



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

**Issued by the Department of Transportation
On the Twenty-Fifth day of October, 2013**

United Airlines, Inc.

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

Docket OST 2013-0004

Served October 25, 2013

CONSENT ORDER

This consent order concerns violations by United Airlines, Inc. (United) of 14 CFR Part 259, the Department's tarmac delay rule, 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and 49 U.S.C. § 42301, which requires adherence to a carrier's tarmac delay contingency plan, when United failed to adhere to the assurances in its contingency plan for lengthy tarmac delays for thirteen flights at Chicago-O'Hare International Airport (ORD) on July 13, 2012.¹ Specifically, United permitted thirteen domestic flights to remain on the tarmac for more than three hours without providing United and United Express passengers an opportunity to deplane and, in the case of two flights, failed to provide operable lavatories during 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 \$1,100,000 in civil penalties.

I. Applicable Law Regarding Tarmac Delays

Pursuant to section 259.4 of the Department's rules (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 domestic flights, which are at issue here, the rule requires covered U.S. carriers to provide assurance that they will not permit an aircraft to remain on the tarmac for more than three hours

¹ Several of the flights at issue were operated by other carriers doing business as United Express under codeshare agreements with United. The affiliated carriers were: ExpressJet Airlines, SkyWest Airlines, Mesa Air Group, Shuttle America Corporation, and GoJet Airlines. Based on the facts described below and for the reasons described in the Decision section of this order, the related violations by the United Express carriers are not included in this order and instead the tarmac delay cases related to those carriers are being closed with warning letters.

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.); 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. 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, carriers must ensure that they have sufficient resources to carry out their contingency plans.

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 tarmac delay contingency plans that contain additional assurances including maintaining a comfortable cabin temperature during an excessive tarmac delay and sharing gates and facilities with other carriers in the event of an emergency. The Act also requires each carrier to develop a tarmac delay contingency plan for each airport it serves and to adhere to its respective plans.

Under the Department's tarmac delay rule, specifically 14 CFR 259.4(a), each carrier must adhere to the tarmac delay contingency plan it adopts for each flight it operates or markets at each U.S. large, medium, small, and non-hub airport. Section 259.4(c) indicates which carrier's plan applies in the event of a code-share flight, i.e., a flight where one carrier markets and sells the air transportation but another carrier operates the flight. Section 259.4(c) states that the plan that applies to a code-share flight is the one of the carrier under whose code the service is marketed, unless the marketing carrier specifies in its contract of carriage that the operating carrier's plan governs. Responsibility to ensure adherence to the plan falls to both the marketing carrier, whose plan governs under section 259.4(c), unless specified otherwise, and the operating carrier, which must adhere to the applicable contingency plan on flights it operates and markets, under section 259.4(a).

An air carrier's failure to comply with assurances required by Part 259 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, in the case of domestic flights, without the opportunity to deplane, the Office of Aviation Enforcement and Proceedings (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. Pursuant to 49 U.S.C. § 46301, violations of 14 CFR Part 259 or 49 U.S.C. § 41712 subject a carrier to civil penalties of up to \$27,500 per violation.

II. Tarmac Delays of July 13, 2012

United, is an air carrier as defined by 49 U.S.C. § 40102(a)(2)² that operates scheduled service into and out of ORD, a large hub airport, using at least one aircraft having a design seating capacity of more than 30 passenger seats. United has adopted a contingency plan for lengthy tarmac delays covering its scheduled operations at ORD, which stipulates that for the carrier's domestic flights, customers will have the opportunity to deplane before the tarmac delay exceeds three hours. In addition, as part of its contingency plan specific to ORD, United has an Extended Tarmac Delay Recovery Plan to respond to congestion at its gates. This plan includes a "Deplane and Go" procedure for sequentially offloading passengers and moving aircraft. Additionally, if United reaches gate saturation at ORD, it has in place a plan for tandem parking operations at gates and attempting to use other airlines' gates. United handles all ground and gate operations for both United and United Express flights at ORD.

In a report filed on August 13, 2012,³ regarding tarmac delays, United indicated that multiple United and United Express flights experienced tarmac delays in excess of three hours at ORD on July 13, 2012. The Enforcement Office conducted an investigation and determined that thirteen flights violated the Department's tarmac delay rule and warrant enforcement action. In total, 939 passengers were delayed on the tarmac at ORD on eleven inbound United and United Express flights and two outbound United Express flights for more than three hours. The following table details the thirteen tarmac delays:

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."

³United filed this report pursuant to 49 U.S.C. § 42301(h).

	Flight	Operating Carrier	Departure Airport	Total Tarmac Delay (Min.)	Minutes > 3 Hrs. (180 Min.)	# OF PAX
1	3512	Shuttle America	Chicago-O'Hare (ORD)	257	77	61
2	6180	ExpressJet	Rapid City, SD (RAP)	249	69	41
3	5918	ExpressJet	Richmond, VA (RIC)	242	62	48
4	5211	SkyWest	Cleveland, OH (CLE)	221	41	65
5	3780	Mesa	Chicago-O'Hare (ORD)	214	34	66
6	5832	ExpressJet	Green Bay, WI (GRB)	213	33	43
7	3487	Shuttle America	Pittsburgh, PA (PIT)	212	32	66
8	3638	GoJet	Kansas City, MO (MCI)	206	26	66
9	3671	GoJet	Austin, TX (AUS)	196	16	64
10	5928	ExpressJet	Norfolk, VA (ORF)	189	9	49
11	908	United	Denver, CO (DEN)	184	4	180
12	597	United	Las Vegas, NV (LAS)	183	3	144
13	5561	SkyWest	Charleston, SC (CHS)	182	2	46
TOTAL						939

On July 13, 2012, severe thunderstorms and lightning on the field at ORD caused several ramp closures and caused other disruptions impeding the movement of aircraft at the airport. Although the weather forecast called for only a thirty percent chance of rain, by 12:50 p.m. it was clear that the weather situation at ORD was serious enough to impact airport operations leading to the first of what turned out to be a series of four ramp closures, which are mandated by an objective system at ORD when lightning strikes within five miles of the airport.⁴ The first ramp closure lasted seventy-two minutes, until 2:02 p.m. The second ramp closure began at 2:23 p.m. and lasted twenty-one minutes. Around the time of the second ramp closure, Air Traffic Control (ATC)

⁴ The Department does not expect airlines to deplane passengers during lightning caused ramp closures and in investigating violations of the tarmac delay rule, the Enforcement Office takes into account the impact of ramp closures.

issued a ground delay program (GDP) affecting all flights bound for ORD. A GDP issued for a particular airport affects inbound flights by metering arrivals through flow control programs to that airport. However, a GDP is not intended to limit departures from such airport.

Due to the ramp closures and reduced yet steady arrival of aircraft, congestion on the airfield and at the gates increased. At 3:00 p.m. United cancelled 60 United Express flights and at 4:15 p.m. commenced an internal ground stop program. During this time period the FAA continued to land arrivals at ORD, including United and United Express flights. United faced increasing gate congestion and limited deplaning options for arriving aircraft. Additionally during this time, United pushed two United Express flights with passengers back from the gate. Those flights were Shuttle America flight 3512, which eventually incurred the longest tarmac delay that day, totaling four hours and seventeen minutes, and Mesa flight 3780, which pushed back at 4:25 p.m. after United initiated its internal congestion relief efforts, and it experienced a tarmac delay of three hours and thirty-four minutes.

A period of nearly two hours elapsed before the third ramp closure at 4:40 p.m. United asserts that recovery efforts from the cascading effects of the preceding ramp closures made it impossible to deplane aircraft between the second and third ramp closures. The third ramp closure lasted forty-five minutes. The ramp reopened for seven minutes and then closed again for the fourth and final time at 5:32 p.m. The last ramp closure was lifted at 6:02 p.m. During the time between the end of the second ramp closure and the end of the fourth ramp closure, ATC continued to permit planes operated by United, United Express, and other operators to land at ORD. United chose not to initiate diversions to other airports. This incoming traffic resulted in twice the number of aircraft on the ground compared to the aircraft present during a normal peak period at ORD. By that time, the number of arrivals exceeding departures had created untenable gridlock.

The Enforcement Office's investigation revealed that United did not contact the airport's personnel for assistance during any of the ramp closures. Additionally, although the pilots of the affected flights attempted to communicate with United's ORD operations personnel, there were periods of time when those United personnel were not responsive to requests for gate assignments. The information provided by United indicates that it did not implement its ORD Extended Tarmac Delay Recovery Plan by commencing its "Deplane and Go" plan or its tandem parking plan, or attempt to use other airline gates as provided in its plan. United states that the situation at ORD on July 13, 2012, was so unique and unexpected that a "Deplane and Go" operation would have, in fact, slowed down the deplaning of passengers. United further asserts that ATC began using all available runways unpredictably to land aircraft as the weather deteriorated. Additionally, United references a rule at ORD requiring a mechanic from the operating carrier to move an aircraft on the airfield when that aircraft's crew has reached its flight and duty time limit. United explains that this adds to the complexity of deplaning because most of the affected flights were operated by regional air carriers.

Although the Enforcement Office recognizes that challenging weather and operational circumstances existed on the day in question, the purpose of 14 CFR Part 259 is to require carriers to plan for various contingencies including gate saturation events or events where the crew may

time out of duty. Additionally, the Enforcement Office does not see the situation at ORD on July 13, 2012 as so unique it went beyond the planning capabilities of United.⁵ Rather, it appears that although United had a contingency plan for lengthy tarmac delays, the plan was inadequate to cover the foreseeable event of weather causing more planes to be on the ground than available gate space. United had several options contained in its plan to deal with a gate saturation event that, by United's own admission, would not have worked in this case.

The investigation found that while most of the delayed flights that are the subject of this order were on the ground during the third and fourth ramp closures, the primary cause for the failure to deplane passengers during the tarmac delays was United's gate management. Most of the aircraft were on the tarmac for a considerable period of time before the third ramp closure began or for a considerable period of time after the ramp closure was lifted.

For example, Shuttle America flight 3512 remained on the tarmac for an additional two hours and sixteen minutes after the final ramp closure ended before passengers were given the opportunity to deplane. Similarly, ExpressJet flight 6180 remained on the tarmac one hour and fifty-two minutes after the ramp reopened. ExpressJet flight 5918 was on the tarmac for one hour and eight minutes before the ramp closures and remained on the tarmac for one hour and thirty-two minutes after the ramp reopened. SkyWest flight 5211 was on the tarmac for one hour and eleven minutes before the third ramp closure, but remained on the tarmac for one hour and eight minutes after the ramp reopened. Mesa flight 3780 was on the tarmac for nearly two hours after the fourth ramp closure lifted. GoJet flight 3638 was on the tarmac for one hour and twenty-four minutes before the first ramp closure and remained on the tarmac for forty minutes after the ramp closures ended. GoJet flight 3671 was on the tarmac for one hour twenty-three minutes after the ramp reopened for the final time. United flight 908 was on the tarmac for twenty-eight minutes before the third ramp closure and remained on the tarmac for one hour and fourteen minutes after the ramp reopened. United flight 597 was on the tarmac for the third and fourth ramp closures and remained on the tarmac for two hours and twenty-one minutes after the ramp reopened. SkyWest flight 5561, the shortest delay, was on the tarmac for forty minutes before the ramp closed and remained on the tarmac for one hour after the ramp reopened. ExpressJet flight 5832, ExpressJet flight 5928 and Shuttle America flight 3487 each arrived after the last ramp closure.

In addition to the lengthy tarmac delays, on two United Express flights, their lavatories became inoperable during the delay. On ExpressJet operated flights 5832 and 5918, the lavatories became full and unusable. The crew of those flights called in for servicing, but the lavatories could not be serviced unless the planes were parked at a gate. For those two flights, the lavatories were not operational for the last one hour and thirty minutes of the delay. According to United's ORD-specific plan, an aircraft must return to the gate prior to the two-hour mark if United cannot provide customers with operable restrooms while on the tarmac. Due to gate congestion, these flights did not receive priority for returning to the gate.

In summary, the Enforcement Office found that United's gate management, its inability to handle the number of flights it chose to operate into and out of ORD, and its failure early in the incident to request assistance with deplaning passengers in accordance with its existing ORD plan caused 939

⁵ The Enforcement Office notes that no other airline experienced a three-hour tarmac delay at ORD on July 13, 2012.

passengers on thirteen aircraft to remain on the tarmac in excess of three hours without the opportunity to deplane. The average length of delay exceeding three hours was thirty minutes. Furthermore, United's inadequate advance consideration of limitations on its and its code share partners' crew and own gate resources and failure to prepare an appropriate deplaning procedure for gate saturation at ORD contributed significantly to the carrier's inability to deplane the thirteen flights by the three-hour mark.

The failure by United and the United Express carriers to adhere to the terms of their contingency plans by failing to offer each passenger the opportunity to deplane within three hours of arrival or departure violates 14 CFR 259.4 and 49 U.S.C. § 41712. This failure also violated 49 U.S.C. § 42301(e)(3), which requires each carrier to adhere to its approved tarmac delay contingency plan. Further, for the ninety-one passengers on ExpressJet flights 5832 and 5918, United failed to adhere to the terms of their contingency plan by failing to maintain operable lavatories in violation of 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301(e)(3).

III. Mitigation

In mitigation and without conceding the Enforcement Office's facts or findings, United states that it was and remains committed to safety as its first priority, and to its full compliance with the Department's consumer protection regulations including Part 259. United also states its belief that its operational decisions on July 13, 2012, that prevented passengers from deplaning within three hours demonstrated that it puts safety first. According to United, the safety exception to the three-hour rule and its own tarmac delay contingency plan both recognize that passenger safety is the first priority.

United further states that its actions in response to the convective weather events of July 13, 2012, were not commercial decisions but, instead, were operational decisions made in the face of unforeseen and extremely unusual weather activity. United also states that the ramp closures which precipitated the tarmac delays were judged necessary to ensure the safety of passengers and employees due to the observed risk of lightning strikes. United asserts that had it attempted to deplane passengers during the ramp closures it would have exposed not only its passengers, but also its aircraft fuelers, wing walkers, luggage handlers, food suppliers and other personnel involved in ramp operations, to lightning risks.

United notes that its tarmac delay contingency plan explicitly states that it may be unable to allow passengers to deplane within three hours on a domestic flight for safety reasons. Thus, United asserts that its operational decisions on July 13 could neither be unfair nor deceptive within the meaning of section 41712 as its plan provided passengers with written advance notice of this very possibility.

With respect to the safety exception and the related operational disruption exception in section 259.4(b)(1), United states its belief that the most reasonable construction of these exceptions is that the duration of ramp closures – or other circumstances during which deplaning would be unsafe because of the risks to passengers and airline ground personnel – should not be counted toward the three-hour limit. If the clock were tolled during ramp closures at ORD on July 13, nine of the thirteen flights that arrived prior to or during the ramp closures would fall within one or both

exceptions.

United also defends its decision not to initiate diversions of flights destined for ORD. According to United, diversions can substantially increase the workloads of both pilots and air traffic controllers and are only undertaken for safety or security reasons such as airport closures, medical emergencies and other exigent circumstances. United also states that diversions can result in substantially greater inconvenience to passengers than tarmac delays.

United further asserts that although 13 flights exceeded three hours on the tarmac, United and their code share partners successfully deplaned 1,156 flights or 98.5% of its total flights at ORD on July 13 without triggering the three-hour rule and also cancelled a total of 121 flights to ensure other passengers would not be subject to extended waits on the tarmac. United acknowledges that four of the thirteen flights exceeded the 180-minutes, even excluding the ramp closures.

United expresses its recognition of, and sincere regret for, the inconvenience and discomfort caused to passengers aboard flights that endured extended waits on the tarmac. According to United, it paid passengers subject to tarmac delays over three hours approximately \$200,000 in compensation and refunds and also provided more than \$18,000 in compensation to passengers on other flights subject to tarmac delays of less than three hours that day at ORD. United states that it seeks to prevent tarmac delays whenever and wherever possible because they are detrimental both to United and its customers. To that end, United states that it has undertaken several measures subsequent to July 13, 2012. Specifically, United states that it has revised communications and coordination protocols between its Network Operations Center and Station Operations Control, increased key staff at ORD, invested in additional ground equipment including air stairs and jet bridges at ORD, and deployed at ORD, on a trial basis, a surface management and surveillance system which has already prevented a tarmac delay violation during this test phase. United believes this surface management and surveillance system will provide it with greater insight and ability to manage ground operations.

Regarding the Enforcement Office's interpretation of the 49 U.S.C. § 46301 that civil penalties of up to \$27,500 may be assessed on a per passenger basis, United states its belief that such civil penalties may be assessed only on a per flight basis as explicitly stated in section 46301(a)(2). However, in the interest of settling this matter without engaging in protracted litigation, and without conceding or waiving its legal position on the scope of the Department's civil penalty authority, its construction of section 41712, and its construction of the safety exception to the three-hour rule, United has agreed to this compromise settlement.

Decision

The Enforcement Office has carefully considered the information provided by United but continues to believe that enforcement action is warranted. The Enforcement Office and United have reached a settlement of this matter in order to avoid litigation. United consents to the issuance of an order to cease and desist from future violations of 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301. United also agrees to the assessment of \$1,100,000 in compromise of potential

civil penalties for the violations of 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301 that would be otherwise due and payable pursuant under 49 U.S.C. § 46301.⁶

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's requirement to adhere to tarmac delay contingency plans by United as well as by other air carriers and foreign air 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 United Airlines, Inc., has 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 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. By its actions, the carrier forced a total of 939 passengers on thirteen flights to remain on the tarmac at Chicago-O'Hare International Airport on July 13, 2012, for more than three hours without the opportunity to deplane;
3. We find that concerning United Express flights 5832 and 5918, operated by ExpressJet, on July 13, 2012, United Airlines, Inc., violated 14 CFR 259.4 and 49 U.S.C. § 42301 by failing to adhere to the assurance in the contingency plan for lengthy tarmac delays that the carrier would ensure that lavatories remain operational for the duration of a lengthy tarmac delay;
4. We find that by engaging in the conduct and violations described in ordering paragraph 2 and 3, United Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. United Airlines, Inc., and all other entities owned or controlled by United Airlines, Inc., its successors and assignees are ordered to cease and desist from further violations of 14 CFR 259.4 and 49 U.S.C. §§ 41712 and 42301;
6. United Airlines, Inc., is assessed \$1,100,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 4 above:

(a) \$475,000 of the assessed penalty shall be due and payable within 30 days of the

⁶ As a point of settlement the Department has also agreed to close with warnings several open tarmac delay cases involving United covering both United and United Express flights.

service date of this order;

- (b) \$185,000 of the assessed penalty shall be credited to United Airlines, Inc., for compensation provided to passengers on the affected flights and also passengers on other flights with tarmac delays of less than three hours;⁷ and
- (c) \$440,000 of the assessed penalty shall be credited to United Airlines, Inc. toward United's cost of acquiring, operating and maintaining a surface management and surveillance system at ORD to monitor the location of each aircraft on the airfield.⁸

7. We order United Airlines, Inc., to pay the penalty as required in paragraph 6 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 Airlines, 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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www.regulations.gov

⁷ The credits are based on the actual amount of refunds, 80% of voucher value, and two cents per frequent flyer mile, provided to passengers affected by lengthy tarmac delay sat ORD on July 13, 2012.

⁸ To avail itself of this credit, United Airlines, Inc., shall provide a sworn statement to the Enforcement Office from a company officer with supporting documentation substantiating the expenditures.