



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

Issued by the Department of Transportation
on the 29th day of August, 2017

Frontier Airlines, Inc.

**Violations of 49 U.S.C. § 41712 and
14 CFR Parts 250, 254, and 259**

Docket DOT-OST-2017-0001

Served August 29, 2017

CONSENT ORDER (AMENDED)

This order concerns violations of the Department’s oversales rule, 14 CFR Part 250, and the domestic baggage liability rule, 14 CFR Part 254 by Frontier Airlines, Inc. (“Frontier”). Violations of Part 250 also constitute a failure to adhere to the carrier’s Customer Service Plan in violation of 14 CFR 259.5 and are unfair and deceptive practices in violation of 49 U.S.C. § 41712. The order directs Frontier to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR Parts 250, 254, and 259, and assesses Frontier \$40,000 in civil penalties.

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, 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 available on the aircraft to be used for that flight. This allows carriers to fill seats that would otherwise have remained 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.

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 "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. 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 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 addition, section 250.5(e) requires the Department to review the maximum denied boarding compensation amounts every two years and to revise the limit to reflect changes in the Consumer Price Index for All Urban Consumers (CPI-U).¹

Further, under section 250.9(a), air carriers 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 carriers' boarding priority rules and criteria" (denied boarding statement). The regulation also requires that carriers "furnish the statement to any person upon request at all airport ticket selling positions which are in the charge of a person employed exclusively by the carrier, or by it jointly with another person or persons, and at all boarding locations being used by the carrier." The denied boarding statement must contain the language identified in section 250.9(b).

Section 250.11(a) requires carriers to display "at each desk, station, and position", including ticket counters and boarding gates, being used by the carrier a public disclosure of deliberate overbooking and boarding procedures. This notice must contain the language identified in 250.11(a).

¹ On May 27, 2015, the Department issued a final rule adjusting the DBC for domestic flights to 200 percent of the fare to the passenger's destination or first stopover to \$675 (from \$650), if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than two hours after the planned arrival time of the passenger's original flight; and 400 percent of the fare to the passenger's destination or first stopover, to \$1,350 (from \$1,300), if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than two hours after the planned arrival time of the passenger's original flight. The rule also adjusted the maximum DBC for international flights departing from a U.S. airport. The amount of denied boarding compensation shall be no less than 200 percent of the fare to the passenger's destination or first stopover, to \$675 (from \$650), if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than four hours after the planned arrival time of the passenger's original flight; and 400 percent of the fare to the passenger's destination or first stopover, to \$1,350 (from \$1,300), if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than four hours after the planned arrival time of the passenger's original flight. This increase reflected changes in the Consumer Price Index for All Urban Consumers (CPI-U), and was effective for travel on or after August 25, 2015. At the time the complaints were reviewed by the Department, passengers were entitled to DBC amounts of up to \$650 or \$1,300 depending on the length of the passenger's delay. See 80 Fed. Reg. 30144.

The Department's Domestic Baggage Liability Limit Rule

The Department's Domestic Baggage Liability Rule, 14 CFR Part 254, mandates that carriers are liable for damages resulting from mishandled baggage on domestic flights. Pursuant to 14 CFR 254.4, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's baggage to an amount less than \$3,500 per passenger for travel on or after August 25, 2015.² In addition, section 254.6 requires the Department to review every two years the minimum limit of liability and to revise the limit to reflect changes in the CPI-U.³ Carriers must provide passengers with proper notice of the baggage liability limit on or with their tickets, as required by section 254.5. It is a violation of Part 254 and 41712 for an air carrier to display information at airports which purports to limit the carrier's liability to an amount less than the minimum amount listed in 254.4.⁴

The Department's Customer Service Plan Rule

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 adopt and adhere to a Customer Service Plan that includes 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 also constitutes a violation of Part 259.⁵

Facts and Conclusions

During compliance inspections conducted in August and September 2016 by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) at various airports across the country, Frontier agents at boarding gates locations and ticket counters being used by the carrier failed to produce proper copies of Frontier's written denied boarding statement ("250.9 Notice") in response to specific requests by Enforcement Office staff. Other Frontier agents were not able to produce a copy of the denied boarding statement at either the ticket counter or the boarding gate. In other circumstances, Frontier agents produced outdated copies of the 250.9 Notice, with compensation amounts below the minimum value stated in section 250.5, with some amounts being more than five years outdated. Moreover, Frontier failed to display the required public disclosure of deliberate overbooking and boarding procedures at certain airport boarding gate locations and ticket counters being used by the carrier.

² The minimum liability for travel before August 25, 2015, was \$3,400. (78 Fed. Reg. 14913)

³ Effective January 18, 2000, the Department raised the minimum limit from \$1,250 to \$2,500 (64 Fed. Reg. 70573). On September 22, 2004, the minimum limit was raised to \$2,800 (69 Fed. Reg. 56692); thereafter on January 29, 2007, the minimum limit was raised to \$3,000; on November 21, 2008, the minimum limit was raised to \$3,300 (73 Fed. Reg. 70591); on March 8, 2013, the limit was increased to \$3,400, effective June 6, 2013 (78 Fed. Reg. 14913); and most recently, on May 27, 2015, the limit was increased to \$3,500, effective August 25, 2015 (80 Fed. Reg. 30144).

⁴ See, e.g., *Southwest Airlines Co., Violations of 49 U.S.C. § 41712 and 14 CFR Parts 250, 2504, and 259*, Order 2016-08-33 (Aug. 16, 2016).

⁵ See, e.g., *United Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Parts 250 and 259*, Order 2016-08-31 (Aug. 26, 2016).

Additionally, during the compliance inspections, Frontier displayed signage at certain airport ticket counters and/or boarding gates which purported to limit the carrier's domestic baggage liability limit to amounts less than \$3,500. In some cases, the displayed liability amounts were more than eight years outdated.

We conclude that by failing to produce complete and accurate copies of the required denied boarding statement upon request at both airport ticket selling positions and boarding gates, Frontier Airlines violated 14 CFR 250.9(a). By failing to display the required public disclosure of deliberate overbooking and boarding procedures, Frontier violated 14 CFR 250.11(a). Additionally, by displaying signage at airports which purport to limit the carrier's domestic baggage liability to an amount below \$3,500, Frontier Airlines violated 14 CFR 254.5. Finally, by failing to adhere to the requirements of Parts 250, Frontier Airlines violated 14 CFR 259.5(b)(8) and 49 U.S.C. § 41712.

Response

In response, Frontier states that it takes compliance with the Department's regulations seriously. To that end, Frontier states that it has a robust compliance program, including customer service manuals; its agents undergo substantial initial and recurrent training with respect to the Department's regulations and the importance of complying with DOT's requirements in the interest of providing the highest quality of customer service; and it issues policy and procedure updates/alerts to its employees about changes in regulations, policies or procedures, and to reinforce certain points about the regulations, policies or procedures. In this case, Frontier has (and had at the time of the airport inspections) manuals, policies, procedures, and training in place covering the oversales and domestic baggage liability regulations at issue in this Consent Order.

In addition, Frontier states that upon learning of the Department's airport audit findings, it took immediate corrective action, including issuing informational updates/briefings to its agents about the issues and the importance of full compliance with all applicable DOT regulations. In addition, with respect to the airport signage, Frontier states that all out-of-date signage was immediately removed from airport locations and from the warehouse, and all stations promptly updated signage and notices. Frontier further states that this matter does not raise any questions with respect to Frontier's actual passenger compensation, and that the instances of outdated notices were isolated.

Decision

The Enforcement Office views seriously Frontier's violations of 49 U.S.C. § 41712 and 14 CFR Parts 250, 254, and 259. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted and is in the public interest. In order to avoid litigation, and without admitting or denying the violations described above, Frontier consents to the issuance of this order to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Parts 250, 254, and 259, and to the assessment of \$40,000 in compromise of potential civil 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 establishes a strong deterrent against future similar unlawful practices by Frontier 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 Frontier Airlines, Inc. violated 14 CFR 250.9 by failing to produce proper copies of the required denied boarding statement upon request at both boarding gate locations and ticket selling counters being used by the carrier;
3. We find that Frontier Airlines, Inc. violated 14 CFR 250.11 by failing to display the required public disclosure of deliberate overbooking and boarding procedures at boarding gate locations and ticket counters being used by the carrier;
4. We find that that by engaging in the conduct described in ordering paragraphs 2 and 3, above, Frontier Airlines, Inc. failed to adhere to its Customer Commitment in violation of 14 CFR Part 259;
5. We find that Frontier Airlines, Inc. violated 14 CFR 254.5 by displaying signage at airports that purported to limit the carrier's domestic baggage liability to an amount less than \$3,500;
6. We find that, by engaging in the conduct described in ordering paragraphs 2, 3, 4, and 5 above, Frontier Airlines, Inc. engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;
7. We order Frontier Airlines, Inc. and its successors and assigns to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 250.9, 250.11, 254.5, and 259.5 as described in ordering paragraphs 2, 3, 4, 5, and 6 above;
8. Frontier Airlines, Inc. is assessed \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, 4, 5, and 6 above; and
9. We order Frontier Airlines, Inc. to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 8, above, 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 penalty as ordered shall subject Frontier Airlines, 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 motion.

BY:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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