



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

**Issued by the Department of Transportation
On the Fourteenth day of November, 2013**

Shuttle America Corporation

**Violations of 49 U.S.C. § 41708 and
14 CFR Part 244**

Docket OST 2013-0004

Served November 14, 2013

CONSENT ORDER

This consent order concerns the failure of Shuttle America Corporation (Shuttle America) to timely file with the Department of Transportation (Department) Tarmac Delay Reports for three flights in violation of 14 CFR Part 244 and 49 U.S.C. § 41708. It directs Shuttle America to cease and desist from future similar violations of Part 244 and section 41708, and assesses the carrier a compromise civil penalty of \$10,000.

Applicable Law

Section 244.3 of the Department's regulations require certain air carriers to file Bureau of Transportation Statistics (BTS) Form 244 "Tarmac Delay Report" with the Office of Airline Information for each month in which at least one tarmac delay of three hours or more occurred. The data are then published and made available to the public in a useable format in the Department's monthly Air Travel Consumer Report (ATCR), which, among other things, lists all regularly scheduled domestic flights with tarmac delays of three hours or more and international flights with tarmac delays of four hours or more.¹ The ATCR data in question are used for a number of purposes, including by the traveling public to choose among transportation options, by the Department as a basis for conducting enforcement investigations, and by carriers as a basis for making advertising claims regarding the quality of their service compared to other carriers. It is imperative,

¹ See *Air Travel Consumer Report*, available at <http://www.dot.gov/airconsumer>. In addition to the reporting requirements of 14 CFR Parts 234 and 244, the FAA Reauthorization Law, 49 U.S.C. § 42301(h), requires carriers to submit a written description of a tarmac delay incident in which any flight experiences an excessive tarmac delay to the Aviation Consumer Protection Division of the Department within 30 days of the date of the incident. The requirement to submit a report under the FAA Reauthorization Law is separate and distinct from a carrier's obligation to submit to the Bureau of Transportation Statistics an on-time performance report under 14 CFR Part 234 or a Tarmac Delay Report under 14 CFR Part 244.

therefore, that ATCR data be accurate. Violations of section 244.3 also constitute violations of 49 U.S.C. § 41708.

Background

During the month of July 2012, Shuttle America, a covered carrier under 14 CFR Part 244, experienced three tarmac delays of more than three hours, as to which it failed to timely file the requisite Tarmac Delay Report according to Part 244. The affected flights, operated by Shuttle America doing business as United Express, were: (1) United Express flight 3486 from Washington Dulles International Airport (IAD) to Detroit-Wayne County International Airport, delayed at IAD on July 3, 2012; (2) United Express flight 3512 from Chicago O'Hare International Airport (ORD) to Atlanta Hartsfield International Airport, delayed at ORD on July 13, 2012; and (3) United Express flight 3487 from Pittsburgh International Airport to ORD, also delayed at ORD on July 13, 2012. Tarmac Delay Reports for the three flights should have been submitted to the Office of Airline Information on or before August 15, 2012 as required by Part 244.² The Tarmac Delay Reports for these flights were filed on September 11, 2012.

In summary, the Office of Aviation Enforcement Proceedings found that Shuttle America's failure to timely report the tarmac delays to the Office of Airline Information violated 14 CFR Part 244 and 49 U.S.C. § 41708.

Mitigation

In mitigation, Shuttle America states that it takes its reporting obligations very seriously. Shuttle America further states that United Airlines (United), the mainline carrier-partner on whose behalf Shuttle America operated these flights, represented to Shuttle America that it would file the Tarmac Delay Reports with respect to the flights on or before the deadline, and that United had in fact timely filed the Tarmac Delay Reports. Shuttle America further states that it reasonably relied on the mainline carrier's representations, and that consistent with the Department's guidance, Shuttle America did not need to file duplicative Tarmac Delay Reports. Shuttle America states that it later learned that United had timely filed the Section 42301(h) tarmac delay reports on August 13, 2012, but filed the Part 244 reports with the Office of Airline Information on September 11, 2012. Shuttle America contends and the Enforcement Office has confirmed that it was informed about the three tarmac delays in sufficient time for the flights to be included in the September 2012 Air Travel Consumer Report. Finally, Shuttle America states that, going forward, it will not rely on its mainline carrier-partners to file timely tarmac delay reports, but rather will file the reports itself.

² The Office of Aviation Enforcement and Proceedings became aware that the three flights experienced tarmac delays of more than three hours prior to the publication of the September 2012 ATCR, and was able to accurately publish the information regarding the tarmac delays despite Shuttle America's failure to timely file the required reports. The reports were filed in mid-September 2012.

Decision

The Enforcement Office has carefully considered the information provided by Shuttle America but continues to believe that enforcement action is warranted. The Enforcement Office and Shuttle America have reached a settlement of this matter in order to avoid litigation. Shuttle America consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41708 and Part 244 of the Department's regulations, and to the assessment of \$10,000 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 of the violations described herein and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's reporting requirements by Shuttle America 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 Shuttle America Corporation violated 14 CFR Part 244 by failing to timely file Tarmac Delay Reports concerning United Express flights 3486 operated on July 3, 2012; 3487 operated on July 13, 2012; and 3512 operated on July 13, 2012;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Shuttle America Corporation has also violated 49 U.S.C. § 41708;
4. We order Shuttle America Corporation, and all other entities owned or controlled by or under common ownership with Shuttle America Corporation and their successors and assignees, to cease and desist from future violations of 49 U.S.C. § 41708 and 14 CFR Part 244;
5. Shuttle America Corporation is assessed \$10,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above, \$5,000 of which shall be due and payable within thirty (30) days from the date of issuance of this order. The remaining \$5,000 shall become due and payable immediately if Shuttle America Corporation violates the cease-and-desist provision of this order within one year following the date of issuance of this order, or fails to comply with the order's payment provisions; and
6. We order Shuttle America Corporation to pay the penalty assessed in paragraph 5 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 Shuttle America Corporation 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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