

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

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In the Matter of)	
)	
Oversales and Denied Boarding Compensation)	Docket DOT-OST-01-9325
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14 C.F.R. Part 250)	
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**COMMENTS OF DELTA AIR LINES, INC. ON NOTICE OF
PROPOSED RULEMAKING AMENDING 14 CFR PART 250**

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January 22, 2008

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**COMMENTS OF DELTA AIR LINES, INC. ON NOTICE OF
PROPOSED RULEMAKING AMENDING 14 CFR PART 250**

Delta Air Lines, Inc. (“Delta”) hereby respectfully submits the following comments in reference to the Notice of Proposed Rulemaking pertaining to 14 C.F.R. Part 250 published in the Federal Register on November 20, 2007. Delta supports the and incorporates by reference the comments submitted by the Airline Transport Association (ATA) in response to this NPRM, but files these separate comments to emphasize two key points of special significance to Delta.

Section 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.

First, with respect to the proposal to double the maximum compensation for passengers involuntarily denied boarding, Delta wishes to reemphasize the important issue raised by the ATA in response to the Department’s prior Advanced Notice of Proposed Rulemaking published last July. *See* 72 Fed. Reg. 37491. Part 250 has tied the maximum compensation for involuntary denied boarding to ticket prices for decades. As

the Department acknowledged in the ANPRM, airline ticket prices have not doubled since the original rule was adopted. To the contrary, the average price of airline tickets has sharply declined in real terms. As ATA noted in its prior comments, taking inflation into account, system-wide yield for U.S. carriers in 2006 was 49.45 percent of what it was in 1978 (4.10 cents/mile versus 8.29 cents/mile). Despite this, as ATA also noted, involuntary denied boarding is extremely rare under the current regulatory scheme. Thus, there is no justification for doubling the current compensation caps.

Because ATA made these arguments at length in response to the ANPRM, and the Department has nonetheless proposed proceeding with doubling the caps, Delta recognizes that the Department may be reluctant to reverse course at this point. Nonetheless, Delta urges the Department to reconsider. The current system has been working for decades and there is simply no need for any change in the compensation limits. On the other hand, if the DOT is convinced that some increase is appropriate, any increase should be tied to the nominal increase in average ticket yield as previously proposed in the ANPRM.

Section 250.2 Applicability.

Second, Delta wishes to draw the Department's attention to a significant concern raised by the proposal to expand the application of Part 250 to flight segments being operated by aircraft with a designed passenger capacity of 30 or more.

At the outset, Delta wishes to make clear that it is committed to providing customer service that is as seamless as possible to passengers served by the Delta network, whether those passengers fly on Delta-operate aircraft or on aircraft operated by one of our regional Delta Connection carriers. This is true with respect to oversale

situations as well. Delta's contract of carriage generally provides for the same denied boarding payments to passengers who are denied boarding on a Delta Connection flight as it does for those who are denied boarding on a Delta-operated flight. With respect to Delta Connection passengers, this policy is a voluntary initiative on Delta's part. As the NPRM observes, the current regulations do not apply to flight segments operated with smaller aircraft.

Nonetheless, there are important reasons to treat smaller aircraft differently than mainline aircraft in the regulations. The smaller aircraft are designed with a much narrower tolerance with respect to weight and balance and related performance restrictions. As a result, they are far more susceptible to situations in which, for safety reasons, carriers must operate them with fewer passengers on board than the number of seats on the aircraft. The primary driver of this requirement is weight and balance restrictions due to excessive passenger luggage, aircraft performance limitations caused by weather (*e.g.* temperature or wind direction and/or velocity), or infrastructure issues (*e.g.* shorter than planned runway due to construction). These causes are generally unpredictable and cannot reasonably be taken into account during the booking process. The passengers who are denied boarding in this circumstance were denied because, for safety reasons, the capacity of the aircraft changed shortly before departure, not because the carrier elected to oversell the subject flight.

The current regulations contain an explicit exception for situations in which the denied boarding occurs because the carrier was forced to "substitute[e] equipment of lesser capacity when required by operational or safety concerns." 14 C.F.R. § 250.6(b). This is a logical exception. The point of the regulations is to address the issue of

intentional overbooking of flights. Denied boarding that occurs as a result of the substitution of equipment with a lesser capacity due to operational or safety reasons is entirely different, more akin to the unexpected cancellation of a flight for safety reasons than to intentional overbooking.

The same logic applies with equal force to denied boardings that occur due to weight and balance concerns. Although there is no physical substitution of the actual aircraft used to operate the flight, the weight and balance issue does in fact cause the scheduled aircraft itself to become “equipment with lesser capacity” than the carrier had intended to use to operate the flight. The same physical aircraft is used, but it cannot operate with its expected capacity due to operational and safety concerns. Thus, the same logic which creates the current operational and safety exception in 14 C.F.R. 250.6(b) also justifies an exception from the regulations when the denied boarding occurs as a result of a reduction in the capacity of the scheduled aircraft due to weight and balance concerns.

This anomaly in the regulation between reduced capacity resulting from substitution of equipment and reduced capacity due to weight and balance concerns was of limited significance when the regulation only applied to flights operated with large aircraft, since weight and balance issues are not generally a significant concern with such aircraft. However, if the Department expands the application of the regulations to smaller aircraft, the anomaly will suddenly become much more significant. Accordingly, the Department should either maintain the current limitation on scope based on aircraft size, or amend 14 C.F.R. § 250.6(b) to exempt denied boardings that occur as a result of weight and balance issues. Specifically, if DOT decides to proceed with its proposal to

expand the applicability of Part 250 to aircraft with 30 or more seats, Delta respectfully requests that the current language of 14 C.F.R. § 250.6(b) also be amended as follows:

(b) The flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger because of substitution of equipment of lesser capacity when required by operational or safety reasons or because weight and balance restrictions prevent the aircraft from operating at full seating capacity.

This amendment is consistent with the intent and spirit of the policy that has been in place for decades. If the Department proceeds with its proposal to apply Part 250 to smaller aircraft, it is essential that it remove the inconsistent treatment of denied boardings due to weight and balance concerns.

Conclusion

Again, Delta would like to thank the Department of Transportation for providing the opportunity to comment on the proposed revisions to 14 C.F.R. Part 250, Oversales and Denied Boarding Compensation. Delta respectfully requests that the Department give serious consideration to the comments provided herein.

Respectfully submitted,



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