



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

**Issued by the Department of Transportation
On the Nineteenth day of July, 2012**

**Request to Extend the Compliance Relief
Provided by Order 2012-1-2**

**Docket: DOT-OST-2010-0140
Served: July 19, 2012**

RESPONSE TO REQUEST TO EXTEND DOT ORDER 2012-1-2

By this order, we are denying the request of Airlines for America, the International Air Transport Association, the Regional Airline Association, and the Air Carrier Association of America (collectively Associations) to extend the compliance relief regarding 14 CFR 399.85(c) and 399.87 provided by Order 2012-1-2 for the reasons discussed below. The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) will, if appropriate, continue to pursue enforcement action where it finds violations of 14 CFR 399.85(c) and 399.87, which deal with the disclosure and assessment of baggage fees. However, the Associations are reminded that, when reviewing carrier compliance with these provisions, as in all compliance matters, the Enforcement Office has considerable discretion and will consider the facts of each potential enforcement matter on a case-by-case basis before taking any action.

Background

On April 25, 2011, the Department of Transportation (Department or DOT) published a final rule in the Federal Register titled “Enhancing Airline Passenger Protections,” containing many new requirements to improve the air travel environment for consumers. See 76 Fed. Reg. 23110 (April 25, 2011). The effective date of certain provisions of the rule, including 14 CFR 399.85(c) and 399.87, was extended to January 24, 2012. On November 28, 2011, the Associations filed a petition urging the Department to postpone for an additional year the implementation of certain of the new rules on bag fees.¹ On

¹ For a more detailed account of the provisions of the final rule and the effective date of various provisions, see Order 2012-1-2. The order also provides an account of the Department’s collaboration with the regulated entities to assist them in complying with the various requirements of the rule and a summary of the petition and a related petition and letters of support.

January 6, 2012, in Order 2012-1-2, the Department denied the Association's petition to delay the effectiveness of sections 399.85(c) and 399.87, but announced that the Enforcement Office would not take enforcement action on violations of those sections for a six-month period with respect to interline itineraries or with respect to code-share itineraries involving international flights, or interline itineraries involving domestic flights of different mainline carriers, if certain conditions were met. The conditions required that carriers (1) disclose on e-ticket confirmations that additional airline baggage fees may apply and provide a hyperlink allowing passengers to link to the applicable baggage allowance and fee information and (2) reimburse upon request any passenger that was not charged the same baggage fees throughout his or her itinerary if that resulted in the passenger being overcharged.

The Request

The Associations now request that the Enforcement Office extend until January 24, 2013, the policy of applying enforcement discretion in monitoring compliance with sections 399.85(c) and 399.87 as described in Order 2012-1-2. The request describes the work the industry has already completed to comply with the Department's rules regarding airline fees for baggage and states that carriers have incurred significant costs in their compliance efforts. The request goes on to describe the additional work that remains to be completed to provide baggage fee notices to passengers at the time of the fare quote and on e-ticket confirmations and to apply baggage rules at the airport for some code-share and all interline itineraries. According to the request, the need to change and reintegrate carrier systems without interrupting ongoing operations has been difficult and time consuming. Meanwhile, carrier coordination and software revisions and testing are ongoing and will not be completed by July 24, 2012. The request indicates that carriers estimate that they can have their systems mostly automated and be compliant by January 2013.

The Associations' request states that 90 percent of itineraries comply with Department baggage rules and that carriers are receiving only a small number of complaints regarding baggage fee overcharges. The request states that "a lack of complaints to carriers and the Department" concerning the baggage rules in sections 399.85(c) and 399.87 suggests that "consumers are satisfied with carrier efforts." More specifically, the request states that one carrier reported three complaints and another reported 20 requests for refund, of which it found 16 to be meritorious. The Associations take the position that an extension of the non-enforcement period "will not materially impact the vast majority of passengers and will allow carriers to provide better customer service in the future."

The Department has not received any comments supporting or opposing the Associations' request.

Decision

We are denying the request to continue a general enforcement policy, as described in Order 2012-1-2, of not enforcing sections 399.85(c) and 399.87 where certain conditions are met. Carriers have known of the requirements in these sections since April 2011 and have already received two extensions, one to the rule's effective date and the other by way of the enforcement policy announced in Order 2012-1-2. Consumers will continue to be confused about their baggage fees until carriers comply with all of the Department's rules regarding baggage fees.

The Department has received at least 25 complaints from passengers alleging that they were required to pay different baggage fees throughout their itinerary and that they were overcharged in violation of our rules. Of those complaints, at least 20 appear to be meritorious. In the Enforcement Office's experience, for each complaint made to the Department, there are significantly more consumers who experienced similar problems, but who chose not to complain or did not know how to complain to the Department.² Accordingly, the Enforcement Office believes that enforcement action may be warranted in certain cases. However, the Enforcement Office recognizes that carriers have invested significant time and resources in their efforts to comply with the rules regarding baggage fees and has significant discretion in when to pursue enforcement action. Additionally, the Enforcement Office believes that in every enforcement matter it is important to consider all relevant factors. Before taking enforcement action against a carrier, the Enforcement Office will carefully investigate the alleged violations of sections 399.85(c) and 399.87 and the carrier's efforts to achieve compliance, the specific obstacles it faced in doing so and its efforts to mitigate any consumer harm. Additionally, the Enforcement Office will consider whether carriers reimbursed upon request any passenger who was overcharged by being required to pay different baggage fees throughout his or her itinerary. Each matter will be considered on a case-by-case basis.

Additionally, although denying the request, the Department will continue to work collaboratively with the regulated entities to assist them in complying with these requirements, including attending industry meetings to answer questions, providing further clarifications, as needed, and publishing guidance on its website.

ACCORDINGLY, we are denying the request of the Associations to extend the compliance relief provided by Order 2012-1-2. A copy of this order will be served on the petitioners.

By:

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(SEAL)

*An electronic version of this document is available at
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² Past informal surveys indicate that the ratio is between 25 and 100 consumer complaints to carriers for each one the Department receives.