 2016

SeaPort Airlines, Inc.

**Violations of 14 CFR Part 323,
49 U.S.C. § 41734, DOT Order 2015-09-
26, and DOT Order 2015-11-6**

Docket OST 2016 – 0002

Served April 12, 2016

CONSENT ORDER

This consent order concerns violations by SeaPort Airlines, Inc., (SeaPort) of 49 U.S.C. § 41734 and 14 CFR Part 323, requiring the carrier to provide advance notice before ending, suspending, or reducing air transportation provided under the Essential Air Service (EAS) Program. In addition, SeaPort failed to comply with orders from the Department of Transportation (Department or DOT) requiring the carrier to continue providing basic EAS to three communities until another carrier could begin service to those communities.

This order directs SeaPort to cease and desist from future similar violations of § 41734 and 14 CFR Part 323, and DOT orders, and assesses the carrier \$30,000 in civil penalties.

Background and Applicable Law

Through the EAS Program, the Department subsidizes air carriers that provide air service to rural and/or isolated communities that would not otherwise receive scheduled air transportation following the deregulation of the airline industry in 1978. Through the EAS Program, the Department enters into contracts with air carriers to provide guaranteed minimum levels of service to EAS communities. 49 U.S.C. §§ 41732-41733.¹

Before a carrier participating in the EAS Program may end, suspend, or reduce EAS service below guaranteed minimum levels, the carrier must first provide 90 days' advance notice to the affected community, the appropriate state authority, and the DOT. 49 U.S.C. § 41734(a). These notice requirements are incorporated into both the Department's regulations for the EAS Program (14 CFR Part 323), and the Department's Carrier Selection Orders. *See, e.g.*, DOT Order 2014-10-21 (October 24, 2014) (SeaPort Selection Order for Muscle Shoals, AL). The notice requirement gives the DOT and affected communities the opportunity to seek alternative providers in a timely and orderly manner. The notice requirement also gives interested parties the opportunity to file objections to the proposed reduction in service. See 14 CFR 323.9-323.13.

The notice requirements are set forth in detail at 14 CFR 323.4.² Generally, notice must conform to the procedural rules of subpart A of 14 CFR Part 302 (relating to service of documents in DOT proceedings). 14 CFR 323.6. Notice must be served upon: (1) the chief executive of the local government at the affected place; (2) the state agency with jurisdiction over air transportation; (3) the manager of the affected airport; (4) certain

¹ The standards for basic essential air service are set forth in detail at 49 U.S.C. § 41732. In general, minimum service consists of two daily round trips to a hub airport, six days per week. 49 U.S.C. § 41732(a), (b)(1)(A).

² For example, the notice must, *inter alia*: provide contact information for the carrier; name all the other air carriers serving the point; provide a detailed description of the service to be terminated, including the specific routes that will be discontinued; provide the calendar date by which objections to the notice are due; and provide proof of service. 14 CFR 323.4.

other air carriers that may be directly affected by the notice; and (5) the DOT. 14 CFR 323.7.

The Department also has the authority under section 41734 to issue hold-in orders directing carriers to continue providing service to an EAS community until a new carrier provides service on a continuing basis. These orders represent a key safeguard in ensuring that rural and isolated communities receive uninterrupted air service.

Facts and Conclusions

SeaPort is a certificated air carrier based in Portland, Oregon, that served both EAS and non-EAS communities in seven states. On May 5, 2015, SeaPort provided 90 days' notice of its intent to terminate EAS to Greenville, MS. In a series of orders, including DOT Order 2015-11-6, the Department directed SeaPort to continue providing EAS to Greenville until a new carrier begins service. On September 28, 2015, SeaPort notified the Department that it would terminate EAS effective two days later, on September 30, 2015. SeaPort terminated EAS to Greenville before a replacement carrier began service.

On August 27, 2015, SeaPort offered 90 days' notice of its intent to terminate service to Muscle Shoals, AL, and Tupelo, MS.³ On September 30, 2015, in DOT Order 2015-09-26, the Department directed SeaPort to continue providing EAS to these communities until December 28, 2015, or until a new carrier actually began providing EAS. On October 19, 2015, SeaPort notified the Department that it would terminate EAS to these communities effective four days later, on October 23, 2015. SeaPort terminated EAS to these communities with less than 90 days' notice, and before replacement carriers could begin service.

³ SeaPort's proposed termination date was earlier than 90 days of the date of the notice. The Department deemed the proposed termination date to be November 25, 2015.

On January 15, 2016, SeaPort announced via email and a press release that it was immediately terminating EAS to Great Bend, KS; Salina, KS; El Centro/Imperial, CA; and Visalia, CA.

As described above, SeaPort did not comply with the full, 90-day notice requirements found in 14 CFR Part 323. In doing so, SeaPort violated 14 CFR Part 323 and 49 U.S.C. § 41734. By failing to provide notice as required, SeaPort compromised the ability of all EAS stakeholders, including the Department, to ensure that adequate and uninterrupted EAS service was provided to the affected communities. One purpose of the statutorily required 90-day notice provision is to give passengers and shippers in the community sufficient notice that the service may not be in place after the end of the 90-day period, and to give them sufficient time to make alternate travel and shipping arrangements. SeaPort's failure to provide the required notice deprived the affected communities of this ability. Further, in Muscle Shoals, Tupelo, and Greenville, SeaPort violated the Department's orders directing the carrier to continue EAS until replacement service began.

Response

SeaPort states that it has been an active participant in the EAS program since 2009 and since that time had established a solid record of providing high-quality and reliable service that earned it the support of the communities that it serves, including its EAS communities. SeaPort states that beginning in late 2014, however, that reliability began to fall apart due to circumstances beyond SeaPort's control. Specifically, SeaPort states the primary reason that it ceased EAS service without proper notice, and subsequently filed for bankruptcy protection, was due to a national pilot shortage that is related to the FAA's new flight and duty time limitations of FAA Air Transport Pilot 1,500 hour requirements for First Officers at Part 121 carriers, thus causing dramatically increased attrition at Part 135 carriers.

Decision

The Office of Aviation Enforcement and Proceedings (Enforcement Office) views seriously SeaPort's violations of 49 U.S.C. § 41734, 14 CFR Part 323 and DOT orders. Accordingly, after carefully considering all of the facts in this case, including those set

forth above, the Enforcement Office believes that enforcement action is warranted. While the Department recognizes SeaPort's staffing difficulties, it cannot overlook SeaPort's noncompliance with DOT orders and the full and formal 90-day notice requirements set forth in Part 323.

In order to avoid litigation, and without admitting or denying the violations described above, SeaPort consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41734, 14 CFR Part 323, and Department orders, and to the assessment of \$30,000 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 SeaPort 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 SeaPort Airlines, Inc., violated 14 CFR Part 323 by failing to comply with the 90-day notice requirements found in that Part;
3. We find that SeaPort Airlines, Inc., violated 49 U.S.C. § 41734 by failing to provide 90 days' notice to the DOT and affected communities before ending, suspending, or reducing air service below EAS minimum levels;
4. We find that SeaPort Airlines, Inc., violated DOT Orders 2015-11-6 and 2015-09-26 by failing to continue providing EAS until replacement service began;

5. We order SeaPort Airlines, Inc., and its successors and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41734, 14 CFR Part 323 and DOT orders; and
6. We assess SeaPort Airlines, Inc., \$30,000 in lieu of civil penalties that might otherwise be assessed for the violations described above, payable from amounts that the Department currently holds that are otherwise due and owing to SeaPort.

This order will become a final order of the Department ten days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

BLANE A. WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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