



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

Issued by the Department of Transportation
on the 23rd day of March, 2018

Compañía Panameña de Aviación, S.A.

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

Docket OST-2018-0001

Served March 23, 2018

CONSENT ORDER

This consent order concerns violations by Compañía Panameña de Aviación, S.A. (Copa) of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, Copa failed to adhere to the assurances in its contingency plan for lengthy tarmac delays to provide adequate food within two hours after arrival and to provide operable lavatories during a tarmac delay. This order directs Copa to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712 and assesses the carrier \$25,000 in civil penalties.

Applicable Law

Pursuant to section 259.4 of the Department's rules (14 CFR 259.4), covered carriers, which include any foreign air 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. Section 259.4(b)(7) of the rule also requires each covered carrier to have sufficient

resources to implement its contingency plan. Furthermore, 259.4(b)(4) requires carriers to provide operable lavatory facilities while the aircraft remains on the tarmac. 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 a prohibited unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

Facts and Conclusions

Copa is a foreign air carrier, as defined by 49 U.S.C. § 40102(a)(21),¹ that operates scheduled service within the U.S. and uses at least one aircraft having a design capacity of more than 30 passenger seats. Copa has adopted a contingency plan for lengthy tarmac delays covering its operations at all U.S. airports, including its diversion airports.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on December 21, 2016, Copa Flight CM302 flying from Tocumen International Airport (PTY) to Los Angeles International Airport (LAX) experienced a tarmac delay when it diverted to Ontario California International Airport (ONT). Flight CM302 was diverted to ONT after air traffic control at LAX advised Copa that heavy rains and congestion at LAX made it impossible for flight CM302 to land at LAX. Flight CM302 decided to land at ONT, an airport that is not one of Copa's regular diversion airports, because of low fuel.

Upon landing at ONT, flight CM302 experienced a tarmac delay of two hours and 39 minutes. While Copa confirmed that the passengers on flight CM302 were provided beverages within two hours after the aircraft arrived at ONT, Copa admits that passengers were not provided with food during this time. The Enforcement Office's investigation also revealed that lavatories onboard flight CM302 were inoperable during the delay. Copa's failure to adhere to the terms of its tarmac delay contingency plan and ensure that passengers received adequate food and operable lavatories during the tarmac delay violated 14 CFR 259.4(b)(3), (4) & (7), and 49 U.S.C. § 41712.

Response

In response, Copa states that it takes very seriously its responsibility to comply with all of the Department's requirements, including the tarmac delay rule. Copa states that it fully cooperated with the Department's investigation of the flight at issue and notes that food was available on the aircraft during the time the aircraft was on the tarmac. Copa also notes that beverages were offered to passengers during the tarmac delay.

Copa states that, initially, all lavatories were available and operating, but as result of the number of passengers who used the lavatories during the time the aircraft was on the tarmac, there were some clogging issues that its crew promptly attempted to resolve.

Copa emphasizes that its crew members made every attempt to minimize any inconvenience to passengers and to ensure that passengers received the highest level of customer service possible.

¹ 49 U.S.C. § 40102(a)(2) 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."

Copa reiterates its commitment to compliance with all of the Department's requirements, including the tarmac delay rule.

Decision

The Enforcement Office views seriously Copa's violations of 14 CFR Part 259 and 49 U.S.C. § 41712. 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 assurance in its contingency plan for lengthy tarmac delays to provide adequate food to passengers no later than two hours after an aircraft touches down (in the case of an arrival) and to provide operable lavatories during a tarmac delay.

In order to avoid litigation, Copa has agreed to settle this matter with the Enforcement Office and enter into this consent order directing the carrier to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assessing \$25,000 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 Compañía Panameña de Aviación, S.A., violated 14 CFR 259.4(b)(3), 14 CFR 259.4(b)(4), and 14 CFR 259.4(b)(7) by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays regarding the provision of adequate food, access to operable lavatories, and the possession of sufficient resources;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, Compañía Panameña de Aviación, S.A., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Compañía Panameña de Aviación, S.A., and its successors and assigns to cease and desist from further violations of 14 CFR Part 259 and 49 U.S.C. § 41712;
5. We assess Compañía Panameña de Aviación, S.A., \$25,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. The total penalty amount of \$25,000 shall be paid within 30 days of the issuance of this order 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 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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