



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY/
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 21st day of December, 2017

SeaPort Airlines, Inc.

**Violations of 49 U.S.C. § 40117, 14 CFR
Part 158, 49 U.S.C. § 41712, and 14 CFR
399.84**

Docket OST 2017 – 0001

Served December 21, 2017

JOINT CONSENT ORDER

This consent order concerns violations of 49 U.S.C. § 40117, 14 CFR Part 158, 49 U.S.C. § 41712, and 14 CFR 399.84 by Seaport Airlines, Inc., (Seaport). The violations of section 40117 and Part 158 arise from the carrier collecting Passenger Facility Charges (PFCs) from consumers and failing to remit those PFCs to airports. The violations of section 41712 and 14 CFR 399.84 arise from the carrier's statements on its website to consumers about its collection of PFCs. This order directs Seaport to cease and desist from future similar violations of these statutes and regulations, and assesses Seaport \$40,000 in civil penalties.

Background and Applicable Law

Recognizing a need for additional funding to expand the national airport system, Congress enacted the Aviation Safety and Capacity Expansion Act of 1990, 49 U.S.C. § 40117. Congress gave the Secretary of Transportation the authority to issue regulations to carry out the program. 49 U.S.C. § 40117(i). The Secretary delegated authority for administering the PFC program to the Federal Aviation Administration (FAA). 49 CFR 1.83(a)(1). Airports use PFC revenues to finance capital expansions and improvements to preserve and enhance the safety, capacity, and security of the national

air transportation system. 49 U.S.C. § 40117(d)(2). Expanding and improving airport capacity also benefits consumers both directly and indirectly as a means of encouraging competition among carriers.

The PFC Program authorizes public agencies that control airports to charge PFCs to enplaning passengers. Under this Program, airlines collect PFCs from passengers, and must remit the PFCs to airports by the last day of the month following the calendar month that the PFCs are collected. 14 CFR 158.51. PFC revenue is not property of the carrier; rather, it is held in trust for the beneficial interest of the airports imposing the PFC. 49 U.S.C. § 40117(g)(4); 14 CFR 158.49(b).¹

Carriers are required to file quarterly reports with each airport for which they collect funds. 14 CFR 158.65. If a carrier files for bankruptcy, it must immediately create and fund a separate, non-commingled PFC account. 49 U.S.C. § 40117(m)(5). The detailed requirements for such an account are set forth in 14 CFR 158.49(c). Failure to remit PFCs to airports as required, and failure to provide proper accountings of PFC revenue, constitute violations of 49 U.S.C. § 40117 and 14 CFR Part 158.

Pursuant to 14 CFR 399.84, any advertisement or solicitation by an air carrier that states a price for passenger air transportation must state the entire price to be paid by the customer to the carrier for such air transportation. Charges included within the single total price listed may be stated separately, but such charges may not be false or misleading, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge. 14 CFR 399.84(a). If a carrier displays a PFC as a component of the price to be paid by the consumer, but does not remit the PFC to the appropriate recipient, such a display is false or misleading within the meaning of section 399.84. Violations of section 399.84 constitute an unfair or deceptive practice in violation of 49 U.S.C. § 41712. Pursuant to 49 U.S.C. § 46301, violations of section 41712 subject a company to the assessment of civil penalties of up to \$32,140 for each day each such violation occurs, or up to \$3,214 each day if the entity is a small business concern.²

¹ Carriers are entitled to collect authorized interest and impose certain handling fees for collecting and distributing PFC revenue. 49 U.S.C. § 40117(m)(5).

² Under an amendment to 14 CFR 383.2 (see 81 FR 52763, August 10, 2016) and pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74; 117 Stat. 584, November 2, 2015), the maximum monetary civil penalty amount that may be assessed for violations covered by 49 U.S.C. 46301(a)(1)(A) or (B) increased from \$27,500 to \$32,140 for a person other than a small business or an individual, and (for violations of section 41712) from \$2,750 to \$3,214 for a small business or an individual. For purposes of civil penalties under section 46301, Seaport is a small business because it employed fewer than 1,500 people. See 49 U.S.C. § 46301(i); 13 U.S.C. § 121.201 (subsection 481 – Air Transportation). The adjusted maximum civil penalty amount is effective and applies to all civil penalties assessed on or after August 1, 2016, for violations occurring before or after that date.

Facts and Conclusions

Seaport was a certificated air carrier based in Portland, Oregon, that participated in the PFC program. In late 2015 and early 2016, Seaport collected PFCs from consumers, but failed to remit those funds to airports as required. In February 2016, Seaport filed for bankruptcy under Chapter 11 of the Bankruptcy Code in the District of Oregon. On September 21, 2016, the case was converted to a Chapter 7 proceeding and the FAA and DOT cancelled the company's authorities. When Seaport filed for bankruptcy, it did not immediately create and fund a separate PFC fund that complied with the provisions of 14 CFR 158.49(c). These acts and omissions constitute violations of 49 U.S.C. § 40117 and 14 CFR Part 158.

Moreover, Seaport informed consumers on its website that PFCs are a component of the price to be paid for air transportation on certain itineraries.³ However, in late 2015 and early 2016, Seaport failed to remit some of those PFC payments to several airports. In doing so, Seaport engaged in a false or misleading display of air transportation price components in violation of 14 CFR 399.84. By violating section 399.84, Seaport also engaged in an unfair or deceptive practice in violation of 49 U.S.C. § 41712.

Response

Seaport states that it converted its Chapter 11 proceeding to a Chapter 7 (liquidation) proceeding administered by a Trustee in September 2016, ceased operations, surrendered its FAA certificate, and had its DOT certificate revoked. In addition, Seaport contends that it did not violate either 49 U.S.C. § 41712 or the Department's full-fare rule because at all times the prices that were advertised were the "entire price" or "all-in" fare for the air transportation, and thus were fully consistent with the full fare rule and did not mislead passengers.⁴ To the extent that PFCs were not remitted, Seaport asserts that was the result of the U.S. Bankruptcy Code's stay with respect to payment of pre-petition debt and the subsequent Chapter 7 conversion under the Bankruptcy Code.⁵ Finally, Seaport's Trustee states that notwithstanding the foregoing, in order to avoid litigation, and without admitting or denying the violations described above, Seaport's Trustee consents to the issuance of this Consent Order, subject to approval of the Bankruptcy Court.

³ When a consumer selected an itinerary on SeaPort's website, Seaport displayed the base fare under the heading of "flights," and a separate amount under the heading of "taxes." Seaport provided a hyperlink on the word "taxes" that leads the consumer to a display marked "Government, authority, and airport charges." On routes where PFCs are to be collected, Seaport indicated the PFC amount under the heading "Passenger Facility Charge (XF)." Moreover, on the Frequently Asked Questions page of its website, Seaport informed consumers that PFCs may be charged on certain flights, along with various other fees and taxes. <http://www.seaportair.com/passenger-faqs/>.

⁴ As noted on page 2, above, the Enforcement Office has not taken action against SeaPort for violations of the "entire price" clause of section 399.84. Rather, the violations at issue involve the provision of section 399.84 requiring that charges listed within the total price are not false or misleading.

⁵ As noted above, DOT is taking action against SeaPort for conduct predating the filing of the bankruptcy petition in February 2016.

Decision

The FAA's Office of Airport Planning and Programming, Financial Assistance Division and the FAA's Office of the Chief Counsel view seriously SeaPort's violations of 49 U.S.C. § 40117 and 14 CFR Part 158. After carefully considering all of the facts of this case, including those set forth above, the FAA believes that enforcement action is warranted. 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 similar violations of 49 U.S.C. § 40117 and 14 CFR Part 158.

Likewise, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office), within the Office of the Secretary of Transportation (OST), views seriously SeaPort's violations of 49 U.S.C. § 41712 and 14 CFR 399.84. After carefully considering all of the facts of this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. 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 similar violations of 49 U.S.C. § 41712 and 14 CFR 399.84, and to the assessment of \$40,000 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 14 CFR 13.13 and 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. The FAA finds that SeaPort Airlines, Inc., violated 49 U.S.C. § 40117 and 14 CFR Part 158 by failing to remit passenger facility charges (PFCs) to airports on a timely basis;
3. The FAA finds that Seaport Airlines, Inc., violated 49 U.S.C. § 40117 and 14 CFR Part 158 by failing to immediately create a separate PFC account after filing for bankruptcy;
4. The OST finds that Seaport Airlines, Inc., violated 14 CFR 399.84 by displaying PFCs as a component of the price to be paid for air transportation, but retaining those PFCs rather than remitting them to airports;
5. The OST finds that by engaging in the conduct described in ordering paragraph 4, above, Seaport Airlines, Inc., engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;

6. We order Seaport Airlines, Inc., and its successors and assigns, to cease and desist from further similar violations of 49 U.S.C. § 40117, 14 CFR Part 158, 49 U.S.C. § 41712, and 14 CFR 399.84; and
7. The OST assesses Seaport Airlines, Inc., \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 4 and 5, above. Seaport Airlines, Inc., may obtain a credit of up to \$40,000 of the assessed penalty by providing documentation to DOT within 90 days that it has made restitution on a pro rata basis to the airports listed on the Debtor's schedules that are owed PFCs. Alternatively, Seaport Airlines, Inc., shall pay the civil penalty through Pay.gov to the account of the U.S. Treasury through offsets as permitted by the final order authorizing use of cash collateral (Docket 210), subject to modification of the automatic stay. Payment shall be made in accordance with the instructions contained in the attachment to this order. Failure to comply with the terms of this Order shall subject Seaport Airlines, Inc., 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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