



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

Issued by the Department of Transportation
On the 15th day of January, 2015

Southwest Airlines Co.

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

Served: January 15, 2015

Docket OST-2015-0002

CONSENT ORDER

This consent order concerns violations by Southwest Airlines Co., (Southwest) of 14 CFR Part 259, the Department's tarmac delay rule; 49 U.S.C. § 42301, which requires adherence to a carrier's emergency contingency plan; and 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. 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 Southwest to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 42301 and 41712 and assesses the carrier \$1,600,000 in civil penalties.

Applicable Law

Pursuant to section 259.4 of the Department's rules (14 CFR 259.4), covered carriers, which include any U.S. certificated carrier conducting scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more 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 airport. Specifically, for domestic flights, which are at issue here, under section 259.4(b)(1),

carriers must provide assurances that they will not permit an aircraft to remain on the tarmac for more than three hours without allowing passengers to deplane. Section 259.4 includes two exceptions to the three-hour rule: (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.), and (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. In addition, section 259.4(b)(7) requires a covered carrier to provide assurances that it has sufficient resources to implement its plans.

Furthermore, under the FAA Modernization and Reform Act of 2012 (the Act), 49 U.S.C. § 42301, covered carriers are required to submit to the Department an emergency contingency plan that contains the assurance that a passenger will have the opportunity to deplane an aircraft when there is an excessive tarmac delay.¹ The Act also requires each carrier to develop a tarmac delay contingency plan for each airport it serves and to adhere to its respective plan. An air carrier's failure to comply with the assurances required by section 259.4 and 49 U.S.C. § 42301 constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

Facts and Conclusions

Southwest is an air carrier as defined by 49 U.S.C. § 40102(a)(2).² Southwest operates scheduled service at Chicago Midway International Airport (MDW), a large hub airport, and has adopted a contingency plan for lengthy tarmac delays covering its scheduled passenger operations at MDW. As the largest airline operating at MDW, Southwest leases twenty-nine of the forty-three gates at MDW and represents 92% of the traffic at MDW. Southwest has adopted a contingency plan for lengthy tarmac delays covering its scheduled operations at Chicago-MDW. This plan stipulates that in the event of a 120 minute taxi-in delay, the carrier should make every attempt to deplane customers and the carrier should consider the following: towing flights away from gates that have not started the boarding process, reducing inbound flight traffic, designating one gate to be used to deplane flights if there are several flights approaching the 180 minute mark, and/or deplaning passengers at an alternative site.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on January 2, 2014, into January 3, 2014, sixteen Southwest flights experienced lengthy tarmac delays at MDW in excess of three hours. Southwest was

¹ The term "Excessive Tarmac Delay" is defined in 49 U.S.C. §42301 as "a tarmac delay that lasts for a length of time, as determined by the Secretary [of Transportation]." The Secretary determined in its tarmac delay rule that tarmac delays of more than 3 hours for domestic flights are excessive. See 14 CFR 259.4.

² 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."

responsive throughout the Department's investigations and promptly provided the Department with requested information. With the exception of its failure to adhere to assurances that it would not allow passengers to remain on the tarmac for more than 3 hours and that it would have sufficient resources available to carry out its Tarmac Delay Contingency Plan, Southwest fulfilled all of the other assurances outlined in its Tarmac Delay Contingency Plan.

The Enforcement Office has learned that a contributing factor to the tarmac delays was a severe winter weather event at MDW that began on December 31, 2013, and lasted until January 2, 2014. Although approximately 12.3 inches of snow accumulated during the multi-day snow event, the two main runways used for air carrier operations at MDW remained open and operational. During the snow event, the three general aviation operation runways at MDW were closed for landing, but were available as taxi routes and for aircraft parking.

In addition to severe weather on January 2nd, Southwest experienced a malfunctioning of its crew scheduling system and an unexpected shortage of staff, particularly the carrier's ramp-crew. Southwest's ramp crew is responsible for baggage handling, de-icing, snow removal, and marshaling aircraft to and from the gates. The absence of some of Southwest's ramp crew inhibited the carrier's ability to clear aircraft from Southwest's gates in a timely manner to accommodate arriving flights. At the time the sixteen flights at issue arrived at MDW, between 10:15 p.m. and 11:01 p.m., an employee shift change had taken place and the small ramp crew that remained made it impossible for Southwest to clear and prepare gates for the arriving flights in a timely manner. The Enforcement Office is not disputing, nor is this order based upon, Southwest's assertion that it could not safely deplane passengers at that time.

Based on the information obtained during its investigation, the Enforcement Office has concluded that Southwest violated the Department's tarmac delay rule and this matter warrants enforcement action. The following table details the sixteen Southwest flights that experienced tarmac delays at MDW:

Carrier	Flight Number	Flight Segment	Total Tarmac Delay Minutes	Minutes > 3 Hrs. (180 Minutes)
Southwest	1884	DTW-MDW	196	16
Southwest	2898	MCI-MDW	210	30
Southwest	0491	SFO-MDW	216	36
Southwest	2968	MEM-MDW	213	33
Southwest	4045	CMH-MDW	196	16
Southwest	1982	STL-MDW	210	30
Southwest	0159	RDU-MDW	224	44
Southwest	0289	SLC-MDW	246	66
Southwest	3160	PHX-MDW	241	61
Southwest	1377	SJC-MDW	237	57
Southwest	3433	DEN-MDW	230	50
Southwest	0421	EWR-MDW	227	47
Southwest	2338	BDL-MDW	223	43
Southwest	0502	SAN-MDW	216	36
Southwest	0279	DEN-MDW	215	35
Southwest	0592	ABQ-MDW	211	31

The average length of the delays exceeding three hours was three hours and thirty-nine minutes causing numerous passengers to be delayed on the tarmac at MDW for more than three hours.

Mitigation

In mitigation, Southwest states that it has a strong record of avoiding tarmac delays, both before and since the implementation of the tarmac delay rule in 2010, and that it strives to be a model of full compliance with all Department regulations, including the tarmac delay rule.

Southwest explains that prior to January 2, 2014, it reasonably believed it had sufficient protections in place to avoid tarmac delays, but, nevertheless, a highly unusual combination of factors led to the tarmac delays at MDW on January 2nd. Southwest states that first and foremost, winter storm Hercules brought snow and cold temperatures that severely disrupted its operation at MDW. According to Southwest, Hercules caused airlines to cancel 8,245 flights system wide on January 1-3, 2014.

Southwest states that on January 2nd, its employees worked tirelessly to get the 16 affected flights to the gate as soon as possible, but ultimately, their efforts fell short. Southwest notes, however, that the cabin crews on the affected flights ensured that passengers were provided with the services required by the tarmac delay rule such as food, water, announcements, functional lavatories, and medical attention as needed. Southwest states that on January 3, 2014, it proactively sent each of the affected passengers a message of apology and a Southwest LUV Voucher for future travel.

Southwest states that after the January 2nd event, its internal team identified several specific steps that needed to be taken to avoid this kind of problem in the future, and Southwest has already implemented most of the team's recommendations. Southwest emphasizes that safety is its top priority, it regrets the inconvenience caused to the passengers affected by the delay, and further states that it is committed to avoiding future tarmac delays.

Southwest disputes the Enforcement Office's interpretation of existing law to allow the imposition of a civil penalty on a per-passenger basis for a violation of the tarmac delay rule. Southwest states its belief that under 49 U.S.C. § 46301(a), the proper unit for applying the penalty of up to \$27,500 is either per day or per flight. Nevertheless, in the interest of avoiding litigation, and without conceding or waiving its legal position on the scope of the Department's civil penalty authority, Southwest has agreed to this compromise settlement.

Decision

We view seriously Southwest's violation of 14 CFR Part 259 and 49 U.S.C. §§ 42301 and 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. By this order, the Department finds that Southwest failed to adhere to the terms of its Tarmac Delay Contingency Plan by failing to offer each passenger the opportunity to deplane within three hours of arrival at MDW and by failing to have sufficient staffing resources available to implement its plan.

In order to avoid litigation, Southwest has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Southwest to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 42301 and 41712, assesses \$1,600,000 in compromise of potential civil penalties otherwise due and payable. 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 Southwest 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 Southwest Airlines Co. violated 14 CFR 259.4(b)(1) by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an aircraft conducting a domestic flight to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane;
3. We find that Southwest Airlines Co. violated 14 CFR 259.4(b)(7) by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would have sufficient resource to implement its plan;
4. We find that Southwest Airlines Co. violated 49 U.S.C. § 42301 by failing to adhere to the assurances in its emergency contingency plan that the carrier would provide passengers onboard an aircraft on the tarmac the option to deplane within three hours;
5. We find that by engaging in the conduct described in ordering paragraph 2, 3 and 4 above, Southwest Airlines Co. engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
6. We order Southwest Airlines Co. and all other entities owned or controlled by, or under common ownership and control with Southwest Airlines Co., its successors, affiliates, and assigns, to cease and desist from further violations of 14 CFR Part 259 and 49 U.S.C. §§ 42301 and 41712;
7. Southwest Airlines Co. is assessed \$1,600,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, 4, and 5 above:
 - (a) \$600,000 of the assessed penalty shall be due and payable within 30 days of the service date of this order;
 - (b) \$269,000 of the assessed penalty shall be credited to Southwest Airlines Co. for compensation provided to passengers on the affected flights;³
 - (c) \$431,000 of the assessed penalty shall be credited to Southwest Airlines Co. toward the carrier's cost of acquiring, operating and

³ The credits are based on the actual amount of refunds and 80% of voucher value provided to passengers affected by lengthy tarmac delays at MDW on January 2nd-3rd, 2014.

maintaining a surface management and surveillance system at 32 of its stations to monitor the location of each aircraft on the airfield;⁴ and

(d) \$300,000 of the assessed penalty shall be come due and payable if, within one year of the date of this order, Southwest Airlines Co. violates this order's cease and desist or payment provision, in which case Southwest Airlines Co. may become subject to additional enforcement action for any violation of the order.

8. We order Southwest Airlines Co. to pay the penalty as assessed in paragraph 8, 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 Southwest Airlines Co. 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

⁴ To avail itself of this credit, Southwest Airlines Co. shall provide a sworn statement to the Enforcement Office from a company officer with supporting documentation substantiating the expenditures.