



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

Issued by the Department of Transportation
on the 30th day of November, 2018

Peninsula Airways, Inc.

**Violations of 49 U.S.C. § 41734 and
14 CFR Part 323**

Docket OST-2018-0001

Served November 30, 2018

CONSENT ORDER

This consent order concerns violations¹ by Peninsula Airways, Inc., (PenAir) of the statutory and regulatory provisions requiring the carrier to provide advance notice before ending, suspending, or reducing air transportation provided under the Essential Air Service (EAS) Program, 49 U.S.C. § 41734 and 14 CFR Part 323. This order directs PenAir to cease and desist from future similar violations and assesses the carrier \$20,000 in civil penalties.

Applicable Law

Through the EAS Program, the Department of Transportation 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

¹ PenAir filed a bankruptcy petition with the U.S. Bankruptcy Court for the District of Alaska on August 6, 2017 (Case No. 17-00282). This consent order concerns violations incurred by PenAir in the course of its post-petition operations.

Program, the Department enters into agreements with air carriers to provide guaranteed minimum levels of service to EAS communities.²

Before a carrier participating in the EAS Program may end, suspend, or reduce EAS service below guaranteed minimum levels, the carrier must first provide at least 90 days' notice to the affected community, the appropriate state authority, and the Department.³ 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.⁴ The notice requirement gives the Department and affected community 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.⁵

The notice requirements are set forth in detail at 14 CFR 323.4.⁶ Generally, notice must conform to the procedural rules of subpart A of 14 CFR Part 302 (relating to service of documents in DOT proceedings).⁷ 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 other air carriers that may be directly affected by the notice; and (5) the Department.⁸

Facts

In Order 2016-4-10, the Department selected PenAir to provide EAS to Bar Harbor, Maine, Plattsburgh, New York, and Presque Isle, Maine, from July 1, 2016, to June 30, 2018. On May 31, 2018, PenAir ceased EAS operations to these three communities. PenAir only provided oral notice via telephone on the same day it ceased operations to Bar Harbor, Plattsburgh, and Presque Isle. By failing to provide at least 90 days' notice to the affected communities, the appropriate state authorities, and the Department, PenAir violated 49 U.S.C. § 41734 and 14 CFR Part 323.

² 49 U.S.C. §§ 41732-41733. 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 trip flights to a hub airport, six days per week. 49 U.S.C. § 41732(a), (b)(1)(A).

³ 49 U.S.C. § 41734(a).

⁴ See, e.g., Order Re-Selecting Air Carriers 2016-4-10 (April 13, 2016).

⁵ See 14 CFR 323.9-323.13.

⁶ 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.

⁷ 14 CFR 323.6.

⁸ 14 CFR 323.7.

By failing to provide notice as required, PenAir compromised the ability of all EAS stakeholders, including the Department, to ensure that adequate and uninterrupted EAS service was provided to the affected communities. As stated above, one purpose of the statutorily required 90-day notice provision is to give passengers and shippers in the communities 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. PenAir's failure to provide the required notice deprived the affected communities of this ability.

Mitigation

In mitigation, PenAir states that it operated the subject routes as long as possible under the circumstances but circumstances beyond its control made a 90-day notice impossible. The carrier states that prior to the time that PenAir ceased the EAS operations, PenAir had bid on continuing EAS operations and was awaiting the announcement of the bid by DOT. PenAir explains that when DOT announced that the bid was awarded to competing airlines offering jet service to these locations, PenAir immediately lost 50% of its pilots and several of its mechanics, leaving it with less than 3 full time mechanics. The carrier explains further that at that time, PenAir was operating the EAS routes on a "hold-in" status, but the natural consequence of the announcement of the EAS bid left PenAir unable to service the routes at an acceptable safety level. PenAir states that while it did not give the required 90-day notice, it did notify the local airport managers as soon as it was aware that it could not continue. PenAir explains further that the status of its bankruptcy case at the time exacerbated the problem and made it impossible for PenAir to solve the pilot/mechanic problem through financial means.

Decision

The Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) views seriously PenAir's violations 49 U.S.C. § 41734 and 14 CFR Part 323. Accordingly, after carefully considering the facts in this case, including the information provided by PenAir, the Enforcement Office believes that enforcement action is warranted.

In order to avoid litigation, PenAir consents to the issuance of this order to cease and desist from future similar violations of 49 U.S.C. § 41734 and 14 CFR Part 323 and to the assessment of \$20,000 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.

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 Peninsula Airways, Inc., violated 14 CFR Part 323 by failing to comply with the 90 days' notice requirements found in that Part;

3. We find that Peninsula Airways, Inc., violated 49 U.S.C. § 41734 by failing to provide 90 days' notice to the Department of Transportation and affected communities before ending, suspending, or reducing air service below EAS minimum levels
4. We order Peninsula Airways, Inc., to cease and desist from further violations of 49 U.S.C. § 41734 and 14 CFR Part 323;
5. We assess Peninsula Airways, Inc., \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above, and such penalty shall be an allowed administrative claim in Peninsula Airways, Inc.'s, bankruptcy case (Case No. 17-00282);
6. Peninsula Airways, Inc., agrees that the penalty assessed in ordering paragraph 5, above, shall be payable through offset by the Department from post-petition amounts due and owing by the Department to Peninsula Airways, Inc.; and
7. Failure to pay the penalty as ordered shall subject Peninsula Airways, 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 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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