



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

Issued by the Department of Transportation  
on the 28<sup>th</sup> day of February, 2019

**Delta Air Lines, Inc.**

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

**Docket OST-2019-0001**

**Served: February 28, 2019**

**CONSENT ORDER**

This consent order concerns violations by Delta Air Lines, Inc., (Delta) of 14 CFR Part 259 (the Department's tarmac delay rule), 49 U.S.C. § 41712 (the prohibition against unfair and deceptive practices), and 49 U.S.C. § 42301 (requirement to adhere to a carrier's tarmac delay contingency plan). Delta failed to adhere to the assurance in its contingency plan for lengthy tarmac delays for various flights at Hartfield-Jackson Atlanta International Airport (ATL) on January 29, 2017, and December 8, 2017, and at Kansas City International Airport (MCI) on February 20, 2018. Specifically, the carrier violated the Department's tarmac delay rule by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier (1) would not allow an aircraft to remain on the tarmac for more than three hours for domestic flights before providing passengers an opportunity to deplane, and (2) would have sufficient resources to implement its plan. This order directs Delta to cease and desist from future similar violations of Part 259 and sections 41712 and 42301, and assesses the carrier \$750,000 in civil penalties.

**Applicable Law**

Pursuant to 49 U.S.C. § 42301(b), each covered carrier must have an emergency contingency plan that contains a description of how the carrier will allow passengers to deplane following an excessive tarmac delay, among other things. 49 U.S.C. § 42301(e)(3) requires each covered carrier to adhere to its emergency contingency plan.

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 arriving domestic flights, 14 CFR 259.4(b)(1) 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 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, section 259.4(b)(7) of the rule requires each covered carrier to have sufficient resources to implement its contingency plan.

The FAA Extension, Safety, and Security Act of 2016 (2016 FAA Extension) amended 49 U.S.C. § 42301 by changing the way that excessive tarmac delays are measured in the case of departure delays for U.S. carriers. Under section 2308 of 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.” Section 2308 of the 2016 FAA Extension also amended 49 U.S.C. § 42301(i)(4) by defining an “excessive tarmac delay” as a tarmac delay of more than three hours for a domestic flight and more than four hours for an international flight.

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.<sup>1</sup>

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<sup>1</sup> 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>.

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.

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 on domestic flights from being forced to remain on an aircraft for more than three hours without the opportunity to deplane, the Enforcement Office takes the position that a separate violation occurs for each passenger who is forced to remain on board an aircraft for longer than the set amount of time without the opportunity to deplane.

### **Facts and Conclusions**

Delta is an air carrier as defined by 49 U.S.C. § 40102(a)(2)<sup>2</sup> that operates scheduled passenger service at ATL and MCI, both large hub airports, and uses at least one aircraft having a design capacity of more than 30 passenger seats. Delta has adopted a contingency plan for lengthy tarmac delays covering its operations at all U.S. airports, including ATL and MCI. The plan stipulates that Delta will have sufficient resources and will meet DOT's three-hour domestic time limit for extended tarmac delays.<sup>3</sup> Delta's plan states that all stations have identified resources and developed procedures that will allow them to effectively bring an aircraft off the runway and open the door, giving the passengers the opportunity to egress within specified time limits.

The Enforcement Office has found that Delta failed to adhere to the assurances in its tarmac delay contingency plan for various flights at ATL on January 29, 2017 and December 8, 2017, and at MCI on February 20, 2018. Information about each of these incidents is provided below.

#### **January 2017 Systems Outage - ATL**

In reports filed with the Enforcement Office, Delta disclosed that multiple flights experienced lengthy tarmac delays in excess of three hours at ATL on January 29, 2017. The Enforcement Office conducted an extensive investigation and determined that Delta violated the DOT's tarmac delay rule by not providing passengers on seven domestic arrival flights the opportunity to deplane for more than three hours even though there was no safety, security, or Air Traffic Control reason for not doing so. In addition to Delta's failure to adhere to assurances that it would not force passengers to remain on the tarmac for more than three hours, Delta failed to have sufficient resources available to carry out its tarmac delay contingency plan. Delta fulfilled all of the other assurances outlined in its tarmac delay contingency plan.

The Enforcement Office's investigation revealed that shortly after 6:00 p.m. local time on January 29, 2017, Delta experienced an information systems outage at its data center in Atlanta, Georgia. A number of Delta's operational systems, including its gate management and flight dispatch

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<sup>2</sup> 49 U.S.C. § 40102(a)(2) defines an air carrier as "a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation."

<sup>3</sup> See *Delta's Contingency Plan for Lengthy Tarmac Delays*, available at [www.delta.com/content/www/en\\_US/legal/plan-for-tarmac-delays.html](http://www.delta.com/content/www/en_US/legal/plan-for-tarmac-delays.html).

systems, were inoperative for several hours. Due to the failure of these systems, Delta lost its ability to effectively track and manage gate availability and could not taxi numerous scheduled departing flights off gates at its major hub airports, including ATL. As a result, Delta imposed a system-wide ground stop until its operational systems were restored.

During the systems outage, 129 mainline and regional Delta flights that were in the air when the systems outage occurred landed at ATL. Because the gate management system was inoperative, departing flights could not taxi off gates, thereby forcing the arriving flights to hold and wait on taxiways, which further compounded surface congestion. Ultimately, Delta permitted a number of domestic arrival flights carrying a significant number of passengers to remain on the tarmac for more than three hours without providing passengers the opportunity to deplane.

Although the Enforcement Office recognizes the challenges surrounding the systems outage, the purpose of 49 U.S.C. § 42301 and 14 CFR 259.4 is to require carriers to plan for various contingencies. Additionally, Delta is ultimately responsible for maintaining its information systems and ensuring that they are functional and operating correctly.

#### December 2017 Incident – ATL

The Enforcement Office's investigation revealed that on December 8, 2017, Delta flight 1387, from ATL to Luis Muñoz Marín International Airport (SJU) in Puerto Rico, did not begin to return to the gate or another suitable disembarkation point within three hours after the main aircraft door closed in preparation for departure. Flight 1387's main aircraft door closed at 12:11 pm local time. At 3:58 pm local time, three hours and 47 minutes into the delay, Delta requested and ATC granted flight 1387 permission to return to the gate. At 4:12 pm local time, the flight arrived at the gate, the door opened, and all passengers were deplaned. Based on our investigation, none of the exceptions identified in section 259.4(b)(1) apply to this tarmac delay.

#### February 2018 Incident - MCI

The Enforcement Office's investigation also found that on February 20, 2018, Delta failed to provide passengers on three arriving domestic flights the opportunity to deplane within three hours. Flight 2256 from ATL landed at MCI at 5:09 pm local time, blocked into a gate 8:26 pm local time, and had its door opened at 8:27 pm local time, three hours and 18 minutes after landing. Flight 3934 from La Guardia Airport (LGA) landed at MCI at 5:15 pm local time and blocked into a gate and had its door opened at 8:42 pm local time, three hours and 27 minutes after landing. Flight 3370 from Minneapolis-St. Paul International Airport (MSP) landed at MCI at 5:03 pm local time and blocked into a gate and had its door opened at 9:05 pm local time, four hours and two minutes after landing. Based on our investigation, none of the exceptions identified in section 259.4(b)(1) apply to these tarmac delays.

### **Response**

In response, Delta states that it takes very seriously its obligations to passengers, including compliance with the tarmac delay rule. Delta states that its focus on compliance has resulted in no enforcement actions related to DOT's three-hour tarmac delay rule in the seven years between the

implementation of the rule in 2010 and the alleged violations in January of 2017. Moreover, Delta explains that those delays were the direct result of an extraordinary, unanticipated, and unpredictable system outage in the data center at Delta's Atlanta hub, which occurred when a tripped circuit breaker caused a loss of computer-network connectivity to two independent and fully redundant power-supply systems. Delta states that this was an event that could not reasonably have been anticipated given (1) the multiple redundancies built into the two power systems supporting the data center -- systems that adhered to industry-best practices for power, network, infrastructure, connectivity, and application capacity; (2) the failure of any equipment providers to indicate that such an outage was possible; and (3) a thorough 2016 independent third-party audit of the data center's infrastructure that did not reveal the specific deficiencies that resulted in this outage. Delta notes that that even though 96 gates were occupied when the outage occurred and 129 additional planes landed during the outage, Delta kept the delays for 90 percent of the incoming flights within acceptable limits. Delta explains that it did so by manually checking gates and aircraft locations, then conveying this information to Delta's control tower, which manually plotted the aircraft to open gates. Delta states that as a result, under these extreme circumstances, only 13 of the 129 flights were delayed on the tarmac for more than three hours. Delta further notes that three of those were excessively delayed only because of the need to give priority to other flights with passengers suffering medical emergencies, and three other flights were delayed only a few minutes beyond the allowed time. Delta acknowledges DOT's forbearance in not imposing any penalty relating to the three flights delayed by medical emergencies or the other three flights that were only nominally late.

Delta further states by way of mitigation that, without DOT intervention, it awarded substantial travel vouchers and miles redeemable for future travel to passengers affected by the January 29 delays, as well as additional cash reimbursements for out-of-pocket expenses connected to the delays. Delta states that it also voluntarily awarded redeemable miles, travel vouchers, and additional cash reimbursement in connection with the four other delayed flights at ATL and MCI (on December 8, 2017, and February 20, 2018, respectively).

Delta notes that it has also invested considerable capital in new equipment and technologies that should reduce the risk of major computer outages and, in the unlikely event of a future outage, should allow Delta to continue operations with minimal interruption. Delta states that to reduce the risk of another system outage, it has invested more than \$250 million to establish an entirely new data center, which is located about sixty miles from the airport. Delta states that the secondary data center is devoted to continuing all core mission-critical applications in the event that any or all such applications at the primary data center become inoperable. Delta states that it has also invested \$12.4 million in an automated aircraft-parking guidance and jet-bridge positioning system at ATL, which will allow Delta to park aircraft more efficiently during irregular operations including, but not limited to, delays caused by system outages. Delta adds that in response to the weather-related tarmac delay at ATL on December 8, 2017, it is purchasing twenty additional deicing trucks valued at \$11.6 million and planning additional deicing pads, which will more than double hourly aircraft throughput during a deicing event at ATL.

Delta believes that in light of the particular facts, circumstances, and mitigating factors noted above, enforcement action by the Department is not warranted. Further, Delta notes that it does not agree with DOT's position that, as a matter of law, civil penalties should be determined on a

per-passenger basis instead of a per-flight basis. Nevertheless, to resolve this matter without litigation, Delta has agreed to this compromise settlement.

### **Decision**

The Enforcement Office views seriously Delta's violations of 14 CFR Part 259 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, Delta consents to the issuance of this order to cease and desist from future similar violations of 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301, and to the assessment of \$750,000 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 to future similar unlawful practices by Delta 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 Delta Air Lines, Inc., 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 domestic flight to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane and for failing to have sufficient resources to implement its plan;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, Delta Air Lines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Delta Air Lines, Inc., 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;
5. We assess Delta Air Lines, Inc., \$750,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above;
  - a. \$300,000 of the assessed penalty shall be due and payable within 30 days of the issuance of the order;
  - b. \$450,000 of the assessed penalty shall be credited to Delta Air Lines, Inc., for compensation provided to passengers affected by the systems outage on

January 29, 2017, and the tarmac delays on December 8, 2017, and February 20, 2018, and for Delta's costs of establishing a backup data center and an automated aircraft-parking guidance and jet-bridge positioning system.

6. We order Delta Air Lines, Inc., to pay the civil penalties as described in subparagraph 5(a) above 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 Delta Air Lines, Inc., 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:**

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