

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

**GUIDANCE ON AIRLINE BAGGAGE LIABILITY AND RESPONSIBILITIES OF CODE-SHARE
PARTNERS INVOLVING INTERNATIONAL ITINERARIES**

NOTICE

This notice is intended to give guidance to U.S. and foreign air carriers on two tariff matters: first, tariffs relating to liability for lost, stolen, delayed or damaged baggage carried on international itineraries; and second, tariffs that appear to assign responsibility, in code-share service, to the operating carrier rather than the selling carrier (i.e., the carrier shown on the ticket).

We have become aware of tariff provisions filed by several carriers that attempt, with respect to checked baggage, to exclude certain items, generally high-cost or fragile items such as electronics, cameras, jewelry or antiques, from liability for damage, delay, loss or theft. A typical provision found in carrier tariffs and disclosed on carrier websites states that the carrier does not assume liability for loss, damage, or delay of “certain specific items, including: . . . antiques, documents, electronic equipment, film, jewelry, keys, manuscripts, medication, money, paintings, photographs”

Such exclusions, while not prohibited in domestic contracts of carriage, are in contravention of Article 17 of the Montreal Convention (Convention),¹ as revised on May 28, 1999. Article 17 provides that carriers are liable for damaged or lost baggage if the destruction, loss or damage” occurred while the checked baggage was within the custody of the carrier, except to the extent that the damage “resulted from the inherent defect, quality or vice of the baggage.”² Article 19 provides that a carrier is liable for damage caused by delay in the carriage of baggage, except to the extent that it proves that it took all reasonable measures to prevent the damage or that it was impossible to take such measures. Although carriers may wish to have tariff terms that prohibit passengers from including certain items in checked baggage, once a carrier accepts checked baggage, whatever is contained in the checked baggage is protected, subject to the terms of the

¹ *Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on May 28, 1999 at Montreal.

² The quoted language might absolve a carrier from liability for a fragile item that is damaged during transport. It would not absolve the carrier from liability for the item’s loss or theft.

Convention, up to the limit of 1000 SDRs (Convention, Article 22, para.2.).³ Carriers should review their filed tariffs on this matter and modify their tariffs and their baggage claim policies, if necessary, to conform to the terms of the Convention. In addition, carriers should ensure that their websites do not contain improper information regarding baggage liability exclusions applicable to international service.

A second issue of concern stems from airline tariffs related to code-share service. As a condition for approval of international code-share services, the Department has as a matter of policy required that "the carrier selling such transportation (i.e., the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in the contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected." (Order 2008-5-19, OST-2008-0064).⁴ Notwithstanding this clear language, several carriers have filed tariff provisions that purport to apply the terms and conditions of the operating carrier's contract of carriage generally, or in certain areas such as check-in time limits, unaccompanied minors, carriage of animals, refusal to transport, oxygen service, irregular operations, denied boarding compensation, and baggage acceptance, allowance and liability. Others state that passengers on code-share flights "may be subject" to the operating carrier's baggage charges. A number of carriers have no clear tariff rule on the subject. The intent of this DOT code-share approval provision may not be circumvented by tariff provisions attempting to allocate responsibility and contract of carriage provisions in different ways by the carriers involved, or by silence on the subject. As with the exclusionary provisions cited above, carriers should review their tariffs and practices and make revisions, if necessary, to reflect the conditions imposed in the Department's orders approving code-share service.

As a matter of policy, the Aviation Enforcement Office will consider the subject tariff provisions noted above involving exclusionary baggage provisions to be of no effect and in violation of the Convention and those involving code share relationships to be in violation of pertinent Department approvals of those code-share services. The tariffs and their application, and similar practices, in the view of the Aviation Enforcement Office, also constitute unfair or deceptive business practices and unfair methods of competition in violation of 49 U.S.C. § 41712. Carriers should, therefore, review their tariffs and practices with respect to these two areas and, if necessary, immediately modify their practices to conform to the Convention and Department code-share conditions and, within 90 days of this notice, revise their respective tariffs and modify appropriately the statements of their baggage and code-share policies on their websites. After that date, the Aviation Enforcement Office will pursue enforcement action in appropriate cases. This disclosure guidance, it should be noted, also extends to ticket agents. Questions regarding this notice may be addressed to the Office of Aviation Enforcement and

³ Article 22, para. 2 also allows the passenger to declare excess value for baggage, subject to payment of a supplementary fee if the carrier so requires. Some tariff provisions state that the higher declared value shall not apply to a list of valuable articles including "money, jewelry, silverware, negotiable papers, securities, business documents, samples, paintings..." Such rules are also inconsistent with the Convention.

⁴ Similar language occurs in numerous other approvals of code-share services.

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