



**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 April, 2010

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

Docket OST 2010-0005

Served April 27, 2010

CONSENT ORDER

This consent order concerns violations by Southwest Airlines Co. (Southwest) 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 furnish the required written notice to passengers who were denied boarding ("bumped") involuntarily, and 2) to provide involuntarily bumped passengers with the appropriate amount and type of denied boarding compensation (DBC) in a timely manner. The order directs Southwest to cease and desist from such further violations and assesses the carrier a civil penalty of \$200,000.

The Department's oversales rule reflects a balance between the right of individual passengers to obtain the services they purchase and the ability 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 to be used for that flight. 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 the ability to overbook flights (a practice that would otherwise be unfair and deceptive or an unfair method of competition within the meaning of 49 U.S.C. § 41712), the rule 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 of their flight because it was oversold ("eligible passengers"). Under most circumstances, Part 250 mandates that a carrier pay DBC to eligible passengers. However, before denying

boarding to passengers against their will, a carrier must first solicit volunteers who are willing to give up their seats in exchange for compensation.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 compensation.”² The appropriate amount of DBC varies for each eligible 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 a U.S. point 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, the carrier must apprise eligible passengers of their entitlement to cash/check compensation and the amount thereof in the event he or she prefers that 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, the text of which is specified in the rule, that explains 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.

The Department’s Office of Aviation Enforcement and Proceedings (Enforcement Office) has investigated Southwest’s compliance with Part 250. That investigation involved a review of information regarding consumer complaints involving Part 250 sent directly to Southwest as well as a comprehensive inspection at Southwest’s headquarters of the airline’s consumer complaint records, practices, and policies involving Part 250.

¹ 14 CFR 250.2b(a).

² 14 CFR 250.8(a). Offering or 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. Part 250 makes clear that passengers are free to decline the DBC required under the rule and bring a private legal action.

³ 14 CFR 250.5(a).

⁴ 14 CFR 250.5(b).

⁵ 14 CFR 250.9(a).

This investigation revealed numerous instances in which Southwest denied boarding to passengers, but did not follow one or more of the requirements of Part 250, as 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. The Enforcement Office views the violations uncovered during its investigation as indicative of noncompliance with Part 250 by Southwest that must be rectified.

In mitigation, Southwest states that it is proud of its exemplary record of regulatory compliance and customer satisfaction. Further, while Southwest regrets any violations of the Department's oversales rules, Southwest notes that on the whole it has maintained an extremely high compliance rate with respect to Part 250, especially considering that Southwest carries over 100 million passengers per year and the number of alleged violations cited by the DOT is very small in comparison. Nevertheless, Southwest states that it is committed to achieving an even better compliance record, via additional training of frontline employees, as well as by implementing new technology that will assist those employees in handling oversales in order to reduce the possibility of manual errors occurring in the sometimes hectic oversale environment. In addition, Southwest points out that it is developing measures beyond what is required by Department rules to provide customers with clear and conspicuous notice of Southwest's oversales policies and the rights of passengers under Part 250. To accomplish this, notices and links to further information will be integrated into the booking process on Southwest's website, www.southwest.com, which is used by the vast majority of Southwest's customers to research travel, purchase tickets, and print boarding passes.

We have carefully considered the facts of this case, including the explanation provided by Southwest, and continue to believe that enforcement action is necessary. Southwest, in order to avoid litigation, and without admitting or denying the violations described above, 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. Southwest further agrees to the assessment of \$200,000 in compromise of potential civil penalties otherwise assessable against it. Of this amount, \$90,000 is due and payable within 30 days of the issuance of this order. Of the remaining portion of the civil penalty, \$90,000 shall become due and payable if, within one year of the issuance of this order Southwest violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately and Southwest may be subject to additional enforcement action for failure to comply with this order, and up to \$20,000 shall be credited to Southwest for funds expended within one year of the issuance of this order to develop and implement methods beyond what is required by Department rules to provide prominent and conspicuous notice to consumers of Southwest's oversales policies and the rights of eligible passengers under Part 250. 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 Southwest 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 Southwest Airlines Co. violated 14 CFR 250.8(a), as described above, by failing to tender cash or an immediately negotiable check for the appropriate amount of compensation on the day and at the place the denied boarding occurred to eligible passengers who were denied boarding involuntarily;
3. We find that Southwest Airlines Co. violated 14 CFR 250.5(a), as described above, by failing to pay eligible passengers who were denied boarding involuntarily the appropriate amount of denied boarding compensation specified in the rule;
4. We find that Southwest Airlines Co. 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 otherwise would have been due to them;
5. We find that Southwest Airlines Co. violated 14 CFR 250.9(a), as described above, by failing to furnish eligible passengers who were denied boarding involuntarily with a written statement explaining the terms, conditions, and limitations of denied boarding compensation;
6. By engaging in the conduct described in ordering paragraphs 2, 3, 4, and 5, above, we find that Southwest Airlines Co. engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
7. We order Southwest Airlines Co. and all other entities owned, controlled by, or under common ownership with Southwest Airlines, Co., to cease and desist from further violations of 14 CFR Part 250 and 49 U.S.C. § 41712;
8. We assess Southwest Airlines Co. a compromise civil penalty of \$200,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 6, above, which amount shall be due and payable subject to the payment provisions set forth in subparagraphs 8(a) through (c) below:
 - a. \$90,000 shall be due and payable within 30 days of the date of issuance of this order;
 - b. \$90,000 shall be due and payable if, within one year of the issuance date of this order, Southwest Airlines Co. violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Southwest Airlines Co. may be subject to additional enforcement action for failure to comply with this order; and

- c. Up to \$20,000 of the assessed civil penalty shall be credited to Southwest Airlines Co. for funds expended within one year of the issuance date of this order, in accordance with ordering paragraph 9, below, to develop and implement methods beyond what is required by Department rules to provide prominent and conspicuous notice to consumers of Southwest's oversales policies and the rights of eligible passengers under 14 CFR Part 250;

9. Within 12 months of the issuance date of this order, Southwest Airlines Co. shall submit a statement of expenditures to the Office of Aviation Enforcement and Proceedings describing in detail the extent to which Southwest Airlines Co. has funded and implemented the methods described in ordering paragraph 8(c), above. The statement shall include the method(s) used to calculate and/or account for the expenditures and shall 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 reasonable inquiry. The Office of Aviation Enforcement and Proceedings will notify Southwest Airlines Co. within 30 days of receipt of the statement of any amount not to be allowed as an offset and Southwest Airlines Co. shall pay that amount within 30 days of receiving the notification; and

10. Southwest Airlines Co. 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 Southwest Airlines Co. 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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