



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

Issued by the Department of Transportation
On the 21st day of July, 2017

Delta Air Lines, Inc.

**Violations of 14 CFR Part 234 and
49 U.S.C. §§ 41708 and 41712**

Docket OST 2017-0001

Served July 21, 2017

CONSENT ORDER

This order concerns an internal policy of Delta Air Lines, Inc., (Delta) that resulted, for a significant period of time, in the misclassification and misreporting of certain mishandled baggage claims filed by passengers, in violation of 14 CFR 234.6. Violations of the reporting requirement under Part 234 constitute violations of 49 U.S.C. § 41708. The misclassification and misreporting also affected the accuracy of Delta's data on mishandled baggage as reflected in the Department's records available to the public, and therefore, constitutes unfair and deceptive practices and unfair method of competition in violation of 49 U.S.C. § 41712. This order directs Delta to cease and desist from future violations and assesses Delta a compromise civil penalty of \$200,000.

Applicable Law

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 234 requires each reporting carrier¹ to file with the Department, on a monthly basis, information about the number of mishandled baggage reports (MBRs) it receives from passengers. 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 MBR per 1,000 enplaned passengers.² In order to provide the required information

¹ For the calendar years relevant to this consent order, a "reporting carrier" under 14 CFR 234.2 is an air carrier certificated under 49 U.S.C. § 41102 that accounts for at least one percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of each year.

² By a final rule issued in November 2016, the Department changed the formula for calculating mishandled baggage rates from the number of MBRs per the number of domestic passenger enplanements to the number of mishandled bags per the number of checked bags. The new matrix will become effective on January 1, 2019. See,

specified in section 234.6, a reporting carrier must report all domestic reports of mishandled checked baggage, including lost baggage, pilfered baggage, damaged baggage, and delayed baggage. Carriers must count a MBR even when the MBR does not result in a claim for compensation.³ The submission of inaccurate mishandled baggage reports violates section 234.6 and section 41708. Systematic misclassification and misreporting of MBRs is an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Background

The Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) recently reviewed Delta's Standard Operating Procedures (SOP) for Damage Liability for Baggage Recovery and found that, for a significant period of time, Delta had implemented a problematic internal policy regarding the reporting of MBRs.⁴ Under the policy, if an agent was unable to settle the mishandled baggage claim with a customer, he or she was required to create a "*WorldTracer*"⁵ entry for that claim. On the other hand, the document also stated that it was "preferred that bag damages be settled via replacement bags" and in that case the claim would be entered in the Passenger Name Record (PNR), but no *WorldTracer* entry was required. Delta uses the *WorldTracer* system to compile its mishandled baggage reports required by Part 234. As such, any MBRs that are not entered into *WorldTracer* by Delta would not be included in the mishandled baggage reports filed with the Department. Delta's policy regarding reporting of MBRs directly contradicts the Department's reporting directive. Misclassifying and misreporting MBRs violated section 234.6 and 49 U.S.C. 41708. It also affected the accuracy of Delta's mishandled baggage data and ranking as reflected in the ATCR.

Response

Delta acknowledges that its former policy failed to capture claims that the Department contends should have been reported. Nonetheless, Delta submits that the ultimate effect of that failure was limited. Delta has analyzed the likely effect of the omitted claims on Delta's rankings for 2012 through 2015. Delta asserts that its analysis indicates that Delta's ATCR rankings for 2014 and 2015 likely would not have been different had the omitted claims been reported. Further, according to Delta, its analysis also indicates that Delta's ranking for 2012 and 2013 likely would have slipped one position, from 4th to 5th. Thus, Delta contends that its mishandled baggage ranking in the ATCRs, relative to its peers, is accurate since 2014.

Final Rule, Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments, 81 FR 76300, November 2, 2016; and *Final Rule, Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments; Extension of Compliance Date*, 82 FR 14437, March 21, 2017.

³ See, *Reporting Directive No.251, Mishandled Baggage Reports*, issued by the Office of Aviation Information, Bureau of Transportation Statistics, U.S. Department of Transportation, December 5, 2000.

⁴ Delta has subsequently revised its policy to bring it into compliance with the Department's reporting requirements.

⁵ *WorldTracer* is a global tracing and matching baggage system that Delta and many other airlines use to trace and manage baggage transportation.

Delta states that it constantly strives to improve its baggage-handling performance and minimize the inconvenience suffered by customers whose bags have been damaged or delayed. To that end, Delta states that it will develop a mobile application that allows domestic customers to bypass baggage kiosks at certain stations throughout the United States, and to create incident report files on their mobile devices for delayed bags. Delta further explains that after creating the files, customers may also use the mobile application to track their bags using scanned data (the same tracking data used by Delta's agents), and decide whether they wish to pick up the bag at the airport, or have it delivered - all without having to spend time waiting in line at the local baggage-recovery office. Delta estimates the cost of this project to be \$1.2 million.

Delta states that it regrets the effect its prior policy had on its reported ATCR data; for that reason, Delta revised its policy as soon as the Department brought the issue to its attention. Delta asserts that such corrective action, coupled with the development of the mobile application described above, reflects Delta's commitment to improving its customers' experience with mishandled bags.

Decision

We have carefully considered the facts of this case, including the explanation provided by Delta, and continue to believe that enforcement action is necessary. Delta, 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 Part 234 and 49 U.S.C. §§ 41708 and 41712, and the assessment of \$ 200,000 in compromise of potential civil penalties otherwise assessable against it for the violations associated with misclassifying and misreporting mishandled baggage incidents that resulted in the passengers receiving a replacement bag. 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 Delta and all other airlines to comply with the Department's regulation on reporting data for mishandled baggage.

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 Delta Air Lines, Inc., violated 14 CFR 234.6 by failing to accurately classify and report to the Department the number of mishandled baggage reports it received from passengers.
3. We find that, by engaging in the conduct described in ordering paragraph 2, above, Delta Air Lines, Inc., violated 49 U.S.C. § 41708.
4. We find that by engaging in the conduct described in ordering paragraph 2, above, Delta Air Lines, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violations of 49 U.S.C. § 41712.

5. We order Delta Air Lines, Inc., and its successors and assigns, to cease and desist from future violations of 14 CFR Part 234 and 49 U.S.C. §§ 41708 and 41712.

6. We assess Delta Air Lines, Inc., a compromise civil penalty of \$200,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above, which amount shall be due and payable subject to the payment provisions set forth in paragraphs 6(a) and (b) below:

(a) \$100,000 shall be due and payable within 30 days of the service date of this order; and

(b) \$100,000 shall be credited to Delta Air Lines, Inc., for expenditures that will be made within 12 months after the service date of this order, in accordance with ordering paragraph 7, to develop a mobile application to improve customers' experience with mishandled bags.

7. The mobile application described in ordering paragraph 6(b) shall be designed to permit customers to create incident report files and receive file reference numbers for mishandled bags on their mobile devices and thereby bypass baggage-recovery offices at airports. The mobile application will also allow customers to track their bags using scanned data, and receive status updates on their mobile devices.

8. Within 13 months after the service date of this order, Delta Air Lines, Inc., shall certify to the Office of Aviation Enforcement and Proceedings that it has funded and implemented the action described in ordering paragraphs 6(b) and that the total expenditures for implementing this action are \$100,000 or more. That statement shall include a detailed explanation of the expenditures meeting the requirements above and the method used to determine them and be accompanied by a sworn statement from an appropriate company official certifying that the statement of expenditures is true and correct to the best of his or her knowledge and belief after a reasonable inquiry into the matter.

9. To the extent Delta Air Lines, Inc., fails to provide adequate documentation verifying the appropriate expenditures as described in ordering paragraph 8, the Office of Aviation Enforcement and Proceedings shall notify Delta Air Lines, Inc., of the inadequacies and Delta Air Lines, Inc., will be granted a reasonable period of time in which to cure the inadequacies or pay the remaining portion of the offset.

10. We order Delta Air Lines, Inc., to pay the penalty specified in ordering paragraph 6(a) through Pay.gov to the account of the U.S. Treasury within 30 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 Delta Air Lines, 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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