



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

Issued by the Department of Transportation
On the Fifteenth day of February, 2012

Allegiant Air, LLC

**Violations of 14 CFR Parts 382 and 399, and
49 U.S.C. §§ 41705, 41702 and 41712**

Docket OST 2012-0002

Served February 15, 2012

CONSENT ORDER

This order concerns violations by Allegiant Air, LLC, (Allegiant) of (1) the requirements of 14 CFR Part 382 (Part 382) with respect to properly coding and recording its disability-related complaints in connection with required disability reporting to the Department of Transportation (Department), as well as providing dispositive written responses to written consumer complaints alleging a violation of Part 382, and related statutory provisions, 49 U.S.C. §§ 41702 and 41705; (2) the Department's full-fare advertising requirements, 14 CFR 399.84; and (3) 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

Many of the violations addressed in this order were uncovered during a February 2011 on-site regulatory compliance inspection at Allegiant's headquarters conducted by staff of the Department's Office of Aviation and Enforcement (Enforcement Office). This order directs Allegiant to cease and desist from future similar violations and assesses the carrier \$100,000 in civil penalties.

The Department's Rule Protecting Disabled Passengers

Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. To the extent that the ACAA and Part 382

violations occurred in interstate air transportation, the incidents are also violations of 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation. Violations of the ACAA and Part 382, as well as of 49 U.S.C. § 41702, are unfair and deceptive practices in violation of 49 U.S.C. § 41712.

Pursuant to 14 CFR 382.155, carriers are required to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of receipt of the complaint.¹ An appropriate dispositive response must specifically discuss the complaint at issue, state the carrier's view of whether a violation occurred, and advise the complainant that he or she may refer the matter to the Department for an investigation.

14 CFR 382.157 requires carriers to categorize disability-related complaints they receive according to the type of disability and nature of complaint and submit annual reports to the Department detailing the disability complaints received the prior calendar year.² If a written complaint contains multiple issues, each issue must be coded separately to adequately account for the number of complaints a carrier receives.³

The Enforcement Office investigated Allegiant's compliance with the ACAA and Part 382 by reviewing a sample of the disability-related complaints that Allegiant received directly from passengers in 2009 and 2010, as well as disability-related complaints that the Department received directly from passengers against Allegiant during 2009 and 2010.

The Enforcement Office found that in multiple instances, Allegiant failed to provide a dispositive written response to a written complaint alleging a violation of Part 382 and thereby failed to comply with the requirements of section 382.155. In those instances, Allegiant addressed the complaints through a telephone call rather than through written means.

The Enforcement Office also found that Allegiant violated section 382.157 both by failing to record disability complaints filed with it, as well as by failing to properly categorize and account for all the disability-related issues that were raised in the complaints filed with it that it did record. As a result of these actions, Allegiant's annual 2009 and 2010 reports submitted to the Department were inaccurate.

¹ Prior to the 2009 amendment of Part 382, section 382.65(b)(3) contained the dispositive response requirement.

² Prior to the 2009 amendment of Part 382, section 382.70 contained the disability-related complaint reporting requirement.

³ The Department's 2004 guidance document on the reporting requirements for disability-related complaints, notes that carriers must categorize and report each separate disability-related complaint if a customer complaint contains more than one disability-related complaint. Reporting Requirements for Disability-Related Complaints, 69 Fed. Reg. 77885, 77888 (Dec. 29, 2004).

The Department's Full-Fare Advertising Rule

As an air carrier, Allegiant is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, advertisements specifying airfares must state the full price to be paid by the consumer. Under long-standing enforcement case precedent that expired on January 25, 2012, the Department allowed taxes and fees collected by carriers and ticket agents, such as passenger facility charges and departure taxes, to be stated separately from base fares in advertisements so long as such taxes and fees were levied by a government entity, were not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, were collected on a per-passenger basis, and their existence and amounts were clearly indicated at the first point in the advertisements where a fare was presented so that consumers could immediately determine the full fare to be paid. Carrier or ticket agent-imposed charges, such as fuel surcharges and administrative fees were not permitted to be stated separately from the advertised fare, unless the full price including those charges was prominently displayed in the advertisement. Thus, for example, fare advertisements that 1) failed entirely to identify the existence and amount of separate additional taxes and fees at the first point at which a fare was displayed, 2) included only general statements regarding the existence of such taxes and fees, or 3) separately stated carrier-imposed fees, other than as described above, did not comply with section 399.84, or the Department's enforcement case precedent.⁴ Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

With respect to Internet fare listings, additional charges that properly may be stated separately from the advertised fare were allowed to be disclosed through a prominent link placed adjacent to the stated fares that noted that taxes and fees were extra. The link was required to directly take the viewer to the bottom of the screen, to a pop-up, or to a place on a separate screen where the nature and amount of taxes and fees were prominently and immediately displayed.⁵ Air carriers and ticket agents were required to provide similar notice when air fares were held out as "free," but government-imposed taxes and fees had to be paid by a passenger in order to use the "free" fare. On the other hand, carrier- or

⁴ On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which became effective January 26, 2012, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition, as described above, on omitting carrier- or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares remains in effect.

⁵ For example, under the enforcement policy in effect prior to January 26, 2012, a carrier or ticket agent could advertise a flight in the following manner: \$260 + Taxes and Fees with the taxes and fees language as a hyperlink that takes the viewer directly to the bottom of the screen, or to the place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed. See Department notices entitled "Disclosure of Air Fare Variations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements," dated November 4, 2004; "Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

agent-imposed surcharges, e.g., fuel, insurance and service charges or other such costs, always had to be included as described above in the advertised price.

For a period of time during December 2010, Allegiant advertised on its homepage a banner that stated, “Happy Holidays! Fly Free* to Vegas.” The advertisement further stated, “four-night minimum stay” and “click here for details!” The banner did not contain notice that taxes and fees were excluded from the advertised “free” fare. Although an asterisk appeared after the words “Fly Free,” there was no language regarding taxes and fees on the page on which the asterisk appeared, nor was there a hyperlink proximate to the words “Fly Free” that took consumers to a place on a separate screen where the full amount of taxes and fees were disclosed. Rather, once consumers clicked on the link in the advertisement, they were taken to a landing page where they could see the amount of taxes and fees upon scrolling to the bottom of the page. Thus, consumers were not notified of the existence and amount of taxes and fees applicable to the “free” fare until they arrived at the landing page and scrolled down. Allegiant’s failure to provide proper notice of taxes and fees that may legally be stated separately from the fare violates 14 CFR 399.84 and 49 U.S.C. § 41712.

Similarly, for a period of time in early January 2011, Allegiant’s homepage contained a banner that stated, “Fly Free* to Tampa Bay.” At the bottom of the homepage, next to an asterisk, the existence of applicable taxes and fees was disclosed, which included Allegiant’s \$14.99 convenience fee for ticket purchases except those made at one of the carrier’s airport ticket offices. Because Allegiant’s convenience fee applied to the “free” fares, those fares were not considered free and the convenience fee should have been included in the initial fare quote. The same issue is apparent in Allegiant’s December 2010 “Happy Holidays! Fly Free* to Vegas” advertisement, referenced above. By advertising in this manner, Allegiant violated the full-fare advertising requirements specified in 14 CFR 399.84 and the statutory prohibition against unfair and deceptive practices and unfair methods of competition found in 49 U.S.C. § 41712.

Mitigation

Allegiant states that it takes compliance with the Department’s requirements very seriously, that it has cooperated fully with the Department’s investigation, and that any violations were inadvertent.

Allegiant states additionally that it values input from passengers with disabilities and that to the best of its knowledge, it has provided a thorough response to each disability-related complaint it has received, regardless of the type, source or merits of the complaint. Allegiant notes that telephone communication can often facilitate instantaneous back-and-forth between the consumer and the carrier permitting a faster and more satisfying resolution of the complainant’s concerns, and that it is unaware of any situation in which a complainant has asserted that the substance of his or her disability-related complaint was not addressed by Allegiant.

Regarding advertising, Allegiant states that in its view, existing Department guidance is unclear on acceptable methods of tax and fee disclosure in the specific context of fly-free advertising. Allegiant states additionally that it acted in good faith in designing the ads at issue, had no intention of obscuring information or misleading consumers, and that it received no consumer complaints regarding either advertisement.

Decision

The Department views compliance with the Federal aviation statutes and Department regulations and orders very seriously. In particular, the Enforcement Office disagrees with Allegiant Air, LLC's, stated view that existing guidance is unclear when it comes to disclosure of taxes and fees in connection with offers for "free" fares. Numerous Enforcement Office notices and Department consent orders address the proper disclosure of additional taxes and fees in fare advertisements. The Enforcement Office has carefully considered the information provided by Allegiant Air, LLC, and continues to believe that enforcement action is warranted. The Enforcement Office and Allegiant Air, LLC, have reached a settlement of this matter in order to avoid litigation. Allegiant Air, LLC, while neither admitting nor denying the violations found here, consents to the issuance of this order to cease and desist from future similar violations of 14 CFR Parts 382 and 399, and 49 U.S.C. §§ 41705, 41702, and 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 establishes a strong deterrent to future similar unlawful practices by Allegiant Air, LLC, and other carriers.

This order is issued under the authority 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 Allegiant Air, LLC, violated 14 CFR 382.157 by failing to properly categorize and accurately report its disability-related complaints;
3. We find that Allegiant Air, LLC, violated 14 CFR 382.155 by failing to provide dispositive written responses to written complaints involving disabled travelers;
4. We find that Allegiant Air, LLC, in the instances described in ordering paragraphs 2 and 3, above, violated the Air Carrier Access Act, 49 U.S.C. § 41705;
5. We find that to the extent the violations described in ordering paragraphs 2 and 3 occurred in interstate air transportation, the conduct violated 49 U.S.C. § 41702;

6. We find that Allegiant Air, LLC, violated 14 CFR 399.84 by failing to properly disclose taxes and fees required to be paid in connection with fly-free promotions;
7. We find that by engaging in the conduct described in ordering paragraphs 2 through 6, above, Allegiant Air, LLC, engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
8. We order Allegiant Air, LLC, and all other entities owned or controlled by, or under common ownership and control with Allegiant Air, LLC, its successors, affiliates, and assignees, to cease and desist from further violations of 14 CFR 382.155, 14 CFR 382.157, 14 CFR 399.84, and 49 U.S.C. §§ 41705, 41702, and 41712;
9. Allegiant Air, LLC, is assessed \$100,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 7, above. Of this total penalty amount, \$50,000 shall be due and payable 30 days after the service date of this order. The remaining \$50,000 shall be paid if Allegiant Air, LLC, violates this order's cease and desist provisions during the 12 months following the service date of this order, and Allegiant Air, LLC, may be subject to further enforcement action; and
10. 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. 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 Allegiant Air, LLC, 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

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