



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

Issued by the Department of Transportation  
on the 5th day of October, 2018

**Allegiant Air, LLC**

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

**Docket OST-2018-0001**

**Served: October 5, 2018**

**CONSENT ORDER**

This order concerns violations by Allegiant Air, LLC (Allegiant) of requirements relating to aircraft cabin temperatures and other assurances contained in its tarmac delay contingency plan. Allegiant did not provide passengers a comfortable cabin temperature on several delayed flights at Las Vegas McCarran International Airport (LAS) and certain other U.S. airports between June and September of 2016 and 2017. In one of these instances, Allegiant did not provide food and water to passengers in a timely manner or make certain announcements as required. This order directs Allegiant to cease and desist from future similar violations of 49 U.S.C. § 42301, 49 U.S.C. § 41712 and 14 CFR Part 259, and assesses the carrier \$225,000 in civil penalties.

**Applicable Law**

Federal law requires that the tarmac delay contingency plan submitted by an air carrier shall contain a description of how the carrier will provide a comfortable cabin temperature, adequate food, and potable water when the departure of a flight is delayed or the disembarkation of passengers is delayed. 49 U.S.C. § 42301(b)(2)(A). Federal law also requires carriers to adhere to their tarmac delay contingency plans. 49 U.S.C. § 42301(e)(3).

Similarly, Department regulations require air carriers operating scheduled passenger or public charter service using any aircraft with a design capacity of 30 or more passenger seats to adopt and adhere to contingency plans for lengthy tarmac delays at each large hub, medium hub, small hub, and non-hub U.S. airport at which they operate or market scheduled or public charter air service. 14 CFR 259.4(a). For domestic flights, such as those at issue here, section 259.4(b)(1) requires covered carriers to provide assurance that they will not permit an aircraft to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane, subject only to the safety, security, and air traffic control-related exceptions found in the rule. Section 259.4(b)(3) requires assurance that a covered carrier will provide adequate food and potable water no later than

two hours after the aircraft leaves the gate (or touches down) 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)(6) requires assurance that passengers on a delayed flight will be notified beginning 30 minutes after scheduled departure time and every 30 minutes thereafter that they have the opportunity to deplane when such an opportunity exists. Section 259.4(b)(7) requires that each covered carrier's tarmac delay contingency plan provide assurance of sufficient resources to implement its plan. Additionally, a carrier's failure to adhere to its tarmac delay contingency plan as required by the provisions cited above constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

### **Facts and Conclusions**

Allegiant is an air carrier as defined by 49 U.S.C. § 40102(a)(2) and provides covered air transportation as defined in 49 U.S.C. § 42301(i)(2).

Allegiant operates scheduled service at LAS, one of its primary airports, and other airports around the country. The Department received multiple consumer complaints between June and September of 2016 and 2017 alleging that cabin temperatures on certain delayed Allegiant flights became uncomfortable. The Enforcement Office investigated complaints regarding the following flights:

Flight No.	Flight Date	Location
Flight 470	July 28, 2016	LAS
Flight 548	July 30, 2016	LAS
Flight 496	August 14, 2016	LAS
Flight 402	August 29, 2016	LAS
Flight 420	September 18, 2016	ELP
Flight 508	June 22, 2017	LAS
Flight 1127	July 19, 2017	DAY
Flight 560	July 28, 2017	LAS
Flight 574	August 6, 2017	LAS
Flight 471	August 17, 2017	ABQ

The Enforcement Office, based on its review of these complaints and information received from Allegiant, determined that Allegiant did not provide a comfortable cabin temperature while passengers were onboard the aircraft at the airport when the departures of these ten flights were delayed. In making these determinations, the Enforcement Office considered written passenger complaints, crewmember statements, temperature readings, reported medical incidents, operational considerations such as the use of external cooling units or air carts during the delays, and decisions to deplane passengers.

In addition, on Flight 471, Allegiant failed to make announcements to inform passengers that they had an opportunity to deplane when such an opportunity existed. The passengers experienced an

extended tarmac delay at Albuquerque International Sunport Airport (ABQ).<sup>1</sup> Allegiant reported that the aircraft doors were closed at 6:43 p.m., with the aircraft pushing back at 8:23 p.m. following a maintenance delay. The aircraft, however, returned to the gate at 8:34 p.m. to allow law enforcement officers to board due to an altercation between two passengers. The officers accessed the aircraft via its integral rear stairs (the jet bridge at the gate had become unusable due to a malfunction). Although three passengers exited the aircraft via the rear stairs approximately two hours and fifteen minutes after the aircraft doors closed, the flight crew did not make announcements informing all passengers they had an opportunity to deplane. The aircraft left the gate at 10:03 p.m. and was airborne soon thereafter.

The Enforcement Office's investigation also determined that during Flight 471's delay, Allegiant did not have adequate supplies onboard to provide water and snack service to all passengers and did not serve food and water to passengers within two hours after the initial door closure. Although additional water was brought to the aircraft, its delivery was untimely resulting in the cabin crew distributing water to the passengers more than two and a half hours into the delay. No food service was provided.

By failing to provide a comfortable cabin temperature for passengers on certain delayed flights between June and September of 2016 and 2017, as described above, Allegiant violated 49 U.S.C. §§ 42301 and 41712, and 14 CFR Part 259. Allegiant also failed to adhere to the terms of its tarmac delay contingency plan by not providing passengers on Flight 471 with food and water in a timely manner and not making certain announcements, as described above, in violation of these same statutory and regulatory requirements.<sup>2</sup>

### **Response**

Allegiant states that it takes compliance with laws and regulations very seriously and that it shares the Department's concern for the well-being of passengers. Allegiant notes, however, that the affected flights were subjected to outdoor temperatures generally in the triple-digit range and in some cases exceeding 110 degrees Fahrenheit. Allegiant states that the outdoor temperatures made cabin cooling during the tarmac delays difficult at best despite Allegiant's use of air conditioning carts, ground power units, and other measures to supplement internally-generated cooling. Allegiant adds that in seeking a balanced, practicable solution to the delays for the greatest benefit of the passengers as a group, the carrier and its personnel made what they believed to be sensible decisions taking account of the information available and various pro-passenger considerations, including the passengers' consistently strong desire to get to their destination as quickly as

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<sup>1</sup> Covered carriers are required to report each of their covered flights that experience a tarmac delay of over three hours. Specifically, 14 C.F.R. 244.3(a) requires covered carriers to file a BTS Form 244 "Tarmac Delay Report" with the Office of Airline Information of the Department's Bureau of Transportation Statistics setting forth the information for each of its covered flights that experienced a tarmac delay of more than three hours. Similarly, 42 U.S.C. § 42301(h) requires that covered U.S. carriers submit a written description of any flight that experiences an excessive tarmac delay, and its resolution, to the Aviation Consumer Protection Division of the Department of Transportation.

<sup>2</sup> While Allegiant reported a tarmac delay exceeding three hours for Flight 471, the Enforcement Office determined that passengers had an opportunity to deplane (and, in fact, three passengers did deplane) when the aircraft returned to the gate one hour and 51 minutes after initial door closure. Accordingly, the tarmac delay did not exceed three hours.

possible. Allegiant notes additionally that it is revising its training and procedures to more effectively address cabin temperature and aircraft provisioning issues, and that its fleet renewal program – whereby it is retiring from service its MD-80 series aircraft, which are the most prone to cabin temperature issues – has been accelerated with completion to occur by late 2018.

### **Decision**

The Enforcement Office views seriously Allegiant’s violations of 49 U.S.C. §§ 42301 and 41712. 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, and without admitting or denying the violations described above, Allegiant consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 42301, 49 U.S.C. § 41712 and 14 CFR 259, and to the assessment of \$225,000 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 Allegiant 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 Allegiant Air, LLC violated 49 U.S.C. § 42301(e)(3) by failing to provide a comfortable cabin temperature as stated in its tarmac delay contingency plan on certain delayed flights at Las Vegas McCarran International Airport and other U.S. airports between June and September of 2016 and 2017;
3. We find that Allegiant Air, LLC violated 49 U.S.C. § 42301(e)(3) by failing to provide adequate food and potable water as stated in its tarmac delay contingency plan on Flight 471 at Albuquerque International Sunport Airport on August 17, 2017;
4. We find that Allegiant Air, LLC violated 14 CFR 259.4(a) by failing to adhere to its tarmac delay contingency plan in the following respects: Allegiant Air, LLC did not (i) provide a comfortable cabin temperature on the flights described in ordering paragraph 2, above, (ii) provide food and potable water no later than two hours after aircraft door closure on Flight 471, August 17, 2017, and (iii) notify passengers every 30 minutes that an opportunity to deplane existed on Flight 471, August 17, 2017;

5. We find that by engaging in the conduct described in ordering paragraphs 2 through 4, above, Allegiant Air, LLC engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712(a);
6. We order Allegiant Air, LLC and its successors and assigns to cease and desist from future similar violations of 49 U.S.C. §§ 42301(e)(3) and 41712(a), and 14 CFR 259.4(a); and,
7. We assess Allegiant Air, LLC \$225,000 in compromise of civil penalties that might otherwise be assessed for the violations described above.; and
8. We order Allegiant Air, LLC to pay within 30 days of the issuance of this order the penalty assessed in paragraph 7, 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 Allegiant Air, LLC 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:**

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

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