

THE PRACTICAL NOMAD

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The Practical Nomad: How to Travel Around the World (4th edition, 2007)

The Practical Nomad Guide to the Online Travel Marketplace

<http://www.practicalnomad.com>

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Docket Management Facility
USA Department of Transportation
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Washington, DC 20590-0001

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**Comments Re: Docket Number DOT-OST-2010-0140,
Notice of Proposed Rulemaking (NPRM), "Enhancing Airline Passenger Protections"**

I am a travel expert and consultant, consumer advocate for travellers, author of two books of consumer advice for travellers on issues including airline ticket purchasing and Internet airfare information, author of a Usenet FAQ on airfares, author/publisher of a Web site and blog of consumer advice and information for travellers, and an affiliate of an Internet travel agency.

These comments are submitted strictly on my own behalf as a traveller, journalist, author, blogger, and independent consumer advocate. They do not necessarily represent the opinions or beliefs of the publisher of my books, the travel agency with which I am affiliated, or any of my past or present employers or consulting clients.

I welcome and support this long-overdue initiative to correct some of the DOT's previous policies of non-enforcement of existing truth-in-advertising and other consumer protection laws and regulations, and to improve those rules.

However, I believe that the proposal overlooks some significant, closely related issues that could, and should, be addressed either as part of this same rulemaking or, if they are considered outside the scope of the NPRM, through a follow-up rulemaking as soon as possible.

1. Information required to be included on e-ticket confirmations or with tickets

Proposed new 14 CFR 399.85(b) would require disclosure of baggage fees in “e-ticket confirmations”. But there is no current requirement for an “e-ticket confirmation” and no definition of what would constitute one. What is required by existing DOT regulations at 14 CFR 399.83 is the provision of a “ticket”, a term whose meaning for both paper and electronic ticket formats is well established by industry standards including those of IATA, ATA, and ARC as well as by airlines' own tariffs, conditions of carriage, and contracts.

Presumably, the reason for the proposed requirement for the provision of notices in an “e-ticket confirmation”, rather than their inclusion with the ticket required by 14 CFR 399.83, is that many airlines no longer provide an actual “ticket”.

The DOT last considered this issue in docket number OST–96–993, “Ticketless Travel: Passenger Notices” (62 Federal Register 19473-19477, 22 April 1997). At that time, the DOT found as follows:

Ticketless travel is a dynamic and evolving element in the marketing of air transportation. The Department will continue to monitor developments in this field, and should consumer problems related to inadequate passenger notice arise, we may propose additional requirements in the future....As far as we are aware, all airlines that offer electronic ticketing provide a paper itinerary showing the fare and reservation status either automatically or upon request. With most carriers, passengers also have the option of a conventional paper ticket if they prefer.... [T]he Department will continue to monitor the evolution of ticketless travel and any consumer problems that may arise from the practice. The compliance policy stated herein will be reconsidered if circumstances so justify.

Obviously, the current rulemaking is a response to just such consumer problems.

But the solution should be enforcement of section 399.83 requiring the provision of a ticket, adoption of a rule explicitly defining a “ticket”, and a requirement that notices be delivered with it in the same format (paper or electronic), rather than a separate set of new requirements for “e-ticket confirmations” and continued non-enforcement of section 399.83.

Whatever was the case in 1997, many airlines no longer provide e-ticket purchasers – if they ever did – with what those airlines' own conditions of carriage define as a ticket. Some airlines no longer provide the option of a paper ticket. Those that still provide the option of a paper ticket typically charge a substantial fee for a paper ticket for any itinerary for which e-ticketing is possible

In the case of electronic tickets, industry standards and airlines' conditions of carriage define the “ticket” to consist of the “Virtual Coupon Record” (VCR), which contains all of the information previously included on paper tickets. But while a few airlines routinely provide purchasers with complete VCR images, and some others do so on request, many do not.

A complete ticket (or the VCR which constitutes the complete e-ticket) includes a variety of information which is important to purchasers but often omitted from e-mail confirmations:

- The validating carrier, which may be the transporting carrier, a codeshare partner, or an entirely different airline in the case of interline or offline ticketing, and which may be vital to know in the case of changes, refund claims, airline bankruptcy, etc.;
- The date and place of issue, which may determine when a ticket must be presented for refund or exchange, or the jurisdiction of claims related to the ticket;
- The indication (in industry standards, by an “X” or “O” for each segment), of which transfer points are allowable stopovers and which are only connection points;
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- The fare calculation, including the fare basis for each segment, which are essential to determining the refund value of a partially used ticket, or the allowable routings and other governing provisions of the applicable tariff in case of cancellations or changes;
- The breakdown of taxes and fees, which is essential to determining which of the “taxes and fees” are imposed by and passed on to governments, and from which agencies of which governments to seek refunds of what amounts in the case of user fees that may be refundable if tickets aren't used, and which fees are imposed by and retained by the airline, and should properly be considered part of the fare;
- The “not valid before” and “not valid after” dates for each segment;
- The free baggage allowance for each segment (note that this is already part of each industry-standard ticket, and allows specifying different allowances for each segment).

Where this information is held by the airline, and specifies the details of the contract between the airline and the ticket purchaser, there are good reasons to require the airline to furnish a copy of this information to each ticket purchaser. 14 CFR 399.83 should be retained and should be enforced.

It would be odd, needlessly inefficient, and contrary to the interests of consumers for the DOT to add a new requirement for airlines to provide each ticket purchaser with an “e-ticket confirmation” providing important but secondary information about baggage allowances and fees, while continuing not to enforce the existing regulation requiring the provision of a *ticket* containing the *essential* information about the ticket purchase, such as the elements listed above.

The DOT should modify the proposed rules for information to be included “in e-ticket confirmations” to require that this information is required to be provided “with, and in the same format as, the ticket required by 14 CFR 399.83”, and should clarify – either in the regulations themselves or through policy guidance – that where the ticket (as described in the tariff and conditions of carriage) exists in electronic form, and not on paper, the “ticket” required to be provided pursuant to 14 CFR 399.83 consists of a copy of all of the data included in the electronic ticket record (typically and in the case of IATA/ATA/ARC standard tickets, in the form of a VCR).

2. **Information required to be included on airline Web sites**

Proposed new 14 CFR 259.6 would require airlines to post their contracts of carriage on their Web sites, and proposed 14 CFR 399.85(a) and 399.85(c) would require them to disclose their baggage fees and fees for optional services on their Web sites.

That's all good, but it leaves a glaring gap: airlines' tariffs of fares.

According to 14 CFR 221, Subpart K (sections 221.100 et seq.), “Carriers must make tariff information available to the general public.... for public inspection at each of its stations, offices, or other locations at which tickets for passenger transportation are sold and which is in charge of a person employed exclusively by the carrier, or by it jointly with another person.”

Of course, today many (for some airlines, most) most tickets are purchased online. Many fares are only applicable to tickets purchased online. While some airlines make the tariff provisions applicable to a specific set of reservations available on their Web sites, I know of no airline that permits purchasers to consult their tariff of all fares between a given origin-destination pair on their Web site, without first selecting specific flights or dates.

That's significant because the optimal strategy for finding the lowest ticket price is often to consult the tariff first, find the lowest fare, read its rules, and then look for availability of reservations in the required booking class on flights on the required routing and satisfying the other rules (dates, days of the week, carriers, etc.) in the tariff applicable to that fare.

Ticket purchasers should be able to do this, but currently can't.

The only reasonable interpretation of 14 CFR 221.101 in the case of tickets sold online is that the “locations at which tickets are sold” are the Web sites through which they are sold, and that the tariff must be available for inspection on those Web sites. The DOT should so order, either through additional language in the regulations themselves or through clarifying policy guidance.

3. **Responsibilities of airlines' agents**

In the NPRM, the DOT “invites comments on its proposal to change its enforcement policy under section 399.84 from one of permitting limited exceptions to disclosing the full price in all advertising of air transportation and air tours to requiring disclosure of the full price to be paid by a consumer whenever a price is displayed, and its proposal to specify in the rule that it applies to 'ticket agents.'”

While I welcome and support the change to a policy of enforcement of full enforcement of section 399.84 as written, I believe that the proposed insertion in this section only of a reference to “ticket agents” might prove counterproductive and injurious to consumers' rights.

When a travel agent is appointed to act as an agent of an airline in the execution of contracts of carriage, and acts as that airline's agent in executing contracts of carriage, it is responsible for complying with all those rules that apply to the airline itself – just as any agent, in the absence of some

specific exception to the law of agency, is responsible for complying with those rules that govern the principal to the transaction. Agents should be aware of this duty.

As the DOT notes in the NPRM,

The Department's statutory authority under 49 U.S.C. § 41712 to prohibit unfair and deceptive practices and unfair methods of competition applies not only to air carriers but also to "ticket agents" which includes those persons other than a carrier "that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation." 49 U.S.C. § 40102(a)(40). Although the Department's full-price advertising rule applies on its face to direct and indirect air carriers as well as "an agent of either," it has been the longstanding policy of the Department to consider ticket agents as defined in title 49 to be subject to that rule.

An explicit reference to "ticket agents" in only one section or only certain sections of the regulations which currently govern airlines and their agents might be misinterpreted as intended to indicate that only those provisions of the regulations apply to ticket agents.

Instead of adding references to ticket agents in selected sections of the regulations, the DOT should issue policy guidance reminding ticket agents of their duty, when they act as airlines' agents, to comply with all those rules and regulations applicable to those airlines.

Respectfully submitted,

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These comments are also available on the Web at:
<http://hasbrouck.org/articles/Hasbrouck_DOT_comments-9AUG2010.pdf>