



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

Issued by the Department of Transportation
on the 18th day of February, 2021

JetBlue Airways Corporation

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

Docket OST-2021-0025

Served February 18, 2021

CONSENT ORDER

This consent order concerns violations by JetBlue Airways Corporation (JetBlue) of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301. Specifically, JetBlue failed to provide for the timely deplanement of passengers during lengthy tarmac delays at John F. Kennedy International Airport (JFK). This order directs JetBlue to cease and desist from future similar violations and assesses the carrier \$60,000 in civil penalties.

Applicable Law

Pursuant to 49 U.S.C. § 42301(b) and (e), each covered U.S. carrier is required to develop a tarmac delay contingency plan for each U.S. airport it serves and to adhere to its respective plans. In addition, pursuant to section 259.4 of the Department's rules (14 CFR 259.4), certificated and commuter air carriers that operate scheduled passenger service or public charter service with at least one aircraft with a design 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 U.S. airport at which they operate or market scheduled or public charter air service.

For domestic and international flights, the rule requires covered U.S. carriers to provide assurances in their contingency plans that they will not permit an aircraft to remain on the tarmac for more than three hours for domestic flights and four hours for international flights without providing passengers an opportunity to deplane, with the following exceptions: (1) where the pilot-in-command determines that an aircraft cannot leave its position on the tarmac to deplane passengers due to a safety-related or security-related reason (e.g., weather, a directive from an appropriate government agency, etc.) or (2) where Air Traffic Control (ATC) advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations. Carriers must also ensure they have sufficient resources to carry out their contingency plans.

The FAA Extension, Safety, and Security Act of 2016 (2016 FAA Extension), which became law on July 15, 2016, requires the Department to issue regulations and take other actions to change the standard for when tarmac delay violations occur in the case of departure delays for U.S. carriers. 49 U.S.C. § 42301 provides that a tarmac delay ends for an arriving flight when a passenger has the option to deplane an aircraft and return to the airport terminal. However, for a departing flight, under amended section 42301, it is not a violation of the assurance to permit an aircraft to remain on the tarmac for more than three hours for domestic flights and more than four hours for international flights if the air carrier begins to return the aircraft to a suitable disembarkation point to deplane passengers by those times.

On November 22, 2016, the Department's Office of Aviation Enforcement and Proceedings, now known as the Office of Aviation Consumer Protection (OACP), issued an interim Enforcement Policy to implement the statutory changes pending rulemaking.¹ The enforcement policy states that a departing flight is considered to have begun the process of returning to a suitable disembarkation point when permission to do so is granted by the Federal Aviation Administration (FAA) control tower, airport authority, or other relevant authority directing the aircraft's operations while it is on the tarmac. If the aircraft is in an area of the airport property that is under the carrier's control, a departing flight is considered to have begun the process of returning to a suitable disembarkation point when the pilot begins maneuvering the aircraft to the disembarkation point.²

A covered carrier's failure to comply with assurances required by 14 CFR 259.4 and as contained in its contingency plan for lengthy tarmac delays constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712. Because the purpose of section 259.4 is to protect individual passengers from being forced to remain on an aircraft for more than three hours for domestic flights or four hours for international flights without the opportunity to deplane, OACP takes the position that a separate violation occurs for each passenger who is

¹ On October 25, 2019, the Department published in the Federal Register a notice of proposed rulemaking that would conform carrier obligations with respect to departure delays to the 2016 FAA Extension. See 84 Fed. Reg. 57370 (October 25, 2019).

² See Enforcement Policy on Extended Tarmac Delays (Nov. 22, 2016), available at, <https://www.transportation.gov/sites/dot.gov/files/docs/Enforcement%20Policy%20on%20Extended%20Tarmac%20Delays.pdf>.

forced to remain on board an aircraft for longer than the set amount of time without the opportunity to deplane.

Facts and Conclusions

JetBlue is an air carrier as defined by 49 U.S.C. § 40102(a)(2)³ that operates scheduled passenger service into and out of JFK, a large hub airport, and uses at least one aircraft having a design capacity of more than 30 passenger seats. JetBlue controls Terminal 5 at JFK, which consists of approximately 30 gates. Based on data provided by the Department's Bureau of Transportation Statistics for calendar year 2017, JFK is JetBlue's largest hub and JetBlue is the airport's largest operating carrier.

JetBlue has a tarmac delay plan as required in 14 CFR 259.4 covering its operations at all U.S. airports, including JFK. At the time of the events described in this order, JetBlue's Contingency Plan for Lengthy Tarmac Delays stated that "[it] has developed a detailed Tarmac Delay Plan that meets all limits imposed by the [Department's Tarmac Delay] Rule and assures it has sufficient resources to enact and implement the Plan . . ." JetBlue's plan further stated, "No later than three hours for domestic flights . . . the aircraft must be at the gate with the door open, or at remote parking with air stairs connected and actual ability to deplane" subject to exceptions permitted by law.

I. Weather Impact

On January 4, 2018, Winter Storm Grayson, a powerful Nor'easter, arrived in the New York Metropolitan area and severely disrupted air transportation operations at JFK. The storm was described as a "bomb cyclone" and strengthened very quickly due to a rapid drop in pressure. When it hit, the storm caused below-freezing temperatures, strong winds (approximately 45 knots), low visibility, and approximately 8.5 inches of snow.

Around 6:00 a.m. on January 4, 2018, the Port Authority of New York and New Jersey (Port Authority) upgraded its Snow Condition Level to the highest level. Later in the morning of January 4, the Port Authority announced that it would close the airport for a few hours, and then ultimately decided to close the airport for the remainder of the day. JFK remained closed for approximately 19 hours starting the morning of January 4 until the morning of January 5. Though the airport reopened on January 5, operations at JFK were disrupted through Sunday, January 7.

II. Flights 326 and 746

JetBlue flight 326 from Tampa International Airport landed at JFK at 9:34 a.m. on January 4, 2018 but did not arrive at a gate to deplane passengers until 3 hours and 3 minutes after it landed.

³ 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."

Within 30 minutes of landing, flight 326 entered the terminal 5 ramp area, but a gate was not available for this flight. Other JetBlue flights were also attempting to access a gate around this time, but gates were also not available for these flights. Flight 326 sat for over two hours waiting for a gate to be cleared of an aircraft by JetBlue. When flight 326 pulled into a gate and passengers proceeded to deplane, wheelchairs were not available to provide assistance in deplaning at least two passengers with disabilities. These passengers had to wait approximately 30 additional minutes for wheelchairs to deplane.

JetBlue failed to adhere to the assurances of its contingency plan and violated 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301 when it failed to provide passengers on flight 326 an opportunity to deplane before the tarmac delay exceeded three hours.⁴ In addition, by not having wheelchairs available, JetBlue failed to meet its assurance in its tarmac delay plan that it has sufficient resources to implement its contingency plan in violation of 14 CFR 259.4 and 49 U.S.C. § 41712.⁵

Passengers on JetBlue flight 746 from Ponce, Puerto Rico, experienced a tarmac delay of four hours and eighteen minutes after their flight landed at JFK on January 4, 2018. Flight 746 arrived at 9:41 a.m. and within 30 minutes after landing, flight 746 entered the terminal 5 ramp area, but like other JetBlue flights needing a gate, a gate was not available. Flight 746 sat for several hours waiting for gates to be cleared by JetBlue. At approximately 2:00 p.m., flight 746 arrived at a gate, the aircraft door opened, and all 96 passengers deplaned. JetBlue failed to adhere to the terms of its contingency plan and therefore violated 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301 when it failed to provide passengers onboard flight 746 an opportunity to deplane before the tarmac delay exceeded three hours.

Though OACP recognizes that the conditions at JFK were challenging, JFK is JetBlue's largest hub and Terminal 5 and the ramp area surrounding it are within the carrier's control. JetBlue did not have the resources necessary to enable the airline to deplane passengers on flights 326 and 746 in a timely manner when faced with the weather impact at JFK on January 4. JetBlue's failure to manage its gates at terminal 5 effectively was the primary contributing factor to each delay.

Response

⁴ In the interest of settlement between the Department and JetBlue, this order does not include the passengers on flight 326 who had the opportunity to deplane flight 326 three hours and three minutes after the aircraft landed at JFK.

⁵ By failing to provide deplaning assistance to passengers with a disability promptly, JetBlue violated the Air Carrier Access Act and its implementing regulation found in 14 CFR Part 382. Specifically, section 382.95(a) requires carriers to promptly provide assistance requested by passengers with a disability in enplaning and deplaning the aircraft. This assistance must include, as needed, the services of personnel and the use of ground wheelchairs, accessible motorized carts, boarding wheelchairs, on-board wheelchairs, and ramps or mechanical lifts. Also, JetBlue violated 14 C.F.R. 259.5 by failing to adhere to its Customer Service Plan which states "JetBlue will accommodate customers with disabilities and other special needs, including during ground delays consistent with its obligations under 14 C.F.R. Part 382." The Department typically pursues enforcement action for these types of violations based on pattern and practice. If the Department decides to seek such an enforcement action against JetBlue, these violations will be among those considered.

In response, JetBlue states that it disagrees with the Department's assertions. JetBlue states that heading into January 2018, it was well prepared and had sufficient resources to ensure its compliance with the Tarmac Delay Rule at JFK, including during adverse winter weather events. JetBlue states that on the morning of January 4, 2018, the weather rapidly and unexpectedly deteriorated to wet, heavy snowfall and blizzard-like whiteout conditions at JFK. JetBlue states that despite its preparedness, and its diligent efforts during the storm, these unanticipated, rare and extreme weather conditions challenged JetBlue's operation and robust fleet of ground service equipment beyond expectation and significantly hindered JetBlue's ability to timely free up gates for its aircraft. JetBlue notes that it was one of the few carriers at JFK who was able to resume near normal flight operations in the days following the storm's passing. JetBlue further notes that the operations of many major carriers were hindered for weeks, as detailed extensively in the media.

JetBlue believes that in light of the particular facts and circumstances surrounding the impact of Winter Storm Grayson at JFK, including as extensively detailed in the independent investigation of JFK's response to the storm by former Secretary Ray LaHood, enforcement action by the Department is not warranted in this case. JetBlue states that it respectfully disagrees with the OACP's view that a separate violation occurs for each customer onboard an aircraft, and believes that the applicable statutes provide for violations to be assessed on a per flight or per day basis. JetBlue also states that it proactively provided compensation to its customers impacted by these unfortunate delays without Department intervention. JetBlue states that in the interest of settling this matter, and without conceding or waiving its legal position on that question or the other issues raised in this order, it has agreed to this compromise settlement.

Decision

OACP views seriously JetBlue's violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301. Accordingly, after carefully considering all the facts in this case, including those set forth above, OACP believes that enforcement action is warranted. To avoid litigation and without admitting or denying the violations, JetBlue consents to the issuance of this order to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301, and to the assessment of \$60,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise is appropriate considering the nature and extent of the violations described herein and the unprecedented impact of the Novel Coronavirus Disease (COVID-19) public health emergency on air travel. This order serves the public interest by establishing a strong deterrent to future similar unlawful practices by JetBlue 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 JetBlue Airways Corporation violated 14 CFR 259.4 and 49 U.S.C. § 42301 by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that for a domestic flight: (a) it will not permit an aircraft to remain on the tarmac for more than three hours before providing passengers the opportunity to deplane; and (b) it will have sufficient resources to implement its plan;
3. We find that by engaging in each the conduct described in ordering paragraph 2, above, in violation of 14 CFR 259.4, JetBlue Airways Corporation engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;
4. We order JetBlue Airways Corporation and its successors and assigns to cease and desist from further violations of 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301;
5. We assess JetBlue Airways Corporation \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this amount,
 - a. \$22,500 shall be due and payable as follows:
 - i. \$11,250 shall be due and payable within 120 days of the service date of this order; and
 - ii. \$11,250 shall be due and payable within 180 days of the service date of this order;
 - b. \$15,000 shall be credited to JetBlue Airways Corporation for travel vouchers⁶ provided to passengers on board flight 746 and passengers who had to wait additional time for wheelchair assistance to deplane flight 326;
 - c. The remaining \$22,500 shall become due and payable if, within one year of the service date of this order, JetBlue Airways Corporation, violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and JetBlue Airways Corporation may be subject to additional enforcement action for failure to comply with this order;
6. We order JetBlue Airways Corporation to pay 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 JetBlue Airways Corporation 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.

⁶ The travel voucher credits are based on less than 80% of voucher value provided to passengers onboard flight 326 and 746.

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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