



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

Issued by the Department of Transportation
on the 4th day of December, 2020

Aerolíneas Argentinas

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

Docket OST-2020-0001

Served December 4, 2020

CONSENT ORDER

This consent order concerns violations by Aerolíneas Argentinas of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, Aerolíneas Argentinas failed to adhere to the assurance in its contingency plan for lengthy tarmac delays regarding the deplaning of passengers. This order directs Aerolíneas Argentinas to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assesses the carrier \$300,000 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. Section 259.4(b)(2) requires that for international flights operated by a covered carrier that depart from or arrive at a U.S. airport, the carrier will not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours before allowing passengers to deplane, unless the pilot-in-command determines there is a safety-related or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers, or unless 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.¹ 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 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, in the case of international flights, from being forced to remain on an aircraft for more than four hours without the opportunity to deplane, the Office of

¹ This rule is enforced for arrivals and diversions, but a different standard is applied for departing flights as a result of the FAA Extension, Safety, and Security Act of 2016, and the Department's Enforcement Policy on Extended Tarmac Delays, which was issued November 22, 2016, and is available at <https://www.transportation.gov/sites/dot.gov/files/docs/Enforcement%20Policy%20on%20Extended%20Tarmac%20Delays.pdf>.

Aviation Consumer Protection (OACP)² takes the position that a separate violation occurs for each passenger who is forced to remain on board an aircraft for longer than the set amount of time without the opportunity to deplane.

Facts and Conclusions

Aerolíneas Argentinas is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)³ that operates scheduled service at John F. Kennedy International Airport (JFK), a large hub airport, and that uses at least one aircraft having a design capacity of more than 30 passenger seats. Aerolíneas Argentinas has adopted a contingency plan for lengthy tarmac delays covering its operations at all U.S. airports, including its regular diversion airports such as Washington Dulles International Airport (IAD). The plan provides that the carrier “will not permit an aircraft to remain on the tarmac for more than four hours and not return it to the gate, or another suitable disembarkation point, where passengers will be allowed to deplane,” subject to exceptions permitted by law.

2017

An investigation by the OACP revealed that on February 9, 2017, Aerolíneas Argentinas Flight 1300, scheduled from Ministro Pistarini International Airport (EZE) to JFK, diverted to Washington Dulles International Airport (IAD) as a result of a weather-related closure at JFK.

Flight 1300 arrived at IAD at 12:50 p.m. and parked at a remote stand, intending to depart for JFK after JFK’s planned reopening. Less than two hours into the delay, Flight 1300 was advised that JFK had reopened. For the next two hours, the aircraft remained on the tarmac at IAD, and it appears that the airline chose not to provide an opportunity for passengers to deplane during that time. Nearly four hours into the delay, weather conditions changed at IAD, and de-icing procedures became required for all carriers. The flight began the process of de-icing four hours and three minutes into the delay, at which time IAD Airport Operations advised the flight that it had reached its four-hour tarmac delay limit and that mobile lounges were available for deplaning passengers. The carrier responded that it was aware that the four-hour time limit had lapsed and that it had chosen to depart for JFK instead of deplaning passengers. Flight 1300 then departed IAD at 5:36 p.m., resulting in a total tarmac delay time of four hours and forty-six minutes.

The carrier chose not to deplane passengers prior to initiating the de-icing process, despite having nearly four hours (from the time the flight landed to the time when de-icing procedures became required) in order to do so. The carrier’s decision not to provide passengers on Flight 1300 an opportunity to deplane resulted in its failure to adhere to the assurances in its tarmac delay contingency plan. As a result, Aerolíneas Argentinas violated 14 CFR 259.4(b)(2) and 49 U.S.C. § 41712.

2018

²² The Office of Aviation Consumer Protection was formerly known as the Office of Aviation Enforcement and Proceedings.

³ 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.”

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 caused below-freezing temperatures, strong winds (approximately 45 knots), low visibility and approximately 8.5 inches of snow.

An investigation by the OACP revealed that on the morning of January 4, 2018, Aerolíneas Argentinas Flight 1300, which was en route to JFK from EZE, diverted to IAD as a result of the closure of JFK. Flight 1300 arrived at IAD at 11:47 a.m. and parked at a remote stand, intending to depart for JFK at 1:30 p.m. and expecting to arrive there after JFK's planned reopening at 3:00 p.m. However, at 1:28 p.m., the Port Authority issued a Notice to Airmen (NOTAM) stating that JFK would remain closed until 6:00 p.m. Aerolíneas Argentinas chose not to offer passengers an opportunity to deplane at this time, even though the revised JFK re-opening schedule would have required Flight 1300 to remain on the ground in IAD for longer than four hours. At 3:30 p.m., an IAD Airport Operations Duty Manager boarded the aircraft to determine whether Aerolíneas Argentinas intended to provide passengers an opportunity to deplane prior to the four-hour time limit required by Federal statute and DOT's tarmac delay rule. The Captain confirmed to him that no decision had been made in that regard. The aircraft remained parked, and the Port Authority subsequently issued another NOTAM at 3:38 p.m., stating that JFK would remain closed until 8:00 p.m. By this time, Aerolíneas Argentinas had permitted the aircraft to remain on the tarmac for three hours and 51 minutes without providing passengers the opportunity to deplane. Passengers onboard Flight 1300 began vigorously requesting to deplane, both to the crew and in phone calls to IAD Airport Operations. Aerolíneas Argentinas ultimately cancelled the flight after the tarmac delay had exceeded four hours, and passengers were provided an opportunity to deplane after the aircraft remained on the tarmac for four hours and 35 minutes.

The carrier's decision to delay cancellation of Flight 1300 even after learning JFK would remain closed until 8 pm resulted in its failure to provide passengers an opportunity to deplane within four hours of arrival. IAD Airport Operations informed Aerolíneas Argentinas that it was willing and able to provide resources such as mobile lounges to assist diverted flights with remote deplaning of passengers. Furthermore, due to capacity constraints in the main U.S. Customs and Border Protection (CBP) passenger processing facility, which resulted from the high volume of international passengers arriving on diverted flights, IAD Airport Operations was able to provide a sterile area to accommodate passengers until the CBP facility became available. The passengers of Flight 1300 were transported to this area upon deplaning. By allowing the aircraft to remain on the tarmac for more than four hours without any safety-related or security-related reason to do so, and without advisement from ATC that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations, Aerolíneas Argentinas failed to adhere to the assurances in its tarmac delay plan and violated 14 CFR 259.4(b)(2) and 49 U.S.C. § 41712.

Response

In response, Aerolíneas Argentinas states that it takes very seriously its obligations under the Department's tarmac delay regulations and that in the chaotic circumstances surrounding these diverted flights it took steps consistent with safety and the requirements of the relevant government agencies to meet the four-hour deadline established by the regulation.

Aerolíneas Argentinas does not agree with a number of the statements that the Department makes in this consent order relating to these two flights. In each of these cases, Aerolíneas Argentinas states that IAD was dealing with a large number of unexpected flights due to diversions resulting from adverse weather conditions at JFK. In the case of the February 9, 2017, diversion, Aerolíneas Argentinas states that it requested de-icing services from its contractor in the interest of safety immediately after JFK reopened and Aerolíneas Argentinas was given clearance to depart less than three hours into the delay. The carrier also states that the aircraft was in the de-icing process at the four-hour deadline and departed as soon as possible thereafter. In the case of the January 4, 2018, diversion, Aerolíneas Argentinas states that it relied on NOTAMs concerning the likely time that JFK would reopen and, when those NOTAMs were revised to delay JFK's reopening, Aerolíneas Argentinas moved quickly to find alternate transportation for its passengers. Aerolíneas Argentinas asserts that it could not move passengers off the aircraft to the airport without canceling its flight and that CBP stated that it did not have the capacity to process Aerolíneas Argentinas' passengers because of the many other diverted flights at IAD. Aerolíneas Argentinas states that it had buses waiting at IAD to bring its passengers to JFK.

Finally, Aerolíneas Argentinas states that it respectfully disagrees with the OACP's determination that civil penalties for excessive tarmac delays may be assessed on a per-passenger basis. Aerolíneas Argentinas believes that the applicable statute provides for penalties to be assessed on a per flight-basis. Nevertheless, Aerolíneas Argentinas has agreed to this settlement in the interest of avoiding litigation.

Decision

The OACP views seriously Aerolíneas Argentinas' 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 OACP believes that enforcement action is warranted. In order to avoid litigation, Aerolíneas Argentinas consents to the issuance of this order to cease and desist from future violations of 14 CFR Part 259 and 49 U.S.C. § 41712 and to the assessment of \$300,000 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 Aerolíneas Argentinas 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 Aerolíneas Argentinas violated 14 CFR 259.4(b)(2) by failing to adhere to the assurance in its contingency plan for lengthy tarmac delays that, for an international flight, it will not permit an aircraft to remain on the tarmac for more than four hours before allowing passengers an opportunity to deplane;

3. We find that by engaging in the conduct described in ordering paragraph 2 above, Aerolíneas Argentinas engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;
4. We order Aerolíneas Argentinas 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 Aerolineas Argentinas \$300,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of that amount, \$25,000 shall be due and payable within 120 days of the date of issuance of this order. Five additional equal payments of \$25,000 shall be due and payable on the following days: May 18, 2021, July 2, 2021, August 16, 2021, September 30, 2021, and November 14, 2021. The remaining amount, \$150,000, will become due and payable if, within one year of the date of issuance of this order, Aerolineas Argentinas violates the order's cease and desist provision or fails to comply with the order's payment provision, in which case Aerolineas Argentinas may be subject to additional enforcement action for violation of this order; and
6. We order Aerolíneas Argentinas to pay within 120 days of the issuance of this order 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 Aerolíneas Argentinas 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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for the Office of Aviation Consumer Protection

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