



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

Issued by the Department of Transportation
on the 26th day of August, 2016

United Airlines, Inc.

Docket DOT-OST-2016-0002

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

Served August 26, 2016

CONSENT ORDER

This order concerns violations of the Department's oversales rule, 14 CFR Part 250 by United Airlines, Inc., (United). Violations of Part 250 also constitute failures 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 United to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR Parts 250 and 259, and assesses United \$35,000 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 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 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 the destination or first stopover, 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), airlines 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).

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 259.²

¹ The minimum DBC for travel occurring on or after August 25, 2015, increased to 200 percent of the fare to the passenger’s destination or first stopover, with a maximum of \$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, with a maximum of \$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 for domestic flights. 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, with a maximum of \$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, with a maximum of \$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. (80 Fed. Reg. 30144.)

² See, e.g., American Airlines, Inc., *Violations of 14 CFR Parts 250 and 259, and 49 U.S.C. §§ 41708 and 41712*, Order 2015-9-10 (Sept. 15, 2015).

Facts and Conclusions

During compliance inspections by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) at several airports across the country, United Airlines agents at boarding locations and ticket counters being used by the carrier failed to produce proper copies of United's written denied boarding statement in response to specific requests by Enforcement Office staff. In some situations, United agents were not able to produce a copy of the denied boarding statement at either the ticket counter or the boarding gate, or both. In other circumstances, United agents produced outdated copies of the denied boarding statement, with compensation amounts below the minimum value stated in § 250.5.

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 locations, United violated 14 CFR 250.9(a). Additionally, by failing to adhere to the requirements of Part 250, United violated 14 CFR 259.5(b)(8) and 49 U.S.C. § 41712.

Response

In response, United states that it takes its obligation to provide accurate involuntary denied boarding statements seriously and is committed to providing its passengers with a positive travel experience, including in the rare instances that passengers are involuntarily denied boarding. United notes that none of the alleged violations occurred during an actual involuntary denied boarding situation nor is there any evidence that any passenger was undercompensated. United also notes that, for nearly half of the alleged failures, United provided the correct involuntary denied boarding statement but with outdated maximum compensation limits – specifically United provided \$650 and \$1,300 instead of the updated \$675 and \$1,350 maximums. The increase to the involuntary denied boarding compensation maximums occurred on August 25, 2015, just a few weeks prior to the DOT inspections in September 2015. United notes that updated involuntary denied boarding maximum compensation was available on United's website, in resources to employees, in its contract of carriage, and to United's gate agents and that it has increased training and review of involuntary denied boarding documents in recent months.

Moreover, United respectfully disagrees with the Enforcement Office's use of Part 259, to the extent applicable, as a basis to increase the civil penalty and believes that such use is contrary to federal law. However, in the interest of settling this matter, and without conceding or waiving its legal position on that question, United has agreed to this compromise settlement.

Decision

The Enforcement Office views seriously United's violations of 49 U.S.C. § 41712 and 14 CFR Parts 250 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, United 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 and 259, and to the

assessment of \$35,000 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 United, 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 United Airlines violated 14 CFR 250.9 by failing to produce proper copies of the required denied boarding statement upon request at both boarding locations and ticket selling counters being used by the carrier;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, United Airlines failed to adhere to its Customer Commitment in violation of 14 CFR Part 259;
4. We find that, by engaging in the conduct described in ordering paragraphs 2 and 3 above, United Airlines engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712.
5. We order United Airlines and its successors and assigns to cease and desist from further violations from similar violations of 49 U.S.C. § 41712 and 14 CFR 250.9 and 259.5 as described in ordering paragraphs 2, 3, and 4, above;
6. United Airlines is assessed \$35,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, and 4, above. Of that amount, \$17,500 shall be due and payable within 30 days after the service date of this order. The remaining amount, \$17,500, shall become due and payable if, within one year of the date of issuance of this order, United Airlines violates the order's cease and desist provisions or fails to comply with the order's payment provision, in which case United Airlines may be subject to additional enforcement action for violation of this order; and
7. We order United Airline to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 7, 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 United Airlines 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

An electronic version of this document is available at www.regulations.gov.