



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

Issued by the Department of Transportation
On the Eleventh day of February, 2013

United Air Lines, Inc.

**Violations of 14 CFR 259.4 and 244.3,
and 49 U.S.C. §§ 41708 and 41712**

**Docket OST 2013-0004
Served February 11, 2013**

CONSENT ORDER

This consent order concerns violations of 14 CFR Parts 259 and 244, and 49 U.S.C. §§ 41708 and 41712, involving the failure by United Air Lines, Inc. (United), as required, to inform passengers on a flight delayed at the gate of the opportunity to deplane, as well as its unwarranted inclusion of the flight in its July 2012 Tarmac Delay Report. This order directs United to cease and desist from future similar violations of Parts 259 and 244 and sections 41712 and 41708 and assesses the carrier \$130,000 in civil penalties.

Applicable Law

I. Contingency Plan for Lengthy Tarmac Delays

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.¹

¹ On April 25, 2011, the Department issued a set of rules designed to enhance protection for air travel consumers that, among other items, expanded the requirements under the Department's rule on contingency plans for lengthy tarmac delays. 76 Fed. Reg. 23110 (April 25, 2011).

Specifically, pursuant to section 259.4(b)(2), carriers must provide assurances that for international flights, carriers will not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours before allowing the passengers to deplane subject to certain exceptions. Additionally, pursuant to section 259.4(b)(6), for all flights, a carrier must provide the assurance that passengers on the delayed flight will be notified beginning 30 minutes after scheduled departure time and every 30 minutes thereafter that they have the opportunity to deplane from an aircraft that is at the gate or another disembarkation area with the door open if the opportunity to deplane actually exists. A carrier's failure to comply with the assurances required by Part 259 and as contained in its contingency plan for lengthy tarmac delays is considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

II. Reporting Tarmac Delay Data

Section 244.3 of the Department's regulations requires certain U.S. and foreign air carriers to file a Bureau of Transportation Statistics (BTS) Form 244 "Tarmac Delay Report" with the Office of Airline Information (OAI) on a monthly basis. The data are filed with a certification of their accuracy.² 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 international flights with tarmac delays of four hours or more.³ 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 to conduct 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, therefore, that ATCR data be accurate. Violations of section 244.3 also constitute violations of 49 U.S.C. § 41708, which provides the authority to require the reports in question.

Facts and Conclusions

United is an air carrier as defined by 49 U.S.C. § 40102(a)(2)⁴ that operates scheduled service at Chicago-O'Hare International Airport (ORD), a large hub airport, and that uses at least one aircraft having a design capacity of more than 30 passenger seats. United has adopted a contingency plan for lengthy tarmac delays covering its scheduled passenger operations at ORD. United's contingency plan stipulates that the carrier will ensure that passengers on the delayed flight receive notifications beginning 30 minutes after the scheduled departure time and every 30 minutes thereafter that they have the opportunity to deplane from an aircraft that is at the gate or another disembarkation area with the door open if the opportunity to deplane actually exists.

² See *Part 244 – Reporting of Tarmac Delay Data (Revised)*, (August 10, 2011), available at http://www.bts.gov/programs/airline_information/accounting_and_reporting_directives/number_303a.html.

³ See *Air Travel Consumer Report*, available at <http://airconsumer.dot.gov>.

⁴ 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."

United was scheduled to operate flight 881, a Boeing 747 with 357 passengers on board, from ORD to Narita International Airport (NRT) in Japan on May 7, 2012. United boarded flight 881 and the aircraft was pushed back from the gate at ORD at 12:38 pm (local time); however, because of a maintenance issue, the aircraft returned to a gate at 2:25 pm and the doors were opened. Once at the gate and the opportunity to deplane existed, United failed to make an announcement notifying passengers of that opportunity to deplane. The aircraft doors were closed again at 3:10 pm, but because of another mechanical issue the flight was ultimately canceled and passengers deplaned at 5:22 pm. Three passengers on board flight 881 filed complaints with the Department's Aviation Consumer Protection Division alleging that passengers were not notified that they had the opportunity to deplane the aircraft during this delay.

In response to an investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office), United acknowledges that a miscommunication resulted in the failure to make a deplaning announcement after the flight returned to the gate and the opportunity to deplane existed. United states that it does not have any record of a passenger requesting to deplane while the aircraft was at the gate with the door open.

Section 259.4(b)(2) requires carriers to provide passengers with the opportunity to deplane on an international flight before the flight has been on the tarmac for more than four hours subject to certain exceptions. Section 259.4(b)(6) requires that carriers announce that passengers have the opportunity to deplane from an aircraft when the flight is delayed and the aircraft is at a gate or another disembarkation area with the door open if the opportunity to deplane actually exists. A tarmac delay begins when passengers no longer have the option to get off an aircraft, which usually occurs when the doors of the aircraft are closed. Section 259.4(b)(6) was promulgated to address the issue of when a tarmac delay has not yet begun, or the clock has stopped, because the doors remain open or are opened at a gate or another disembarkation area, and yet passengers may be unaware that the door to the aircraft is open and that they have the option to deplane. Carriers are not required to provide passengers the opportunity to deplane in less than four hours but if that opportunity does exist the rule requires that the carrier simply inform passengers of the option to deplane. The Department has encouraged carriers to also remind passengers that they are deplaning at their own risk and that the flight could depart at any time without them if that is in fact the case.

In sum, section 259.4(b)(6) is in place to address the precise incident that occurred on flight 881. Beginning thirty minutes after the flight returned to the gate in which the opportunity to deplane existed and every thirty minutes thereafter until the doors closed United was required to notify passengers that they could deplane the aircraft if they wished to do so. The failure by United to make the proper notification is a violation of 14 CFR 259.4(b)(6) as well as 49 U.S.C. § 41712.

Further, United reported this delay to the Bureau of Transportation Statistics (BTS), and the Department published the delay data in its monthly *Air Travel Consumer Report* (ATCR) in July 2012. United's reporting of this delay was inaccurate because the door

was open at the gate in the middle of the delay providing passengers an opportunity to deplane. The failure by United to provide accurate tarmac delay information to the Department is a violation of 14 CFR 244.3 and 49 U.S.C. § 41708.

Mitigation

In mitigation, United emphasizes its commitment to full compliance with the Department's Part 259 tarmac delay regulations and notes that it has provided compensation to impacted passengers. United explains that this particular incident was related to a miscommunication between personnel, not a systemic failure. Nevertheless, United responded to the incident by disseminating communications to refresh its training program for flight attendants and gate agents on section 259.4(b)(6) that reemphasized United's obligation to announce that passengers may deplane an aircraft that has been sitting at a gate with the door open 30 minutes after scheduled departure times, and every 30 minutes thereafter. United notes that the refresher communication has been effective and that it is unaware of any subsequent incidents of non-compliance with section 259.4(b)(6). Furthermore, while United acknowledges it failed to make an announcement while flight 881 was at the gate with the door open, United points out that the aircraft was at the gate with the doors open for only 45 minutes and that United failed to make the announcement mandated by section 259.4(b)(6) only once.

In connection with its alleged violation of Part 244, United emphasizes its commitment to providing BTS with the most accurate information possible. United notes that the violation at issue does not imply a failure by United to disclose a reportable delay under Part 244, and, according to the carrier, that the decision to report ran counter to United's own interests and in fact illustrates United's commitment to regulatory compliance.

Decision

The Enforcement Office has carefully considered the information provided by United, but continues to believe enforcement action is warranted. The Enforcement Office and United have reached a settlement of this matter in order to avoid litigation. 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(b)(6), 14 CFR 244.3 and 49 U.S.C. §§ 41708 and 41712, and to the assessment of \$130,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

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 United and other carriers.

This order is issued under the authority 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 Air Lines, Inc., violated 14 CFR 259.4 by failing to properly notify passengers that they had the opportunity to deplane the aircraft that was at the gate with the door open;
3. We find that United Air Lines, Inc., violated 14 CFR 244.3 by including UA 881 in its July 2012 BTS Tarmac Delay report;
4. We find that by engaging in the conduct described in ordering paragraph 2, above, United Air Lines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We find that by engaging in the conduct described in ordering paragraph 3, above, United Air Lines, Inc., violated 49 U.S.C. § 41708.
6. We order United Air Lines, Inc., and all other entities owned or controlled by, or under common ownership and control with United Air Lines, Inc., its successors, affiliates, and assignees, to cease and desist from further violations of 14 CFR 259.4, 14 CFR 244.3 and 49 U.S.C. §§ 41708 and 41712;
7. United Air Lines, Inc., is assessed \$130,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of that amount, \$40,000 shall be due and payable within 30 days of the date of issuance of this order; and \$40,000 shall be credited to United Air Lines, Inc., for refunds and travel vouchers and frequent flyer mileage awards that may be used to acquire transportation on United Air Lines, Inc., flights that were provided to passengers of Flight 881. The remaining amount will become due and payable, if within one year of the date of the issuance of this order, United Air Lines, Inc., violates the order's cease and desist provisions or fails to comply with the order's payment provisions, in which case United Air Lines, Inc., may be subject to additional enforcement action for violation of this order; and
8. We order United Air Lines, Inc., to pay the penalty 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 United Air Lines, 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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