

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

**GUIDANCE ON PRICE INCREASES OF ANCILLARY SERVICES
AND PRODUCTS NOT PURCHASED WITH THE TICKET**

NOTICE

This notice is intended to give guidance to U.S. and foreign air carriers on this office's enforcement policy concerning the prohibition of post-purchase price increases for services and products not purchased with the ticket in light of the U.S. Department of Transportation's recent announcement to conduct further rulemaking in this area. See <http://regs.dot.gov>.

Under 14 CFR 399.88, any seller of scheduled air transportation within, to, or from the United States (or of a tour or tour component that includes scheduled air transportation within, to, or from the United States) is prohibited from increasing the price after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee if the potential for an increase was disclosed as required prior to purchase. The prohibition on increasing the price includes increases in applicable carrier-imposed mandatory fees such as fuel surcharges, as well as increases in fees for ancillary services such as those for checked baggage, carry-on baggage, advance or upgraded seating assignments, pillows and blankets, and meals, whether or not these items are purchased along with the air transportation. Section 399.88 caps the price of ancillary services and products for a given consumer at the time that he or she purchases the air transportation, as the existence of a fee for other services or

products related to air transportation, as well as the amount of any such fee, can influence a customer's purchasing decision.¹

The Department recently decided to revisit the issue of whether it should prohibit post-purchase price increases for all services and products not purchased with the ticket, or whether it is sufficient to prohibit post-purchase price increases for baggage-related charges that traditionally have been included in the price of the ticket.² The Department decided to re-examine this matter because the agency received few comments about price increases for optional services which passengers purchase after they buy tickets, other than baggage comments, and carriers have since suggested that the rule as applied to those services will have effects on their operations and finances that merit further consideration. The Department's examination is intended to be narrow and to focus on ancillary services and products that were not purchased with the ticket -- other than baggage charges that traditionally have been included in the price of the ticket -- such as charges for meals and snacks, pillows and blankets, on-board alcohol, advance or upgraded seating assignments, and third or more checked bags. See <http://regs.dot.gov>.

It is generally acknowledged that charges for carry-on bags and first and second checked bags are considered by many consumers in making their carrier selection decisions. Reserving the right to increase the price to carry these bags after the purchase of the underlying air

¹ Under section 399.88, a seller of air transportation is always free to charge a consumer less than the price for ancillary services that existed at the time that he or she purchased the ticket for air transportation.

² The Department's decision to re-examine whether services and products not purchased with the ticket should be capped at the price that existed at the time the air transportation was purchased does not extend to increases in carrier imposed mandatory fees such as fuel surcharges. Such mandatory charges remain frozen.

transportation makes it difficult if not impossible for consumers to make rational decisions when purchasing air transportation.³ Therefore, the Department's announced intention to conduct further rulemaking on price increases for optional services does not cover the fee for carry-on bags and first and second checked bags when they are not purchased with the air transportation. Rather, the Department has committed only to addressing in its upcoming rulemaking on consumer protection issues, the extension of this protection to other types of ancillary services and products when they are not purchased with the air transportation.⁴

Because the rulemaking process will undoubtedly take time, until it is completed the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings as a matter of prosecutorial discretion will not enforce the requirement that carriers freeze the price of ancillary services and products not purchased with the ticket (with the exception of any fees for carry-on bags and the first and second checked bags) for a given consumer at the time that he or she purchases the air transportation. In other words, the office will not pursue enforcement action against carriers that increase fees for ancillary services and products that were not purchased with the air transportation, other than baggage charges that traditionally have been included in the price of the ticket.

³ For example, consider a consumer who purchases a non-refundable ticket for a family of four, based on the carrier's representation at the time that baggage is free, and the carrier subsequently changes its policy and introduces a bag fee. That family could suddenly be paying hundreds of dollars more than anticipated for its air trip. Consider also this same family having purchased four tickets but deciding not to pay a first checked bag fee of \$25 at the time of the purchase because the first checked bag fee at that time was only \$35 if purchased at the airport, but the carrier subsequently changes the first checked bag fee policy so that it is \$100 if purchased at the airport. The family may have made the decision to fly with a different carrier or pay the bag fee at the time of ticket purchase had they known of the actual baggage fees that would have applied.

⁴ The Department is also concerned about airlines charging exorbitant fees for oversized or overweight bags. In this same rulemaking, the Department plans to address whether it should require additional or special disclosures (*footnote continued on next page*) 3

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

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Dated: December 28, 2011

(SEAL)

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regarding substantial fees for oversize or overweight baggage and whether the ancillary fee price increase prohibition should apply to such fees.