



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

Issued by the Department of Transportation
on the 9th day of July, 2009

Delta Air Lines, Inc.

**Violations of 14 CFR Part 250 and
49 U.S.C. § 41712**

Docket OST 2009-0001

Served July 9, 2009

CONSENT ORDER

This Consent Order concerns violations by Delta Air Lines, Inc., (Delta) of the Department's oversales rule, 14 CFR Part 250, and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. The violations stem from the carrier's failure 1) to solicit volunteers before involuntarily denying boarding to passengers on oversold flights, 2) to furnish the required written notice to passengers who were denied boarding involuntarily ("bumped"), and 3) to provide bumped passengers with the appropriate amount and type of denied boarding compensation (DBC) in a timely manner. The order directs Delta to cease and desist from such further violations and assesses the carrier a civil penalty of \$375,000.

Under certain circumstances, Part 250 mandates that a carrier pay DBC to passengers who hold "confirmed reserved space" on a flight, have complied with the carrier's contract of carriage, have met the carrier's requirements with respect to check-in time and appearance at the gate, and have been bumped involuntarily from the flight because it was oversold ("eligible passengers"). In addition, before bumping passengers involuntarily, the carrier must first solicit volunteers.¹ If there are not enough volunteers, the carrier may deny boarding to other passengers against their will, provided *inter alia* "on the day and [at the] place the denied boarding occurs," the carrier pays all eligible passengers with "cash or an immediately negotiable check for the appropriate amount of

¹ 14 CFR 250.2b(a).

compensation... .”² The appropriate amount of DBC varies for each passenger depending on the planned time of arrival at his or her destination of substitute transportation arranged (or offered to be arranged) by the carrier, the value of the unused portion of the passenger’s ticket to his or her destination, and whether the flight segment on which the bumping occurred was between U.S. points, or from the U.S. to a foreign point.³ Although Part 250 permits a carrier to offer free or reduced rate air transportation in the form of travel vouchers for use on future flights in lieu of a cash payment, the carrier must first “[inform] the passenger of the amount of cash compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash payment.”⁴ In other words, eligible passengers who are involuntarily denied boarding must be apprised of their entitlement to cash compensation and be given the choice to receive this form of compensation instead of a travel voucher. In order to ensure that these passengers have the ability to make informed decisions regarding the various DBC options available to them, a carrier is required to furnish them with a written statement “explaining the terms, conditions, and limitations of denied boarding compensation... .”⁵ Violations of Part 250 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

A recent inspection of Delta’s passenger complaint records received by the carrier from January to July 2008 conducted by the Office of Aviation Enforcement and Proceedings (Enforcement Office), and of passenger complaints involving Delta during 2008 sent directly to the Enforcement Office, revealed numerous instances in which the carrier bumped passengers, but did not follow one or more of the provisions of Part 250 outlined above. These failures violated Part 250 and constituted unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

In mitigation, Delta states that it takes great pride in its efforts to not only fully comply with DOT consumer regulations, but to exceed DOT mandates in many areas to make the travel experience as convenient and enjoyable as possible. Delta asserts that it has invested significant financial and manpower capital in an effort to ensure compliance with 14 CFR Part 250, and in particular Part 250’s cash compensation requirements. With respect to the subject matter of this order, Delta points out that it has been working consistently over the past year and a half to improve compliance with the requirements of Part 250. According to Delta, well before the Enforcement Office’s recent inspection of Delta’s passenger complaint records, the carrier recognized the need for vigorous training

² 14 CFR 250.8(a). Providing passengers denied boarding compensation does not relieve carriers from their obligation to perform the transportation promised under their contract of carriage with passengers. Therefore, in addition to receiving DBC, eligible passengers are entitled to keep their original ticket and use it on another flight. In the alternative, if eligible passengers choose to make their own arrangements, they can request an “involuntary refund” for the ticket for the flight from which they were bumped. DBC is a separate right and is intended to compensate passengers for their inconvenience.

³ 14 CFR 250.5(a).

⁴ 14 CFR 250.5(b).

⁵ 14 CFR 250.9(a).

and communication efforts in this area, as well as the development of tools to simplify the process agents follow to determine cash compensation. Included in this effort was the development and implementation of a tool which allows denied boarding compensation to be accurately determined and generates a notification coupon that meets the notice requirements required under Part 250.

The Department's oversales rule reflects a carefully crafted balance between the right of individual passengers to obtain the services they purchase and the right of carriers to market their services effectively. Part 250 permits airlines to sell more tickets for a flight than there are seats on the aircraft. This allows carriers to fill seats that would otherwise have gone empty due to "no shows," thereby resulting in efficiencies for carriers, including revenue enhancement, and benefits for passengers as a whole by enabling carriers to offer them lower fares. In exchange for this privilege, the rule mandates compensation and other protections for eligible passengers who are involuntarily denied boarding. We take seriously any violation of the rule. The Enforcement Office views the violations uncovered during its inspection as indicative of a general pattern of noncompliance by Delta that must be addressed. Therefore, we believe that enforcement action is warranted. However, the Enforcement Office recognizes that Delta is taking steps to improve customer convenience and ensuring compliance with Part 250 through both the measures described above and those Delta plans to undertake, as set forth in ordering paragraph 10 below, during a time in which the airline industry continues to face financial difficulties. The Enforcement Office believes that the costs associated with implementation of the service improvement measures described in paragraph 10, which go beyond the requirements in Department rules and should provide an overall benefit to consumers, should to the extent documented be allowed as an offset to reduce a substantial portion of the assessed civil penalty.

In order to avoid litigation, and without admitting or denying the violations described above, Delta agrees to the issuance of this order to cease and desist from future violations of 14 CFR Part 250 and 49 U.S.C. § 41712. Delta further agrees to the assessment of \$375,000 in compromise of potential civil penalties otherwise assessable against it, subject to the offset of up to \$200,000 of that amount, provided Delta meets the requirements set forth in the ordering paragraphs below. The Enforcement Office believes that this compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and provides a strong incentive to Delta and all other airlines to comply with the Department's denied boarding regulation.

This order is issued under the authority contained in 49 CFR 1.57(a) and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest;
2. We find that Delta Air Lines, Inc., violated 14 CFR 250.2b(a), as described above, by failing to solicit volunteers before involuntarily denying boarding to passengers on oversold flights;
3. We find that Delta Air Lines, Inc., violated 14 CFR 250.8(a), as described above, by failing to tender to eligible passengers cash or an immediately negotiable check for the appropriate amount of compensation on the day and at the place the denied boarding occurs;
4. We find that Delta Air Lines, Inc., violated 14 CFR 250.5(a), as described above, by failing to pay eligible passengers the amount of denied boarding compensation specified in the rule;
5. We find that Delta Air Lines, Inc., violated 14 CFR 250.5(b), as described above, by failing to inform eligible passengers offered travel vouchers of the amount of cash compensation that would otherwise have been due to them;
6. We find that Delta Air Lines, Inc., violated 14 CFR 250.9(a), as described above, by failing to furnish eligible passengers with a written statement explaining the terms, conditions, and limitations of denied boarding compensation;
7. By engaging in the conduct described in ordering paragraphs 2, 3, 4, 5, and 6, above, we find that Delta Air Lines, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
8. We order Delta Air Lines, Inc., and all other entities owned, controlled by, or under common ownership with Delta Air Lines, Inc., to cease and desist from further violations of 14 CFR Part 250 and 49 U.S.C. § 41712;
9. We assess Delta Air Lines, Inc., a compromise civil penalty of \$375,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 7 above, which amount shall be due and payable subject to the payment provisions set forth in subparagraph 9(a) through (c) below;
 - (a) \$175,000 shall be due and payable 30 days after the service date of this order;
 - (b) Up to \$200,000 shall be credited to Delta Air Lines, Inc., for expenditures that will be made within 18 months after the service date of this order, in accordance

with ordering paragraph 10, to enhance the tools and processes Delta Air Lines, Inc., utilizes to ensure compliance with 14 CFR Part 250; and

(c) To the extent Delta Air Lines, Inc., fails to provide adequate documentation verifying the appropriate expenditures of the potential \$200,000 offset, the Office of Aviation Enforcement and Proceedings shall notify Delta Air Lines, Inc., of the inadequacies and Delta Air Lines, Inc., shall have 60 days to cure the inadequacies or pay the remaining portion of the offset;

10. The enhancements described in ordering paragraph 9(b) shall consist of one or more of the following:

(a) The launch of "Concord" to all Delta Customer Care locations. Concord is a complaint handling/letter generating system that will allow Delta Air Lines, Inc., to provide higher quality customer service. It will improve reporting functionality and customer experience tracking capabilities that will allow Delta Air Lines, Inc., to provide better customer feedback to internal departments. Concord will enable stations to obtain actual complaint data and text in order to drive station accountability and develop best practices. Delta Air Lines, Inc., agrees to report the following to the Enforcement Office within 6 months after implementation of Concord: how the system is utilized by individual stations, how the system has benefited consumers, and what best practices and procedures have been developed due to Concord's use;

(b) The implementation of "Closed Bid," an automated system that will notify Delta Air Lines, Inc., customers at the time of check-in, through delta.com or its kiosks, if their flight is oversold and ask whether they wish to volunteer their seat for compensation. This new system will provide passengers with more time to consider their options and make the best choice based on their needs;

11. Delta Air Lines, Inc., shall certify to the Office of Aviation Enforcement and Proceedings the extent to which it has funded and implemented the enhancements described in subparagraphs 10(a) through (b). That statement shall include a detailed explanation of the expenditures meeting the requirements above and the method used to determine them and be accompanied by a sworn statement from an appropriate company official certifying that the statement of expenditures is true and correct to the best of his or her knowledge and belief after a reasonable inquiry into the matter; and

12. Delta Air Lines, Inc., shall pay the assessed civil penalty by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Delta Air Lines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure 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 initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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