



**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 April, 2023**

British Airways PLC

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

Docket DOT-OST-2023-0001

Served April 5, 2023

CONSENT ORDER

This consent order concerns violations by British Airways PLC (British Airways) of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, British Airways failed to adhere to the assurance in its contingency plan for lengthy tarmac delays regarding the timely deplaning of passengers. This order directs British Airways to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assesses the carrier \$135,000 in civil penalties.

Applicable Law

Pursuant to 14 CFR 259.4,¹ foreign air carriers 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. According to the version of section 259.4(b)(2)² that was in effect at the time the violations in this order occurred, covered carriers could not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours for international flights that depart from or arrive at a U.S. airport without providing

¹ 14 CFR 259.4 was amended by Final Rule on May 3, 2021 and became effective on June 2, 2021. 86 Fed. Reg. 23260 (May 3, 2021). The changes to the rule do not impact the violations at issue in this case. The citations contained in this order are to the rule that was in effect at the time of the violations.

² 14 CFR 259.4(b)(2) has since been replaced by 14 CFR 259.4(c)(2).

passengers the opportunity to deplane, with the following exceptions: (1) 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 (e.g., weather, a directive from an appropriate government agency, etc.); or (2) 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.³ 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 from experiencing a tarmac delay on an aircraft for more than four hours without the opportunity to deplane when on an international flight, the U.S. Department of Transportation's Office of Aviation Consumer Protection (OACP)⁴ takes the position that a separate violation occurs for each passenger who is forced to remain on the tarmac on board an aircraft for longer than the set amount of time without the opportunity to deplane.

Facts and Conclusions

British Airways is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)⁵ that operates scheduled service from Austin-Bergstrom International Airport (AUS), among other U.S. airports, using at least one aircraft having a design capacity of more than 30 passenger seats. British Airways has a tarmac delay contingency plan that states, “[w]e will not permit an aircraft to remain on the tarmac (stands, taxiways) for more than four hours without the opportunity for you to disembark,” with specific exceptions permitted by law.

An investigation by OACP revealed that on December 7, 2017, British Airways flight BA190, traveling from AUS to Heathrow Airport (LHR), experienced a lengthy tarmac delay when it departed from AUS. After pushing back from the gate, BA190 underwent deicing by the carrier's ground handler, which had one truck available to deice the Boeing 787 wide-body aircraft. According to the carrier, the deicing process for BA190 was discontinued when the deicing truck ran out of fluid. While the flight waited for the deicing truck to return, passengers were provided food and water, but the carrier did not return the aircraft to a gate or otherwise provide passengers an opportunity to deplane. A second round of deicing started just over three hours into the tarmac delay. The second deicing process was completed after the tarmac delay surpassed four hours. In total, the 185 passengers on BA190 experienced a tarmac delay of four hours and 27 minutes.

³ When the Department amended its tarmac delay rule in 2021, it added an exception that applies to departure flights, 14 CFR 259.4(c)(3)(i).

⁴ The Office of Aviation Consumer Protection was formerly known as the Office of Aviation Enforcement and Proceedings.

⁵ 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.”

Based on our investigation, none of the exceptions in the Department's tarmac delay rule apply to the delay experienced by flight BA190. The responsibility for deicing aircraft and ensuring compliance with the Department's rules ultimately rests with the carrier. As such, by failing to provide passengers on board with the opportunity to deplane before the tarmac delay exceeds four hours, British Airways failed to adhere to its contingency plan and violated 14 CFR 259.4 and 49 U.S.C. § 41712.

Response

British Airways states that it shares the Department's concern for the well-being of passengers.

The carrier states that BA190 was originally scheduled to depart from AUS to LHR at 1855 local time. However, the carrier states that the Austin area experienced unusual weather (rain, snow, and sleet that afternoon and evening), operations at AUS were severely affected, and BA190 had to be deiced prior to take-off. British Airways asserts that prior to this snowfall, the last measurable snowfall observed at AUS was on February 4, 2011, almost seven years prior.

British Airways states that, before finishing the deicing, the truck ran out of fluid and had to depart and refill the deicing fluid. British Airways reports when the truck returned approximately three hours into the delay, the ground handler performed the second deicing, which was successful, and the aircraft was airborne approximately fifteen minutes after deicing was completed.

British Airways believes the captain of BA190 justifiably assumed, based on years of experience, that the second de-icing should have been completed in sufficient time for BA190 to become airborne before the four-hour tarmac delay deadline. British Airways believes the decision to conduct a second de-icing rather than return to the gate was both reasonable and consistent with the objective of transporting the passengers to their desired destination. British Airways further believes the failure to complete de-icing by the four-hour deadline was primarily attributable to the infrequent need for de-icing at AUS and the consequent inexperience of AUS de-icing personnel.

British Airways recognizes that the second deicing was completed after the four-hour tarmac delay deadline but believes that the circumstances of this incident do not call for enforcement action by the Department. British Airways also respectfully disagrees with OACP's view that a separate violation occurs for each passenger onboard the aircraft. British Airways believes that the applicable statutes provide for violations to be assessed on a per flight basis. However, in the interest of resolving this proceeding, British Airways is agreeing to this settlement.

Decision

OACP views seriously British Airways' 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, OACP believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations alleged above, British Airways 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 \$135,000 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 against future similar unlawful practices by British Airways 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 British Airways PLC violated 14 CFR 259.4(b)(2)⁶ by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, British Airways PLC engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;
4. We order British Airways PLC and its successors and assigns to cease and desist from further violations of 14 CFR 259.4 and 49 U.S.C. § 41712;
5. We assess British Airways PLC \$135,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total amount, \$67,500 shall be due and payable within 30 days of issuance of this order. The remaining \$67,500 shall become due and payable if, within one year of the issuance of this order, British Airways PLC violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and British Airways PLC may be subject to additional enforcement action for failure to comply with this order;
6. We order British Airways PLC to pay within 30 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 British Airways PLC 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.

⁶ 14 CFR 259.4(b)(2) has since been replaced by 14 CFR 259.4(c)(2).

BY:

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