



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

**Issued by the Department of Transportation
on the 3rd day of January, 2025**

JetBlue Airways Corp.

Docket OST-2024-0001

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 399**

Served January 3, 2025

CONSENT ORDER

The U.S. Department of Transportation’s Office of Aviation Consumer Protection (OACP) has determined that JetBlue Airways Corp. (JetBlue) held out four chronically delayed flights from June 2022 through November 2023 at least 145 times in violation of 49 U.S.C. § 41712 (Section 41712) and 14 CFR 399.81. This order directs JetBlue to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR 399.81, and assesses the carrier \$2,000,000 in civil penalties.

Applicable Law

A “chronically delayed flight” means any domestic flight that is operated at least 10 times a month and arrives more than 30 minutes late (including cancelled flights) more than 50 percent of the time during that month.¹ For purposes of determining chronically delayed flights, the Department considers all of a carrier’s flights that are operated in a given city-pair market whose scheduled departure times are within 30 minutes of the most frequently occurring scheduled departure time to be one single flight.² The holding out of a chronically delayed flight for more than four consecutive one-month periods represents one form of unrealistic scheduling and is an unfair and deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. § 41712.³

¹ 14 CFR 399.81(c)(2).

² 14 CFR 399.81(c)(3).

³ 14 CFR 399.81(c)(4).

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. For the period in question, JetBlue was subject to a maximum civil penalty of up to \$40,272 for each violation of section 41712 and 14 CFR 399.81.⁴ A separate violation takes place for each day the violation continues or, if applicable, for each flight involving the violation.⁵

Facts and Conclusions

As part of its monitoring of airlines' operations, OACP regularly obtains chronic delay data from the Department's Bureau of Transportation Statistics (BTS). The BTS data that OACP uses to monitor airlines' operations are submitted to BTS by the airlines. Nevertheless, OACP sent individual warnings of chronic delays to carriers until 2018. In February 2018, OACP notified airlines, including JetBlue, that it would stop sending individualized warnings of chronic delays to carriers. By this point, the prohibition against chronically delayed flights had been in existence for many years. Carriers have both the capability and legal responsibility to avoid chronic delays, even in the absence of warnings by OACP that a chronic delay violation is imminent.

OACP uncovered that, from June 2022 through October 2022, JetBlue operated a chronically delayed flight between New York City and Raleigh-Durham, NC (Flight 2585, JFK-RDU). Although informed about this chronically delayed flight in January 2023, from June 2023 through October 2023, JetBlue operated another two chronically delayed flights: one between Fort Lauderdale, FL and New York City (Flight 1802, FLL-JFK) and another between Orlando, FL and New York City (Flight 384, MCO-JFK). Also, from June 2023 through November 2023, JetBlue operated yet another chronically delayed flight between Fort Lauderdale, FL, and Windsor Locks, CT (Flight 460, FLL-BDL).

JetBlue held out these chronically delayed flights to the public at least 145 times⁶ in violation of Section 41712 and 14 CFR 399.81. Regardless of the cause of the delay (carrier, weather, national airspace, security) for any specific flight, JetBlue had adequate time to act to avoid the chronic delays.⁷ Holding out these chronically delayed flights disregarded consumers' need to

⁴ 49 U.S.C. § 46301(a)(1)(A) and (B). For violations occurring from March 21, 2022, to January 5, 2023, the maximum civil penalty is \$37,377. Revisions to Civil Penalty Amounts, 87 Fed. Reg. 15839 (March 21, 2022). For violations occurring on or after January 6, 2023, the maximum civil penalty is \$40,272. Revisions to Civil Penalty Amounts, 88 Fed. Reg. 1114 (Jan. 6, 2023).

⁵ 49 U.S.C. § 46301(a)(2).

⁶ For flight 2585 JFK-RDU, JetBlue operated (and therefore held out) 31 flights in month 5. For flight 460 FLL-BDL, JetBlue operated 57 flights in months 5 and 6. For flight 1802 FLL-JFK, JetBlue operated 30 flights in month 5. For flight 384 MCO-JFK, JetBlue operated 27 flights in month 5.

⁷ The preamble to the Department's rule covering chronically delayed flights states as follows: "Carriers know at the beginning of month two whether the flights they operated during month one were chronically late. **We believe that carriers can make adjustments to their schedules within 60 days; therefore, we expect that during months two, three and four carriers would adjust their schedule for each of their chronically late flights to make the schedule for that flight more realistic by month five.** While flight delays for weather, mechanical, or other

have reliable information about the real arrival time of a flight and harmed thousands of passengers. The civil penalty in this matter is intended, in part, to reflect that harm.

Response

JetBlue states that it takes extremely seriously its obligations to comply with applicable federal law, regulations, and policies, and has at all times strived to avoid scheduling or operating flights that are delayed, much less “chronically delayed.” Without any admission of liability, JetBlue is agreeing to settle DOT’s claims pursuant to this Consent Order to avoid the expense and uncertainty of litigation. However, JetBlue respectfully maintains that the penalties sought by DOT are subject to significant mitigation to reflect the following factors, without limitation:

1. JetBlue has spent tens of millions of dollars in investment in its systems and in process improvements in order to address issues with air traffic control (ATC) especially in the U.S. Northeast corridor to as much as reasonably possible prevent any chronically delayed flights in the future. These past and ongoing efforts are reflected in a large and sustained improvement in JetBlue’s operations over the last two years since the flights at issue occurred, as demonstrated this past summer with dramatic improvement in operational performance.
2. JetBlue has recently learned that DOT has eliminated its prior practice of providing written warnings to the air carriers that multiple months of chronically delayed flights have occurred, and in the future, JetBlue will no longer rely on the receipt of such timely warnings by DOT.
3. JetBlue will continue to lobby and work with the FAA and Congress to improve the air traffic control system, staffing and operational reliability especially in the Northeastern U.S. corridor – which is the predominant geographical area served by JetBlue – in order to seek a reduction in the ATC conditions which JetBlue maintains were the root cause of the chronic delays in the past.

Decision

OACP views seriously JetBlue’s violations of Section 41712 and 14 CFR 399.81. Accordingly, after carefully considering all the facts in this case, OACP believes that enforcement action is warranted. In order to avoid litigation, JetBlue consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.81 and to the assessment of \$2,000,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. DOT states that the compromise assessment is appropriate considering the

operational reasons occur frequently in the airline industry, the Department considers the continued publishing of schedules that list chronically late flights to be one form of unrealistic scheduling and an unfair or deceptive practice and unfair method of competition within the meaning of 49 U.S.C. 41712.” See 74 FR 68983, 68993-94 (December 30, 2009) (emphasis added). Carriers know or should know at the beginning of month two whether the flights they operated during month one were chronically late. Carriers can adjust schedules during months two, three, and four to make them more realistic by month five and not hold out chronically delayed flights. *Id.*

nature and extent of the violations described herein, serves the public interest, and establishes 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 Corp. held out chronically delayed flights, as defined by 14 CFR 399.81(c)(2):
 - a. One flight for five consecutive months from June 2022 through and October 2022;
 - b. Two flights for five consecutive months from June 2023 through October 2023; and
 - c. One flight for six consecutive months from June 2023 through November 2023;
3. We find that by engaging in the conduct described in paragraph 2, above, JetBlue Airways Corp. violated 14 CFR 399.81(c)(4) and engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order JetBlue Airways Corp. and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 399.81;
5. We assess JetBlue Airways Corp. \$2,000,000 in civil penalties for the violations described in paragraphs 2 and 3, above:
 - (a) 500,000 of the assessed penalty is due and payable within 60 days of the date of this order;
 - (b) \$500,000 of the assessed penalty is due and payable within one year after the payment in paragraph 5(a); and
 - (c) \$1,000,000 of the assessed penalty will be credited to JetBlue for costs that JetBlue has incurred or will incur for: (1) goodwill compensation already paid to affected passengers during the timeframe covered by this investigation;⁸ and (2) goodwill compensation payable within one year of the date of this order to passengers who are

⁸ Credit for goodwill compensation to passengers is calculated at 100% for cash refunds and 80% for vouchers or travel credits.

affected by future controllable cancellations or delays of three hours or more, provided that any vouchers payable to passengers are valued at a minimum of \$75;⁹

6. We order JetBlue Airways Corp. to pay 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 Corp. 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;
7. The offsets described in ordering paragraph 5(c) may be amended with the Department's approval; and
8. Should a dispute arise under, or with respect to, this Consent Order, the parties will raise such concerns to one another and seek to resolve the dispute. If the parties are unable to reach a satisfactory resolution of the issue or issues within 60 days after concerns have been raised, then either party may seek judicial review of the dispute.

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
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⁹ By January 31, 2026, at the latest, in addition to the November 25, 2024, documentation provided by JetBlue, the carrier must provide the Department with updated supporting documentation containing a description of the expenditures associated with the offsets in subparagraph 5(c) if any changes and accompanying accounting verifying the offsets. The documentation must be accompanied by a sworn statement by a senior carrier official attesting that the description, documentation, and accounting are true and complete to the best of that official's knowledge and that official has made a reasonable inquiry to establish the accuracy of the statement. To the extent the carrier fails to provide adequate documentation and accounting verifying the appropriate expenditures by January 31, 2026, that amount shall become due to the U.S. Treasury within 30 days.