



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

Issued by the Department of Transportation
on this 19th day of June, 2020

Spirit Airlines, Inc.

**Violations of 49 U.S.C. §§ 41708 and 41712 and
14 CFR Part 250**

Docket DOT-OST-2020-0001

Served June 19, 2020

CONSENT ORDER

This order concerns the failure of Spirit Airlines, Inc. (“Spirit”) to comply with the Department’s oversales rule, 14 CFR Part 250. This order also concerns Spirit’s policy that resulted in the misclassification and misreporting of certain passengers who were involuntarily denied boarding as volunteers, and the failure to properly calculate and report data related to oversales in violation of 14 CFR 250.10. Violations of the reporting requirement under section 250.10 constitute violations of 49 U.S.C. § 41708. Violations of Part 250 and 49 U.S.C. § 41708 also violate the statutory prohibition against unfair and deceptive practices and unfair methods of competition, 49 U.S.C. § 41712. This order directs Spirit to cease and desist from future violations of 49 U.S.C §§ 41708 and 41712 and 14 CFR Part 250, and assesses the carrier a compromise civil penalty of \$350,000.

Applicable Law

The Department’s Oversales Rule

The Department’s oversales rule reflects a carefully crafted balance between the right of individual passengers to obtain the services they purchase and the ability of carriers to market their services effectively and efficiently. Part 250 permits airlines to sell more tickets for a flight than there are seats on the particular aircraft to be used for that flight. This allows carriers to fill seats that would otherwise have gone empty due to “no shows,” thereby achieving operational efficiencies including revenue enhancement for carriers and benefits such as lower fares for passengers.

In exchange for the ability to overbook flights (a practice that would otherwise be an unfair and deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. § 41712), 14 CFR Part 250 mandates compensation and other protections for 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 involuntarily denied boarding because their flight was oversold (“eligible passengers”). The appropriate amount of Denied Boarding Compensation (“DBC”) varies for each passenger depending on the planned arrival time of substitute transportation arranged (or offered to be arranged) by the carrier, the value of the unused portion of the passenger’s fare 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. 14 CFR 250.5. In determining the value of the unused portion of the passenger’s fare, carriers must include all mandatory taxes and fees. 14 CFR 250.1.

Specifically, under most circumstances, Part 250 mandates that a carrier pay DBC to eligible passengers “on the day and [at the] place the denied boarding occurs,” with “cash or an immediately negotiable check for the appropriate amount of compensation.” 14 CFR 250.8. However, before denying boarding to passengers against their will, the carrier must first solicit volunteers who are willing to give up their seats in exchange for compensation. 14 CFR 250.2b.

Moreover, pursuant to 250.9(a), airlines must “furnish passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space immediately after the denied boarding occurs, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carrier’s boarding priority rules and criteria” (“250.9 Notice”). The denied boarding statement must contain the language identified in section 250.9(b).

In lieu of the cash or check required by 250.5(a) and (b), carriers may also offer free or reduced rate air transportation (“vouchers”) as DBC payment. A carrier may only offer vouchers as DBC if: (1) the value of the transportation benefit offered, excluding any fees or other mandatory charges applicable for using the voucher, is equal to or greater than the cash/check payment otherwise required under 250.5(a) or (b); (2) the carrier fully informs the passenger of the amount of cash/check compensation that would otherwise be due and that the passenger may decline the voucher and receive the cash/check payment; and (3) the carrier fully discloses all material restrictions associated with the use of the voucher, including but not limited to, administrative fees, advance purchase or capacity restrictions, and blackout dates applicable to the offer before the passenger decides to give up the cash/check payment in exchange for the voucher. 14 CFR 250.5(c).

Violations of Part 250 also constitute a violation of the statutory prohibition against unfair and deceptive practice in 49 U.S.C. § 41712.

The Department’s Reporting Rule

Among other things, 49 U.S.C. § 41708 authorizes the Secretary of Transportation to require air carriers to submit reports to the Department. Pursuant to section 41708, 14 CFR 250.10 requires each reporting carrier¹ to provide to the Department on a quarterly basis a report of passengers denied confirm space on BTS Form 251. This information is then compiled and published in the

¹ A “reporting carrier” is defined under 14 CFR 234.2 as a certificated air carrier which accounts for at least one half of one percent of domestic scheduled-passenger revenues.

Department's monthly Air Travel Consumer Report ("ATCR"), which ranks the reporting carriers based on various performance criteria, including the rate of involuntary denied boardings per 10,000 passengers.

To provide the required information, a reporting carrier must accurately classify each passenger who was denied boarding either as a "volunteer" or as a passenger who was involuntarily denied boarding. A "volunteer" is a person who responds to the carrier's request for volunteers pursuant to 14 CFR 250.2b and willingly consents to exchange his or her confirmed reserved space for compensation of the carrier's choosing. Any passenger selected by the carrier for denied boarding in accordance with a boarding priority other than a request for volunteers is considered to have been denied boarding involuntarily, whether or not the passenger accepts denied boarding compensation. 14 CFR 250.2b. In order to be classified as a volunteer, a passenger must have been given the option of taking the oversold flight for which he or she held a reservation. In other words, if a passenger does not initially respond to the carrier's solicitation of volunteers, and is later denied boarding by action of the carrier, that passenger was denied boarding involuntarily and must be reported as such.² The decision of the passenger to accept the cash/check compensation or free or reduced rate air transportation does not change the passenger's classification from a passenger who was denied boarding involuntarily to a volunteer.³

Pursuant to 14 CFR 250.10, reporting carriers must report the number of passengers denied confirmed space for scheduled passenger flights "originating in the United States operated by the reporting carrier." This includes all qualifying enplanements departing from a domestic location, regardless of destination. BTS Form 251 provides that a carrier should report the number of passengers who were denied boarding involuntarily who either qualified for denied boarding compensation or did not qualify for denied boarding qualification, as well as the total number of passengers denied boarding.

The submission of inaccurate reports violates 250.10 and sections 41708 and 41712.⁴

Facts and Conclusions

Spirit is a certificated air carrier that operates scheduled passenger service using at least one aircraft with a designed seating capacity of more than 30 passenger seats. Spirit is also a reporting carrier pursuant to 14 CFR Part 234, and has been required to report oversales data on flights it operated beginning January 2015.

During a review of consumer complaints filed with the Department, the Department's Office of

² In essence, once the passenger has been denied boarding by action of the carrier, that passenger is, and must be always be treated as, a passenger denied boarding involuntarily.

³ See also 250.2b(a) and see Letter sent to U.S. and Foreign Carriers dated November 19, 1996, available at <https://www.transportation.gov/sites/dot.gov/files/docs/oversales-1996-11-19.pdf>.

⁴ See, e.g., *American Airlines, Inc., Violations of 14 CFR Parts 250 and 259, and 49 U.S.C. §§ 41708 and 41712*, Order 2015-9-10 (Sept. 16, 2015).

Aviation Consumer Protection (OACP)⁵ found that Spirit had a pattern of non-compliance with the compensation scheme required by Part 250. Consumer complaints received by the OACP indicate Spirit has, on several occasions, required passengers who were involuntarily denied boarding to sign waivers or documents suggesting that those passengers were “volunteers.” Moreover, Spirit’s substantive responses to these complaints repeat that the passengers volunteered their seats, despite statements from the passengers to the contrary. In addition, a review of OACP’s consumer complaints received between January 2017 and June 2018, indicated that on several occasions Spirit may not have disclosed all material terms and restrictions of its voucher option offered to passengers as DBC, may have offered travel vouchers without first disclosing the cash/check option that is also available to passengers, and provided vouchers that undercompensated certain passengers.

Based on the available information, we determined that in oversale situations, Spirit would first solicit volunteers to give up their seats in exchange for a Future Travel Voucher (“FTV”), re-accommodation on Spirit’s next available flight or a flight on another airline, and hotel accommodations, if needed. If there were not enough volunteers, Spirit would then deny boarding to passengers involuntarily based on time of check-in. Passengers who were denied boarding involuntarily were then offered three compensation options: (1) receive cash or check in the amount of 400% of the cost of the passenger’s ticket plus a refund for the unused segment of the trip with no reaccommodation for the passenger on another flight; (2) receive cash or check in the amount of 400% of the cost of the passenger’s ticket and the passenger would be reaccommodated on another Spirit flight if one happened to be available; or (3) receive a FTV⁶ with restrictions for a roundtrip anywhere on Spirit’s network and be reaccommodated on another flight including on another airline. Spirit referred to the later choice as the “volunteer option” even for passengers denied boarding involuntarily. Passengers were then required to sign a document (“acknowledgement form”) indicating their compensation preference.⁷

⁵ The Office of Aviation Consumer Protection was formerly known as the Office of Aviation Enforcement and Proceedings.

⁶ The FTV issued as denied boarding compensation is valid for a single use, which Spirit asserts could be used for up to 400% of the passenger’s one-way fare, with no remaining value after redemption. It is non-transferable and subject to blackout dates. The FTV can only be applied to the flight portion of the base fare of a subsequent ticket, excluding taxes and carrier fees. It cannot be redeemed for cash and cannot be used to purchase any other products offered by Spirit, including ancillary services. In other words, the value of the FTV is limited to the base fare of the subsequent ticket purchased by the passenger who was denied boarding involuntarily and not the value of the passenger’s one-way fare for the flight on which the denied boarding occurred.

⁷ The form requires passengers to select one of two compensation options and sign next to the chosen option.

Option 1 states: “I understand the conditions which I have agreed to volunteer my seat on this flight are in exchange for a confirmed reservation on the next available Spirit flight to my original destination and a Future Travel Voucher equal to a roundtrip flight on Spirit Airlines subject to the terms and conditions set forth herein. NOTE: This voucher does not cover taxes, fees, and optional services. Travel must be booked within sixty (60) days of voucher issuance for any flight dates available on spirit.com.”

Option 2 states: “I did not volunteer to give up my seat (denied boarding involuntarily) and have agreed to accept the applicable cash compensation in the form of a check offered by Spirit Airlines.”

At the time of the denied boarding, Spirit agents would input information into an internal database for each passenger denied boarding. If a passenger selected the FTV, Spirit would categorize that passenger as a “volunteer” in its database. If a passenger selected the cash compensation, Spirit would categorize these passengers as having been denied boarding involuntarily in its database. Spirit would then use its internal database to complete Form 251. We found that passengers overwhelmingly selected FTVs and were subsequently miscategorized as “volunteers.”

Our review of Spirit’s oversales practices revealed several violations of our rules. First, under 250.2b, any passenger who does not respond to a request for volunteers and is ultimately denied boarding as a result of the carrier’s actions has been denied boarding involuntarily. Even if the passenger subsequently decides to accept DBC in the form of a voucher and reaccommodation, the passenger cannot be classified as a “volunteer”, as Spirit had been doing. Second, Spirit’s reference to these passengers as “volunteers” on the acknowledgement form and in written responses to consumer complaints is inconsistent with Part 250 and section 41712. Third, Spirit did not ensure that the value of the FTV offered as denied boarding compensation at the time it was offered was equal to or greater than the cash/check payment otherwise required. Fourth, in some instances, Spirit agents did not disclose, as required, the amount of the cash compensation due to the passenger before the passenger selects the voucher option. Finally, Spirit admitted that passengers who were denied boarding involuntarily but selected the voucher compensation method were classified and reported to the Department on Form 251 as “volunteers”.⁸ In all, for six consecutive quarters starting with the first quarter of 2017, Spirit misclassified and misreported over one thousand passengers as “volunteers” when they were actually passengers denied boarding involuntarily.

Moreover, in 2017, Spirit self-reported to the Department that, for nine consecutive quarters between 2015 and 2017, it submitted Form 251 with incorrect data. Specifically, Spirit disclosed it had been misreporting data on its Form 251 submissions by using only domestic to domestic enplanements, when all enplanements departing a domestic location should have been included; and reporting the total number of passengers denied boarding involuntarily as only those who qualified for denied boarding compensation while excluding those who did not qualify for denied boarding compensation.⁹ In February 2018, it was determined that Spirit violated 14 CFR 250.10 and 49 U.S.C. §§ 41708 and 41712 for the reporting errors in 2015, 2016, and 2017. Spirit was warned for these violations and was put on notice that any further failures to file accurate data on Form 251 may result in enforcement action without further warning, and such action may also cover the outlined deficiencies. We have determined that because Spirit again failed to report accurate data on Form 251 for the first and second quarters of 2018, enforcement action is warranted for the previously-identified reporting violations.

Spirit’s failure to file accurate reports with the Department resulted in the publication of numerous ATCRs with information that deceptively and incorrectly lowered Spirit’s rate of involuntary denied boarding. Spirit’s failures to file correct data, and its subsequent refile of corrected

⁸ Spirit submitted revised Form 251 for 6 consecutive quarters beginning with the first quarter of 2017 though the second quarter of 2018 to reclassify these passengers as passengers denied boarding involuntarily and not as volunteers.

⁹ Spirit submitted revised Form 251 for nine consecutive quarters from 2015-2017 with corrected data in 2017.

information, has caused the Department to revise and edit several ATCRs. Moreover, Spirit's inaccurate reporting has deprived the traveling public of useful data for determining which carrier has the highest rate of denied boardings.

Response

In response, Spirit states it takes its responsibilities under the Department's consumer protection regulations very seriously and adds that, as the country's largest ultra-low fare airline, it seeks to provide its guests with an enjoyable travel experience at the lowest possible cost.

During the relevant period, when faced with an oversales/denied boarding situation, Spirit states it provided passengers the option of either being paid the cash denied boarding compensation (DBC) and a refund for the unused portion of the flight or onward travel on the next Spirit flight but not on other airlines. Spirit states it also offered FTVs and booking on an alternative flight, including on other airlines. When passengers denied boarding involuntarily chose the vouchers plus a flight accommodation, Spirit states those passengers were reported as volunteers on Spirit's Form 251.

According to Spirit, the Spirit voucher option during the relevant time period benefitted passengers who otherwise would not be rebooked and importantly who would have been required to arrange alternative travel without any assistance while they were at the airport. Spirit notes it frequently arranged for onward travel on a competing carrier for those passengers. Spirit asserts these rebooked passengers almost always traveled on legacy carriers charging Spirit the full walk-up fare for each accommodated passenger, at substantial financial cost to Spirit. Spirit believes many passengers involuntarily denied boarding preferred the voucher option to expedite their transportation to their final destination. Spirit notes that during the relevant period between January 2017 and June 2018, only 86 passengers filed a complaint with the Department or directly with Spirit concerning the voucher option.

Spirit also notes it went 'above and beyond' the Department's requirements in caring for passengers involuntarily denied boarding by providing onward travel on competing carriers for passengers not otherwise entitled to compensation (e.g., denied boarding due to aircraft downgrades). Spirit states, after June 2018, Spirit further improved the experience for passengers involuntarily denied boarding by contacting passengers on downgraded flights to offer them attractive re-accommodation options, thus, increasing the number of passengers on downgraded flights voluntarily accepting other arrangements.

Decision

The OACP views seriously Spirit's violations of 14 CFR Part 250, and 49 U.S.C. §§ 41708 and 41712. Accordingly, after carefully considering all the facts in this case, including those set forth above, the OACP believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, Spirit consents to the issuance of this order to cease and desist from future violations of 14 CFR Part 250 and 49 U.S.C. §§ 41708 and 41712, and to the assessment of \$350,000 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 against 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 250.2b by misclassifying certain passengers who were denied boarding involuntarily as “volunteers”;
3. We find that Spirit Airlines, Inc., violated 14 CFR 250.5(c)(1) by failing to ensure that the value of the voucher offered as denied boarding compensation was equal to or greater than the cash/check payment otherwise required;
4. We find that Spirit Airlines, Inc., violated 14 CFR 250.5(c)(2) by failing to disclose the amount of cash compensation due to the passenger before the passenger selects the voucher as denied boarding compensation;
5. We find that Spirit Airlines, Inc., violated 250.10 by failing to accurately report to the Department the number of passengers denied boarding voluntarily, the number of passengers denied boarding involuntarily, and the carrier’s enplanement data;
6. We find that, by engaging in the conduct described in ordering paragraph 5, above, Spirit Airlines, Inc., violated 49 U.S.C. § 41708;
7. We find that by engaging in the conduct described in paragraphs 2, 3, 4, 5, and 6 above, Spirit Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
8. We find that by engaging in the conduct described in paragraphs 2, 3, 4, 5, 6, and 7 above, Spirit Airlines, Inc., violated ordering Paragraph 17 of DOT Order 2009-09-08 as it relates to violations of Part 250 and §§ 41708 and 41712;
9. We order Spirit Airlines, Inc., and its successors and assigns to cease and desist from further violations of 14 CFR Part 250, and 49 U.S.C. §§ 41708 and 41712.
10. We assess Spirit Airlines, Inc., \$350,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of that amount:
 - a. \$155,000 shall be due and payable within 120 days of the date of issuance of this order;

- b. \$110,000 shall be credited to Spirit Airlines, Inc., for funds expended towards the purchase of airfare on other airlines for Spirit passengers denied boarding due to the substitution of a smaller aircraft; and
- c. \$85,000 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, fails to comply with the order's payment provision, or is found to have committed any violation of Part 250, in which case Spirit Airlines, Inc. may be subject to additional enforcement action for violation of this order.

11. We order Spirit Airlines, Inc., to pay within 120 days of the issuance of this order the penalty assessed in Ordering subparagraph 10(a), above, through Pay.gov to the account of the U.S. Treasury. Payments 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 the Office of Aviation Consumer Protection

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