



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

Issued by the Department of Transportation  
On the Twentieth day of August, 2012

**JetBlue Airways Corporation**

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

**Docket OST 2012-0002**

**Served August 20, 2012**

**CONSENT ORDER**

This consent order concerns violations of 14 CFR Part 259 and 49 U.S.C. § 41712 involving the failure by JetBlue Airways Corporation (JetBlue) as required to inform passengers on a flight delayed at the gate for a lengthy period of time of the opportunity to deplane. Moreover, JetBlue failed to include certain required assurances in its contingency plan for lengthy tarmac delays. This order directs JetBlue to cease and desist from future similar violations of Part 259 and section 41712 and assesses the carrier \$90,000 in civil penalties.

**Applicable Law**

Pursuant to section 259.4 of the Department's rules (14 CFR 259.4) covered carriers, which includes any U.S. certificated 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.<sup>1</sup>

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<sup>1</sup> On April 25, 2011, the Department issued a set of rules designed to enhance protection for air travel consumers that, among other items, expanded the requirements under the Department's rule on contingency plans for lengthy tarmac delays. 76 Fed. Reg. 23110 (April 25, 2011).

Specifically, pursuant to section 259.4(b)(6), for all flights, a carrier must provide the assurance that the passengers on the delayed flight will be notified beginning 30 minutes after scheduled departure time and every 30 minutes thereafter that they have the opportunity to deplane from an aircraft that is at the gate or another disembarkation area with the door open if the opportunity to deplane actually exists. A carrier's failure to comply with the assurances required by Part 259 and as contained in its contingency plan for lengthy tarmac delays is considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

In addition, pursuant to section 259.4, covered carriers' tarmac delay contingency plans must include, at a minimum, the ten assurances that are specified in the rule at section 259.4(b)(1)-(10). Under section 259.6, each covered U.S. carrier that has a website is required to post its current contingency plan on its website in easily accessible form.

### **Facts and Conclusions**

JetBlue is an air carrier as defined by 49 U.S.C. § 40102(a)(2)<sup>2</sup> that operates scheduled service at JFK International Airport (JFK), and many other a large hub airports, using aircraft having a design capacity of more than 30 passenger seats. JetBlue operated flight 645 from JFK to San Francisco International Airport (SFO) on March 3, 2012. Flight 645 was scheduled to depart JFK at 7:30 p.m. and arrive at SFO at 11:16 p.m. local time. Boarding began at 7:06 p.m., however, because of a mechanical issue and then circumstances surrounding accommodating military personnel, the flight was delayed and the doors to the aircraft did not close until 9:55 p.m. A passenger on board flight 645 filed a consumer complaint with the Department's Aviation Consumer Protection Division and alleged that passengers were not notified that they had the opportunity to deplane the aircraft during this delay.

In response to an investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office), JetBlue admits that the Captain of flight 645 confirmed that deplaning announcements were not made during the delay in question. However, JetBlue states that although the option to deplane was not announced, the aircraft door was open throughout this delay and customers could have deplaned at any time.

Section 259.4(b)(6) requires that carriers announce that passengers have the opportunity to deplane from an aircraft when the flight is delayed and the aircraft is at a gate or another disembarkation area with the door open. A tarmac delay begins when passengers no longer have the option to get off an aircraft, which usually occurs when the doors of the aircraft are closed. Section 259.4(b)(6) was promulgated to address the issue of when a tarmac delay has not yet begun, because the doors remain open at a gate or another disembarkation area, and yet passengers are unaware that the door to the aircraft is open and that they have the option to deplane, particularly during a departure delay at the gate or on an aircraft where passenger would not know that the door was open and deplaning

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<sup>2</sup> 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."

was an option. Carriers are not required to provide passengers the opportunity to deplane in less than three hours but if that opportunity does exist the rule requires that the carrier simply inform them that the opportunity to deplane exists. The Department has encouraged carriers to also remind passengers that they are deplaning at their own risk and that the flight could depart at any time without them if that is in fact the case.

In sum, section 259.4(b)(6) is in place to address the precise incident that occurred on flight 645. Beginning thirty minutes after the scheduled departure time of 7:30 p.m. and every thirty minutes thereafter until the doors closed JetBlue was required to notify passengers that they could deplane the aircraft if they wished to do so. The failure by JetBlue to make the proper notifications is a violation of 14 CFR 259.4(b)(6) as well as 49 U.S.C. § 41712.

In addition, as part of the investigation into this incident, a review of JetBlue's contingency plan for lengthy tarmac delays, posted on its website, revealed that absent from the contents of its plan are the required assurances specified in section 259.4(b)(5)-(7). Pursuant to section 259.4(b)(5), a carrier must provide an assurance that passengers on the delayed flight will receive notifications regarding the status of the delay every 30 minutes while the aircraft is delayed, including the reasons for the tarmac delay, if known. The provisions of section 259.4(b)(6) are the subject of this enforcement order and section 259.4(b)(7) requires the assurance of sufficient resources to implement the plan. The failure by JetBlue to adopt all of the required assurances specified in 259.4(b)(1)-(10) in its contingency plan for lengthy tarmac delays is a violation of 14 CFR 259.4(b) and 49 U.S.C. § 41712.

### **Mitigation**

JetBlue states that it takes its regulatory responsibilities very seriously and is especially concerned about its passengers' safe travel, including being sure that any passenger that wishes to deplane prior to departure has that opportunity. JetBlue concedes that its contingency plan failed to cover all of the requirements of Part 259; however, it points out that during the mechanical delay the door of the aircraft was never closed and passengers were free to deplane at any time. It further points out that even after the door was eventually closed on the flight in question the gate was reattached and the door was reopened allowing a passenger who asked to deplane to do so. JetBlue states that no one was forced to remain on the aircraft for more than three (3) hours at any time on the flight nor was anyone prohibited from deplaning at their will. JetBlue also states that it has provided passengers \$31,245 in one-way travel vouchers as compensation for the delay they encountered on March 3, 2012 and has amended its contingency plan to cover all requirements of Part 259.

### **Decision**

The Enforcement Office has carefully considered the information provided by JetBlue Airways Corporation, but continues to believe enforcement action is warranted. The Enforcement Office and JetBlue Airways Corporation have reached a settlement of this

matter in order to avoid litigation. Without admitting or denying the violations described above, JetBlue Airways Corporation, consents to the issuance of this order to cease and desist from future violations of 14 CFR 259.4 and 49 U.S.C. § 41712 and to the assessment of \$90,000 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 to future similar unlawful practices by JetBlue Airways Corporation, and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that JetBlue Airways Corporation violated section 259.4(b)(6) by failing to properly notify passengers that they had the opportunity to deplane the aircraft that was at the gate for a lengthy period with the door open;
3. We find that JetBlue Airways Corporation violated section 259.4(b) by failing to include all of the required assurances in its contingency plan for lengthy tarmac delays;
4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3, above, JetBlue Airways Corporation engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order JetBlue Airways Corporation, and all other entities owned or controlled by, or under common ownership and control with JetBlue Airways Corporation, its successors, affiliates, and assignees, to cease and desist from further violations of 14 CFR 259.4 and 49 U.S.C. § 41712;
6. JetBlue Airways Corporation is assessed \$90,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of that amount, \$20,000 shall be due and payable within 30 days of the date of issuance of this order; and \$25,000 shall be credited to JetBlue Airways Corporation for travel vouchers provided to passengers of Flight 645 that may be used to acquire transportation on JetBlue Airways Corporation flights. The remaining amount will become due and payable, if within one year of the date of the issuance of this order, JetBlue Airways Corporation violates the order's cease and desist provisions or fails to comply with the order's payment provisions, in which case JetBlue Airways Corporation may be subject to additional enforcement action for violation of this order; and

7. We order JetBlue Airways Corporation to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payments 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.

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:**

**SAMUEL PODBERESKY**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

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