



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

Issued by the Department of Transportation  
on the 30<sup>th</sup> day of March, 2017

**Spirit Airlines, Inc.**

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

**Docket OST 2017-0001**

**Served March 30, 2017**

**CONSENT ORDER**

This consent order concerns violations of 14 CFR Part 259 and 49 U.S.C. § 41712 by Spirit Airlines, Inc. (Spirit Airlines) when it failed to inform passengers on a flight delayed at the gate for a lengthy period of time of the opportunity to deplane. This order directs Spirit Airlines to cease and desist from future similar violations of Part 259 and section 41712 and assesses the carrier \$60,000 in civil penalties.

**Applicable Law**

Pursuant to 14 CFR 259.4 of the Department's rules, "covered carriers"<sup>1</sup> are required to adopt, implement, and adhere to contingency plans that include a series of assurances with respect to the treatment of passengers during lengthy tarmac delays at each large hub, medium hub, small hub, and non-hub airport. As part of its contingency plan, pursuant to section 259.4(b)(6), a covered carrier must provide an assurance that the passengers on the delayed flight will be notified 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. A carrier's failure to comply with the

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<sup>1</sup> "Covered carriers" include U.S. certificated carriers conducting scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more seats.

assurances required by Part 259 and as contained in its contingency plan for lengthy tarmac delays is a prohibited unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

### **Facts and Conclusions**

Spirit Airlines is a “covered carrier” pursuant to 14 CFR Part 259. Spirit Airlines has adopted a contingency plan for lengthy tarmac delays covering its scheduled passenger operations. Spirit Airlines’ contingency plan states that it will notify passengers on delayed flights 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.

Spirit Airlines operated flight 713 from Orlando International Airport (MCO) to Louis Armstrong New Orleans International Airport (MSY) on December 27, 2015. Flight 713 was originally scheduled to land at George Bush Intercontinental Airport (IAH), but due to bad weather in Houston, it diverted to MSY. After landing at MSY and reaching the gate location, the doors to the aircraft were opened. The aircraft remained at the gate with the door open for a period of time exceeding 30 minutes, during which, passengers had the opportunity to deplane the aircraft. However, Spirit Airlines failed to notify passengers of this opportunity.

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 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) addresses the issue that arises when a tarmac delay has not yet begun because the doors remain open at a gate or another disembarkation area, but 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 three hours, but if that opportunity exists, the rule requires that the carrier inform passengers of the option to deplane. Carriers are free in these situations to remind passengers that they are deplaning at their own risk and that the flight could depart without them.

In sum, section 259.4(b)(6) is in place to address the precise incident that occurred on flight 713. Beginning thirty minutes after flight 713 arrived at the gate at MSY, and until the aircraft pushed back from the gate, Spirit Airlines was required to notify passengers every thirty minutes that they could deplane if the opportunity to do so existed. The failure by Spirit Airlines to notify passengers of the opportunity to deplane violates 14 CFR 259.4(b)(6) as well as 49 U.S.C. § 41712.

### **Response**

In response, Spirit emphasizes its commitment to full compliance with the Department's consumer protection rules, including the Part 259 tarmac delay regulations. When flight 713 arrived at MSY, the Captain informed the passengers of the flight's status, initially believing this would be a "gas and go" and the weather in Houston was going to improve imminently.

When it became clear the delay would be longer, the Captain informed the passengers of the flight's status, and made an announcement updating the passengers every 15 minutes. While the flight crew recalls advising passengers they could exit the aircraft, and believe they complied with the rule, it was unclear whether this information was repeated at the interval required by Part 259, as the crew was anxious to get the aircraft back in the air to deliver the passengers safely to their destination IAH.

Between December 27th and December 29, 2016, Spirit distributed refunds to the passengers of flight 713 in the approximate amount of \$30,000.

Spirit believes, under the circumstances of the deteriorating weather conditions, the Captain acted in the best interests of the passengers to keep them informed of the flight's status and provide access to the terminal.

### **Decision**

The Enforcement Office has carefully considered the information provided by Spirit Airlines, but continues to believe enforcement action is warranted. The Enforcement Office and Spirit Airlines have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Spirit Airlines consents to the issuance of this order to cease and desist from future violations of 14 CFR 259.4 and 49 U.S.C. § 41712 and to the assessment of \$60,000 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 Spirit Airlines and other carriers.

This order is issued under the authority contained 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 Spirit Airlines, Inc., violated section 259.4(b)(6) by failing to properly notify passengers that they had the opportunity to deplane flight 713, as described above, while it was at the gate with the door open;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Spirit Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;

4. We order Spirit Airlines, Inc. and its successors and assigns to cease and desist from further violations of 14 CFR 259.4 and 49 U.S.C. § 41712;
5. We assess Spirit Airlines, Inc., \$60,000 in compromise civil penalties that might otherwise be assessed for the violations described above;
  - a. \$30,000 of the assessed penalty shall be due and payable within 30 days of the service date of this order;
  - b. \$30,000 shall 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.
6. We order Spirit Airlines, Inc., to pay the penalty 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 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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