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

Southwest Airlines Co. **Violations of 49 U.S.C. § 41712 and 14 CFR Parts 250, 254, and 259**	**Docket DOT-OST-2016-0002** **Served August 26, 2016**

CONSENT ORDER

This order concerns violations of the notification provisions of the Department's oversales rule, 14 CFR Part 250, and the notification provisions of the Department's domestic baggage liability rule, 14 CFR Part 254 by Southwest Airlines Co. ("Southwest"). Violations of Part 250 and 254 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 Southwest to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR Parts 250, 254, and 259, and assesses Southwest $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 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 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), 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 Domestic Baggage Liability Limit Rule

In addition to the oversales rule, Southwest is subject to the requirements in 14 CFR Part 254, which 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. In addition, section 254.6 requires the Department to review every two

---

[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.)

years the minimum limit of liability and to revise the limit to reflect changes in the CPI-U.[2] Carriers must provide passengers with proper notice of the baggage liability limit on or with their tickets, as required by section 254.5.

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 and to compensate passengers for reasonable expenses that result from the delay in delivery of baggage pursuant to 14 CFR Part 254. Failure to adhere to the requirements of Parts 250 and 254 also constitutes a violation of Part 259.[3]

Facts and Conclusions

During compliance inspections by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) at airports across the country, Southwest agents at some boarding gates and ticket counters failed to produce proper copies of Southwest's written denied boarding statement in response to specific requests by Enforcement Office staff. Specifically, a Southwest agent at SAT was not able to produce a copy of the denied boarding statement at the ticket counter. Another Southwest agent at OAK provided only a partial copy of Southwest's denied boarding statement, and that statement contained compensation amounts $25 to $50 below the actual amounts (e.g. $650 and $1300 instead of $675 and $1350) stated in 250.5.

Additionally, during the compliance inspections, Southwest agents at SLC produced ticket notices or displayed signage at certain airport ticket counters and/or boarding gates which purported to limit the carrier's domestic baggage liability to less than $3,500. Also, at CHS, Southwest's policy at one of its baggage offices incorrectly limited the airline's domestic baggage liability to less than $3,500.

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, Southwest violated 14 CFR 250.9(a). Additionally, by providing ticket notices and displaying signage at airports which purport to limit the carrier's domestic baggage liability to an amount below $3,500, Southwest violated 14 CFR 254.5. Finally, by failing to adhere to the

[2] 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).

[3] *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); *see also* Hawaiian Airlines, Inc., *Violations of 14 CFR 254.4, 14 CFR 259.5, 14 CFR 399.84(a), and 49 U.S.C. § 41712*, Order 2015-5-17 (May 21, 2015).

requirements of Parts 250 and 254, Southwest violated 14 CFR 259.5(b)(8) and 49 U.S.C. § 41712.

Response

Southwest Airlines states that it is committed to full compliance with all U.S. Department of Transportation regulations. Southwest states that it takes seriously the obligation to keep its customers informed of all relevant consumer protections, whether at the airport, on its website, or through other means. Southwest states that it continually updates its employee manuals, training materials, Contract of Carriage, Customer Service Commitment, and customer-facing documentation to reflect all DOT requirements.

Southwest asserts that it believes that the instances cited by the Department in this Consent Order are isolated, and had no impact on the actual amount of money any customer received for involuntary denied boarding compensation (DBC) or a mishandled baggage incident. Southwest states that it increased its DBC maximum payment amounts (from $650 to $675 and from $1,300 to $1,350), and increased its baggage liability limits from $3,400 to $3,500 by the Department's deadline of August 25, 2015. Southwest also notes that it updated the automated tools it used to calculate these amounts prior to August 25, 2015.

Southwest states that it conducted a timely update of its Refund Draft Calculator —the automated tool that Customer Service Agents use to determine the correct compensation amounts. Similarly, in the baggage liability context, Southwest asserts that it conducted a timely update of the automated system that it uses for managing baggage claims. Southwest notes that after August 25, 2015, even if a customer saw an outdated version of Southwest's handouts or signage (whether for DBC or baggage liability), Southwest's automated systems would have still guided the employee to the revised (correct) reimbursement amounts.

Finally, Southwest states that it regrets that a small number of signs and notices did not reflect the updated amounts for DBC and baggage liability limits and that those incidents were isolated and resulted in no harm to consumers because Southwest's automated systems for determining the correct amount of passenger compensation had been updated by the Department's deadline of August 25, 2015.

Decision

The Enforcement Office views seriously Southwest'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, Southwest 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 Southwest, 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 Southwest Airlines violated 14 CFR 250.9 by failing to produce, upon request, proper updated copies of the required denied boarding statement at two airports;

3. We find that Southwest Airlines violated 14 CFR 254.5 by providing ticket notices, adhering to Southwest policies, and displaying signage at two airports which purport to limit the carrier's domestic baggage liability to an amount less than $3,500;

4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3, above, Southwest Airlines failed to adhere to its Customer Commitment in violation of 14 CFR Part 259;

5. We find that, by engaging in the conduct described in ordering paragraphs 2, 3, and 4, above, Southwest Airlines engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;

6. We order Southwest Airlines and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 250.9, 254.5, and 259.5 as described in ordering paragraphs 2, 3, 4 and 5, above;

7. We assess Southwest Airlines Co. $40,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, 4 and 5, above. Of this total amount, $20,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining $20,000 shall become due and payable if, within one year of the service date of this order, Southwest Airlines Co., violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Southwest Airlines Co., may be subject to additional enforcement action for failure to comply with this order; and

8. We order Southwest 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 Southwest 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.