



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

**Issued by the Department of Transportation
On the Fifteenth day of March, 2011**

Southwest Airlines Co.

Docket OST-2011-0003

Violations of 14 CFR 234.11 and 49 U.S.C. § 41712

Served March 15, 2011

CONSENT ORDER

This consent order concerns violations by Southwest Airlines Co. (Southwest) of the requirement of 14 CFR 234.11 to display on-time performance data for each domestic flight for which schedule information is available on the initial listing of flights on its website. Violations of Part 234 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Southwest to cease and desist from future violations of Part 234 and 49 U.S.C. § 41712 and assesses the carrier \$50,000 in civil penalties.

Department's On-Time Performance Data Rule

The Department's on-time performance data rule enables consumers to make informed choices when booking air transportation by requiring the posting of information on carrier websites to indicate which flights are often late or are often cancelled. Specifically, the rule requires carriers to display, for each flight, the percentage of arrivals that were on time (i.e., within 15 minutes of scheduled arrival time); the percentage of arrivals that were more than 30 minutes late (including special highlighting if the flight was late more than 50 percent of the time); and the percentage of flight cancellations if 5 percent or more of the flight's operations were cancelled in the month covered. By requiring carriers to display flight delay data to consumers in the browsing/shopping phase of booking air transportation, consumers are able to identify flights that suit their travel needs and abandon consideration of flights that frequently experience lengthy delays or cancellations if they choose.

The Office of Aviation Enforcement and Proceedings' review of Southwest's website and information provided by Southwest revealed that on-time performance data were not available to about half of the consumers visiting Southwest's website for a short period, a significant violation of the Department's on-time performance rule. Southwest did not discover or correct the deficiency until after the Office of Aviation Enforcement and Proceedings notified Southwest

of the deficiency. The failure to display on-time performance data violated Part 234 and constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, Southwest states that it takes its obligation to provide consumers with flight specific on-time performance data on its website very seriously and is focused on ensuring full compliance with Part 234. Southwest notes that this regulation is relatively new and that the company worked closely with the Department to comply with the requirements in a timely manner.

As soon as Southwest learned that its on-time performance data were not available to all consumers using southwest.com, it corrected the problem immediately. Southwest notes that the lapse resulted from an unexpected technical failure by one of the two servers supporting its website to properly load the on-time performance data. Southwest has now implemented measures to eliminate the likelihood of a similar error in the future and has added a new automated process to detect any errors in data load files so they can be corrected immediately.

Decision

The Office of Aviation Enforcement and Proceedings has carefully considered the information provided by Southwest but believes that enforcement action is warranted. In order to avoid litigation, Southwest has agreed to settle this matter and enter into this consent order directing the carrier to cease and desist from future similar violations of Part 234 and 49 U.S.C. § 41712, and assessing Southwest \$50,000 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 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 1.57a and 14 CFR 385.15.

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 the requirements of 14 CFR 234.11 by failing to display on-time performance data on its website;
3. We find that the violation described in ordering paragraph 2 involved an unfair and deceptive practice and unfair method of competition and thereby violated 49 U.S.C. § 41712;

4. We order Southwest Airlines Co. and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 234.11 by engaging in the conduct described in ordering paragraphs 2 and 3;
5. We assess Southwest Airlines Co. a compromise civil penalty of \$50,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total assessed penalty, \$25,000 shall be due and payable within thirty days of the issuance of this order. The remaining \$25,000 shall be due and payable if Southwest Airlines Co. violates this order's cease and desist provisions within one year following the date of issuance of this order or fails to comply with the payment provisions of this order, in which case the entire unpaid portion of the \$50,000 assessed penalty shall become due and payable immediately; and
6. We order Southwest Airlines Co. to pay the penalty by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions.

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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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