



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

**Issued by the Department of Transportation
On the Fourteenth day of November, 2013**

GoJet Airlines, LLC

**Violations of 49 U.S.C. § 41708 and
14 CFR Part 244**

Docket OST 2013-0004

Served November 14, 2013

CONSENT ORDER

This consent order concerns the failure of GoJet Airlines, LLC, (GoJet) to timely file with the Department of Transportation (Department) Tarmac Delay Reports in violation of 14 CFR Part 244 and 49 U.S.C. § 41708. It directs GoJet to cease and desist from future similar violations of Part 244 and section 41708, and assesses the carrier a compromise civil penalty of \$10,000.

Applicable Law

Section 244.3 of the Department's regulations require certain air carriers to file Bureau of Transportation Statistics (BTS) Form 244 "Tarmac Delay Report" with the Office of Airline Information for each month in which at least one tarmac delay of three hours or more occurred. The report includes detailed data regarding each incident. The data are then published and made available to the public in a useable format in the Department's monthly Air Travel Consumer Report (ATCR), which, among other things, lists all regularly scheduled domestic flights with tarmac delays of three hours or more and international flights with tarmac delays of four hours or more.¹ The ATCR data in question are used for a number of purposes, including by the traveling public to choose among transportation options, by the Department as a basis for conducting enforcement investigations, and by carriers as a basis for making advertising claims regarding the quality of their service compared to other carriers. It is imperative, therefore, that ATCR data be accurate. Violations of section 244.3 also constitute violations of 49 U.S.C. § 41708.

In addition to the reporting requirements of 14 CFR Parts 234 and 244, the FAA Reauthorization Act, 49 U.S.C. § 42301(h), requires carriers to submit a written description of a tarmac delay incident in which any flight experiences an excessive

¹ See *Air Travel Consumer Report*, available at <http://www.dot.gov/airconsumer>.

tarmac delay to the Aviation Consumer Protection Division of the Department within 30 days of the date of the incident. The requirement to submit a report under the FAA Reauthorization Law is separate and distinct from a carrier's obligation to submit to the Bureau of Transportation Statistics an on-time performance report under 14 CFR Part 234 or a Tarmac Delay Report under 14 CFR Part 244.

Background

GoJet, a covered carrier under 14 CFR Part 244, failed to timely file the required Tarmac Delay Reports under Part 244 for two tarmac delays of more than three hours that occurred on July 13, 2012, at Chicago-O'Hare International Airport (ORD). The affected flights, operated by GoJet doing business as United Express, were: (1) United Express flight 3638 from Kansas City International Airport to ORD and (2) United Express flight 3671 from Austin-Bergstrom International Airport to ORD. Tarmac Delay Reports for the two flights should have been submitted to the Office of Airline Information on or before August 15, 2012, as required by Part 244.²

GoJet's mainline partner filed a report with the Department's Aviation Consumer Protection Division in accordance with 49 U.S.C. § 42301(h) which provided some information regarding the tarmac delay incidents but did not include the detailed data required in a Part 244 Tarmac Delay Report. Therefore, the Office of Aviation Enforcement and Proceedings (Enforcement Office) was aware of the delays because of the report submitted under the statutory requirement. Prior to the Part 244 filing deadline, the Enforcement Office reminded GoJet that with respect to code-share arrangements, the code-share partners must decide among themselves who will file each required Part 244 report. The Enforcement Office also advised GoJet that the Department did not need duplicate tarmac delay reports, but if any report is not timely, fully, or accurately filed, the Enforcement Office could hold both the operating and marketing carrier responsible.³ Nevertheless, neither GoJet nor United filed the required Part 244 report with BTS until well after the August 15, 2012, deadline. Accordingly, the Enforcement Office found that GoJet's failure to timely report the tarmac delays to BTS violated 14 CFR Part 244 and 49 U.S.C. § 41708.

Mitigation

GoJet Airlines believed at the time of this violation that it had complied with the reporting requirements of the Department. GoJet further believed that the Enforcement Office was already aware of the tarmac delay issues in question and the Enforcement

² The Office of Aviation Enforcement and Proceedings became aware that the two flights experienced tarmac delays of more than three hours prior to the publication of the September 2012 ATCR, and was able to accurately publish the information regarding the tarmac delays, despite GoJet's failure to timely file the required reports. The reports were filed in mid-September 2012.

³ See also *Answers to Frequently Answered Questions Concerning the Enforcement of the Second Final Rule Enhancing Airline Passenger Protections (EAPP #2), II. Reportable Tarmac Delay Data (14 CFR Part 244), Q3*, U.S. Department of Transportation, Office of Aviation Enforcement and Proceedings, (Aug. 19, 2011, revised Sept. 6, 2011, Oct. 19, 2011, Jan. 11, 2012).

Office was in discussions with both GoJet Airlines and its mainline partner about the tarmac delay issues. When GoJet inquired with the Enforcement Office about a duplicate filing, GoJet states that it was advised that duplicate filings with the Department would not be required, so GoJet did not make what it believed were duplicate filings. At the time GoJet believed that the filings had been made and that the Department was fully aware of the totality of the situation. Notwithstanding the above and in the interest of resolving this matter without further litigation, GoJet now agrees to this consent order with the Department.

Decision

The Enforcement Office has carefully considered the information provided by GoJet but continues to believe that enforcement action is warranted. The Enforcement Office and GoJet have reached a settlement of this matter in order to avoid litigation. GoJet consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41708 and Part 244 of the Department's regulations, and to the assessment of \$10,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature of the violations described herein and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's reporting requirements by GoJet as well as by other air carriers and foreign air 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 GoJet Airlines, LLC, violated 14 CFR Part 244 by failing to file timely Tarmac Delay Reports concerning flights 3638 and 3671 operated on July 13, 2012;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, GoJet Airlines, LLC, has also violated 49 U.S.C. § 41708;
4. We order GoJet Airlines, LLC, and all other entities owned or controlled by or under common ownership with GoJet Airlines, LLC, and their successors and assignees, to cease and desist from future violations of 49 U.S.C. § 41708 and 14 CFR Part 244;
5. GoJet Airlines, LLC, is assessed \$10,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above, \$5,000 of which shall be due and payable within 15 days from the date

of issuance of this order. The remaining \$5,000 shall become due and payable immediately if GoJet Airlines LLC, violates the cease and desist provision of this order within one year following the date of issuance of this order, or fails to comply with the order's payment provisions; and

6. We order GoJet Airlines, LLC, to pay the penalty assessed in paragraph 5 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 GoJet Airlines, LLC, 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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