



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

**Issued by the Department of Transportation
On the First day of May, 2013**

Southwest Airlines Co.

Docket OST 2013-0004

**Violations of 14 CFR 259.7(c), 14 CFR 382.155,
and 49 U.S.C. §§ 41702, 41705, and 41712**

Served May 1, 2013

CONSENT ORDER

This consent order concerns violations by Southwest Airlines Co. (Southwest) of 14 CFR Part 382 (Part 382) requiring carriers to provide timely dispositive written responses to written disability-related air travel complaints alleging a violation of Part 382 and 14 CFR Part 259 requiring carriers to provide a timely substantive written response to written consumer complaints, and related statutory provisions, 49 U.S.C. §§ 41702 and 41705. Violations of 14 CFR Parts 382 and 259 constitute violations of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

The violations addressed in this order were found during an April 2012 on-site regulatory compliance inspection at Southwest's headquarters conducted by the staff of the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office). This order directs Southwest to cease and desist from future similar violations and assesses a compromise civil penalty of \$150,000.

Applicable Law

Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. To the extent that the ACAA and Part 382 violations occurred in interstate air transportation, the incidents are also violations of 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation. Violations of the ACAA, Part 382, and 49 U.S.C. §§ 41702 and 41705, are unfair and deceptive practices in violation of 49 U.S.C. § 41712.

Pursuant to 14 CFR 382.155, carriers are required to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of receipt of the complaint. An appropriate dispositive response must specifically discuss the

complaint at issue, specifically admit or deny whether the carrier believes that a violation of Part 382 occurred under the circumstances, summarize the facts that led the carrier to its conclusion of whether or not a violation of Part 382 occurred, and advise the complainant of his or her right to refer the matter to the Department for an investigation.

Part 259 is a regulation requiring enhanced protections for airline passengers. Pursuant to 14 CFR 259.7(c)¹ covered carriers must acknowledge receipt of written complaints regarding scheduled service within 30 days of receipt of the complaint. Within 60 days of the receipt of the complaint, the carrier must provide a substantive written response to the complaint.²

Facts and Conclusions

The Enforcement Office found that Southwest failed to respond timely to a large number of disability- and consumer-related complaints that it received during a seven month period of time beginning in June 2011 through January 2012. Southwest was unaware that passengers had filed complaints with the carrier during that time period because of a problem associated with its website. After Southwest discovered the problem with its website, seven months after it began, Southwest responded to the consumers; however, the majority of the responses were dated outside of the timeframes prescribed in 14 CFR 382.155 and 14 CFR 259.7(c). Southwest concedes that its responses to the disability-related complaints that it received during that time period were dated outside of the timeframes of section 382.155(d). Additionally, the Enforcement Office found that each of Southwest's responses to the disability-related complaints that it received during that time period merely provided a summary of Southwest's policy regarding the disability-related issues raised by the passengers and did not address the specific facts in each passenger's complaint, in violation of section 382.155(d). Furthermore, Southwest failed to specifically admit or deny whether a violation of the substantive portions of Part 382 that were at issue in the complaints occurred, in violation of 14 CFR 382.155(d).³

Mitigation

In mitigation, Southwest states that it takes very seriously its obligation to provide timely responses to consumer complaints in full compliance with the Department's regulations.

¹ For U.S. carriers, 14 CFR 259.7(c) became effective on April 29, 2010. The Department expanded this requirement to foreign carriers through its Enhancing Airline Passenger Protections II final rule, which became effective on August 23, 2011.

² Enforcement Office policy permits carriers to respond to consumer complaints under 14 CFR 259.7(c) through a telephone call provided that the carrier maintains a record of the conversation(s), including the name of the carrier employee, the name of the individual that the employee spoke with, the date and time of the call, and a summary of the substance of the conversation sufficient to permit a reviewer to determine whether the principal issue in the complaint were addressed. *See Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2)*, Section VII, Question #7, Revised on June 15, 2012, available at www.dot.gov/airconsumer.

³ We note that Southwest refunded the amount of the ticket to passengers whose complaints were affected by the technical issue.

According to the carrier, as soon as it learned that an inadvertent technical problem had caused consumer complaint inquiries entered on its website to be mis-routed, a team of employees worked around the clock to provide an individualized response to each consumer with an overview of relevant Southwest policies and DOT regulations, beginning with the most recent inquiries first. Southwest states that it did not address the specific facts of each complaint or admit or deny alleged violations because the company's main priority was to respond to each consumer as quickly as possible given the delay that had already occurred. Moreover, on its own initiative, Southwest states that it refunded the full amount of each affected customer's ticket regardless of the merits of the complaint. Following this incident, Southwest states that it adopted significant safeguards to ensure that similar website routing errors do not recur.

Decision

The Enforcement Office has carefully considered the information provided by Southwest but continues to believe that enforcement action is warranted. The Enforcement Office and Southwest have reached a settlement of this matter in order to avoid litigation. Southwest consents to the issuance of this order to cease and desist from future similar violations of 14 CFR Parts 259 and 382, and 49 U.S.C. §§ 41702, 41705 and 41712, and to the assessment of \$150,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and the size and sophistication of the carrier, and serves the public interest. It represents a strong deterrent to future similar unlawful practices by Southwest Airlines Co. 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 382.155 by failing to provide timely dispositive written responses to written complaints involving disabled travelers;
3. We find that Southwest Airlines Co. in the instance described in ordering paragraph 2, above, violated, 49 U.S.C. §§ 41702 and 41705;
4. We find that Southwest Airlines Co. violated 14 CFR 259.7(c) by failing to provide timely substantive responses to complaints involving scheduled service;

5. We find that by engaging in the conduct described in paragraphs 2 through 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 with Southwest Airlines Co. and their successors and assignees, to cease and desist from violations of 14 CFR Parts 259 and 382, and 49 U.S.C. §§ 41702, 41705 and 41712;
7. We assess Southwest Airlines Co. a compromise civil penalty of \$150,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 5. Of that amount, \$35,000 shall be due and payable within 30 days from the date of issuance of this order. The remaining amount, \$115,000, shall be credited to Southwest Airlines Co., for refunds that were provided to passengers affected by the violations described in paragraphs 2 through 5; and
8. We order Southwest Airlines Co. to pay the penalty as ordered in paragraph 9 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 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:

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Assistant General Counsel for
Aviation Enforcement and Proceedings

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