



**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, 2018

Hawaiian Airlines, Inc.

**Violations of 14 CFR Parts 250, 259 and 382 &
49 U.S.C. §§ 41310, 41702, 41705 and 41712**

Docket DOT-OST-2018-0001

Served April 13, 2018

CONSENT ORDER

This order concerns violations by Hawaiian Airlines (Hawaiian) of the Department's disability rule in 14 CFR Part 382 and the Department's oversales rule in 14 CFR Part 250. Hawaiian failed to provide dispositive responses to individuals with disabilities as required by 14 CFR 382.155(d) and failed to properly categorize and report disability-related complaints as required by 14 CFR 382.157. Also, Hawaiian underpaid denied boarding compensation (DBC) to passengers who were involuntarily denied boarding in violation of 14 CFR 250.5, a provision in the Department's oversale rules. Violations of Part 382 and section 250.5 constitute a failure to adhere to the carrier's Customer Service Plan in violation of 14 CFR 259.5. Violations of Part 382 also violate the Air Carrier Access Act (49 USC § 41705), 49 USC § 41702 to the extent the violations occurred in interstate air transportation, and 49 USC § 41310 to the extent the violations occurred in foreign air transportation. Violations of Parts 382, 250, and 259 and 49 U.S.C. §§ 41310, 41702, and 41705 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

The violations addressed in this order were discovered during an on-site regulatory compliance inspection conducted by staff in the Department of Transportation's Office of Aviation Enforcement and Proceedings (Aviation Enforcement Office) at Hawaiian Airlines' headquarters in Honolulu, Hawaii. This order directs Hawaiian to cease and desist from future violations of these requirements and assesses the carrier \$125,000 in civil penalties.

Failure to Properly Categorize and Report Disability-Related Complaints

14 CFR 382.157 requires carriers to categorize disability-related complaints that they receive according to the type of disability and nature of complaint, and to submit annual reports to the Department detailing the disability complaints received the prior calendar year. During its on-site compliance inspection, the Aviation Enforcement Office found that in Hawaiian's 2016 report on

the number of disability-related complaints that Hawaiian received in 2015, Hawaiian incorrectly counted its service-animal denial explanation letters, required by section 382.117(g), as disability complaints. Furthermore, the Aviation Enforcement Office noted that the accuracy of Hawaiian's disability-related complaint report data was compromised by Hawaiian's failure to report written complaints received from passengers that involved damage to assistive devices complaints. Hawaiian had a practice of forwarding its damage to assistive device complaints to its baggage claims department for processing, rather than treating them as disability-related complaints. These disability-complaints were not forwarded for inclusion in Hawaiian's disability-related complaint report totals that it submits to the Department. As a result, Hawaiian violated section 382.155.

Failure to Provide Dispositive Responses

Pursuant to 14 CFR 382.155(d), carriers are required to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of receipt of the complaint. An appropriate dispositive response must specifically discuss the complaint at issue, specifically admit or deny whether the carrier believes that a violation of Part 382 occurred under the circumstances, summarize the facts and reasons that led the carrier to its conclusion of whether or not a violation of Part 382 occurred, and advise the complainant of his or her right to pursue DOT enforcement action under Part 382.

Upon reviewing Hawaiian's 2015 and 2016 baggage complaints, the Aviation Enforcement Office found that Hawaiian systematically failed to provide a dispositive response to passengers who filed written complaints about damage to their assistive device. Hawaiian's practice of treating damage to assistive device complaints as baggage claims, rather than forwarding these complaints to its disability-complaint handling department for formal response, violated 14 CFR 382.155(d).

Failure to Comply with the Department's Oversales Rule and Applicable Oversales Reporting Requirements

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 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.

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 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. Violations of Part 250 constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Further, 14 CFR 259.5 requires that carriers adopt and adhere to a Customer Service Plan that includes a commitment that carriers will handle “bumped” passengers with fairness and comply with the requirements of 14 CFR Part 250.

A review of Hawaiian’s oversales records revealed that Hawaiian violated the Department’s oversale regulations in 2015 and 2016. Furthermore, pursuant to 14 CFR 259.5, Hawaiian adopted a Customer Commitment and made it available on its website. In this Customer Commitment, Hawaiian states that with few exceptions, persons denied boarding involuntarily are entitled to compensation under federal law. As such, Hawaiian’s failure to comply with the Department’s oversales regulations and its own Customer Commitment not only violates Part 250, but also constitutes violations of 14 CFR 259.5.¹

Response

In response, Hawaiian states that its 2015 and 2016 failure to provide a dispositive response to passengers who filed written complaints directly to Hawaiian about damage to their assistive devices was inadvertent. Hawaiian explains that it addressed each compensation issue raised by a complainant, but failed to forward those written complaints to the appropriate department for action. Hawaiian states that as a result of that oversight, it failed to include those totals in its disability-related complaint report totals that it submits to the DOT, and failed to provide dispositive written responses to those affected passengers.

Hawaiian also states that it inadvertently counted its service-animal denial explanation letters, required by section 382.117(g), as disability complaints. Hawaiian states that it mistakenly believed that since a written explanation was required, any service-animal denial rose to the level of a disability complaint, even when the affected passenger failed to make a written complaint. Hawaiian states that as a result, it overreported its disability complaints.

Hawaiian explains that it has addressed these issues by instituting the following practices: (i) implementing a workflow process that ensures that all claims related to the damage of assistive devices are reviewed to ensure that all written disability related complaints are properly identified

¹ See, e.g., *Delta Air Lines, Inc., Violations of 14 CFR Part 250, 14 CFR Part 259, 49 U.S.C. § 41708, 49 U.S.C. § 41712, and Order2003-7-7, Order 2013-6-18, June 26, 2013.*

and addressed, and (ii) not including service-animal denial explanation letters as disability complaints unless they are actually accompanied by a written complaint.

In response to its violation of section 250.5, Hawaiian states that it has one of the best records in the industry for not involuntarily denying boarding to its passengers as a result of overbooking its flights. Hawaiian states that in the most recent quarter for which data is available, Hawaiian had only 22 instances of involuntarily denied boarding -- and 21 of those were due to the substitution of a smaller aircraft -- among more than 2.8 million passengers it boarded.² Hawaiian states that despite its low rate of involuntarily denied boarding, passengers occasionally cannot be accommodated aboard the assigned aircraft. Hawaiian states that it has addressed this issue by providing additional training to its boarding agents to ensure that they pay the required compensation to any passengers who are involuntarily denied boarding.

Decision

The Enforcement Office has carefully considered the information provided by Hawaiian and continues to believe that enforcement action is warranted. The Enforcement Office and Hawaiian have reached a settlement of this matter in order to avoid litigation. Hawaiian consents to the issuance of this order to cease and desist from future similar violations of 14 CFR Parts 382, 250, and 259, and 49 U.S.C. §§ 41310, 41702, 41705 and 41712, and to the assessment of \$125,000 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 represents a strong deterrent to future similar unlawful practices by Hawaiian and other carriers.

This order is issued under the authority contained in 14 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 Hawaiian Airlines, Inc., violated 14 CFR 382.155 by failing to provide dispositive responses to passenger complaints regarding lost, damaged, or delayed assistive devices;
3. We find that Hawaiian Airlines, Inc., violated 14 CFR 382.157 by failing to properly categorize and accurately report its disability-related complaints;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Hawaiian Airlines, Inc., violated 49 U.S.C. § 41705;
5. We find that to the extent the conduct described in paragraphs 2 through 4, above, occurred in interstate air transportation, Hawaiian Airlines, Inc., violated 49 U.S.C. § 41702;

² Bureau of Transportation Statistics, Report of Passengers Denied Confirmed Space, 2017 2nd Quarter, at <https://www.bts.dot.gov/content/report-passengers-denied-confirmed-space-2017-2nd-quarter>

6. We find that to the extent the conduct described in paragraphs 2 through 4, above, occurred in foreign air transportation, Hawaiian Airlines, Inc., violated 49 U.S.C. § 41310;
7. We find that Hawaiian Airlines, Inc., violated 14 CFR 250.5(b) as described above, by failing to pay eligible passengers the correct amount of denied boarding compensation specified in the rule;
8. We find that by engaging in the conduct described in paragraphs 2, 3 and 7 above, Hawaiian Airlines, Inc., failed to adhere to its Customer Commitment Plan in violation of Part 259;
9. We find that, by engaging in the conduct described in ordering paragraphs 2 through 8 above, Hawaiian Airlines, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.
10. We order Hawaiian Airlines, Inc., and its successors and assigns to cease and desist from further violations of 14 CFR Parts 382, 250, and 259, and 49 U.S.C. §§ 41310, 41702, 41705 and 41712;
11. We assess Hawaiian Airlines, Inc., a compromise civil penalty of \$125,000 in compromise of civil penalties that might otherwise be assessed for the violations described above;
12. We order Hawaiian Airlines, Inc., to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 11, 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 Hawaiian 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:

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