



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

Issued by the Department of Transportation  
On the 29th day of October, 2010

**Delta Air Lines, Inc.**

**Violations of 49 U.S.C. § 41712 and  
14 CFR Part 254**

**Docket OST 2010-0005**

**Served October 29, 2010**

**CONSENT ORDER**

This consent order concerns violations by Delta Air Lines, Inc., (Delta) of the Department's domestic baggage liability rule, 14 CFR Part 254. It directs Delta to cease and desist from future violations of Part 254, and assesses the carrier a compromise civil penalty of \$100,000.

**Applicable Law**

Section 254.4 states that an air carrier "shall not limit its liability for *provable direct or consequential damages* [emphasis added]" relating to lost, damaged or delayed baggage to less than \$3,300 per passenger. The Office of Aviation Enforcement and Proceedings (Enforcement Office) regards carrier policies that categorically limit reimbursement of passenger expenses to less than \$3,300 to be a violation of 14 CFR Part 254 and constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. On October 9, 2009, the Enforcement Office issued an industry notice to this effect warning carriers that it would pursue enforcement action if unlawful reimbursement policies were not corrected within 90 days.<sup>1</sup>

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<sup>1</sup> *Guidance on Reimbursement of Passenger Expenses Incurred as a Result of Lost, Damaged or Delayed Baggage*, available at <http://airconsumer.ost.dot.gov/rules/Notice.Expense.Reimburse.final.pdf> (October 9, 2009).

### **Facts and Conclusions**

For a period of time well after January 2010, Delta distributed a pamphlet to consumers through select airport stations entitled *Baggage Information* that purported to limit Delta's liability for passenger expenses incurred due to delay of baggage to a level below the minimum set in Part 254. The pamphlet stated that Delta "will not authorize any expense reimbursement" when a passenger's delayed baggage is expected to reach the passenger within 24 hours. The pamphlet also stated that the carrier's liability is capped at "USD 25 per day for necessities after the first 24 hours up to a maximum of USD 125 per ticketed customer" while a passenger is away from his or her permanent residence. The Enforcement Office believes that passengers who read the pamphlet may have been dissuaded from seeking reimbursement to which they were entitled. Moreover, in a number of instances in which passengers whose bags were delayed sought reimbursement, Delta applied the exclusions and limitations set forth in the pamphlet.

As stated above, Delta may not limit its liability for provable direct or consequential damages relating to lost, damaged, or delayed baggage to less than \$3,300 per passenger. By categorically limiting reimbursement of passenger expenses, Delta violated 14 CFR Part 254 and 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, Delta states that it takes its responsibility to comply with DOT's consumer-protection regulations very seriously. Delta states that it places a high priority on providing clear and accurate disclosure to make certain that its customers are properly informed of their rights under Delta's contract of carriage and that they are treated fairly at all times. Delta further states that it had no intention to mislead any passengers concerning its baggage policy. Delta asserts that it had updated its baggage policy disclosures in its relevant informational pamphlets, distributed them to the field, and instructed all stations to substitute the new pamphlets by the January deadline established by the Department's guidance on this subject referred to in footnote 1, above. Delta further instructed its stations to destroy the outdated pamphlets. Delta states that any distribution of outdated pamphlets or application of a flat per diem cap in the processing of a baggage claim violated Delta policy, and affected only a tiny fraction of the millions of passengers served by Delta. According to Delta, the vast majority of its passengers received the correct information and had their claims processed pursuant to the proper baggage-claim policy. Moreover, Delta points out that once it became aware of the problem, the carrier immediately worked to contact the affected passengers and to send them the appropriate reimbursement amounts to which they were entitled.

### Decision

The Enforcement Office has carefully considered the information provided by Delta and continues to believe that enforcement action is warranted. The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office and Delta have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Delta consents to the issuance of this order to cease and desist from future violations of 14 CFR Part 254 and 49 U.S.C. § 41712, and to the assessment of \$100,000 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 against future noncompliance with the Department's domestic baggage liability rule by all air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.  
ACCORDINGLY,

1. Based on the above information, 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 254.4 by limiting its liability for provable direct or consequential damages relating to delayed baggage to less than \$3,300 per passenger;
3. We find that by engaging in the conduct described in paragraph 2 above, Delta Air Lines, Inc., engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Delta Air Lines, Inc., and all other entities owned or controlled by, or under common ownership and control with Delta Air Lines, Inc., their successors, affiliates, and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 254.4. Failure to comply with this cease and desist provision shall subject Delta Air Lines, Inc, and their successors and assignees to further enforcement action;
5. We assess Delta Air Lines, Inc., a compromise civil penalty of \$100,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above. Of this total penalty amount, \$50,000 shall be due and payable within 30 days of the date of issuance of this consent order. The remaining \$50,000 shall become due and payable immediately if Delta Air Lines, Inc., violates this order's cease and desist or payment provisions during the 12 months following the service date of this order, and Delta Air Lines, Inc. also may be subject to further enforcement action for failure to comply with this order; and

6. Payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise penalty assessment as ordered will subject Delta Air Lines, Inc., to an 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:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

(SEAL)

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