

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

**ENFORCEMENT POLICY
REGARDING MISTAKEN FARES**

NOTICE

This notice provides the Office of Aviation Enforcement and Proceedings' (Enforcement Office) current policy on "mistaken fares."

Background

On April 25, 2011, the Department of Transportation issued a final rule on enhancing airline passenger protections which included a provision prohibiting airlines and other sellers of air transportation from increasing the price of air transportation after a purchase has occurred (the post-purchase price increase prohibition). See 14 C.F.R. § 399.88. Under section 399.88, a purchase occurs when the full agreed upon amount has been paid by the consumer.

On June 15, 2012, the Enforcement Office issued Answers to Frequently Asked Questions about the application of the post-purchase price increase rule to mistaken fares. Mistaken fares are offers by an airline or other seller of air transportation to sell tickets for air transportation for a fare that is usually substantially lower than the intended ticket price for the class of service being sold. The Enforcement Office explained that if a consumer purchases a fare and receives confirmation of the purchase and the purchase appears on the consumer's credit card statement and/or online account summary, then there has been a purchase whether or not it was a mistaken fare and the post purchase price prohibition in section 399.88 applies. The Enforcement Office also reiterated that it would consider a contract of carriage provision that reserves the right to cancel such a mistaken fare ticket or otherwise attempts to relieve a carrier of the prohibition against post-purchase price increases to be an unfair and deceptive practice in violation of 49 U.S.C. § 41712. See § XI(8), *Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections*, available at http://www.dot.gov/sites/dot.gov/files/docs/EAPP_2_FAQ.pdf.

Since the rule prohibiting post-purchase price increases took effect, a number of mistaken fare incidents have occurred. The Enforcement Office has generally enforced the post purchase price prohibition rule and required airlines to honor mistaken fares.¹

¹ In February 2015, United Airlines experienced a mistaken fare situation where, in order to purchase a ticket, individuals had to go to United's Denmark website which had fares listed in Danish Krone throughout the purchasing process. Only people who identified "Denmark" as their location/country when entering billing information at the completion of the purchase process were able to complete their purchase at the mistaken fare levels. The Enforcement Office decided not to take action against United for not honoring the fare offers because the fare offer was not marketed to consumers in the United States. The Enforcement Office also noted its concern

Notice of Proposed Rulemaking

On May 23, 2014, the Department published a Notice of Proposed Rulemaking (NPRM) on transparency of airline ancillary fees and other consumer protection issues that sought comment on a number of proposals to enhance protections for air travelers and improve the air travel environment.² The NPRM also stated that the Department is contemplating revising the post-purchase price provision of § 399.88 to better address the issue of mistaken fares. In that rulemaking, the Department expressed concern regarding how quickly mistaken fares are spread through postings on aviation and travel websites, forums, and blogs.³ The Department specifically solicited comment on how to address “bad faith” purchases of mistaken fares. The comment period on this NPRM closed on September 29, 2014, and the Department’s review of those comments is ongoing.

Enforcement Policy

The authority to pursue or not to pursue enforcement action against airlines or other sellers of air transportation with respect to air travel consumer protection and civil rights requirements lies with the Department’s Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. The Assistant General Counsel has decided not to enforce section 399.88 with respect to mistaken fares while the Department completes the aforementioned rulemaking process. As a matter of prosecutorial discretion, the Enforcement Office will not enforce the requirement of section 399.88 with regard to mistaken fares occurring on or after the date of this notice so long as the airline or seller of air transportation: (1) demonstrates that the fare was a mistaken fare⁴; and (2) reimburses all consumers who purchased a mistaken fare ticket for any reasonable, actual, and verifiable out-of-pocket expenses that were made in reliance upon the ticket purchase, in addition to refunding the purchase price of the ticket. These expenses include, but are not limited to, non-refundable hotel reservations, destination tour packages or activities, cancellation fees for non-refundable connecting air travel and visa or other international travel fees. The airline may ask the consumer requesting out-of-pocket expenses to provide evidence (i.e. receipts or proof of cancellations) of actual costs incurred by the consumer. In essence, the airline or seller of air transportation is required to make the consumer “whole” by restoring the consumer to the position he or she was in prior to the purchase of the mistaken fare. The enforcement policy outlined in this notice is temporary and will remain in effect only until the

that to obtain the fare, some purchasers had to manipulate the search process on the website in order to force the conversion error to Danish Krone by misrepresenting their billing address country as Denmark when, in fact, Denmark was not their billing address country.

² See *Notice of Proposed Rulemaking*, Docket DOT-OST-2014-0056, available at, <http://www.dot.gov/sites/dot.gov/files/docs/Passenger%20Protections%20NPRM%20April%2016%202014.pdf> (April 14, 2014).

³ Although the airline or seller of air transportation may promptly correct a mistaken fare and halt the sale, due to the rapid speed at which information is disseminated, significant ticket sales, sometimes in the thousands, may occur before the fare becomes unavailable.

⁴ The burden rests with the airline or seller of air transportation to prove to the Enforcement Office that an advertised fare and the resulting ticket sales constitutes a mistaken fare situation. If a sale does not qualify as a mistaken fare situation, the carrier or other seller of air transportation is bound by § 399.88.

Department issues a final rule that specifically addresses mistaken fares. If, based on comments received in the rulemaking process, the Department determines that section 399.88 should remain as written, airlines and other sellers of air transportation would be expected to comply and the Enforcement Office would enforce the requirement.

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C-70), 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

By:

/s/

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Dated: May 8, 2015

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