



February 28, 2011

Honorable Ray LaHood  
Secretary of Transportation  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

**Re: Comments of *AirlinePassengers.org* on Rulemaking  
"Enhancing Airline Passenger Protections"  
75 FR 32318 (June 8, 2010)  
Docket No. DOT-OST-2010-0140**

Dear Secretary LaHood:

*AirlinePassengers.org*, a newly-chartered non-profit organization<sup>1</sup> to serve as the "Voice for Airline Passenger Rights," urges the Department to consider these late-filed comments<sup>2</sup> on an important policy issue first raised in the February 16, 2011, comments of Allegiant Air to this docket on the subject of **Full-Fare Advertising** (regulated at 14 C.F.R. 399.84).

Allegiant argues in part that since there has been a substantial run-up in fuel costs in recent weeks that airlines must pay, DOT should allow carriers to retain the right to price their services flexibly, including the option for Allegiant to offer consumers on its website a choice of two fares: a traditional "locked in" fare that would not fluctuate between the time of fare purchase and the travel date, and a lower fare that could change before the date of travel "(up to a set maximum that would be clearly disclosed) depending upon changes in fuel price between the booking and travel dates." Allegiant is opposed to DOT's first listed option in the pending rulemaking to change the current regulation to establish a blanket ban on all post-purchase price increases.

First, *AirlinePassengers.org* is completely sympathetic toward the concerns of all airlines that the sudden and substantial recent increases in their cost of fuel will have a serious financial impact on individual carriers and the entire recovering domestic airline industry.

Passengers will be asked to pay increased fares that reflect airlines' higher costs for fuel. This is appropriate; the single policy question is how those higher fuel costs are to be presented to consumers. *AirlinePassengers.org* supports the Department's proposal for a blanket ban

<sup>1</sup> Chartered in the Commonwealth of Virginia; request to the Internal Revenue Service (IRS) for classification as a section 501(c)(3) educational organization is pending.

<sup>2</sup> The NPRM provides that late-filed comments will be considered to the extent practicable (75 FR 32318). Since the Department anticipates issuing a final regulation in April (DOT Regulatory Agenda Semiannual Summary, 75 FR 79612 (December 20, 2010)), Allegiant Air's comments and this submission should be considered.

precluding airlines from imposing any post-purchase price increases on consumers for the following reasons:

**1. DOT must foster easy transparency as to the full costs of commercial air travel that passengers must pay.**

At the current time, some legacy carriers are refusing to provide current fare and “ancillary fee” information to third parties that have traditionally offered consumers valuable on-line comparisons of the costs of flying on competing airlines. These carriers now want passengers to obtain information on their current fares and on each of their newly-established “ancillary fees” (e.g., checked bags, advance seat assignments, carry-on bags, in-flight food and beverage service, blankets, pillows) solely from each carrier’s own website and not from any third party that would provide comparative information between airlines.

If allowed by the Department, airline passengers would lose the transparency of the easy comparability of the total costs of flying on numerous competing airlines – which is one of the primary consumer benefits of the internet age – and would have to search numerous carrier websites to make informed judgments about total costs.

Allegiant proposes to take this legacy carrier scheme one step further: from a difficult-to-determine total cost of flying after consumers have to search individual airline websites to an impossible-to-determine total cost because Allegiant would determine that total cost on its own - post-purchase, between the dates of booking and travel, by setting its current “fuel surcharge.” ...Another step backward from true transparency for consumers.

**2. The proposed Allegiant Air plan is simply an effort to have DOT approve shifting normal airline business risk onto the consumer, which is contrary to consumer interest.**

Regardless of the degree of disclosure it might provide, what Allegiant Air is proposing is simply a mechanism for off-loading the normal airline business risk of fuel price increases onto the consumer, where it does not belong. Well-run businesses throughout the economy recognize that there are certain, inherent risks in operations, often including commodity price increases. Fuel price increases is one such risk constantly faced by airlines. Well-run airlines can, and often do, address these uncertainties by employing hedging and other strategies to protect against the uncertainty of future fuel price increases. The average consumer has no such opportunity.

Allowing airlines to abnegate their management responsibility to protect their businesses from the vicissitudes of fuel price fluctuations discourages good management practices, is fundamentally anti-consumer and contrary to the public interest. Qualified airline management must be prepared to manage the business risk of fuel price fluctuations no less than assuring compliance with required equipment maintenance schedules and providing properly trained and qualified operating personnel.

**3. It's time DOT prohibits all airlines from identifying and collecting specific "fuel surcharges"; airline "surcharges"<sup>3</sup> increasingly are mostly marketing tactics and aren't regulated for amount or timing by anyone.**

When fuel costs last spiked in 2008, it became obvious that the "fuel surcharges" the airlines added to their fares were as much marketing tactics as a needed cost recovery mechanism. Some carriers imposed "fuel surcharges" only in their non-competitive markets, imposing their higher fuel costs on some and not on all passengers buying tickets. Some carriers, according to some industry commenters, delayed eliminating their "fuel surcharges" long after the cost of fuel had receded. Passengers who bought tickets well in advance of their travel date and who paid the "fuel surcharge" reportedly weren't given refunds, while passengers buying tickets later for the same flight didn't pay the surcharge.

DOT traditionally has allowed airlines to advertise "fuel surcharges" but mandates that those extra charges be included within the advertised fare. That's not enough. It's time DOT and the airlines made clear that the airline fare is whatever the airline can charge, and that varying fuel costs are but one important element in the airlines' decisions as to what fares to charge (plus all the extra "ancillary fees," of course). Surcharge language ought to be prohibited.

The Consumer Travel Alliance (CTA) also agrees with the positions in this letter.

Thank you for your consideration of this issue of importance to passengers, raised in the recent Allegiant Air filing. For additional information, contact us at toll-free phone 1-855-AIRPASS (247-7277).

Sincerely,



BURTON J. RUBIN  
Director

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<sup>3</sup> "Surcharges" in regulated industries were extra charges collected from all purchasers, and their inclusion in the cost base was reviewed by regulators as to reasonableness of amount of charges and dates during which higher charges were imposed. In contrast, today's airlines set their own fares and "surcharges" on a market basis to maximize revenue.