



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

**Issued by the Department of Transportation
on the 18th day of December, 2019**

China Eastern Airlines Corporation, Ltd.

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

Docket DOT-OST-2019-0001

Served December 18, 2019

CONSENT ORDER

This consent order concerns violations by China Eastern Airlines Corporation, Ltd. (China Eastern) of 14 CFR Part 259 and 49 U.S.C. § 41712 with respect to a flight that experienced an excessive tarmac delay in 2017. For this flight, the carrier failed to adhere to the assurance 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. This order directs China Eastern to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assesses the carrier \$247,000 in civil penalties.

Applicable Law

Pursuant to section 259.4, foreign air carriers that operate scheduled passenger service or public charter service to and from the U.S. 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, medium, small, and non-hub U.S. airport at which they operate scheduled or public charter air service. For international flights, the rule requires covered carriers to provide assurance that they will not permit an aircraft to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane, with the following exceptions: (1) where 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; 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. A carrier's failure to comply with the assurances required by Part 259 and as contained in its contingency plan for lengthy tarmac delays is considered to be 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 being forced to remain on the aircraft for more than four hours in the case of international flights without being provided the opportunity to deplane or being informed when an opportunity to deplane exists, a separate violation is considered to have occurred 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

China Eastern is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)¹ that operates scheduled service from John F. Kennedy International Airport (JFK), among other large hub airports, using at least one aircraft having a design capacity of more than 30 passenger seats. The carrier has a tarmac delay contingency plan that states, “We will not permit an aircraft to remain on the tarmac at a U.S. airport for more than four (4) hours before allowing passengers to deplane,” with specific exceptions permitted by law.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on February 9, 2017, China Eastern flight MU587, traveling from Shanghai Pudong International Airport (PVG) to JFK, was diverted to Washington Dulles International Airport (IAD) as a result of difficult weather conditions at JFK. In accordance with China Eastern’s standard operating procedure, the carrier had coordinated in advance with IAD as a potential diversionary point, should a diversion become necessary. Upon landing at IAD, MU587 was delayed on the tarmac in excess of seven hours before passengers had the opportunity to deplane. The aircraft was initially expected to refuel and depart for JFK, but between three and four hours into the delay, the aircraft was informed that its designated terminal at JFK was not accepting flights that had diverted and were repositioning to JFK. Upon re-entering an IAD hardstand, the carrier was unable to reach its ground handler for assistance to deplane passengers. The carrier did not coordinate with IAD, other potential ground handlers, or other airlines for assistance in deplaning passengers prior to the tarmac delay reaching four hours, instead making contact with its originally intended ground handler nearly seven hours into the tarmac delay. The passengers were not fully deplaned until an hour later.

Section 259.4(b)(2) requires carriers to provide assurance in their tarmac delay contingency plans that they will not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours on an international flight before allowing passengers to deplane. China Eastern failed to follow through on its contingency plan by permitting MU587 to remain on the tarmac for more than four hours without allowing passengers to deplane. The carrier’s inability to communicate with its ground handler and to provide passengers an opportunity to deplane does not fit within the safety, security, or ATC exceptions to the tarmac delay rule stated in section 259.4(b)(2). Furthermore, the severity of the delay in this case was egregious. Accordingly, China Eastern did not adhere to the terms of its contingency plan and therefore violated 14 CFR 259.4 and 49 U.S.C. § 41712 when it

¹ 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.”

failed to provide passengers on flight MU587 an opportunity to deplane before the tarmac delay exceeded four hours.

Response

In response, China Eastern states that the delay of MU587 resulted from events out of China Eastern's control, stemming from extreme weather conditions and recurring operational deficiencies at JFK.

China Eastern states that it believes all of its actions were in the best interest of the passengers and consistent with its CAAC and FAA operations specifications and international standards. China Eastern states that it is committed to maintaining the highest level of safety and seeks to always provide its passengers with timely, reliable, and passenger-friendly service. China Eastern states that, pursuant to standard procedures, the airline's dispatch reviewed weather conditions both before and after departure from Shanghai and confirmed that conditions were within normal operating parameters for an on-time arrival at JFK and that JFK was open and fully-functional at the time of MU587's departure.

Following multiple Notices to Airmen that indicated progressively later re-opening times for JFK that impacted MU587 and a number of other flights, China Eastern states that, due to limited fuel reserves, MU587 was required to divert to IAD for a "fuel and go." China Eastern states that MU587 was not provided a gate at IAD upon landing but was instead directed to a remote hardstand located far from the terminal and other airport resources, including fuel. China Eastern states that, despite these obstacles, it worked vigorously to implement the fuel and go so as to return MU587's passengers to their intended destination of JFK. China Eastern states that MU587 was de-iced and cleared for take-off 44 minutes prior to the four-hour mark of the delay. Shortly thereafter, China Eastern states that JFK Terminal 1 then advised China Eastern that no gate would be available upon MU587's return to JFK. China Eastern states that this was contrary to all information China Eastern had been given up to this point in the delay by Terminal 1 and that, based on this new information and in the interest of the safety and security of its passengers, MU587's pilot-in-command terminated the take-off attempt and contacted ATC to find a suitable disembarkation point for the passengers.

China Eastern states that it was in constant contact with its ground handler at JFK and Terminal 1 officials prior to the four-hour mark of the delay and was repeatedly assured it would have a gate at JFK. China Eastern states that after the aircraft was directed to a remote hardstand at IAD for the second time roughly 3.5 hours into the delay, China Eastern states that it made dozens of phone calls to a handler (with which it had a contractual relationship) for assistance with deplaning passengers. China Eastern states that its phone calls were not answered and it was left in a position where it could not move the aircraft to a gate or get assistance deplaning passengers from its remote hardstand location.

China Eastern states that it takes the Department's tarmac delay rules seriously and took all available measures to comply with them. China Eastern states that the passengers were

well taken care of during the delay of MU587; the temperature on the aircraft was pleasant; food and water were provided; lavatories remained in working order; and medical assistance was available on an as-needed basis. China Eastern states that it expended approximately \$83,000 in compensation, lodging, and transportation costs for passengers affected by the delay. China Eastern believes that in light of the particular facts and circumstances noted above, particularly the systemic operational failures at JFK during severe weather events and China Eastern's attempts to deplane the passengers safely as soon as practicable, the safety and security exceptions should be applied. However, in the interest of settling this matter, China Eastern has agreed to this compromise settlement.

Decision

The Enforcement Office views seriously China Eastern's 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, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, China Eastern 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 \$247,000 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 China Eastern 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 China Eastern Airlines Corporation, Ltd. violated 14 CFR 259.4(b) 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. By its actions, the carrier forced passengers on flight MU587 to remain on the tarmac for a period significantly exceeding four hours on February 9, 2017;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, China Eastern Airlines Corporation, Ltd. engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;
4. We order China Eastern Airlines Corporation, Ltd. and its successors and assigns to cease and desist from further violations of 14 CFR 259.4(b) and 49 U.S.C. § 41712;

5. We assess China Eastern Airlines Corporation, Ltd. \$247,000 in compromise of civil penalties that might otherwise be assessed for the violations described above.
 - a. \$110,000 of the assessed penalty shall be due and payable within 60 days of the issuance date of this order.
 - b. \$27,000 of the assessed penalty shall be credited to China Eastern Airlines Corporation, Ltd. for compensation provided to passengers as a result of the tarmac delay of flight MU587.
 - c. The remaining \$110,000 of the assessed penalty shall be due and payable if, within one year of the issuance date of this order, China Eastern Airlines Corporation, Ltd. violates this order's cease and desist or payment provisions in which case the entire unpaid amount shall become due and payable immediately and China Eastern Airlines Corporation, Ltd. may be subject to additional enforcement action for failure to comply with this order.

6. We order China Eastern Airlines Corporation, Ltd. to pay within 60 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 China Eastern Airlines Corporation, Ltd. 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 A. WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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