



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

Issued by the Department of Transportation
On the 27th day of August, 2015

Spirit Airlines, Inc.

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

Served: August 27, 2015

Docket Number: 2015-0002

CONSENT ORDER

This consent order concerns violations by Spirit Airlines, Inc., (Spirit) of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301. Specifically, the carrier failed to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier (1) would not allow an aircraft to remain on the tarmac for more than three hours for domestic flights before providing passengers an opportunity to deplane and (2) would provide customers with food and water within two hours after the aircraft left the gate in the case of a tarmac delay. This order directs Spirit to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301 and assesses the carrier \$100,000 in civil penalties.

Applicable Law

Pursuant to section 259.4 of the Department's rules, 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, medium, small, and non-hub U.S. airport. For a domestic flight, which is at issue here, section 259.4(b)(1) requires covered carriers to provide an assurance that they will not permit an aircraft to remain on the tarmac for more than three hours 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.

Section 259.4(b)(3) requires covered carriers, for all flights delayed on the tarmac, to 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.

Furthermore, 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 an emergency contingency plan that contains the assurance that a passenger will have the opportunity to deplane an aircraft and will be provided with adequate food and water when there is an excessive tarmac delay. The Act also requires each carrier to develop a tarmac delay contingency plan for each airport it serves and to adhere to its respective plan.

A carrier's failure to comply with the assurances required by Part 259 and 49 U.S.C. § 42301 and contained in the carrier's contingency plan for lengthy tarmac delays constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

Facts and Conclusions

Spirit is an air carrier as defined by 49 U.S.C. § 40102(a)(2)¹ that operates scheduled service at George Bush Intercontinental Airport in Houston, Texas, (IAH) a large hub airport, and that uses at least one aircraft having a design capacity of more than 30 passenger seats. Spirit's contingency plan for lengthy tarmac delays states that the carrier will not permit an aircraft to remain on the tarmac at a U.S. airport for more than three hours. With respect to the provision of food and water, the plan states that the carrier will provide passengers with adequate food and water no later than two hours after the aircraft leaves the gate (in the case of departure) or touches down (in the case of arrival or a diversion) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security considerations preclude such service.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) found that Spirit flight NK 667 landed at IAH at 11:23 a.m. on July 17, 2014, while en route from Baltimore/Washington Thurgood Marshall International Airport (BWI) to Dallas/Fort Worth International Airport (DFW). Flight NK 667 diverted to

¹ 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."

IAH due to severe weather at DFW. At 11:57 a.m., the aircraft parked at a hardstand, the door was opened, stairs were attached, and a passenger van was parked by the aircraft to take passengers to the terminal. At 2:10 p.m., two hours and 42 minutes into the delay, the aircraft pushed back from the hardstand. At 3:01 p.m., three hours and 38 minutes into the delay, the aircraft took off. At no time during the three hours and 38 minutes at IAH did Spirit offer passengers on board flight NK 667 the opportunity to deplane, despite the availability of a passenger van parked by the aircraft.

The investigation also revealed that at 1:20 p.m., 1 hour and 57 minutes into the delay, flight attendants began selling food and beverages to passengers on board flight NK 667. After the aircraft reached 10,000 feet, approximately 3 hours and 45 minutes after the aircraft had landed at IAH, the flight attendants distributed the food and water that was part of Spirit's lengthy tarmac delay kit. As such, passengers were not offered snacks within two hours of the start of the delay.

Based on the facts described above, the Enforcement Office has concluded that Spirit failed to provide passengers with an opportunity to deplane before the tarmac delay exceeded three hours. Furthermore, the Enforcement Office has found that Spirit did not provide food to passengers within two hours after the aircraft arrived at IAH. Spirit's failure to adhere to the terms of its contingency plan in this regard violated sections 259.4(b)(2) and 259.4(b)(3), as well as 49 U.S.C. §§ 41712 and 42301.

Mitigation

In mitigation Spirit states that it takes its responsibility to comply with all Department consumer protection regulations, including the tarmac delay rule, very seriously. This is Spirit's first violation of the Department's tarmac delay regulation. Spirit states that it fully cooperated with the Department's investigation.

Spirit states that its primary concerns were the safety of its passengers and reaching DFW as quickly as conditions would permit. Spirit states that the captain postponed the tarmac delay service based on information from the tower that a departure lane was open and the aircraft could soon be in the air at which point Spirit states that it had planned to serve food and drinks. Spirit states that the captain believed this was in the best interest of the passengers as she was unsure when another departure lane would become available. Spirit states that the captain expected a speedy departure. Spirit states that, as conditions deteriorated, the departure clearance was delayed as ATC slowed departures due to increased runway congestion resulting from the weather. The three hour mark passed on the taxiway, with departure imminent. Spirit further states that had the flight returned to the gate at this point, the flight crew would have likely timed out, potentially delaying passengers in Houston. Spirit notes that the tarmac delay kit was served as soon as the aircraft reached 10,000 feet.

As a result of this incident, Spirit states that it has instructed its flight crews and flight attendants of the necessity of handing out the tarmac delay kit before the two hour mark

despite any extenuating circumstances. In addition, Spirit notes only one of the 179 passengers onboard complained about the delay. Spirit believes the absence of other complaints evidences that passengers understood the crew was working to ensure their best interest in an extraordinarily difficult operating environment.

Spirit states that it is committed to avoiding lengthy tarmac delays and emphasizes its commitment to ensuring the well-being of its passengers and providing the best possible customer service during any significant delay.

Decision

We view seriously Spirit's violation of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301. 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, Spirit has agreed to settle this matter with the Enforcement Office and enter into this consent order, which directs Spirit to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301, and assesses \$100,000 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 Spirit, 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 Spirit Airlines, Inc., violated 14 CFR 259.4(b)(2) by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an aircraft to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane;
3. We find that Spirit Airlines, Inc., violated 14 CFR 259.4(b)(3) by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would provide food and water no later than two hours after the aircraft touched down in the case of arrival;
4. We find that Spirit Airlines, Inc., violated 49 U.S.C. § 42301 by failing to adhere to the assurances in its emergency contingency plan that the carrier would provide passengers onboard an aircraft on the tarmac the option to deplane within three hours and with adequate food and water;

5. We find that by engaging in the conduct described in ordering paragraphs 2, 3, and 4, above, Spirit Airlines, Inc. engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;
6. We order Spirit Airlines, Inc., and all other entities owned or controlled by, or under common ownership and control with Spirit, its successors, affiliates, and assigns, to cease and desist from further violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301;
7. We assess Spirit Airlines, Inc., \$100,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, 4, and 5, above. Of that amount, \$50,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining amount, \$50,000, will become due and payable if, within one year of the date of issuance of this order, Spirit Airlines, Inc., violates the order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Spirit Airlines, Inc., may be subject to additional enforcement action for violation of this order; and
8. We order Spirit Airlines, Inc., to remit the payment assessed in paragraph 7, above, within 30 days of the issuance of this order. Payment shall be made 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 Spirit 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:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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