



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

**Issued by the Department of Transportation  
on the 14<sup>th</sup> day of November, 2022**

**Air India**

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

**Docket OST-2022-0001**

**Served November 14, 2022**

**CONSENT ORDER**

The U.S. Department of Transportation’s Office of Aviation Consumer Protection (OACP) has determined that Air India routinely failed to provide timely refunds to passengers for flights to and from the United States that the carrier cancelled or significantly changed in violation of 49 U.S.C. § 41712 (Section 41712) and 14 CFR Part 259. Since March 2020, the Department has received over 1,900 complaints alleging that Air India failed to provide timely refunds after cancelling or significantly changing consumers’ flights to or from the United States. Air India’s stated policy has been to provide refunds to consumers for flights it cancelled or significantly changed. However, a review of the complaints filed with the Department revealed that in practice Air India took the carrier more than 100 days to process most of the refund requests that it received. Air India admits that it also failed to provide timely refunds to passengers who filed complaints and requested refunds directly with the airline. This order directs Air India to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and assesses the carrier \$1.4 million in civil penalties.

**Applicable Law**

Pursuant to 49 U.S.C. § 41301, a foreign air carrier<sup>1</sup> may provide foreign air transportation<sup>2</sup> only if the foreign air carrier holds a permit from the Department authorizing the foreign air

<sup>1</sup> 49 U.S.C. § 40102(a)(21) 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.”

<sup>2</sup> 49 U.S.C. § 40102(a)(5) defines “air transportation” as “foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.” 49 U.S.C. § 40102(a)(23) defines “foreign air transportation” as “the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of

transportation or has a valid exemption from that section.<sup>3</sup> A foreign air carrier that holds a foreign air carrier permit from the Department is subject to the requirements of 49 U.S.C. § 41712, which prohibits an air carrier, foreign air carrier, or a ticket agent from engaging in an unfair and deceptive practice in air transportation or the sale of air transportation. Section 41712 authorizes the Department to investigate and decide whether a carrier or ticket agent is engaging in an unfair or deceptive practice, and if so, to prohibit such a practice.<sup>4</sup>

In April and May 2020, in response to the high volume of air travel service complaints received, many of which concerned refunds, OACP issued notices to help consumers understand their rights and emphasize to airlines that the unprecedented impact COVID-19 has had on air travel has not changed the airlines' obligation under Section 41712 to refund passengers for flights that airlines cancel or significantly change.<sup>5</sup> Then, in December 2020, the Department published in the Federal Register a final rule titled "Defining Unfair or Deceptive Practices."<sup>6</sup> The rule defined the terms "unfair" and "deceptive" for purposes of Section 41712. Pursuant to the rule, a practice is "unfair" to consumers within the meaning of Section 41712 if it causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.<sup>7</sup> For the reasons set forth below, the practice of cancelling or significantly changing a flight to or from the United States without providing a refund is "unfair" as that term is defined by regulation, irrespective of the reason for the cancellation.

First, the practice imposes substantial harm to consumers because they paid money to the carrier for a service that the carrier did not provide. Consumers incur harm from delays in receiving refunds, as well as from the time, effort, and expense involved in seeking a refund.

Second, the harm is not reasonably avoidable. A consumer acting reasonably would believe that he or she was entitled to a refund under U.S. law if the carrier cancelled or significantly changed the flight whatever the reason for the cancellation or significant change. Moreover, a reasonable consumer would not believe that it is necessary to purchase a more expensive refundable ticket in order to be able to recoup the ticket price when the *airline* fails to provide the service paid for

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mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft."

<sup>3</sup> The authority required by section 41301 is separate and distinct from the operations specifications and approvals that such an entity must obtain from the Federal Aviation Administration (FAA) for operations to and from the United States.

<sup>4</sup> The Department's regulations impose obligations on airlines that cannot be avoided through contractual provisions. See *Spirit Airlines vs. DOT*, 687 F.3d 403, 416 (D.C. Cir. 2012) (DOT may implement rule that airlines must change their policies to permit a passenger to cancel a reservation without penalty within 24 hours, based on DOT's finding that existing practices were unfair or deceptive).

<sup>5</sup> "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (April 3, 2020), available at [https://www.transportation.gov/airconsumer/enforcement\\_notice\\_refunds\\_apr\\_3\\_2020](https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020); "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (May 12, 2020), available at [https://www.transportation.gov/airconsumer/FAQ\\_refunds\\_may\\_12\\_2020](https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020);

<sup>6</sup> 85 Fed. Reg. 78707 (December 7, 2020).

<sup>7</sup> 14 CFR 399.79(b)(1).

through no action or fault of the consumer. Reasonable consumers understand that “refundable” tickets are valuable because they ensure a refund if the *passenger* cancels their own flight reservation.

Third, the harm is not outweighed by countervailing benefits to consumers or competition. The Department seeks to regulate practices that are injurious to consumers in their net effects.<sup>8</sup> In enforcing Section 41712, which is modeled on Section 5 of the Federal Trade Commission (FTC) Act, the Department recognizes, like the FTC, that practices may be harmful to consumers in some ways, but beneficial in others. For example, offsetting benefits may include lower prices or a wider availability of products and services resulting from competition.<sup>9</sup> Here, there are no offsetting benefits to consumers that would outweigh the harm of retaining passengers’ funds for lengthy periods of time.

In addition to the general prohibition on unfair and deceptive practices, pursuant to 14 CFR 259.5, U.S. and foreign air carriers operating at least one aircraft having a designed seating capacity of 30 or more seats must adopt a Customer Service Plan and adhere to the Plan’s terms. Customer Service Plans represent a baseline, uniform, minimum level of service to which all covered carriers operating flights to and from the United States must comply. The Customer Service Plan must include certain commitments relating to the payment of refunds to passengers when required by Section 41712. Section 259.5(b)(5) requires: “Where ticket refunds are due, providing prompt refunds, as required by 14 CFR 374.3 and [Regulation Z, 12 CFR Part 1026] for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, including refunding fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation.” OACP’s position is that refunds are “due” when failure to provide them would constitute an unfair or deceptive practice under Section 41712. Regulation Z states, at 12 CFR 1026.11(a)(2), that for credit card purchases, refunds must be provided within seven business days of receipt of a written request from the consumer. Pursuant to 14 CFR 374.3(b), violations of Regulation Z constitute violations of 49 U.S.C. Subtitle VII.<sup>10</sup>

### **Facts and Conclusions**

Air India, a foreign air carrier, holds a foreign air carrier permit to operate flights to and from the United States pursuant to 49 U.S.C. § 41301. Air India uses at least one aircraft having a designed capacity of more than 30 passenger seats. One condition of Air India’s foreign air carrier permit is that Air India “comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.”<sup>11</sup> Accordingly, Air India is subject to the requirements in 49 U.S.C. § 41712 and 14 CFR 259.5.

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<sup>8</sup> See <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.

<sup>9</sup> See *Id.*

<sup>10</sup> In enforcement orders, DOT has clarified that violations of section 259.5 are violations of Section 41712 specifically, not just 49 U.S.C. Subtitle VII generally. See, e.g., *American Airlines*, DOT Order 2017-7-9.

<sup>11</sup> See DOT Order 2018-10-10 (September 16, 2008) in Docket DOT-OST-2007-012.

Since March 1, 2020, over 1,900 consumers complained to OACP that Air India failed to provide requested refunds for flights to or from the United States that the carrier cancelled or significantly changed due to the COVID-19 pandemic and associated governmental restrictions. Air India maintains that its policy has been to provide refunds to consumers for flights it cancelled or significantly changed. An investigation by OACP, which included reviewing consumer complaint files, among other information, revealed that Air India took more than 100 days to process more than half of the 1,900 refund complaints filed with the Department for flights that the carrier cancelled or significantly changed. While Air India could not provide the Department information regarding the length of time that it took to process refunds to passengers who filed complaints and requested refunds directly with the carrier, Air India admits that it failed to do so in a timely manner. OACP is of the view that Air India taking more than 100 days to provide timely refunds to most of the passengers who filed complaints with the Department against the carrier is indicative of the carrier taking more than 100 days to provide refunds to a majority of the individuals who filed complaints and requested refunds directly with the carrier. Irrespective of Air India's stated refund policy, in practice Air India did not provide timely refunds. As a result, consumers experienced significant harm from the extreme delay in receiving their refunds.

### **Response**

In response, Air India states that unlike many other carriers, it has maintained a policy of providing refunds upon request, regardless of whether a passenger chose not to travel or the carrier cancelled the flight, and made a good faith effort to comply with its obligations to provide timely refunds during the COVID-19 pandemic. Air India asserts that it has waived applicable change, cancellation, and no-show penalties for ticket refunds worth over \$98 million, resulting in passengers receiving full refunds who were not otherwise entitled to them. Air India states that it faced extraordinary hardships during the early stages of the COVID-19 pandemic, including repeated closures of its India offices, border closures, and travel bans, which significantly hindered its ability to process refunds. Further, Air India contends that these same factors, coupled with its liberal refund-on-demand policy, resulted in a flood of refund requests during the March 2020 through September 2021 period. Air India also asserts that some of the delayed refunds related to the complaints filed with DOT stemmed from difficulties communicating with passengers; for example, in a few instances passengers who booked through travel agencies would demand a refund but not provide Air India with payment information or promptly respond to a request for same. Finally, Air India contends that it has cooperated with OACP at all stages of its investigation, including compiling payment information for each of the over 1,900 refund complaints received by the Department. Air India argues that because it did not mislead passengers about their rights under 14 CFR 295.5 and because its refund-on-demand policy is more liberal than that required by the regulation, its penalty should be reduced. Nevertheless, Air India has agreed to this settlement in the interest of avoiding litigation.

## Decision

OACP views seriously Air India's violations of 49 U.S.C. § 41712 and 14 CFR Part 259. Accordingly, after carefully considering all the facts in this case, OACP believes that enforcement action is warranted. In order to avoid litigation, Air India consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and to the assessment of \$1.4 million 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 Air India 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 by significantly delaying the payment of refunds to passengers for flights to or from the United States that Air India cancelled or significantly changed, Air India engaged in an unfair practice in violation of 49 U.S.C. § 41712;
3. We find that by failing to adhere to its customer commitment related to providing prompt refunds, Air India violated 14 CFR 259.5(b)(5) which also constitutes a violation of 49 U.S.C. § 41712;
4. We order Air India and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 259.5;
5. We assess Air India \$1.4 million in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2 and 3 above. Of this total amount:
  - a. \$200,000 shall be due and payable within 30 days of the issuance of the order;
  - b. \$200,000 shall be due and payable within 60 days of the issuance of the order;
  - c. \$200,000 shall be due and payable within 90 days of the issuance of the order;
  - d. \$200,000 shall be due and payable within 120 days of the issuance of the order;
  - e. \$200,000 shall be due and payable within 150 days of the issuance of the order;
  - f. \$200,000 shall be due and payable within 180 days of the issuance of the order;
  - g. \$200,000 shall be due and payable within 210 days of the issuance of the order;and
6. We order Air India 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 Air India 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 the Office of Aviation Consumer Protection**

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