



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

Issued by the Department of Transportation
On the 19th day of November, 2014

China Eastern Airlines Co., Ltd.

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

Served: November 19, 2014

Docket OST-2014-0001

CONSENT ORDER

This consent order concerns violations by China Eastern Airlines Co., Ltd. (China Eastern) of 14 CFR Part 244 and 49 U.S.C. § 41708. Specifically, the carrier failed to file the required tarmac delay data for a lengthy tarmac delay with the Department of Transportation (Department). This order directs China Eastern to cease and desist from future similar violations of 14 CFR Part 244 and 49 U.S.C. § 41708 and assesses the carrier \$10,000 in civil penalties.

I. Applicable Law

Section 244.3 of the Department's regulations requires certain carriers to file Bureau of Transportation Statistics (BTS) Form 244 "Tarmac Delay Report" with the Office of Airline Information (OAI) on a monthly basis 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 international flights with tarmac delays of four hours or more.¹ The ATCR data in

¹ See *Air Travel Consumer Report*, available at <http://airconsumer.dot.gov>.

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

Facts and Conclusions

China Eastern is a foreign air carrier that operates scheduled service to John F. Kennedy International Airport (JFK), a large hub airport, using at least one aircraft having a design seating capacity of more than 30 passenger seats. Prompted by a consumer complaint, the Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated and found that on February 21, 2014, China Eastern flight MU587 bound for JFK diverted to Washington Dulles International Airport (IAD), where it experienced a tarmac delay of 4 hours and 10 minutes.² China Eastern, however, failed to timely file the required BTS Form 244 “Tarmac Delay Report” with the Department’s Bureau of Transportation Statistics’ Office of Airline Information covering flight MU587 as required by Part 244. The Department first learned of the tarmac delay experienced by flight MU587 after reviewing a complaint it received from a consumer aboard flight MU587 alleging that he experienced a lengthy tarmac delay. China Eastern’s failure to file a Tarmac Delay Report for flight MU587 is a violation of 14 CFR 244.3 and 49 U.S.C. § 41708.

Mitigation

In mitigation, China Eastern states that it is fully committed to complying with all of the Department’s consumer protection and reporting requirements, including those concerning tarmac delays. According to China Eastern, flight MU587 was unexpectedly diverted from JFK to IAD due to the closure of airspace in the Northeast corridor as a result of heavy fog that persisted subsequent to the diversion. China Eastern notes that while the flight did experience a delay of more than four hours calculated from wheels down to wheels up, the delay was under four hours when calculated from the time the aircraft completed its taxi-in and parked at a remote apron to when the aircraft received take-off clearance and began to taxi out. China Eastern asserts that it takes its reporting obligations seriously and understands the importance of ensuring the accuracy and timeliness of the data it reports to the Department. Because IAD is not a regularly scheduled destination for China Eastern, China Eastern states that it took the company time to conduct a full investigation of the delay and to obtain accurate information for purposes of filing its required Part 244 tarmac delay report, which resulted in a delayed filing. China Eastern notes that the delayed filing was caused by its focus on providing

² Although China Eastern violated 14 CFR 259.4, the Department’s rules prohibiting lengthy tarmac delays, China Eastern was issued a warning because of the mitigating circumstances that surrounded the lengthy tarmac delay experienced by flight MU587.

the Department with accurate information and was in no way an attempt to circumvent the Department's tarmac delay reporting requirements.

Decision

We view seriously China Eastern's violation of 14 CFR Part 244 and 49 U.S.C. § 41708. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted.

In order to avoid litigation, and without admitting the violations described above, China Eastern has agreed to settle this matter with the Enforcement Office and enter into this consent order, which directs China Eastern to cease and desist from future similar violations of 14 CFR Part 244 and 49 U.S.C. § 41708, and assesses \$10,000 in compromise of potential civil penalties otherwise due and payable. 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 China Eastern 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 China Eastern Airlines Co. Ltd., violated 14 CFR Part 244 by failing to file a BTS Form 244 with the Department setting forth the information surrounding the tarmac delay experienced by flight MU587;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, China Eastern Airlines Co. Ltd., violated 49 U.S.C. § 41708;
4. We order China Eastern Airlines Co. Ltd., and all other entities owned or controlled by, or under common ownership and control with China Eastern Airlines Co. Ltd., its successors, affiliates, and assigns, to cease and desist from further violations of 14 CFR Part 244 and 49 U.S.C. § 41708;
5. We assess China Eastern Airlines Co. Ltd., \$10,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 3 above. Of this total penalty amount, \$5,000 shall be due and payable within 60 days of the issuance of this order. The

remaining portion of any unpaid civil penalty shall become immediately due and payable if, within one year of the date of this order, China Eastern Airlines Co. Ltd. violates this order's cease and desist or payment provision, in which case China Eastern Airlines Co. Ltd. may become subject to additional enforcement action for any violation of the order; and

6. We order China Eastern Airlines Co. Ltd., to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject China Eastern Airlines Co. Ltd., 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:

BLANE A. WORKIE
Acting Assistant General Counsel for
Aviation Enforcement and Proceedings

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