



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

Issued by the Department of Transportation
On the 3rd day of October, 2007

Hawaiian Airlines, Inc.

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

OST-2007-26781

Served: October 3, 2007

CONSENT ORDER

This consent order is the result of an investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) which revealed the failure of Hawaiian Airlines, Inc. ("Hawaiian") to provide on-time performance information to consumers in violation of 14 CFR Part 234 and 49 U.S.C. § 41712. This order directs Hawaiian to cease and desist from future similar violations of Part 234 and section 41712, and assesses the carrier \$50,000 in civil penalties.

Section 234.8 of the Department's regulations, 14 CFR 234.8, requires carriers reporting on-time performance information to the Department, including Hawaiian, to assign an on-time performance code to flights covered by that section. Additionally, section 234.9 sets out the guidelines by which carriers must report on-time performance codes to the vendors of computer reservations systems. Under section 234.11, a carrier must disclose to a consumer during the course of a reservation inquiry and upon reasonable request the on-time performance information for any flight which has been assigned an on-time performance code under Part 234. Violations of Part 234 constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

The Enforcement Office's investigation revealed a lack of compliance with section 234.11 by Hawaiian. In a recent telephone survey conducted by this office, Hawaiian reservation agents failed to provide the requested on-time performance information in a number of calls. In those calls where answers were provided, Hawaiian reservations agents gave varying on-time performance information for the same flight.

In mitigation, Hawaiian states that any non-compliance with the section 234.11 was purely unintentional. Hawaiian points out that its on-time performance is consistently

among the best of all the airlines that report on-time performance information.¹ Consequently, according to the carrier, it has every incentive to disclose the information to all customers reasonably requesting it. Hawaiian believes this compliance issue can be addressed through improved training and retraining of its reservation agents. Hawaiian states that it already has initiated a multi-pronged program designed to remedy any problem concerning the disclosure of on-time performance information. First, according to Hawaiian, it has implemented a special training program describing how to comply with Hawaiian's obligation to report on-time performance information to all new and experienced call center reservation agents. Second, Hawaiian states that it has implemented a similar training program for customer service representatives at airports who interact with the public on matters concerning reservations and flight information. Third, Hawaiian states it will self-audit the performance of its call center reservation agents to determine the effectiveness of its training program. Fourth, Hawaiian points out that it has revised the manuals used by its customer service personnel at airports, the Passenger Service Manual, and by its call-center reservation agents, the Focus Manual, to provide more specific direction concerning Hawaiian's obligation to provide on-time performance information. Fifth, Hawaiian states that it has developed a notice for its reservation agents explaining Hawaiian's obligation to disclose on-time performance information and how to provide the information upon request that appears on reservation agents' screens on a quarterly basis.

Hawaiian also states that it plans to make on-time performance information more available to the public generally, including posting a link to the Bureau of Transportation Statistics website on Hawaiian's own website, informing callers to its Interactive Voice Response ("IVR") system about the availability of on-time performance information through Hawaiian's website, and sending an email about the disclosure of on-time performance information to travel agents.

Despite the existence of these mitigating factors, we view seriously Hawaiian's failure to disclose on-time performance information as required by Part 234. Accordingly, after carefully considering all of the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Department finds that Hawaiian failed to disclose the on-time performance of its flights in violation of 14 CFR Part 234 and 49 U.S.C. § 41712. In order to avoid litigation, and without admitting or denying the violations described above, Hawaiian agrees to settle these matters with the Enforcement Office through the issuance of this consent order directing it to cease and desist from future similar violations of Part 234 and 49 U.S.C. § 41712 and assessing it \$50,000 in compromise of potential civil penalties that are otherwise payable and due. Of this amount, \$25,000 shall be due and payable with 15 days of the date of the issuance of this order. The remaining \$25,000 shall be suspended for 12 months following the service date of this order and then forgiven unless Hawaiian violates this order's cease and desist or payment provisions during this time period, in

¹ In this regard, the carrier points to the Department's August Air Travel Consumer Report, which shows that Hawaiian had the highest on-time arrival percentage of all reporting carriers during the 12 months ending June 2007 for all airports served – 93.2 percent.
<http://airconsumer.ost.dot.gov/reports/2007/august/200708atcr.doc>.

which case the suspended \$25,000 will become due and payable immediately and the carrier will be subject to further enforcement action. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's on-time disclosure requirements by Hawaiian, as well as by other domestic 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 discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Hawaiian Airlines, Inc. has violated 14 CFR 234.11 by failing to disclose on-time performance information as required;
3. We find that by engaging in the conduct and violation described in ordering paragraph 2 above, Hawaiian has engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Hawaiian Airlines, Inc., and all other entities owned or controlled by or under common ownership with Hawaiian Airlines, Inc., its successors and assignees are ordered to cease and desist from further violations of 14 CFR Part 234.11 and 49 U.S.C. § 41712;
5. Hawaiian is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above, of which \$25,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$25,000 shall be suspended for 12 months after the date of issuance of this order and then forgiven, unless, during this time Hawaiian violates this order's cease and desist or payment provisions, in which case the entire amount shall become due and payable immediately and Hawaiian shall be subject to additional enforcement action; and
6. Payment 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 in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Hawaiian Airlines, Inc. to the assessment of interest, penalty and collection charges under the Debt Collection Act and 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:

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Deputy General Counsel

(SEAL)

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