



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

**Issued by the Department of Transportation
On the 16th day of September, 2015**

America Airlines, Inc.

**Violations of 14 CFR Parts 250 and 259,
and 49 U.S.C. §§ 41708 and 41712**

Docket OST 2015-0002

Served September 16, 2015

CONSENT ORDER

This order concerns the failure of American Airlines, Inc., (American) to comply with the Department's oversales rule, 14 CFR Part 250, with respect to its transportation of a group of 11 passengers represented by Ms. Doe.¹ Violations of Part 250 with regard to Ms. Doe's group also constitute failure to adhere to the carrier's Customer Service Plan in violation of 14 CFR 259.5. This order also concerns American's internal policy, implemented since at least 2008, that resulted in the misclassification and misreporting of certain passengers who were involuntarily denied boarding as volunteers, in violation of 14 CFR 250.10. Violations of the reporting requirement under section 250.10 constitute violations of 49 U.S.C. § 41708. Violations of Parts 250 and 259 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs American to cease and desist from future violations and assesses American a compromise civil penalty of \$20,000.

Applicable Law

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.

¹ Ms. Doe filed a complaint with the Department on behalf of the group. Identification of individuals involved in this incident is unnecessary for purpose of this consent order and is withheld for privacy reasons.

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. When an eligible passenger is denied boarding on a flight involving foreign air transportation and originating at a U.S. point, the DBC amount due to the passenger is 400 percent of the unused portion of the fare to the passenger’s destination or first stopover, with a maximum of \$1,300,² if the carrier does not offer alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger’s first stopover or final destination less than four hours after the planned arrival time of the original flights. 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.

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 a commitment 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 259.³

Moreover, 49 U.S.C. § 41708, among other things, authorizes the Secretary of Transportation to require air carriers to submit reports to the Department. Pursuant to section 41708, 14 CFR 250.10 requires each reporting carrier⁴ to report to the Department, on a quarterly basis, information about its oversales. This information is then compiled and published in the Department’s monthly *Air Travel Consumer Report* (ATCR), which ranks the reporting carriers based on various performance criteria, including the rate of involuntary denied boardings per 10,000 passengers. In order to provide the required information specified in

² On May 27, 2015, the Department issued a final rule to adjust this maximum DBC amount to \$1,350 to reflect changes in the Consumer Price Index for All Urban Consumers (CPI-U), effective on August 25, 2015. At the time Ms. Doe and her party was denied boarding involuntarily, the applicable maximum DBC amount was \$1,300.

³ 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 Order 2003-7-7*, Order 2013-6-18, June 26, 2013.

⁴ A “reporting carrier” under 14 CFR 234.2 is an air carrier certificated under 49 U.S.C. 41102 that accounts for at least 1 percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of each year.

BTS Form 251, a reporting carrier must accurately classify each passenger who was denied boarding either as a volunteer or as a passenger involuntarily denied boarding. In Form 251's Instructions, Section (D), the Department explains that any passenger selected by the carrier for denied boarding in accordance with a boarding priority other than a request for volunteers is considered to have been denied boarding involuntarily, whether or not the passenger accepts denied boarding compensation. Further, in order to be classified as a volunteer, a passenger must have been given the option of taking the oversold flight for which he or she held a reservation. The submission of inaccurate reports violates section 250.10 and section 41708.

Background

Ms. Doe's Group

In an investigation of a complaint filed with the Department's Aviation Consumer Protection Division (ACPD), the Enforcement Office found violations of Part 250 by American with regard to its handling of Ms. Doe and ten other passengers in her party after they were denied boarding involuntarily at Miami airport. Specifically, Ms. Doe and 12 others in her party flew from Orlando on AA1882 to Miami, where they were scheduled to connect on AA56 to London Heathrow. All passengers in the group had their reservations on AA56 confirmed and received boarding passes for AA56 in Orlando. However, when the group arrived at the boarding gate in Miami and attempted to board AA56, they were pulled to the side and subsequently were informed that they would not be traveling on AA56 and would have to proceed to the rebooking desk to reschedule their travel. Two members of the group were ultimately able to obtain seats on AA56, but Ms. Doe and ten other members (including children) in her group had to be rebooked on another set of flights departing the following day for Heathrow via Barcelona. American staff at Miami airport did not offer any meaningful explanation as to what happened to these 11 passengers' reservations, nor did they offer them any type of compensation.

After receiving the complaint forwarded from the Department, American responded to Ms. Doe and to the Enforcement Office on several occasions. In its initial response, American acknowledged that members of Ms. Doe's group held valid, confirmed tickets and complied with all check-in requirements and, therefore, were entitled to DBC. American's response further stated that based on the price of the tickets and the length of delay, each adult passenger in Ms. Doe's party was entitled to either a check for \$168 or a transportation voucher for \$209, and each child passenger was entitled to a check for \$125 or a transportation voucher for \$156.

In its response to the Enforcement Office's request for an explanation of the amounts offered to Ms. Doe and her group, American provided a copy of the screenshot displaying the fare portion of Ms. Doe's Passenger Name Record (PNR), and explained that the \$168 in cash DBC offered to adult passengers was based on the total roundtrip fare of £489.69, minus taxes and fees of £351.69, converted to US dollars using the exchange rate of 0.663508, and then reduced by half because the denied boarding occurred during their return flight.

Subsequently, when questioned by the Enforcement Office about excluding taxes and fees in its calculation of DBC, American explained that its previous communication regarding the exclusion of taxes and fees was a misstatement and that American had, in fact, been unable to determine the actual fare paid by these passengers since they had purchased their tickets from a consolidator. Accordingly, American decided to use the DBC calculation method for “zero fare ticket” holders,⁵ and, based on that, American would be offering a check for \$496 or a voucher for \$619 for each passenger in Ms. Doe’s party.

In its last response to the Department regarding this matter, American stated that its previous offer of \$496 per passenger was mistaken because it had erroneously applied the currency exchange rate reversely when converting British Pounds to U.S. Dollars. American reached the conclusion that each passenger should receive DBC in the amount of \$848.

We consider this violation to be egregious as it affected 11 passengers, American failed to offer any DBC at all until receiving the complaint from the Enforcement Office, and only offered the correct amount of DBC after repeated inquiries from the Enforcement Office.

Furthermore, pursuant to 14 CFR 259.5, American adopted a Customer Commitment and made it available on its website. In this Customer Commitment, American states that with few exceptions, persons denied boarding involuntarily are entitled to compensation under federal law. American’s failure to adhere to this commitment, as described above, not only violates Part 250, but also constitutes violations of 14 CFR 259.5.

Oversales Reporting

During an oversales complaint investigation conducted by the Enforcement Office in February 2015, we found that, since at least 2008, American had implemented a problematic internal policy regarding the reporting of oversales data. Under the policy, American’s station agents were directed to reclassify a passenger who was denied boarding involuntarily as a volunteer, even if the passenger had not been given the opportunity to board the originally booked flight, as long as that passenger initiates a conversation, after the flight had departed, to receive the compensation that was previously offered to volunteers. This policy directly contradicts the Instructions of Form 251 as explained by the Department’s November 19, 1996, letter to the carriers. Misclassifying involuntarily denied boardings as voluntary denied boardings violates section 250.10 and 49 U.S.C. 41708. It also affects the accuracy of American’s data on oversales as reflected in the ATRC, and therefore, constitutes unfair and deceptive practice and unfair method of competition in violation 49 U.S.C. 41712.

Mitigation

In mitigation, American states that the issues associated with properly calculating the denied boarding compensation due to Ms. Doe and her party arose in a very complex context of

⁵ Part 250 defines a “zero fare ticket” as a ticket acquired without a substantial monetary payment or a consolidator ticket obtained after a monetary payment that does not show a fare amount on the ticket. 14 CFR 250.5(d) provides that the fare paid by a “zero fare ticket” holder for the purpose of calculating DBC shall be the lowest cash, check, or credit card payment charged for a ticket in the same class of service on that flight.

codeshare tickets sold by a consolidator with two schedule changes. American asserts that the complexity of the situation is evidenced by the fact that the Department does not fault American's agents for not treating the situation as an oversold flight at the airport on the day these passengers were traveling. American states that when Ms. Doe and her party contacted the carrier regarding their travel experience, American without hesitation agreed that denied boarding compensation was due. American further asserts that while it initially used an incorrect compensation calculation methodology, and then made a simple currency conversion error in applying the correct methodology, at all times American acted in good faith and had no objective but to provide the appropriate denied boarding compensation, which it ultimately did.

Decision

We have carefully considered the facts of this case, including the explanation provided by American, and continue to believe that enforcement action is necessary. American, in order to avoid litigation, and without admitting or denying the violations described above, agrees to the issuance of this consent order to cease and desist from future violations of 14 CFR Parts 250 and 259 and 49 U.S.C. §§ 41708 and 41712, and the assessment of \$ 20,000 in compromise of potential civil penalties otherwise assessable against it for the violations associated with the handling of Ms. Doe and her group. With respect to the reporting issue, the Enforcement Office views this violation to be serious, but notes that, despite the incorrect policy, American has reviewed its records and identified a statistically insignificant number of instances of misreporting during the past three years. Based on the foregoing and the other mitigating factors, American is ordered to cease and desist from further violation of 14 CFR 250.10 and 49 U.S.C. § 41708, but will not be subject here to any civil penalty with respect to this issue. The Enforcement Office believes that this compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and provides a strong incentive to American and all other airlines to comply with the Department's oversales regulation.

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 American Airlines, Inc., violated 14 CFR 250.5(b), as described above, by failing to pay eligible passengers in foreign air transportation the correct amount of denied boarding compensation specified in the rule.
3. We find that by engaging in the conduct described in ordering paragraph 2, above, American Airlines, Inc., failed to adhere to its Customer Commitment in violation of 14 CFR Part 259.
4. We find that American Airlines, Inc., violated 14 CFR 250.10 by failing to accurately classify and report to the Department the number of passengers denied boarding voluntarily and the number of passengers denied boarding involuntarily.

5. We find that, by engaging in the conduct described in ordering paragraphs 2, 3, and 4, above, American Airlines, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.
6. We find that, by engaging in the conduct described in ordering paragraph 4, above, American Airlines, Inc., violated 49 U.S.C. § 41708.
7. We order American Airlines, Inc., and all other entities owned and controlled by American Air Lines, Inc., and their successors and assignees, to cease and desist from future violations of 14 CFR Parts 250 and 259 and 49 U.S.C. §§ 41708 and 41712.
8. We assess American Airlines, Inc., a compromise civil penalty of \$20,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 5, above.
9. We order American Airlines, Inc., to pay the penalty through Pay.gov to the account of the U.S. Treasury within 20 days of the issuance date of this order. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject American 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 ten days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

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