



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

Issued by the Department of Transportation  
on the 6th day of January, 2012

**Petition to delay the effective date of  
14 CFR 399.85(c) and 399.87**

**Docket: DOT-OST-2010-0140**

**RESPONSE TO PETITION**

By this order, we are denying the petition of the Air Transport Association (now Airlines for America), the International Air Transport Association, the Regional Airline Association, the Air Carrier Association of America, and the Association of European Airlines (AEA) (collectively Associations) to delay the effectiveness of 14 CFR 399.85(c) and 399.87 for the reasons discussed below but also announcing that the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings has decided, for a short period of time, to apply its enforcement discretion in monitoring compliance with these provisions.

**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).<sup>1</sup> It expanded upon the improved passenger rights included in a DOT rule published on December 30, 2009. See 74 Fed. Reg. 68983 (December 30, 2009). As published, the effective date of the April 2011 rule was August 23, 2011, except for the full fare advertising amendments which were scheduled to be

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<sup>1</sup> The April 2011 rule, among other things, requires airlines to provide greater compensation to consumers involuntarily bumped from flights, expands the ban on lengthy tarmac delays, requires that advertised air fares be the full price to be paid by the consumer including all mandated government taxes and fees, establishes minimum standards for the subjects carriers must cover in customer service plans, expands the group of carriers that must respond to consumer complaints, prohibits most post-purchase price increases, requires carriers to provide passengers timely notice of flight status changes such as delays and cancellations, requires carriers to disclose fees for ancillary services (particularly baggage) sold in connection with tickets, and requires airlines to apply the same baggage allowances and fees throughout a passenger’s journey if their ultimate ticketed origin or destination is a U.S. point.

effective on October 24, 2011. On July 28, 2011, at the request of U.S. carrier associations, foreign carrier associations and a travel agent association, the Department extended the effective date of certain provisions of the rule. Specifically, the Department extended the effective date from August 23, 2011, to January 24, 2012, of the requirements pertaining to disclosure of certain baggage fees, post-purchase price increases, notification of flight status changes, and holding a reservation without payment for twenty-four hours. The Department also extended the effective date from October 24, 2011, to January 24, 2012, of the requirements pertaining to full fare advertising. The full fare advertising requirements were further extended until January 26, 2012, based on a petition from American Airlines. See 76 Fed. Reg. 78145 (December 16, 2011) and 76 Fed. Reg. 82115 (December 30, 2011).

Since the Enhancing Airline Passenger Protections final rule was published in the Federal Register on April 25, 2011, the Department has been working collaboratively with the regulated entities to assist them in complying with the various requirements in this rule. For example, on July 7 and 8 and again on July 21 and 22, the Department held two all-day public forums to explain the requirements in the final rule and to answer questions. In addition, on August 19, 2011, the Department's Aviation Enforcement Office issued a guidance document titled "Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections." This guidance document was amended on September 6, 2011, and again on October 19, 2011 and will be amended again during the week beginning January 9, 2012, to include more answers to frequently asked questions. See Office of Aviation Enforcement and Proceedings, DOT, Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (Aug. 19, 2011, revised Sept. 6, 2011 and Oct. 19, 2011) at <http://airconsumer.dot.gov/rules/rules.htm>. Staff members in the Department's Aviation Enforcement Office have also participated in numerous meetings and teleconferences to provide further guidance to assist industry stakeholders in their compliance efforts.

### **The Petition**

On November 28, 2011, the Associations other than AEA filed a petition urging the Department to postpone for an additional year the implementation of certain of the new rules on bag fees. More specifically, the request involves two provisions of the April 2011 final rule to enhance airline passenger protections: (1) a requirement in 14 CFR 399.85(c) for carriers to include bag allowance and fee information for a carry-on bag and the first and second checked bag in text form on e-ticket confirmations, and (2) a requirement in 14 CFR 399.87 that the same baggage allowances and fees that apply at the beginning of a passenger's itinerary apply throughout the entire itinerary if the journey originates or ends in the U.S.<sup>2</sup> The petition included sworn affidavits and statements from representatives of 11 U.S. and foreign air carriers and a technology supplier that works on carrier baggage information systems explaining the technical challenges and the difficulties they face in meeting the current deadline of January 24, 2012, for complying with sections 399.85(c) and 399.87.

On November 29, 2011, the Airline Tariff Publishing Company (ATPCO) filed an answer supporting the petition and asking the Department to create a taskforce comprised of ATPCO, DOT, the airlines and airline technology systems in order to help determine the most efficient method for the airline industry

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<sup>2</sup> The Associations also asked the Department to provide clarification on a number of issues that could impact carrier implementation plans for sections 399.87 and 399.85(c). These clarifications will be included in the guidance document noted above.

to implement the new DOT requirements. On December 7, 2011, AEA also filed a request that the effective date for sections 399.87 and 399.85(c) be delayed for one year. On December 20, 2011, the American Society of Travel Agents (ASTA) sent the Department a letter supporting the request of the Associations for an extension of the effective dates of the new rules on bag fees and asking that the Department include ASTA and others from the distribution and consumer side of the issue in any task force it creates to work on implementation of the new bag rules.

### **Reasons for the Petition**

In support of their petition for a one-year delay of the effective date of section 399.87, the Associations cite five principal reasons. First, the Associations point to a lack of a centralized database for bag fees and allowances. They explain that there is no industry standard today for carriers to tell one another which baggage rule to apply, so there will be “lots of work to do” to reach a consensus on how to resolve that issue. Second, the Associations cite the lack of internal IT systems and procedures that interact with baggage rule databases. Although they acknowledge that ATPCO is on track to have a baggage rule database ready by January 24, 2012, the airlines state that they will still need time to determine how best to access the information in that database or others, automate their communications with each other, transmit and incorporate the data into their check-in systems at websites, kiosks and ticket counters, test the connectivity, and train employees on the new rules and procedures. Third, the Associations state that existing systems are unable to accommodate downstream application of baggage rules or fees. They provide as an example the inability of their current check-in systems to store and access information on any flight segments that took place earlier in time, which they state is necessary in order to identify the first carrier in an itinerary and to be able to apply that airline’s baggage policy. Fourth, the Associations contend that there is a need for stakeholders (airlines, airline vendors and other groups providing baggage rule information) to adjust compliance plans and efforts as the Department continues to clarify specific details of the new baggage rules. Fifth, the Associations state their belief that there will be an increased likelihood of consumer harm if the extension is not granted because carriers would be “forced to adopt error-prone makeshift procedures that would substantially delay passenger check-in, create long lines at airports and substantially reduce the availability of automated self-service check-in, including the fast growing popular remote check-in systems.”

As for their request for a one-year delay of the effective date of section 399.85(c), the Associations assert that current carrier e-ticket automated processes that could be used to disclose baggage rules and fees to passengers do not have access to other carriers’ baggage rules and fees. They state that any system that is built to receive and reconcile baggage rule and fee information for section 399.87 will be used to communicate with e-ticket and website ticket purchasing engines to meet the baggage notice requirements of section 399.85(c), so the present inability to comply with section 399.87 will make it impossible to comply with section 399.85(c).

### **Decision**

We are denying the petitions to delay the effectiveness of sections 399.85(c) and 399.87. Carriers have known of the requirements since April 2011 and have already received a five-month extension. Consumers will continue to be confused about their baggage fees until the carriers comply with these new bag rules.

In any event, airlines should be able to comply with both sections 399.85(c) and 399.87 where all of the flights on a passenger's itinerary are operated by a single carrier with no code-share or interlining, or with domestic code sharing between a mainline carrier and its regional partners. The vast majority of passengers fly on these types of itineraries. There is no reason for airlines not to provide consumers accurate information about baggage allowances and fees and to apply the same allowance and fee throughout a passenger's itinerary when it is one carrier that is marketing and operating the flight or the flight only involves domestic code-share service on a regional partner.

The next biggest group of passengers has itineraries with code-share flights that involve international code-share service (e.g. Delta with Air France) or domestic code-share service between mainline carriers (e.g., United Airlines with US Airways). Here as well there is little reason not to apply a single baggage allowance/fee policy and to communicate that policy to consumers. Airlines have known for many years of the Department's code-share policies that require a marketing carrier's contract of carriage to apply to a passenger's air transportation and the need to include accurate baggage information concerning such flights in their tariffs and contracts of carriage

As for interline itineraries, we recognize that it is more difficult to disclose baggage fees and ensure that the same baggage allowances and fees that apply at the beginning of a passenger's itinerary apply throughout the entire itinerary on flights that are on a single ticket but are sold pursuant to interline agreements among the carriers listed on the ticket. This is particularly problematic when a passenger is flying on an interline ticket and the airlines listed on the ticket do not all have a direct relationship with one another.<sup>3</sup> However, a mandate to apply a particular baggage rule to the entire journey of a passenger whose ultimate ticketed origin or destination is a point in the U.S. is not entirely new to carriers. For many years, the Department has required and continues to require carriers to use the piece-related baggage system instead of weight-based baggage system over the entire itinerary shown on a passenger's ticket, including an interline ticket.

For these reasons, the Department is denying the Associations' request to delay the effectiveness of 14 CFR 399.85(c) and 399.87 but announcing that its Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, which has the discretion to determine in which cases to pursue enforcement action against airlines with respect to air travel consumer protection, has decided not to strictly enforce sections 399.85(c) and 399.87 with respect to certain interline and code-share itineraries. More specifically, the Assistant General Counsel has decided not to enforce sections 399.85(c) and 399.87 for a six-month period with respect to interline itineraries or with respect to code-share itineraries involving international flights, or domestic flights of different mainline carriers, if certain conditions are met. First, carriers will be expected at a minimum to disclose on e-ticket confirmations that additional airline fees for baggage may apply and provide a link from the e-ticket confirmation to the code-share or interline partner websites where the passenger can follow a link and find the baggage allowance and fee information. Second, carriers will be expected to reimburse upon request any passenger that was not charged the same baggage fees throughout his/her itinerary if that resulted in the passenger being overcharged.

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<sup>3</sup> For example, a passenger purchases a ticket for travel on ABC Airlines, connecting to DEF Airlines and then to GHI Airlines. ABC Airlines and GHI Airlines do not have a ticketing agreement with one another but both have a ticketing agreement with DEF Airlines and DEF Airlines issues an interline ticket on its ticket stock for travel on all three airlines.

Also, while the Department is not creating a task force to discuss the most efficient method the airline industry can use to implement the Department's new bag rules, 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 or provide further clarifications as needed.

ACCORDINGLY, we are denying the petitions to postpone the effectiveness of 14 CFR 399.85(c) and 399.87 but also announcing to regulated entities that the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings has decided to apply its enforcement discretion in the manner described above in enforcing those sections. A copy of this order will be served on the petitioners.

**By:**

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Robert S. Rivkin  
General Counsel

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