



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

**Issued by the Department of Transportation
on the 13th day of April, 2017**

Dynamic International Airways, LLC

**Violations of 14 CFR Parts 241 and 380,
49 U.S.C. §§ 41708 and 41712, and Order
2016-3-23**

Docket OST 2017- 0001

Served April 13, 2017

CONSENT ORDER

This consent order concerns violations by Dynamic International Airways, LLC (Dynamic) of the Department of Transportation's (Department) regulations on public charter operations (14 CFR Part 380) with respect to providing prompt refunds to passengers after flight cancellations and promptly notifying passengers of the cancellations. These violations also constitute violations of 49 U.S.C. § 41712, which prohibits unfair and deceptive practices and unfair methods of competition in air transportation. Failing to promptly notifying passengers of flight cancellations also violates the cease and desist provision of Order 2016-3-23, issued on March 15, 2016. This order also concerns reporting delinquencies by Dynamic that constitute violations of 49 U.S.C. § 41708 and the accounting and reporting requirements specified in 14 CFR Part 241. This order directs Dynamic to cease and desist from future violations of the aforementioned regulations and statutes and Order, and assesses the carrier a compromise civil penalty of \$120,000.¹

Applicable Law

I. Public Charter Regulations

A certificated air carrier that sells or offers for sale, and operates, as a principal, public charter flights must comply with all of the applicable requirements of 14 CFR Part 380 (Part 380) with respect to these direct sales operations. 14 CFR 212.7. Part 380 is designed to prevent economic harm to charter passengers.

¹ In addition, Dynamic has paid \$100,000, the portion of the civil penalty assessed in Order 2016-3-23 that was to have been suspended. That amount became due and payable when Dynamic violated the cease and desist provision of Order 2016-3-23, as provided for in ordering paragraph 6 of the instant order.

These regulations, among other things, require public charter operators to provide prompt refunds to affected passengers if the operator cancels a charter flight. Specifically, under section 380.32(k), public charter operators must include in the operator-participant contract that they furnish to the charter participants a statement that if the charter is canceled, a refund will be made to the participant within 14 days after the cancellation. Moreover, under section 380.12(b), if a public charter operator cancels a flight ten or more days before the scheduled departure, the operator must so notify each participant in writing within seven days after the cancellation, but in any event not less than ten days before the scheduled departure date of the outbound trip. Violations of 14 CFR Part 380 also constitute violations of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

II. Reporting Regulation

Section 41708 of the United States Code, *inter alia*, authorizes the Secretary of Transportation to require air carriers to submit reports to the Department. Pursuant to section 41708, 14 CFR Part 241 designates various categories of data to be collected and prescribes the manner in which these data are to be submitted to the Department. The Department uses carriers' Part 241 reports to monitor carrier fitness and ownership, to analyze the effects of air transportation industry policy initiatives, to allocate airport development funds, to forecast traffic, and to develop airport and airway traffic policy. A carrier's failure to file its reports timely prevents the Department from making fully informed decisions. Failure to file reports when they are due constitutes a violation of both 49 U.S.C. § 41708 and 14 CFR Part 241.

Facts and Conclusion

Dynamic is a certificated air carrier based in Greensboro, North Carolina. It conducts single entity charter flights and direct sales public charter flights between the United States and points outside of the United States. Based on a significant increase of consumer complaints filed with the Department's Aviation Consumer Protection Division against Dynamic in 2016, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) conducted an investigation of these complaints and found that in many instances, Dynamic failed to provide refunds in a timely manner to passengers affected by cancelled flights, as required by section 380.32(k). In numerous cases, consumers had to wait for months to receive a refund. The Enforcement Office also found that in several cases, Dynamic also violated section 380.12(b) by failing to provide written notice to passengers after cancellations more than ten days out of their return flights. As a result, some passengers arrived at airports and were forced to purchase separate tickets from other airlines at the last minute. The violations described above also constitute violations of 49 U.S.C. § 41712, which prohibits unfair and deceptive practices and unfair methods of competition. The violations of section 380.12 also violate the cease and desist provision of Order 2016-3-23.

As a certificated carrier, Dynamic is required to comply with the Department's reporting requirements in 49 U.S.C. § 41708 and 14 CFR Part 241. During 2016, Dynamic consistently failed to file in a timely manner applicable monthly and quarterly financial reports with the Department's Bureau of Transportation Statistics as required by Sections 23-25 of Part 241. Specifically, Dynamic was delinquent on all monthly Schedule P-1A and P-12A reports between

May and December 2016, and all quarterly Schedule B-1, and B-12 reports for the second and third quarters of 2016. In addition, Dynamic was delinquent on the T-100 traffic reports for the months of September, October, and November 2016. Most of the delinquencies range from 30 days to over 140 days.²

Response

By way of mitigation and explanation, Dynamic states that it consolidated its flight operations in the summer of 2016 to focus on a few key markets to improve service, and that such consolidation resulted in numerous flight cancellations in a relatively short amount of time, which in turn resulted in an unusually large number of refunds that needed to be processed. Dynamic states that a corporate consolidation that embarked at the same time also affected several offices around the United States and resulted in the overtaxing of their customer service staff. Dynamic states that it has brought on additional personnel to address the refunds issue. Dynamic asserts that this situation was exacerbated by some passengers making double refund requests, one directly from Dynamic and one via a chargeback through the passenger's credit card. Dynamic alleges that this practice resulted in Dynamic, Dynamic's escrow bank, and Dynamic's credit card processor undertaking repeated lengthy reconciliations of passenger funds in escrow. Dynamic states these additional measures, compelled by certain passengers' own actions, necessarily hindered Dynamic's ability to make timely refunds.

Dynamic states many of its passengers book through travel agents, and Dynamic believes many of its cancellation notices either were not sent to travel agents in a timely manner or where not forwarded by travel agents to passengers in a timely manner or at all. To address the cancellation notices issue, Dynamic advises that it now requires travel agents that book passengers on Dynamic flights to provide Dynamic with passenger's contact information. Dynamic states that it also revised its procedures to provide for timely issuance of cancellation notices to travel agents in the first instance following a flight cancellation.

Decision

The Enforcement Office has carefully considered the information provided by Dynamic and continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Dynamic have reached a settlement of this matter. Without admitting or denying the violations alleged in this order, Dynamic consents to the issuance of an order to cease and desist from future violations of 14 CFR Parts 241 and 380, 49 U.S.C. §§ 41708 and 41712, and Order 2016-3-23, and to the assessment of \$120,000 in compromise of potential penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent to future noncompliance with the Department's requirements pertaining to public charters and reporting of financial data.

² Dynamic now is current on all applicable reports required by Part 241.

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 Dynamic International Airways, LLC violated 14 CFR 380.32(k) by failing to timely provide refunds to passengers affected by cancelled flights;
3. We find that Dynamic International Airways, LLC violated 14 CFR 380.12(b) by failing to provide prompt notification to passengers affected by cancelled flights;
4. We find that Dynamic International Airways, LLC violated 14 CFR 241 by failing to file required financial data reports in a timely manner;
5. We find that by violating 14 CFR Part 380, as described in ordering paragraphs 2 and 3, above, Dynamic International Airways, LLC engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
6. We found that by engaging in the conduct described in ordering paragraph 3, above, Dynamic International Airways, LLC violated the cease and desist provision of Order 2016-3-23;
7. We find that by violating 14 CFR Part 241, as described in ordering paragraph 4, above, Dynamic International Airways, LLC violated 49 U.S.C. § 41708;
8. We order Dynamic International Airways, LLC and its successors and assigns to cease and desist from future violations of 14 CFR Part 241 and §§ 380.12(b) and 380.32(k), 49 U.S.C. §§ 41708 and 41712, and Order 2016-3-23. Failure to comply with this cease and desist provision may subject Dynamic International Airways, LLC and its successors and assignees to further enforcement action;
9. We assess Dynamic International Airways, LLC \$120,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 7, above. Of this total penalty amount, \$60,000 shall be due and payable in six installments. The first installment in the amount of \$10,000 shall be due and payable within 30 days from the date of issuance of this order. The five successive

installments in the amount of \$10,000 each shall be due and payable in 30 day increments thereafter. The remaining \$60,000 shall become due and payable if Dynamic International Airways, LLC violates the cease and desist provision in ordering paragraph 8, above, within one year of the issuance date of this order, or fails to comply with the payment provisions in this ordering paragraph.

10. We order Dynamic International Airways, LLC 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 compromise penalty assessment as ordered shall subject Dynamic International Airways LLC to an 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 ten days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

BLANE A. WORKIE

Assistant General Counsel for
Aviation Enforcement and Proceedings

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