



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

**Issued by the Department of Transportation
on the 28th day of February 2019**

American Airlines, Inc.

**Violations of 14 CFR Part 259 and
49 U.S.C. §§ 41712 and 42301**

Docket DOT-OST-2019-0001

Served February 28, 2019

CONSENT ORDER

This consent order concerns violations by American Airlines, Inc. (American Airlines) of 14 CFR 259.4 (the Department's tarmac delay rule), 49 U.S.C. § 41712 (prohibition against unfair and deceptive practices), and 49 U.S.C. § 42301 (requirement to adhere to a carrier's tarmac delay contingency plan). American Airlines failed to adhere to the assurances in its contingency plan for lengthy tarmac delays for 10 domestic flights and 3 international flights at various airports throughout the United States. Specifically, the carrier permitted flights to remain on the tarmac for more than three hours for the domestic flights and more than four hours for the international flights without providing passengers an opportunity to deplane. This order directs American Airlines to cease and desist from future similar violations of Part 259 and sections 41712 and 42301 and assesses American Airlines \$1 million in civil penalties.

I. Applicable Law

Pursuant to 49 U.S.C. § 42301(b) and (e), each covered U.S. carrier is required to develop a tarmac delay contingency plan for each U.S. airport it serves and to adhere to its respective plans. In addition, under 14 CFR 259.4, certificated and commuter air carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more passenger 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 U.S. airport at which they operate or market scheduled or public charter air service.

For domestic and international flights, the rule requires covered U.S. carriers to provide assurances in their contingency plans that they will not permit an aircraft to remain on the tarmac for more than three hours for domestic flights and four hours for international flights without providing passengers an opportunity to deplane, with the following exceptions: (1) where the pilot-in-command determines that an aircraft cannot leave its position on the tarmac to deplane passengers due to a safety-related or security-related reason (e.g., weather, a directive from an appropriate

government agency, etc.); or (2) where 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. For all covered flights delayed on the tarmac, carriers must provide adequate food and water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival) unless the pilot-in-command determines that safety or security requirements preclude such service. Carriers must also ensure that lavatory facilities are operable and medical attention is provided, if needed, while the aircraft remains on the tarmac. In addition, carriers must ensure that they have sufficient resources to carry out their contingency plans. Further, carriers must provide an assurance that the passengers on the delayed flight will be notified beginning 30 minutes after the scheduled departure time and every 30 minutes thereafter that they have the opportunity to deplane from an aircraft that is at the gate or another disembarkation area with the door open if the opportunity to deplane actually exists.

An air carrier's failure to comply with assurances required by 49 U.S.C. § 42301 or 14 CFR 259.4 and as contained in its contingency plan for lengthy tarmac delays constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

The FAA Extension, Safety, and Security Act of 2016 (2016 FAA Extension), which became law on July 15, 2016, requires the Department to issue regulations and take other actions to change the way that excessive tarmac delays are measured in the case of departure delays for U.S. carriers. Under the 2016 FAA Extension, a tarmac delay begins "after the main aircraft door is closed in preparation for departure" and ends when a U.S. carrier "begin[s] to return the aircraft to a suitable disembarkation point." On November 22, 2016, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) issued an interim Enforcement Policy to implement the statutory changes to the tarmac delay rule pending rulemaking. The Enforcement Policy states that the Enforcement Office considers a departing flight to have begun the process of returning to a suitable disembarkation point when permission to do so is granted by the Federal Aviation Administration (FAA) control tower, airport authority, or other relevant authority directing the aircraft's operations while it is on the tarmac. If the aircraft is in an area of the airport property that is under the carrier's control, the Enforcement Office considers an aircraft to have begun the process of returning to a suitable disembarkation point when the pilot begins maneuvering the aircraft to the disembarkation point.¹

Pursuant to 49 U.S.C. § 46301, violations of 14 CFR Part 259 or 49 U.S.C. §§ 41712 and 42301 subject a carrier to civil penalties of up to \$32,140 per violation. Because the purpose of section 259.4 is to protect individual passengers from being forced to remain on an aircraft for more than three hours for domestic flights or four hours for international flights without the opportunity to deplane, the Enforcement Office takes the position that a separate violation occurs for each passenger who is forced to remain onboard an aircraft for longer than the set amount of time without the opportunity to deplane.

¹ See Enforcement Policy on Extended Tarmac Delays (Nov. 22, 2016), available at, <https://www.transportation.gov/sites/dot.gov/files/docs/Enforcement%20Policy%20on%20Extended%20Tarmac%20Delays.pdf>.

II. American Airlines U.S. Operations

American Airlines is an air carrier as defined by 49 U.S.C. § 40102(a)(2) that operates scheduled service at large hub, medium hub, small hub, and non-hub airports throughout the United States using at least one aircraft having a design seating capacity of more than 30 passenger seats. American Airlines adopted a contingency plan for lengthy tarmac delays covering its scheduled operations at the large hub, medium hub, small hub, and non-hub airports throughout the United States, which stipulated that for the carrier's operations at U.S. airports, customers would have the opportunity to deplane an aircraft before a tarmac delay exceeds three hours for domestic flights and four hours for international flights. The plan indicates that American Airlines ensures that the carrier has adequate resources available to implement the plan and a designated person to coordinate the activities of a local team who will also communicate with American Airlines' central operations center.

Lengthy Tarmac Delays

Although American Airlines had a plan in place to address lengthy tarmac delays, the carrier's management of its operations at various U.S. airports throughout the United States was such that it did not adequately adhere to its tarmac delay contingency plans. The Enforcement Office conducted an extensive investigation and determined that 13 American Airlines flights violated the Department's tarmac delay rule (one of which was a violation of the requirement to notify passengers that they have the opportunity to deplane) and warrant enforcement action. Details about each of these flights are provided below.

1. On December 26, 2015, at Austin–Bergstrom International Airport (AUS), American Airlines flight 1540 experienced an extended tarmac delay after the flight diverted to AUS and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the three-hour mark. Flight 1540 diverted to AUS due to severe weather at its final destination of Dallas/Fort Worth International Airport (DFW). After flight 1540 landed at AUS, American Airlines was unaware of the aircraft's location for two hours and thirty minutes. Once the carrier learned of the aircraft's location through a radio call, it began the process of navigating the aircraft toward a gate to deplane passengers, however, the carrier failed to deplane passengers before the three-hour mark. In total, 56 passengers onboard flight 1540 experienced a tarmac delay of 3 hours and 14 minutes before the deplaning process began.
2. On December 26, 2015, at AUS, American Airlines flight 1398 experienced an extended tarmac delay after the flight diverted to AUS, and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the three-hour mark. Flight 1398 diverted to AUS due to severe weather at its final destination of DFW. After flight 1398 landed at AUS, the pilot decided not to use available American Airlines personnel and airstairs to deplane passengers onto the tarmac. Instead, the pilot of flight 1398 decided to taxi to a gate location to deplane passengers via a jetbridge. Due to the pilot's decision, the carrier failed to deplane passengers before the three-hour mark. In total, 128 passengers onboard flight 1398 experienced a tarmac delay of 3 hours and 24 minutes before the deplaning process began.

3. On January 16, 2016, at Tampa International Airport (TPA), American Airlines flight 984 experienced an extended tarmac delay after the flight diverted to TPA, and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the four-hour mark. Flight 984 was an international flight from Tancredo Neves International Airport (CNF) originally scheduled to land at Miami International Airport (MIA) but was forced to divert to TPA due to severe fog, and resultant ground stops at MIA. After flight 984 landed at TPA, due to gate mismanagement by the airline and limited United States Customs and Border Protection (CBP) processing facilities, the aircraft remained on the tarmac for more than four hours without providing passengers with an opportunity to deplane. Specifically, the F gates at TPA are the only gates at the airport with CBP facilities capable of processing passengers arriving from locations outside of the United States. Flight 984 could not deplane its international passengers into its F gates because it had other American Airlines flights occupying those gates. Eventually, an F gate became available for flight 984, which it used to deplane passengers. In total, 171 passengers onboard flight 984 experienced a tarmac delay of 4 hours and 18 minutes.
4. On January 16, 2016, at TPA, American Airlines flight 992 also experienced an extended tarmac delay after the flight diverted to TPA, and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the four-hour mark. Flight 992 was an international flight from CNF originally scheduled to land at MIA, but was forced to divert to TPA due to severe fog and resultant ground stops at MIA. After Flight 992 landed at TPA, the aircraft remained on the tarmac for more than four hours without providing passengers with an opportunity to deplane due to the same gate mismanagement and CBP processing issues that affected American flight 984. American Airlines originally planned for flight 992 to land at TPA, receive gas at a gate, and then take-off to its final destination of MIA. However, American Airlines was unable to gas the aircraft and take-off for MIA in a timely fashion. Flight 992 received FAA clearance to take-off and departed TPA to its final destination of MIA² after 4 hours and 21 minutes. In total, 149 passengers onboard flight 992 experienced a tarmac delay of 4 hours and 21 minutes before the flight departed for its final destination of MIA.
5. On April 30, 2016, at Columbia Metropolitan Airport (CAE), American Airlines flight 2076 experienced an extended tarmac delay after the flight diverted to CAE, and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the three-hour mark. After flight 2076 landed at CAE, due to gate congestion and the number of planes diverted to CAE on that day, flight 2076 remained on the tarmac for more than three hours without providing passengers with an opportunity to deplane. Specifically, American Airlines diverted 15 flights to CAE on April 30, 2016, some of which were international flights requiring CBP processing. Ultimately, the carrier did not have sufficient resources at CAE to handle 15 diverted flights and failed to provide passengers onboard flight 2076 with an opportunity to deplane before three hours. After processing an international flight that was diverted from Cancún International Airport (CUN), American Airlines was able to bring airstairs to flight 2076 providing passengers an

² The weather-related ground stop at MIA lifted allowing flights to takeoff for, and land at, the airport.

opportunity to deplane. In total, 97 passengers onboard flight 2076 experienced a tarmac delay of 3 hours and 51 minutes before the deplaning process began.

6. On May 31, 2016, at Clinton National Airport (LIT), American Airlines flight 5623 experienced an extended tarmac delay after the flight diverted to LIT, and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the three-hour mark. Flight 5623 diverted to LIT due to severe weather at its final destination of DFW. Upon landing at LIT, flight 5623 taxied to the cargo area of the tarmac and parked. American Airlines made a decision to attempt a “gas and go” by refueling the aircraft and taking off for the final destination. After refueling the aircraft and keeping it on the tarmac without offering the opportunity to deplane for two hours and fifty-two minutes, American Airlines released the brake holding the aircraft in its location and began to taxi for takeoff. Taxing the aircraft to the tarmac and departing the airport took longer than eight minutes resulting in a tarmac delay in excess of three hours. In total, 62 passengers onboard flight 5623 experienced a tarmac delay of 3 hours and 12 minutes before the flight departed for its final destination of DFW.
7. On June 12, 2016, at AUS, American Airlines flight 5781 experienced an extended tarmac delay after the flight diverted to AUS, and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the four-hour mark. Flight 5781 was an international flight from San Luis Potosí International Airport (SLP) originally scheduled to land at DFW, but was forced to divert to AUS due to severe weather at DFW. After flight 5781 landed at AUS, the aircraft remained on the tarmac for more than four hours without providing passengers with an opportunity to deplane. Upon landing flight 5781 at AUS, American Airlines made a decision to attempt a “gas and go” by refueling the aircraft and taking off for the final destination of DFW. After refueling the aircraft, American Airlines received ATC clearance to depart and began taxing for takeoff after sitting on the tarmac at AUS for 3 hours and 59 minutes. Flight 5781 had only one minute to taxi and depart the airport before experiencing an extended tarmac delay in excess of four hours. Before flight 5781 could takeoff for DFW, a ground stop was imposed at DFW, impeding flight 5781’s ability to takeoff as desired. Ultimately, American Airlines could not continue to flight 5781’s final destination and the carrier was unable to offer passengers the opportunity to deplane before the four-hour mark. In total, 42 passengers onboard flight 5781 experienced a tarmac delay of 5 hours and 35 minutes before the deplaning process began.
8. On July 18, 2016, at Tucson International Airport (TUS), American Airlines flight 627 experienced an extended tarmac delay after the flight diverted to TUS, and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the three-hour mark. Flight 627 diverted to TUS due to severe weather at its final destination of Phoenix International Airport (PHX). Upon landing flight 627 at TUS, American Airlines made a decision to attempt a “gas and go” by refueling the aircraft and taking off for the final destination of PHX. However, due to a dispatch paperwork issue, flight 627 remained on the tarmac and passengers onboard experienced a tarmac delay in excess of three hours. In total, 128 passengers onboard flight 627 experienced a tarmac delay of 3 hours and 19 minutes before the deplaning process began.

9. On August 2, 2016, at PBI, American Airlines flight 1299 experienced an extended tarmac delay after the flight diverted to PBI due to severe weather at MIA. Flight 1299 was a domestic flight from Luis Muñoz Marín International Airport (SJU). Due to a data entry error by American Airlines' International Operations Control department, American Airlines mistakenly believed that passengers deplaned flight 1229 two hours and three minutes into the tarmac delay. Once American Airlines realized its mistake, the carrier was unable to obtain a gate for the aircraft for over an hour. As a result of American Airlines' mismanagement, flight 1299 remained on the tarmac in excess of 3 hours. In total, 163 passengers onboard flight 1299 experienced a tarmac delay of 3 hours and 23 minutes before the deplaning process began.
10. On August 12, 2016, at Austin–Bergstrom International Airport (AUS), American Airlines Flight 152 experienced an extended tarmac delay after the flight diverted to AUS, and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the three-hour mark. Flight 152 diverted to AUS due to severe weather at its final destination of Dallas/Fort Worth International Airport (DFW). After flight 152 landed at AUS, the aircraft parked at a remote location where it sat idle for over two hours. Although station personnel approached the aircraft for the purpose of deplaning two hours and eighteen minutes into the tarmac delay, passengers were not offered the opportunity to deplane, and no passengers exited the aircraft. Eventually, flight 152 made its way to a gate location to offer passengers the opportunity to deplane, but not before experiencing a tarmac delay in excess of three hours. In total, 162 passengers onboard flight 152 experienced a tarmac delay of 4 hours and 52 minutes before the deplaning process began.
11. On August 16, 2016, at AUS, American Airlines flight 346 experienced an extended tarmac delay after the flight diverted to AUS, and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the three-hour mark. Flight 346 diverted to AUS due to severe weather at its final destination of DFW. After flight 346 landed at AUS, the aircraft parked at a remote location where it sat idle for over one hour and thirty minutes. Although station personnel approached the aircraft for the purpose of deplaning the aircraft, passengers were not offered the opportunity to deplane, and no passengers exited the aircraft. Eventually, flight 346 made its way to a gate location to offer passengers the opportunity to deplane, but not before experiencing a tarmac delay in excess of three hours. In total, 175 passengers onboard flight 346 experienced a tarmac delay of 4 hours and 2 minutes before the deplaning process began.
12. On January 8, 2017, at DFW, American Airlines flight 208 experienced an extended tarmac delay after the flight diverted to DFW, and American Airlines failed to notify passengers of the opportunity to deplane while the flight was at the gate with a door open. Flight 208 diverted to DFW for a fuel stop in route to its final destination of MIA. After flight 208 landed at DFW, the aircraft taxied to a gate location. While flight 208 was parked at the gate location, it took longer than expected to refuel the aircraft causing the crew to exceed their allowable flight duty hours. Through the main aircraft door, which was opened at times, the flight deck crew and flight attendants were replaced, and two passengers onboard deplaned after requesting to be accommodated on another flight. However, it appears that

American Airlines failed to notify all passengers onboard the aircraft that they had the opportunity to deplane the aircraft. The aircraft ultimately pushed back from the gate and departed after experiencing a tarmac delay in excess of three hours. In total, 143 passengers onboard flight 208 experienced a tarmac delay of 3 hours and 47 minutes before the aircraft departed for its final destination.

13. On January 22, 2017, at McCarran International Airport (LAS), American Airlines flight 6017 experienced an extended tarmac delay after the flight diverted to LAS, and American Airlines failed to offer passengers the opportunity to deplane the aircraft before the three-hour mark. Flight 6017 diverted to LAS due to a ground stop at its final destination of LAX. American Airlines made a decision to attempt a “gas and go” by refueling the aircraft at LAS on a remote pad. Upon landing, the aircraft taxied to a remote pad and parked. Although aircraft refueling was completed one hour and twenty-three minutes into the tarmac delay, the ground stop at LAX persisted, preventing flight 6017 from departing to its final destination. At this point, American Airlines began to prepare to deplane passengers at LAS instead of continuing on to LAX, but the carrier’s Customer Service Manager (CSM) mistakenly believed that the aircraft landed one hour later than it did. As a result, when prioritizing flights for deplaning, American Airlines failed to prioritize flight 6017. According to American Airlines, the CSM also mistakenly believed that the only viable option for deplaning was via remote stairs as opposed to a gate location. Ultimately, passengers onboard flight 6017 remained on the tarmac without the opportunity to deplane for more than three hours. In total, 58 passengers onboard flight 6017 experienced a tarmac delay of 3 hours and 21 minutes before the deplaning process began.

III. American Airlines Response

In response, American Airlines states that it takes very seriously its responsibility to comply with all of the Department’s requirements, including the tarmac delay rule. American also notes that it fully cooperated with the Department’s investigation of the flights at issue. In mitigation, and without conceding the Department’s recitation of facts or findings, American states as follows.

American states that first, and most importantly, American Airlines prioritizes safety, and that sometimes requires that an aircraft must be diverted to a different airport due to severe weather at the destination airport. American asserts that each of the flights at issue in this Order were diversions, and in all cases, American chose to divert the flights to ensure the safety of its passengers and crews. American states that a diversion is never ideal, and, as here, there are usually multiple flights that are simultaneously diverted due to the emergent weather conditions. In these cases, American states that the carrier is mindful of the tarmac delay clock on all diverted flights and at all times strives to adhere to the Department requirements, but American is also mindful of the need to get passengers to their destination airport instead of fully deplaning at the interim airport that is not anyone’s final destination. American asserts that this tension played out in five of the flights at issue here,³ resulting in a decision to proceed to the original destination notwithstanding the tarmac clock.

³ American Airlines flights 992 (TPA), 5623 (LIT), 5781 (AUS), and 627 (TUS).

Particular to flights 1540 and 984, American states that the carrier disputes the Department's recitation of factors creating the delays. For flight 1540, American asserts that the aircraft was on its way to the gate to deplane passengers within the permitted time, but the movement of another carrier's aircraft blocked access to the AA gate for 20 minutes, bringing that flight in at over three hours. American believes that but for the other aircraft blocking flight 1540's path for 20 minutes, the passengers on flight 1540 would have been successfully deplaned within the allotted time. For flight 984, American does not agree that "gate mismanagement" caused the delay. American believes that this aircraft was diverted to TPA due to severe weather in MIA. American states that, in this case, there were multiple flights diverted to TPA that day, and more than one of which was an international, widebody aircraft requiring both CBP processing and specific equipment to deplane passengers. American asserts that all of these diversions strained the airport operations and resources (including CBP resources). American further asserts, that the gates were not mismanaged, they were just continuously occupied.

American states that the carrier has made significant investments since 2015 to improve operations during diversions. Specifically, American notes that an American Airlines Task Force recommended and implemented changes to avoid extended tarmac delays during diversions in the future, including additional staff at diversion airports, improved situational awareness tools, and capital investments such as additional vans, air stairs, and lavatory trucks. American states that it has invested over 5 million dollars on these efforts since 2015. American notes that immediately following each of these events, American proactively provided significant compensation in vouchers good for future travel and redeemable airline miles to passengers impacted by these delays without Department intervention.

Finally, American notes that it respectfully disagrees with the Enforcement Office's view that a separate violation occurs for each passenger onboard an aircraft subject to an excessive tarmac delay. American believes that the applicable statutes provide for violations to be assessed on a per flight or per day basis. In the interest of settling this matter and without conceding or waiving its legal position on that question or the other issues raised in this order, American has agreed to this compromise settlement.

IV. Decision

The Enforcement Office views seriously American Airlines' violations of 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, American Airlines consents to the issuance of this order, to cease and desist from future violations of 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301, and to the assessment of \$1 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 against future similar unlawful practices by American Airlines and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that American Airlines violated 49 U.S.C. § 42301 and 14 CFR 259.4 by failing to adhere to the assurance in its contingency plan for lengthy tarmac delays that the carrier will not permit a flight to remain on the tarmac at a U.S. airport for more than three hours for domestic flights and four hours for international flights without providing passengers an opportunity to deplane;
3. We find that American Airlines violated section 259.4(b)(6) by failing to properly notify passengers that they had the opportunity to deplane flight 208, as described above, while it was at the gate with the door open;
4. We find that by engaging in the conduct and violations described in ordering paragraph 2 and 3, above, American Airlines engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order American Airlines and its successors and assigns to cease and desist from further violations of 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301;
6. We assess American Airlines \$1 million in compromise of civil penalties that might otherwise be assessed for the violations described above;
 - a. \$550,000 of the assessed penalty shall be due and payable within 30 days of the service date of this order; and
 - b. \$450,000 of the assessed penalty shall be credited to American Airlines for compensation provided to passengers on the affected flights described in this order.
7. We order American Airlines to pay within 10 days of the issuance of this order the penalty assessed in Ordering Paragraph 6, 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 American Airlines 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 WORKIE
Assistant General Counsel for Aviation
Enforcement and Proceedings

An electronic version of this document is available at www.regulations.gov