



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

**Issued by the Department of Transportation
on the 24th day of September 2021**

United Airlines, Inc.

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

Docket DOT-OST-2021-0025

Served September 24, 2021

CONSENT ORDER

This consent order concerns violations by United Airlines, Inc. (United) of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301. United failed to adhere to the assurances in its contingency plan for lengthy tarmac delays for 20 domestic flights and 5 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. The carrier also failed to have sufficient resources to implement its contingency plan for lengthy tarmac delays. This order directs United to cease and desist from future similar violations of Part 259 and sections 41712 and 42301 and assesses United \$1.9 million in civil penalties.

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, pursuant to 14 CFR 259.4¹, 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 in effect at the time required 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)

¹ 14 CFR 259.4 was amended by Final Rule, Tarmac Delay Rule, 86 Fed. Reg. 23260 on June 2, 2021. The changes to the rule do not impact the violations at issue in this case. The citations contained in this order are to the rule that was in effect at the time of the violations.

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. Carriers must also ensure that they have sufficient resources to carry out their contingency plans.

The FAA Extension, Safety, and Security Act of 2016 (2016 FAA Extension), which became law on July 15, 2016, required the Department to issue regulations and take other actions to change the standard for when tarmac delay violations occur in the case of departure delays for U.S. carriers. 49 U.S.C. § 42301 provides that a tarmac delay ends for an arriving flight when a passenger has the option to deplane an aircraft and return to the airport terminal. However, for a departing flight, under amended section 42301, it is not a violation of the assurance to permit an aircraft to remain on the tarmac for more than three hours for domestic flights and more than four hours for international flights if the air carrier begins to return the aircraft to a suitable disembarkation point to deplane passengers by those times.

On November 22, 2016, the Department's Office of Aviation Enforcement and Proceedings, now known as the Office of Aviation Consumer Protection (OACP), issued an interim enforcement policy to implement the statutory changes to the tarmac delay rule pending rulemaking.² The enforcement policy states that a departing flight is considered 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, a departing flight is considered to have begun the process of returning to a suitable disembarkation point when the pilot begins maneuvering the aircraft to the disembarkation point.

In May 2021, the Department published a final rule modifying U.S. and foreign air carriers' obligations with respect to tarmac delays and confirming their obligations with respect to departure delays with the changes made to the 2016 FAA Extension Act.³ The requirements in this final rule, which became effective on June 2, 2021, regarding airlines' obligations with respect to departure delays were largely consistent with the standard that has been in effect since the Department issued its 2016 Enforcement Policy.

A covered carrier's failure to comply with assurances required by 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. 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, OACP takes the position that a separate violation occurs for each passenger who is

² 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>.

³ See 86 Fed. Reg. 23260 (May 3, 2021).

forced to remain on board an aircraft for longer than the set amount of time without the opportunity to deplane.

Facts and Conclusions

United is an air carrier as defined by 49 U.S.C. § 40102(a)(2)⁴ 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. United has a contingency plan for lengthy tarmac delays covering its scheduled operations at each large hub, medium hub, small hub, and non-hub U.S. airport at which it operates. That plan stipulates that for the carrier's operations at U.S. airports, customers will have the opportunity to deplane an aircraft before a tarmac delay exceeds three hours for domestic flights and four hours for international flights. For arriving flights, United's plan specifies that a tarmac delay ends when a passenger has the opportunity to deplane the aircraft. For departing flights, United's plan stipulates that an aircraft will begin to return to a suitable disembarkation point within three hours for a domestic flight or four hours for an international flight. United's plan also includes an assurance that the carrier has adequate resources available to implement the plan.

Lengthy Tarmac Delays

OACP conducted an extensive investigation and determined that 25 United flights experienced lengthy tarmac delays that affected a total of 3,218 passengers in violation of the Department's tarmac delay rule. Details about each of these flights are provided below.

1. On December 27, 2015, United flight 3556, a domestic flight, experienced an extended tarmac delay of 4 hours and 29 minutes after the flight diverted to Louis Armstrong New Orleans International Airport (MSY) due to severe weather at George Bush Intercontinental Airport (IAH), its scheduled destination. United diverted several aircraft to MSY this day and quickly became overwhelmed with the number of additional aircraft on the ground. After flight 3556 landed at MSY, United failed to effectively manage its personnel, resources, and gates at MSY. As a result, United failed to provide passengers onboard flight 3556 the opportunity to deplane before the tarmac delay exceeded three hours.
2. On December 27, 2015, United flight 5090, a domestic flight, experienced an extended tarmac delay of 3 hours and 42 minutes after the flight diverted to MSY due to severe weather at IAH, its scheduled destination. United diverted several aircraft to MSY this day and quickly became overwhelmed with the number of additional aircraft on the ground. After flight 5090 landed at MSY, United failed to effectively manage its personnel, resources, and gates at MSY. As result, United failed to provide passengers onboard flight 5090 the opportunity to deplane before the tarmac delay exceeded three hours.

⁴ Under 49 U.S.C. § 40102(a)(2), an "air carrier" means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

3. On April 18, 2016, United flight 128, an international flight, experienced an extended tarmac delay of 5 hours and 21 minutes after the flight diverted to MSY due to severe weather at IAH, its scheduled destination. After flight 128 landed at MSY, United intended the flight to “gas and go” to IAH, despite the availability of a common-use gate to deplane passengers at MSY. However, at 3 hours 48 minutes into the delay, the crew of flight 128 exhausted its duty time under 14 CFR Part 117 (“timed out”). It was not until the crew timed out that United began the process to secure a gate for flight 128. Due to its lack of resources on the ground at MSY, United was unable to secure a gate and failed to provide passengers onboard flight 128 the opportunity to deplane before the tarmac delay exceeded four hours.
4. On April 18, 2016, United flight 818, an international flight, experienced an extended tarmac delay of 4 hours and 40 minutes after the flight diverted to MSY due to severe weather at IAH, its scheduled destination. After flight 818 landed at MSY, United intended the flight to “gas and go” to IAH. However, at 1 hour and 57 minutes into the delay, the crew of flight 818 timed out, at which time United began the process to secure a gate for the flight. A suitable gate was made available to flight 818 by MSY airport approximately 2 hours and 30 minutes into the delay. However, due to its lack of resources and the number of additional United aircraft on the ground at MSY, United was unable to avail itself of the available gate for flight 818 and failed to provide passengers onboard flight 818 the opportunity to deplane before the tarmac delay exceeded four hours.
5. On May 19, 2016, United flight 61, a domestic flight, experienced an extended tarmac delay of 3 hours and 33 minutes after the flight diverted to Oakland International Airport (OAK) due to low visibility at San Francisco International Airport (SFO), its scheduled destination. After flight 61 landed, United intended the aircraft to “gas and go” to SFO. However, due to confusion with United’ contracted fueler at OAK, the flight was not able to be fueled and depart before the tarmac delay exceeded three hours. United never contacted the airport to request deplaning options during the flight’s delay. As a result, passengers onboard flight 61 were not provided the provided the opportunity to deplane before the tarmac delay exceeded three hours.
6. On June 12, 2016, United flight 4443, an international flight, experienced an extended tarmac delay of 4 hours and 36 minutes after the flight diverted to Lake Charles Regional Airport (LCH) due to severe weather at IAH. After flight 4443 landed, it taxied to a remote location expecting to “gas and go” to IAH. LCH has an approved tarmac delay contingency plan⁵ that states that LCH can create a sterile corridor, with the approval of a Customs and Border Patrol (CBP) officer, in order to deplane international passengers who have not yet cleared CBP inspections. LCH’s plan includes phone numbers for the

⁵ 49 U.S.C. § 42301 requires operators of U.S. airports to create and submit contingency plans for lengthy tarmac delays to the Department for approval. Airport contingency plans must contain a description of how the airport operator, to the maximum extent practicable, will: (1) provide for the deplanement of passengers following excessive tarmac delays; (2) provide for the sharing of facilities and make gates available at the airport in an emergency; and (3) provide a sterile area following excessive tarmac delays for passengers who have not yet cleared U.S. Customs and Border Protection. Airport operators must ensure its approved plan is publicly available on the operator’s website.

proper CBP authorities to be contacted when an unscheduled international flight lands at LCH. During the tarmac delay, United failed to contact LCH airport operations and CBP directly to request remote deplaning. As result, passengers onboard flight 4443 were not provided the opportunity to deplane before the tarmac delay exceeded four hours.

7. On July 25, 2016, United flight 994, a domestic flight, experienced an extended tarmac delay of 3 hours and 28 minutes after the flight diverted to Richmond International Airport (RIC) due to severe weather at Newark International Airport (EWR), its scheduled destination. After flight 994 landed, the flight parked at a remote location because no gates were immediately available. During the flight's delay, flight 994 did not contact the airport to request remote deplaning or re-request a gate assignment, instead choosing to wait for clearance to depart to EWR. The flight eventually departed for EWR, but not before the three-hour period. As a result, passengers onboard flight 994 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
8. On July 23, 2017, United flight 664, a domestic flight, experienced an extended tarmac delay of 3 hours and 41 minutes after the flight diverted to Lehigh Valley International Airport (ABE) due to severe weather at Philadelphia International Airport (PHL), its scheduled destination. After flight 664 landed, it taxied to a remote parking spot expecting to "gas and go" to PHL. After the flight was refueled, weather conditions at PHL failed to improve in order to permit the flight to depart. At that point, United's contracted ground staff contacted the airport to coordinate deplaning of the aircraft. The airport offered United an available common use gate for deplaning. United did not have the appropriately trained personnel at ABE necessary to accept the use of a gate before the expiration of the three-hour period as the flight was required to be towed into the gate. As a result, passengers onboard flight 664 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
9. On December 8, 2017, United flight 6100, a domestic flight, experienced an extended tarmac delay of 3 hours and 17 minutes at Hartsfield–Jackson Atlanta International Airport (ATL). Flight 6100 pushed back from the gate while ATL was experiencing irregular operations due to a snow storm and proceeded to the deicing queue. Due to the long queue for deicing, the flight explored the option to return to the terminal. However, since no gates were available at that time, the flight crew chose to continue to the deicing pad in an attempt to depart. Flight 6100 entered the deicing pad 2 hours and 27 minutes into the delay and exited the deicing pad 3 hours and 13 minutes into the delay. The flight ultimately departed, but not before the three-hour period. As a result, passengers onboard flight 6100 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
10. On January 11, 2018, United flight 6262, a domestic flight, experienced an extended tarmac delay of 3 hours and 14 minutes after the flight diverted to San Antonio International Airport (SAT) due to severe weather at IAH, its scheduled destination. United diverted 16 total flights to SAT on this date, causing United's ground personnel and resources at SAT to become overwhelmed. After flight 6262 landed, it was refueled

and expected to “gas and go” to IAH. However, approximately 1 hour and 30 minutes into the delay, the flight crew timed out. United prioritized its own gates and resources, as well as the airport-controlled common-use gates, to handle other diverted flights. The airport also offered United the use of air stairs to remotely deplane flight 6262. However, United was unable to accept that offer before the expiration of the three-hour period due to insufficient staffing. As a result, passengers on board flight 6262 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.

11. On September 3, 2018, United flight 624, a domestic flight, experienced an extended tarmac delay of 3 hours and 14 minutes after the flight diverted to St. Louis Lambert International Airport (STL) due to severe weather at Chicago O’Hare International Airport (ORD), its scheduled destination. After the flight landed, the aircraft taxied to a remote pad, expecting to “gas and go” to ORD. While flight 624 was on the ground, the airport proactively offered United a gate, but the carrier refused that offer, instead waiting for the weather conditions at ORD to improve. United also did not appear to have sufficient resources at STL to handle the number of diversions on the ground at the same time. Flight 624 ultimately departed for ORD, but not before the expiration of the three-hour period. As a result, passengers on board flight 624 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
12. On October 31, 2018, United flight 47, an international flight, experienced an extended tarmac delay of 4 hours and 45 minutes after the flight diverted to MSY due to severe weather at IAH, its scheduled destination. MSY received three international diversions to MSY on this date, including flight 47. After flight 47 landed, it taxied to the ramp expecting to “gas and go” to IAH. After the flight crew timed out, United worked to have a second crew flown in to MSY to operate the remainder of the flight to IAH. During the flight’s delay at MSY, the airport was in constant contact with United ground personnel, and continued to offer assistance and resources to deplane flight 47. MSY airport operations also reminded United of the ongoing tarmac delay for flight 47, and United ground staff acknowledged that it was fully aware of the length of time flight 47 was on the ground. United continued to refuse the airport’s offers of assistance, and instead opted to wait for the replacement crew to arrive. The flight ultimately departed for IAH, but not before the expiration of the four-hour period. As a result, passengers on board flight 47 were not provided the opportunity to deplane before the tarmac delay exceeded four hours.
13. On November 15, 2018, United flight 1515, an international flight, experienced an extended tarmac delay of 4 hours and 12 minutes after the flight landed at EWR during a snow storm. Newark Airport is United’s East Coast hub, and United accounts for 70% of all flight operations at EWR. Additionally, United is the terminal operator for Terminal C. United is responsible for all operations at Terminal C, including gate assigning/management, snow removal from gate and ramp areas, and deicing. On this date, EWR was experiencing a snow storm, which significantly affected United’s operations and resources. While flights continued to land at EWR during the snow storm, departing flights were significantly delayed, resulting in gate congestion. Moreover, United did not have sufficient resources at EWR during the snow storm to handle the

continued operation of flights. When flight 1515 landed, it was initially assigned to a C-Terminal gate. A short time after landing, flight 1515 was reassigned to a different C-Terminal gate, which was occupied by a departing United flight. This gate remained occupied until 3 hours and 35 minutes into the delay, when a new C-Terminal gate was assigned. Flight 1515 was eventually towed into gate C120, but not before the expiration of the four-hour period. As a result, passengers on board flight 1515 were not provided the opportunity to deplane before the tarmac delay exceeded four hours.

14. On November 15, 2018, United flight 2322, a domestic flight, experienced an extended tarmac delay of 3 hours and 16 minutes as the flight departed EWR during the waning hours of a snow storm. Newark Airport is United' East Coast hub, and United accounts for 70% of all flight operations at EWR. Additionally, United is terminal operator for Terminal C. United is responsible for all operations at Terminal C, including gate assigning/management, snow removal from gate and ramp areas, and deicing. After the passengers boarded flight 2322 and the main cabin door was closed in anticipation of departure, it remained in the gate area for over an hour. After flight 2322 pushed back from the gate, it entered the deice pad in anticipation of departure. At 2 hours and 33 minutes into the delay, flight 2322 exited the deice pad and was offered the opportunity to return to a gate by United operations in consideration of the potential for a tarmac delay. The flight crew ultimately rejected the offer of a gate return and proceeded to the runway for departure. The flight departed EWR but not before the expiration of the three-hour period. As a result, passengers on board flight 2322 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
15. On March 15, 2019, United flight 1748, a domestic flight, experienced an extended tarmac delay of 3 hours and 39 minutes after the flight diverted to New York Stewart International Airport (SWF) due to severe weather at EWR, its scheduled destination. United uses SWF as a primary diversion airport for its EWR operations and has contracted ground handling services at SWF to support diverted flights. After flight 1748 landed, the flight crew taxied to the ramp expecting to "gas and go" to EWR. After the flight 1748 was refueled, the flight crew taxied the aircraft to a location near the runway in anticipation of an imminent departure. Information from SWF indicates that gates were available to deplane passengers, but United instead opted not to deplane the passengers and to wait for the weather to clear at EWR. Flight 1748 ultimately departed for EWR, but not before the expiration of the three-hour period. As a result, passengers on board flight 1748 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.

The following facts apply to flights described in paragraphs 16-20, below: On April 14, 2019, ORD was impacted by a snow storm. As a result, United diverted 10 flights to Dane County Regional Airport (MSN) which were scheduled to arrive at ORD. Due to the number of diversions on the ground at MSN, United's resources at the airport became overwhelmed. During each of the flight delays described in paragraphs 16-20, United was offered deplaning assistance from the airport in the form of remote deplaning or the use of airport-controlled gates. United did not initially accept those offers of assistance due to its lack of sufficient resources at MSN. As a result,

passengers on board these flights were not provided the opportunity to deplane before the tarmac delay exceeded three hours.

16. On April 14, 2019, United flight 4492, a domestic flight, experienced an extended tarmac delay of 3 hours and 46 minutes after the flight diverted to MSN due to a winter storm impacting operations at ORD, its scheduled destination. After flight 4492 landed, it taxied to a holding pad to await a gate to deplane passengers. The flight eventually blocked into a gate, but passengers on board flight 4492 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
17. On April 14, 2019, United flight 5217, a domestic flight, experienced an extended tarmac delay of 3 hours and 39 minutes after the flight diverted to MSN due to a winter storm impacting operations at ORD, its scheduled destination. After flight 5217 landed, it taxied to a holding location on the ramp to await a gate to deplane passengers. The flight eventually blocked into a gate, but passengers on board flight 5217 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
18. On April 14, 2019, United flight 4394, a domestic flight, experienced an extended tarmac delay of 4 hours and 1 minute after the flight diverted to MSN due to a winter storm impacting operations at ORD, its scheduled destination. After flight 4394 landed, it taxied to a holding pad to await a gate to deplane passengers. The flight eventually blocked into a gate, but passengers on board flight 4394 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
19. On April 14, 2019, United flight 729, a domestic flight, experienced an extended tarmac delay of 3 hours and 30 minutes after the flight diverted to MSN due to a winter storm impacting operations at ORD, its scheduled destination. After flight 729 landed, it taxied to a holding pad to await a gate to deplane passengers. The flight eventually blocked into a gate, but passengers on board flight 729 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
20. On April 14, 2019, United flight 682, a domestic flight, experienced an extended tarmac delay of 3 hours and 23 minutes after the flight diverted to MSN due to a winter storm impacting operations at ORD, its scheduled destination. After flight 682 landed, it taxied to a holding pad to await a gate to deplane passengers. During the flight's delay, the aircraft was refueled and awaited clearance to depart once the weather conditions at ORD improved. Flight 682 eventually departed for ORD not before the expiration of the three-hour period. As a result, passengers on board flight 682 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
21. On May 30, 2019, United flight 2179, a domestic flight, experienced an extended tarmac delay of 3 hours and 12 minutes after the flight diverted to Norfolk International Airport (ORF) due severe weather en route to LaGuardia Airport (LGA), its scheduled destination. After flight 2179 landed, it taxied to a hard stand expecting to "gas and go" to LGA. The flight waited for the weather to improve, but when it became clear that departure was not imminent, the flight crew arranged to deplane passengers at a gate. The

flight taxied to a gate and passengers deplaned, but not before the expiration of the three-hour period. As a result, passengers on board flight 2179 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.

22. On July 7, 2019, United flight 5009, a domestic flight, experienced an extended tarmac delay of 3 hours and 53 minutes during the flight's departure from EWR. After flight 5009 boarded and pushed back from the gate, the crew received a new flight plan from Air Traffic Control, requiring additional fuel. The flight taxied back to a gate to receive fuel, but only one passenger was provided the opportunity to deplane at that time. At 2 hours and 12 minutes into the delay, the flight again pushed back from the gate in expectation of departure. At 2 hours and 57 minutes into the delay, the crew received a second rerouting and was now too heavy for departure. The flight then began the process to return to the gate to remove fuel and offer passengers egress, but not before the expiration of the three-hour period. As a result, the remaining passengers on board flight 5009 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
23. On July 22, 2019, United flight 1173, a domestic flight, experienced an extended tarmac delay of 3 hours and 30 minutes after the flight landed at EWR during severe weather. When flight 1173 landed, the ramp was closed due to thunderstorms over the airfield. Once the storms passed and the ramp reopened, flight 1173 was assigned to a gate occupied by a departing United flight. Flight 1173 taxied to the ramp and was positioned short of the gate waiting for its assigned gate to become available. At 3 hours and 19 minutes into the delay, the flight occupying the gate departed and flight 1173 entered the gate area. Passengers were then permitted to deplane but not before the expiration of the three-hour period. United did not seek any other deplaning options for flight 1173, instead opting to wait for its assigned gate to become available. As a result, passengers on board flight 1173 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
24. On July 22, 2019, United flight 2418, a domestic flight, experienced an extended tarmac delay of 3 hours and 14 minutes after the flight landed at EWR during severe weather. When flight 2418 landed, the ramp was closed due to thunderstorms over the airfield. Upon landing, the flight was assigned a gate that was occupied by a departing United aircraft which was also affected by the ramp closure. Once the storms passed and the ramp reopened, flight 2418 taxied to the ramp and was positioned short of the gate waiting for its assigned gate to become available. At 3 hours and 10 minutes into the delay, the flight occupying the gate departed and flight 2418 entered the gate area. Passengers were then permitted to deplane but not before the expiration of the three-hour period. United did not seek any other deplaning options for flight 2418, instead opting to wait for the assigned gate to become available. As a result, passengers on board flight 2418 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.
25. On July 22, 2020, United flight 226, a domestic flight, experienced an extended tarmac delay of 3 hours and 16 minutes after the flight diverted to Tallahassee International

Airport (THL) due to severe weather at Tampa International Airport (TPA), its scheduled destination. After flight 226 landed, the aircraft taxied to a fixed-based operator intending to “gas and go” to TPA. At 1 hour and 45 minutes into the delay, the flight attempted to depart THL but the aircraft experienced a mechanical issue requiring resolution. After attempting to troubleshoot the issue for an hour and fifteen minutes, the flight crew contacted the airport to request a gate to deplane passengers. The airport immediately granted that request. The flight taxied to a common-use gate and passengers deplaned, but not before the expiration of the three-hour period. As a result, passengers on board flight 226 were not provided the opportunity to deplane before the tarmac delay exceeded three hours.

United’s Response

In response, United states that it is committed to full compliance with the Department’s lengthy tarmac delay laws. United notes that this consent order covers more than five years, and ultimately only 25 out of nearly 8 million flights operated by United and its United Express partners during that time have been determined by the Department to warrant enforcement action. While United enters freely into this settlement with the Department, it does not agree with the Department’s description of the flights in this order.

United also states that safety is always its first priority, and the vast majority of flights in this consent order were diversions due to severe weather at the destination airport or en route to the destination. In such situations, United is singularly focused on ensuring aircraft near adverse weather land safely. United notes and appreciates the professionalism and dedication of its pilots, dispatchers, Network Operations Center personnel, and ground crews who work tirelessly to safely navigate our operations around dangerous weather when it arises.

United also states that diversions pose particularly challenging circumstances for passengers who never intended to be present in those locations, and United does all within its power to safely bring those passengers to their intended destination. While United always seeks to comply with the Department’s tarmac delay requirements, United believes there is also a tension between the rules and operational decisions to position flights to take advantage of windows of opportunity to get the passengers to their ultimate destination. United believes that both it and the Department ultimately want what is best for passengers – to safely move passengers to their destinations and around adverse weather as quickly as possible. But, with regard to some of the flights in this order, United respectfully disagrees with the Department that enforcement action is warranted.

United states that since 2015, it has made substantial improvements and investments in its management of diversions. United highlights that it has implemented a diversion monitoring system available to its Network Operations Center personnel that identifies all available airports for a flight impacted by weather, including which airports have the appropriate facilities for that particular type of aircraft; identifies all relevant ground equipment; and tracks how many other aircraft are seeking to divert to that location in real time. United believes that this system dramatically improves the situational awareness of its decision-makers during adverse weather events.

United states that it has also made a substantial investment in ground service equipment to ensure that many strategically located airports have the capability to handle a large variety of aircraft far beyond the type of aircraft that are scheduled at that airport. For example, United ensures that many airports near its hubs have tow bars for the various types of aircrafts operated by United (such as the Boeing 787, 777, and 737 MAX), compatible mobile airstairs, and pushback tractors to broaden the potential diversion locations that could offer egress for passengers.

Lastly, United notes that it respectfully disagrees with OACP's view that a separate violation occurs for each passenger onboard an aircraft subject to an excessive tarmac delay. United believes that the applicable statutes provide for civil penalties to be assessed on a per flight or per day basis. However, in the interest of settling this matter, and without conceding or waiving its legal position on that question, United has agreed to this compromise settlement.

Decision

OACP views seriously United's 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, OACP believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, United 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 \$1.9 million in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise is appropriate considering the nature and extent of the violations described herein, the financial impact of the COVID-19 global pandemic on airlines, and serves the public interest. It establishes a strong deterrent against future similar unlawful practices by United 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 United violated 14 CFR 259.4 and 49 U.S.C. § 42301 by failing to adhere to the assurance in its contingency plan for lengthy tarmac delays that: (a) for arriving flights, the carrier will not permit aircraft 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 the opportunity to deplane and, (b) for departing flights, the carrier will begin the process of returning aircraft to a suitable disembarkation point within three hours for domestic flights and four hours for international flights.
3. We find that United violated section 259.4(b)(7) by failing to have adequate resources to implement its tarmac delay contingency plan.

4. We find that by engaging in the conduct and violations described in ordering paragraphs 2 and 3, above, United engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712.
5. We order United 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 United \$1.9 million in compromise of civil penalties that might otherwise be assessed for the violations described above.
 - a. \$950,000 of the assessed penalty shall be due and payable within 30 days of the issuance of the order;
 - b. \$750,000 of the assessed penalty shall be credited to United for compensation provided to passengers on the flights included in this order and for passengers on other delayed flights⁶, and
 - c. \$200,000 of the assessed penalty shall be credited to United for its costs in developing and implementing a diversion management tool which improves United's Network Operations Center overall situational awareness of system-wide diversions and better allows United to avoid the oversaturation of airports with diversion flights.
7. We order United to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 6(a), 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 United 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

BLANE A. WORKIE
Assistant General Counsel
Office of Aviation Consumer Protection

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

⁶ Credit for compensation to passengers is calculated as follows. For flights included in the order, passenger compensation is valued at 100% for cash refund, 80% for vouchers or travel credits, and two cents a mile for frequent flyer mileage. For compensation provided to passengers on other delayed flights, passenger compensation is valued at 50% for cash refunds, 40% for vouchers or travel credits, and one cent a mile for frequent flyer mileage.