



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

Issued by the Department of Transportation
on the 7th day of January, 2016

United Airlines, Inc.

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

Docket OST-2016-0002

Served: January 7, 2016

CONSENT ORDER

This consent order concerns violations by United Airlines, Inc., (“United”) of 14 CFR Part 259, the Department’s tarmac delay rule; 49 U.S.C. § 42301, which requires adherence to a carrier’s emergency contingency plan; and 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. Specifically, the carrier violated the Department’s tarmac delay rule by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not allow an aircraft to remain on the tarmac for more than three hours for domestic flights and four hours for international flights before providing passengers an opportunity to deplane. This order directs United to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 42301 and 41712 and assesses the carrier \$750,000 in civil penalties.

Applicable Law

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. Specifically, for domestic flights, under section 259.4(b)(1), carriers must provide assurance that they will not permit an aircraft to remain on the tarmac for more than three hours without allowing passengers to deplane. Under section 259.4(b)(2), for international flights, carriers must provide assurances that they will not

permit an aircraft to remain on the tarmac for more than four hours without allowing passengers to deplane. Section 259.4 includes two exceptions to the requirement to deplane passengers within three or four hours: (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.

Furthermore, under the FAA Modernization and Reform Act of 2012 (the Act), 49 U.S.C. § 42301, air carriers¹ that engage in “covered air transportation”² 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 when there is an “excessive tarmac delay.”³ 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. An air carrier’s failure to comply with the assurances required by section 259.4 and 49 U.S.C. § 42301 constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

Facts and Conclusions

United is an air carrier as defined by 49 U.S.C. § 40102(a)(2). United operates scheduled service at Chicago O’Hare International Airport (ORD), a large hub airport, and has adopted a contingency plan for lengthy tarmac delays covering its scheduled passenger operations at ORD. In its contingency plan, United outlines options available to operations personnel for gate returns and deplaning, including using taxi-line deboarding and remote deplaning.

In a report filed to the Office of Aviation Enforcement and Proceedings (Enforcement Office) on January 7, 2014, United indicated that multiple United and United Express flights experienced tarmac delays in excess of three hours at ORD on December 8, 2013.⁴ The Enforcement Office conducted an investigation into the flights and determined that five United flights violated the Department’s tarmac delay rule and warrant enforcement action. United was responsive throughout the Department’s investigations and promptly provided the Department with requested information. With the exception of its failure to adhere to assurances that it would not

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.”

² The term “covered air transportation” means scheduled or public charter passenger air transportation provided by an air carrier that operates an aircraft that as originally designed has a passenger capacity of 30 or more seats.

³ The term “excessive tarmac delay” is defined in 49 U.S.C. §42301 as “a tarmac delay that lasts for a length of time, as determined by the Secretary [of Transportation].” The Secretary has determined that tarmac delays of more than 3 hours for domestic flights and 4 hours for international flights, are excessive. See 14 CFR 259.4.

⁴ United filed this report pursuant to 49 U.S.C. § 42301(h).

allow passengers to remain on the tarmac for more than three hours for domestic flights or four hours for international flights, United fulfilled all of the other assurances outlined in its Tarmac Delay Contingency Plan.

Through the investigation, the Enforcement Office learned that there were multiple contributing factors to the tarmac delays at ORD, including a severe winter weather event at ORD. Although the weather forecast for December 8, 2013, predicted inclement weather at ORD in the afternoon, the event exceeded predictions with snow falling at the rate of one inch per hour between 6:00 PM and 8:00 PM, which is United's busiest time at ORD. Additionally, the ground temperatures were lower than predicted. This combination caused ice to accumulate on aircraft, which then required de-icing. Additionally, this event was the first severe weather event after a new arrival runway opened at ORD in October 2013. Therefore, arrival traffic at the airport exceeded departure traffic causing long taxi-times for aircraft waiting to depart, requiring those aircraft to de-ice multiple times. Since all aircraft de-ice at ORD's gates, congestion in the gate area increased between the flights waiting to depart that had to de-ice, flights that returned to the gate that had to de-ice again, and flights that arrived and were waiting for a gate.⁵ Moreover, due to the rapidly accumulating snowfall, at intermittent periods throughout the evening, the Chicago Department of Aviation closed taxiways and runways.⁶

While the above conditions contributed to these delays, the Enforcement Office found that for the five flights at issue in this order, United's gate mismanagement caused the flights to exceed the three hour limit. Although the challenging weather and taxi instructions made remote deplaning unsafe, given United's knowledge of the operational situation on the ground and the provisions of its contingency plan, pursuant to its Tarmac Delay Contingency Plan, United should have explored alternate deplaning options earlier or assigned gates earlier. For some flights, United continued to change the flight's gate assignment or did not assign a gate until after the three hour mark, which delayed FAA ATC taxi instructions. United's contingency plan recognizes that even during normal operations at ORD, aircraft may experience long taxi times to the ramp area. Moreover, FAA ATC at ORD will not give taxi instructions to aircraft that have not yet been assigned a gate at ORD. For the flights listed below, the Enforcement Office determined that United's actions led to the excessive delay.

The following table details the five United flights that experienced tarmac delays at ORD:

⁵ Unlike at some other airports, there are no remote deicing pads at ORD.

⁶ Despite these challenging conditions, no other airline experienced excessive tarmac delays at ORD on December 8, 2013. However, ORD is a primary hub for United, and it and its affiliated regional carriers operate the largest number of flights at the airport.

Carrier	Flight Number	Flight Segment	Total Tarmac Delay Minutes	Minutes > Tarmac Limit (180 Minutes for domestic flights, 240 Minutes for international flights)
United	651	TPA-ORD	196	16
United	1633	IAD-ORD	207	27
United	1138	ORD-IAD	228	48
United	691	ORD-IAH	244	64
United	987	ORD-CDG	270	30

In addition to the tarmac delay event that occurred at ORD in December 2013, this order also covers a tarmac delay experienced by United flight 756 in May 2015. Flight 756 departed from Denver International Airport (DEN) bound for Houston Bush Intercontinental Airport (IAH) on May 20, 2015, and was unable to land at IAH due to severe thunderstorm activity. As a result, flight 756 diverted to Houston Hobby Airport (HOU) to refuel and experienced a three hour 14 minute tarmac delay while on the ground. There is no clear evidence that United attempted to deplane passengers before the tarmac delay reached the three-hour mark. As such, the Enforcement Office determined that flight 756 also violated the Department's tarmac delay rule and enforcement action is warranted with respect to this flight.

Mitigation

In mitigation, United states that it is committed to safety as its first priority, and to full compliance with the Department's lengthy tarmac delay regulations. United explains that on December 8, 2013, a combination of factors led to the tarmac delays at ORD, including that the snowstorm was the first of the year and the first following the addition of a new runway at ORD. United states that the new runway altered the direction of traffic at ORD and caused operational challenges, not only for United, but also for air traffic control and the snow removal process at ORD which is under the control of the Chicago Department of Aviation. United further states that the snowstorm caused serious disruption to ground equipment and aircraft, some of which became mired in the snow and needed to be dug out, which in turn caused numerous closures of taxiways. United states that, despite the difficult operating conditions, its employees worked tirelessly to bring the five ORD flights at issue here to the gate. United states that it regrets the inconvenience caused to passengers affected by the delay, and it has provided compensation to passengers affected by the tarmac delays that day. United notes that its flight crew and gate agents ensured that all affected passengers had appropriate food, water, functional lavatories, medical attention, and that it made status announcements, as required under the Department's rules.

United also states that it has invested significantly in equipment and technologies to minimize future delays at ORD – such as adding fourteen de-icing trucks to its operations at ORD since December 8, 2013. Additionally, United states that it has installed an automated visual docking

and guidance system that enable aircraft to be parked in all-weather conditions and during irregular operations, without marshallers (e.g., “wing walkers”).

With respect to Flight 756 on May 20, 2015, United states that its top priority during extreme weather events is to ensure the safety of its passengers by landing our aircraft without incident. United states that in this instance, it chose to divert the aircraft to HOU due to severe thunderstorm activity surrounding the flight’s scheduled destination, IAH, and in the immediate area. Although United does not have operations at HOU, United states that its flightcrew worked tirelessly to ensure that the passengers were comfortable during the delay including making all required announcements and providing the passengers water, food, functional lavatories, and, if needed, medical attention. United explains that as soon as the weather permitted, Flight 756 departed HOU for IAH only 14 minutes after the tarmac delay limit.

Lastly, United notes that it respectfully disagrees with the Enforcement Office’s view that a separate violation occurs for each passenger onboard an aircraft subject to an excessive tarmac delay. United believes that the applicable statutes provide for violations to be assessed on a per flight or per day basis. However, in the interest of settling this matter, and without conceding or waiving its legal position on that question, United has agreed to this compromise settlement.

Decision

We view seriously United’s violations of 14 CFR Part 259 and 49 U.S.C. §§ 42301 and 41712 particularly given United’s previous tarmac delay rule violations.⁷ Accordingly, after carefully considering all the facts in these cases, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Enforcement Office finds that United failed to adhere to the terms of its Tarmac Delay Contingency Plan by failing to offer each passenger the opportunity to deplane within three hours of the delay for domestic flights and four hours of the delay for international flights at both ORD and HOU.⁸

Without admitting any violations but in order to avoid litigation, United has agreed to settle these cases with the Enforcement Office and enter into this consent order directing United to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. §§ 42301 and 41712, and assessing \$750,000 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 United and other carriers.

⁷ United previously had a significant tarmac delay incident at ORD in which United did not provide the opportunity to deplane to passengers on 13 flights on July 13, 2012. *See United Airlines, Inc., Violations of 14 CFR Part 259 and 49 U.S.C. §§ 41712 and 42301*, Order 2013-10-13, Issued on October 25, 2013.

⁸ In the interest of settlement, without further investigation, this order also closes our investigation of seven flights that experienced lengthy tarmac delays. Three of these flights occurred at IAH on May 25, 2015, two flights occurred at Louis Armstrong New Orleans International Airport (MSY) on May 30, 2015, one flight occurred at ORD on January 15, 2015, and one flight occurred at DEN on April 16, 2015. These seven tarmac delay incidents were taken into account in assessing the \$750,000 civil penalty against the carrier.

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 United Airlines, Inc., violated 14 CFR 259.4(b)(1) and 49 U.S.C. § 42301 by failing to adhere to the assurance in its contingency plan for lengthy tarmac delays that the carrier would not permit an aircraft conducting a domestic flight to remain on the tarmac for more than three hours without providing passengers an opportunity to deplane;
3. We find that United Airlines, Inc., violated 14 CFR 259.4(b)(2) and 49 U.S.C. § 42301 by failing to adhere to the assurance in its contingency plan for lengthy tarmac delays that the carrier would not permit an aircraft conducting an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane;
4. We find that by engaging in the conduct described in ordering paragraph 2 and 3, above, United Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order United Airlines, Inc., and all other entities owned or controlled by, or under common ownership and control with United Airlines, Inc., its successors, affiliates, and assigns, to cease and desist from further violations of 14 CFR Part 259 and 49 U.S.C. §§ 42301 and 41712;
6. United Airlines, Inc., is assessed \$750,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, and 4, above:
 - (a) \$375,000 of the assessed penalty shall be due and payable within 30 days of the service date of this order; and
 - (b) \$375,000⁹ of the assessed penalty shall be credited to United Airlines, Inc., toward the cost of acquiring and installing an automated visual docking and guidance system¹⁰ at more than 90 percent of the carrier's gates at ORD.¹¹

⁹ Anticipated cost information provided by United to the Department of the offset described in subparagraph 6(b) showed that the cost to the carrier of this offset would be significantly greater than the credit provided by the Department.

7. We order United Airlines, Inc., to pay the penalty as assessed in paragraph 6, above, through Pay.gov to the account of the U.S. Treasury. Payment 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 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 ten (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
Assistant General Counsel for
Aviation Enforcement and Proceedings

An electronic version of this document is available at
www.regulations.gov

¹⁰ United's automated visual docking and guidance system is an automated parking unit that will allow aircraft, with a high degree of safety, to be parked more expediently without marshallers, e.g. wing walkers, during irregular airport operations and adverse weather events.

¹¹ To avail itself of this credit, United Airlines, Inc. shall provide a sworn statement to the Enforcement Office from a company officer with supporting documentation substantiating the expenditures.