



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

Issued by the Department of Transportation  
on the 19<sup>th</sup> day of November 2007

**Delta Air Lines, Inc.**

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

**OST-2007-26781**

**Served: November 19, 2007**

**CONSENT ORDER**

This order is the result of an investigation by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) which revealed the failure of Delta Air Lines, Inc. (Delta) to provide on-time performance (OTP) information to consumers in violation of 14 CFR Part 234 (Part 234) and 49 U.S.C. § 41712. This order directs Delta to cease and desist from future similar violations of Part 234 and section 41712, and assesses the carrier \$115,000 in civil penalties.

Section 234.8 of the Department's regulations, 14 CFR 234.8, requires carriers reporting on-time performance information, including Delta, 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 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 significant lack of compliance with section 234.11 by Delta employees. In 2006 and 2007, staff in the Enforcement Office made a number of telephone calls to Delta's reservations system to determine if Delta's employees were providing passengers on-time performance information upon request. Delta failed to provide the requested on-time performance information to callers during a substantial number of those calls. During those calls, Delta reservations agents indicated they did not have on-time performance information to provide for some of the flights.<sup>1</sup>

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<sup>1</sup> Delta also did not comply with section 234.11 with respect to calls made to Delta's reservation agents regarding the on-time performance of flights operated by Delta's connection carriers, i.e., Comair, Atlantic Southeast Airlines, and Skywest Airlines. This order covers those violations.

In mitigation, Delta states that the failure of Delta reservations agents to disclose OTP data with respect to Delta Connection flights was caused by an unknown and unforeseen computer software problem, which Delta discovered and fixed prior to the receipt of any enforcement inquiry from the Department on this issue. Delta notes that the software problem only affected certain Delta Connection flights and only with respect to customers that used Delta's internal reservations systems and that customers using global distribution systems or Delta's website (which account for about 80% of Delta's bookings) were not affected by the computer problem.

Delta further states that its initial training for 'new hire' reservations agents provided specific instructions on how to find and provide OTP data to customers. In addition, Delta states that its Quality Assurance Monitors audited thousands of calls each month, and any non-compliance with regulatory requirements discovered during those audits would be discussed with the individual reservations agent. According to Delta, its experience on the basis of these audits is that very few, if any, customers ever ask Delta agents for the OTP information.

Delta further states that as a result of the Enforcement Office's inquiry, Delta has taken the following additional steps to reinforce further its training, policies, and procedures on providing OTP data to customers: It issued an updated Job Aid Card to all reservations agents specifically focusing each agent's attention on the requirement and procedures for OTP data disclosure; it posted several notices on its intranet reminding Delta reservations agents about how to locate and disclose OTP data; it is implementing a new recurrent training program for reservations agents with a discrete section on the requirements and procedures for OTP data disclosure; and, it implemented a new training module for 'new hire' reservations agents on OTP data disclosure requirements. With respect to both the 'new hire' training and recurrent training on OTP data disclosure, Delta states that an agent must receive a perfect (100%) score on the post-training test in order to continue with his/her training or employment with Delta. Delta further submits that these actions have worked and the positive impact is reflected in the results of the Department's most recent test calls.

Despite the existence of these mitigating factors, we view seriously Delta's failure to disclose on-time performance information as required by Part 234. Accordingly, after carefully considering all 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 Delta 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, Delta 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 \$115,000 in compromise of potential civil penalties otherwise due and payable. Of this amount, \$57,500 shall be due and payable within 15 days of the date of the issuance of this order. The remaining \$57,500 shall be suspended for 12 months following the service date of this order and then forgiven unless Delta violates this order's cease and desist or payment provisions during this time period, in which case the suspended \$57,500 will become due and payable immediately upon the Enforcement Office's finding of a violation and the carrier may 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 reporting requirements by Delta 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 Delta Air Lines, 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, Delta Air Lines, Inc. has engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Delta Air Lines, Inc., and all other entities owned, affiliated, or controlled by or under common ownership with Delta Air Lines, Inc., its successors and assignees are ordered to cease and desist from further violations of 14 CFR Part 234 and 49 U.S.C. § 41712;
5. Delta Air Lines, Inc. is assessed \$115,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above, of which \$57,500 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$57,500 shall be suspended for 12 months after the date of issuance of this order and then forgiven, unless during this time period Delta Air Lines, Inc. violates this order's cease and desist or payment provisions, in which case the entire amount shall become due and payable immediately upon the Enforcement Office's finding of a violation and Delta Air Lines, Inc. may 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 Delta Air Lines, 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:**

ROSALIND A. KNAPP  
Deputy General Counsel

(SEAL)

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