



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

**Issued by the Department of Transportation
On the Twenty-Sixth day of June, 2013**

Delta Air Lines, Inc.

Docket OST 2013-0004

**Violations of 14 CFR Part 250, 14 CFR Part 259,
49 U.S.C. § 41708, 49 U.S.C. § 41712, and Order
2009-7-7**

Served June 26, 2013

CONSENT ORDER

This order concerns the failure of Delta Air Lines, Inc., (Delta) to comply with the Department's oversales rule, 14 CFR Part 250. Violations of Part 250 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. The violations by Delta of the Part 250 reporting requirement, 14 CFR 250.10, also violate 49 U.S.C. § 41708. Failure to comply with Part 250 also violates 14 CFR Part 259, which requires Delta to adopt and adhere to a Customer Service Plan that addresses, among other things, oversales issues. Violations of Part 250 by Delta also constitute violations of Order 2009-7-7,¹ in which Delta was ordered to cease and desist from violations of the Department's oversales regulation. This order directs Delta to cease and desist from future violations and assesses Delta a compromise civil penalty of \$750,000.

Applicable Law

The Department's oversales rule reflects a carefully crafted balance between the right of individual passengers to obtain the services they purchase on the one hand, and the ability of carriers to market their services effectively and efficiently, on the other hand. 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 achieving operational efficiencies including revenue enhancement for carriers, and resulting in benefits for passengers as a whole by enabling carriers to offer them lower fares.

¹ *Delta Air Lines, Inc., Violations of 14 CFR Part 250 and 49 U.S.C. § 41712, Order 2009-7-7 (July 9, 2009).*

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”). Specifically, under most circumstances, Part 250 mandates that a carrier pay Denied Boarding Compensation (DBC) to eligible passengers. 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.² If there are not enough volunteers, the carrier may then deny boarding to passengers against their will (“bump”), 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.”³ The appropriate amount of 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 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.⁴

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.”⁵ In other words, the carrier must apprise eligible passengers of their right to receive cash/check compensation and the amount thereof in the event they prefer 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.⁶ Violations of Part 250 constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

² 14 CFR 250.2b(a).

³ 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 transportation 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.

⁴ 14 CFR 250.5(a) and (b).

⁵ 14 CFR 250.5(c).

⁶ 14 CFR 250.9.

In addition, 14 CFR 250.10 requires carriers to file quarterly reports with the Department's Bureau of Transportation Statistics (BTS Form 251) listing, *inter alia*, the number of passengers denied boarding involuntarily and the number of passengers who volunteered to give up their seats. These numbers are then published and made available to the public in the Department's monthly Air Travel Consumer Report (ATCR), which ranks carriers according to their rate of involuntarily denied boardings.⁷ ATCR data may be used by members of the traveling public when choosing among transportation options and by carriers as a basis for composing advertising materials regarding the quality of their service compared to other carriers. It is imperative, therefore, that the ATCR data be accurate. Violations of section 250.10 also constitute violations of 49 U.S.C. § 41708, which authorizes the Department to require airlines to file reports in the form prescribed by the Department.

In April 2011, the Department issued a set of rules designed to enhance protections for air travel consumers. Among these rules, 14 CFR 259.5 requires that carriers must adopt and adhere to a Customer Service Plan and sets forth the minimum standards for each subject that the plan must contain, including the commitments that carriers will handle "bumped" passengers with fairness and comply with the requirements of 14 CFR Part 250. Failure to adhere to the requirements of Part 250 not only violates Part 250 but also constitutes violations of Part 259.

Background

During a visit to Delta's Atlanta headquarters in March 2012, the Office of Aviation Enforcement and Proceedings (Enforcement Office) found substantial evidence indicating noncompliance with 14 CFR Part 250 by the carrier. Specifically, Enforcement Office staff reviewed a total of 310 oversales-related complaint files received by the carrier during 14-non-consecutive weeks between November 2010 and January 2012. Among these files, the Enforcement Office identified numerous instances in which the complaint file indicated that Delta denied boarding to eligible passengers against their will but failed to advise them of their rights to cash or check DBC payments, failed to furnish a written notice to these passengers as required by section 250.9, or failed to solicit volunteers before denying boarding of passengers involuntarily. Some of the complaints also described incidents in which Delta classified passengers who were involuntarily denied boarding as having volunteered to give up their seats, which, in addition to violating the various sections of Part 250 that protect the rights of passengers who are involuntarily denied boarding, also violates the reporting requirement contained in section 250.10, as well as 49 U.S.C. § 41708. The Enforcement Office views the violations uncovered during its compliance review as indicative of a wide-spread practice of noncompliance by Delta that warrants enforcement action and must be rectified.

Also of serious concern is the fact that this is Delta's second violation of the Department's oversales rule since 2009. By order 2009-7-7, issued on July 9, 2009, Delta was found to

⁷ See *Air Travel Consumer Report*, available at <http://www.dot.gov/airconsumer>. A carrier's rate of involuntary denied boarding is computed using its total quarterly number of involuntary denied boardings and its passenger enplanements over that period.

have violated 14 CFR Part 250 and 49 U.S.C. § 41712 by failing to solicit volunteers before involuntarily denying boarding to passengers on oversold flights, failing to furnish the required written notice to bumped passengers, and failing to provide bumped passengers with the appropriate amount and type of DBC. Order 2009-7-7 directs Delta to cease and desist from further violations of the oversales rule and assesses the carrier a civil penalty of \$375,000. The violations of Part 250 by Delta found during the Enforcement Office's 2012 compliance review also constitute violations of the cease and desist provision of Order 2009-7-7.

Furthermore, pursuant to 14 CFR 259.5, Delta adopted a Customer Commitment and made it available on its website. In this Customer Commitment, Delta pledges that, among other things, it will provide information at airports about its policies and procedures for handling situations when all ticketed customers cannot be accommodated on a flight, request volunteers for denied boarding before using any other boarding priority, offer a transportation credit if a passenger voluntarily give up his or her seat, and provide notice explaining Delta's obligations and the compensation to passengers who are involuntarily denied boarding. Delta's failure to adhere to these commitments, as described above, not only violates Part 250, but also constitutes violations of 14 CFR 259.5.

Mitigation

In mitigation, Delta denies that the complaint files identified by the Enforcement Office reflect any widespread practice of noncompliance with the oversales regulations. To the contrary, Delta states that ensuring compliance with the Department's oversales regulations has always been a high priority for Delta, especially since the entry of Order 2009-7-7. In particular, Delta asserts that it has invested heavily in improving its policies, procedures and systems for ensuring compliance since 2009. Delta contends that the allegations in many of the complaint files identified by the Enforcement Office contain ambiguous descriptions of the incidents alleged and Delta disputes the facts described in many others. Delta contends that if any individual passenger was incorrectly identified as a volunteer, that error reflected an isolated violation of Delta policy and training, not a systemic practice on Delta's part.

Delta acknowledges that some of the complaint files identified by the Enforcement Office do contain allegations which, if true, would reflect violations of the oversales regulations. However, Delta contends that these are isolated errors that make up only a tiny fraction of the voluntary and involuntary denied boardings that occur on Delta aircraft. Moreover, Delta asserts that it has significantly improved its ability to meet customer expectations in recent years when flights are oversold. According to Delta, while the number of denied boardings (voluntary and involuntary) on Delta climbed by almost 20 percent from 2011 to 2012, the number of complaints relating to oversales issues received by Delta Customer Care during the same period fell by more than 20 percent, and the number of complaints received by DOT fell by more than 35 percent. Moreover, Delta states that it has consistently erred on the side of crediting the customer version of events when it receives complaints concerning the handling of oversold flights, and has tried to redress any service failures directly with the customers in appropriate ways.

Decision

We have carefully considered the facts of this case, including the explanation provided by Delta, and continue to believe that enforcement action is necessary. Delta, in order to avoid litigation, and without admitting or denying the violations described above, agrees to the issuance of this consent order to cease and desist from future violations of 14 CFR Parts 250 and 259 and 49 U.S.C. §§ 41708 and 41712. Delta further agrees to the assessment of \$ 750,000 in compromise of potential civil penalties otherwise assessable against it. 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 oversales regulation.

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 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 cash or an immediately negotiable check to eligible passengers for the appropriate amount of compensation on the day and at the place the involuntary denied boarding occurred.
4. We find that Delta Air Lines, Inc., violated 14 CFR 250.5(a) and (b), as described above, by failing to pay eligible passengers the appropriate amount of denied boarding compensation specified in the rule.
5. We find that Delta Air Lines, Inc., violated 14 CFR 250.5(c), as described above, by failing to inform eligible passengers of the amount of cash compensation that was due to them.
6. We find that Delta Air Lines, Inc., violated 14 CFR 250.9 by failing to furnish eligible passengers, immediately after the denied boarding occurred, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carrier's boarding priority rules.
7. We find that Delta Air Lines, Inc., violated 14 CFR 250.10 by reporting passengers as having volunteered to give up their seats, when, in fact, they were denied boarding involuntarily.
8. We find that, by engaging in the conduct described in ordering paragraph 7, above, Delta Air Lines, Inc., violated 49 U.S.C. § 41708.
9. We find that, by engaging in the conduct described in ordering paragraphs 2, 3, 4, 5, 6, 7, and 8, above, Delta Air Lines, Inc., engaged in an unfair and deceptive practice and unfair

method of competition in violation of 49 U.S.C. § 41712.

10. We find that, by engaging in the conduct described in ordering paragraphs 2, 3, 4, 5, 6, and 9, above, Delta Air Lines, Inc., violated the cease and desist provision of Order 2009-7-7.

11. We find that by engaging in the conduct described in ordering paragraphs 2, 3, 4, 5, and 6, above, Delta Air Lines, Inc., failed to adhere to its Customer Commitment in violation of 14 CFR Part 259.

12. We order Delta Air Lines, Inc., and all other entities owned and controlled by, or under common ownership and control with Delta Air Lines, Inc., and their successors and assignees, to cease and desist from future violations of 14 CFR Parts 250 and 259 and 49 U.S.C. §§ 41708 and 41712, and Order 2009-7-7.

13. We assess Delta Air Lines, Inc., a compromise civil penalty of \$750,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 11, above, which amount shall be due and payable subject to the payment provisions set forth in paragraphs 13(a) and (b) below:

(a) \$325,000 shall be due and payable within 30 days of the service date of this order; and

(b) Up to \$425,000 shall be credited to Delta Air Lines, Inc., for expenditures that will be made within 15 months after the service date of this order, in accordance with ordering paragraph 14, to enhance the tools and processes Delta Air Lines, Inc., utilizes to ensure compliance with 14 CFR Part 250⁸.

14. The enhancements described in ordering paragraph 13(b) shall consist of one or more of the following:

(a) Technology improvements designed to improve agent compliance with approved oversales policies and procedures and accurately capture customer decision to volunteer and/or decline to volunteer for denied boarding in oversales situations after disclosure that the customer may be at risk of involuntary denied boarding. The aforementioned improvements shall include the acquisition of portable tablet devices to use to record decisions by consumers at gates acknowledging the acceptance of voluntary denied boarding and compensation, as well as the training for personnel on the proper use of such devices;

(b) Development of agent performance audits, based on customer data collected using the tablet devices described in paragraph 14(a), to proactively address any compliance failures.

15. Within 15 months of the service date of this order, Delta Air Lines, Inc., shall certify to the Office of Aviation Enforcement and Proceedings that it has funded and implemented the enhancements described in paragraphs 13(b) and 14 and that the total expenditures for implementing these enhancements are \$425,000 or more. 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

⁸ Delta Air Lines, Inc., has provided assurances that the expenditures will be well in excess of \$425,000.

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.

16. To the extent Delta Air Lines, Inc., fails to provide adequate documentation verifying the appropriate expenditures as described in ordering paragraph 15, 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.

17. We order Delta Air Lines, Inc., to pay the penalty 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 Delta Air Lines, 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 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

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Assistant General Counsel for
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