



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

Issued by the Department of Transportation
on the 9th day of March, 2017

Delta Air Lines, Inc.

**Violations of 14 CFR Part 259 and
49 U.S.C. §§ 41712 and 42301**

Docket OST-2017-0001

Served: March 9, 2017

CONSENT ORDER

This consent order concerns violations by Delta Air Lines, Inc., (Delta) of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301. Specifically, the carrier failed to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would provide adequate food and water no later than two hours after an aircraft leaves the gate if the aircraft remains on the tarmac and to ensure sufficient resources to implement the plan. This order directs Delta to cease and desist from future similar violations of 14 CFR Part 259 and of 49 U.S.C. §§ 41712 and 42301, and assesses the carrier \$90,000 in civil penalties.

Applicable Law

Pursuant to section 259.4 of the Department's rules, covered carriers, which include any U.S. certificated carrier 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. Pursuant to section 259.4(b)(3), covered carriers are required to provide adequate food and water no later than two hours after the aircraft leaves the gate (in the case of departure) or touches down (in the case of arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security considerations preclude such service. Further, section 259.4(b)(7) of the rule requires each covered carrier to have sufficient resources to implement its contingency plan.

A covered carrier’s failure to comply with the assurances required by section 259.4 and as 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. § 41712.¹

Facts and Conclusions

Delta is an air carrier as defined by 49 U.S.C. § 40102(a)(2)² that operates scheduled service at John F. Kennedy International Airport (JFK) and Hartsfield–Jackson Atlanta International Airport (ATL), both large hub airports, and that uses at least one aircraft having a design capacity of more than 30 passenger seats. Delta has adopted contingency plans for lengthy tarmac delays covering its scheduled passenger operations at JFK and ATL. These plans include assurances that food and water will be stored on board all of its aircraft and will be provided to passengers within two hours of the beginning of a tarmac delay.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that in July 2016, the following Delta flights experienced lengthy tarmac delays:

Flight Number	Flight Date	Itinerary	Incident Airport
DL 470	7/1/16	JFK-AGP	JFK
DL 43	7/8/16	JFK-ATL	JFK
DL 1341	7/21/16	ATL-GSP	ATL
DL 1132	7/21/16	ATL-PWM	ATL

Although water was served on each of these flights to all passengers, the evidence indicates that limited or no food service was provided. On flight 470, it appears that some food was available to passengers before the two-hour mark, but that due to “limited supplies,” the snacks were placed in the galley and made available to whoever wanted them, rather than served to all the passengers. Regarding flight 43, it appears that while a snack service was done while the cabin door was open, only water was served during the subsequent delay of 131 minutes after there was no longer an opportunity to deplane. The evidence with respect to flight 1132 indicates that Delta provided only water to the passengers onboard before the tarmac delay exceeded two hours. Finally, in regards to flight 1341, it appears that Delta failed to have adequate provisions onboard to provide snack service to all passengers during the delay. Delta’s failure to adhere to the terms of its contingency plans in these instances violated 14 CFR 259.4(b)(3) and 14 CFR 259.4(b)(7), as well as 49 U.S.C. §§ 41712 and 42301(e)(3).

¹ In addition, the FAA Modernization and Reform Act, 49 U.S.C. § 42301 requires that carriers adhere to their tarmac delay contingency plans. 49 U.S.C. § 42301(e)(3).

² 49 U.S.C. § 40102(a)(2) defines an air carrier as “a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.”

Response

In response, Delta states that none of the four flights caused any passengers to be kept on the tarmac for over three hours without the opportunity to deplane. However, Delta acknowledges and regrets that the manner of distribution of snacks was not ideal. Delta states that it strives to provide food and water during extended delays not simply because it is required by regulation, but because it always strives to provide excellent service to all Delta customers. The carrier adds that during irregular operations, Delta places its highest priority on the safety and comfort of its customers and crew members.

Decision

The Enforcement Office views seriously Delta's violations of 49 U.S.C. §§ 41712 and 42301 and 14 CFR Part 259. Accordingly, after carefully considering all the facts in these instances, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, Delta consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41712 and 42301 and 14 CFR Part 259 and to the assessment of \$90,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future similar unlawful practices by Delta and other air 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 Delta Air Lines, Inc., violated 49 U.S.C. § 42301(e)(3), 14 CFR 259.4(b)(3), and 14 CFR 259.4(b)(7) by failing to adhere to the assurance of its contingency plan for lengthy tarmac delays that the carrier would provide adequate food and water no later than two hours after an aircraft leaves the gate (in the case of departure);
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Delta Air Lines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Delta Air Lines, Inc., and its successors and assigns, to cease and desist from future violations of 49 U.S.C. §§ 41712 and 42301 and 14 CFR 259.4(b)(3) and 14 CFR 259.4(b)(7);
5. We assess Delta Air Lines, Inc., \$90,000 in compromise of civil penalties that might otherwise be assessed for the violations described above; and

6. We order Delta Air Lines, Inc., to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 5, 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 Delta Air Lines, 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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