



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

Issued by the Department of Transportation
on the eleventh day of June 1996

Served: June 11, 1996

HORIZON AIR

Violations of 49 U.S.C. §41712 and
14 CFR 399.84

CONSENT ORDER

This consent order concerns violations of 49 U.S.C. § 41712 and the price advertising requirements in 14 CFR 399.84 by Horizon Air. This order directs Horizon Air to cease and desist from future violations and to pay compromise civil penalties.

As a U.S. certificated air carrier, Horizon Air is subject to the Department's policy on price advertising embodied in 14 CFR 399.84. Section 399.84 requires that any advertising or solicitation which states a price for air transportation must state the entire price to be paid. Advertisements that do not conform to the requirements of section 399.84 also violate 49 U.S.C. § 41712, which prohibits unfair or deceptive practices and unfair methods of competition.

The Department's Office of Aviation Enforcement and Proceedings ("Enforcement Office") has, as a matter of enforcement policy, permitted carriers to state separately in fare advertisements any charges that are imposed or approved by the government on a per-passenger basis, such as customs, immigration, or agriculture inspection ticket surcharges, international departure taxes and security and passenger facility ticket surcharges, only if such fees are clearly noted elsewhere in the advertisement and their amount stated. See, e.g., Orders 96-1-13, 93-4-40 and 92-10-41.

Horizon Air published or caused to be published each-way fare advertisements which appeared in the *Tri-City Herald* (Richland, WA) on and about December 27, 1995. The advertisements promoted "The Horizon Winter Fare Sale" and listed fares to various points in the United States and Canada. A small print disclaimer at the bottom of the

advertisements stated, among other things, "Airport fees up to \$12 and additional taxes and fees for travel to/from Canada are extra."

While the Department permits carriers to state separately in fare advertisements any charges that are imposed or approved by the government on a per-passenger basis, such as customs, immigration, or agriculture inspection ticket surcharges, international departure taxes and security and passenger facility ticket surcharges, such fees, including their amounts, must be clearly noted. The advertisement described in the preceding paragraph did not contain the required information relating to the amount of the applicable excise taxes.¹ Failure to specifically state the dollar amounts of the per-passenger government-imposed or -approved taxes and fees makes it impossible for consumers to determine the full price to be paid for any of the advertised fares, and, as stated above, constitutes violations of section 399.84 of our regulations and 49 U.S.C. § 41712.

In mitigation, Horizon Air states that it did not, and does not, believe that the advertisements at issue here were in any way unlawful or unfair or deceptive to the traveling public. Horizon believes that potential travelers were in fact informed that additional Canadian non-transportation add-on fees and taxes might be applicable to the fares quoted.

To Horizon's knowledge, no complaints were ever received from the public. Moreover, Horizon states that upon inquiry from the Enforcement Office concerning these advertisements, the carrier immediately corrected its advertising to comply with the Enforcement Office's interpretation of the applicable regulations. Further, Horizon states that it has voluntarily agreed to absorb any portion of any advertised fare which exceeded the maximum amount set forth in the advertisements that are the subject of this order, if requested to do so by any traveler.

Horizon also states that this was a one-time violation and that the carrier has no prior violations. Horizon asserts that it cooperated at all times with the Enforcement Office and corrected any perceived irregularities without question. Finally, Horizon states that it has agreed to the issuance of this order solely to avoid expensive and time-consuming litigation, and without agreeing that there is any legal basis for liability.

The Enforcement Office has carefully considered the information provided by Horizon Air; however, it continues to believe that enforcement action is warranted in connection with this advertisement. In this regard and in order to avoid litigation and without admitting or denying the alleged violations, Horizon Air has agreed to a settlement of this matter with the Enforcement Office. Horizon Air consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712 and section 399.84 of the Department's regulations (14 CFR 399.84) and to the assessment of \$12,000 in compromise of potential civil penalties, of which \$4,500 is suspended for one year and will be forgiven, as described

¹ To the extent that any excise tax was imposed on *ad valorem* basis the amount would have had to have been included in the advertised fare and could not have been listed separately.

below. The Enforcement Office believes that the assessment of a civil penalty of \$12,000 is warranted in light of the nature and circumstances of the violations at issue here and the mitigating circumstances described by Horizon Air. This order and the penalty it assesses will provide an adequate deterrence to future noncompliance by Horizon Air, as well as by other domestic and foreign sellers of air transportation.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Horizon Air violated 14 CFR 399.84, by failing to specifically state the dollar amounts of the government-imposed taxes and fees for the advertised fares in advertisements that it published or caused to be published in the *Tri-City Herald* (Richland, WA) on and about December 27, 1995;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, Horizon Air also violated 49 U.S.C. § 41712;
4. Horizon Air, and all other entities owned or controlled by Horizon Air, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41712 and 14 CFR 399.84;
5. Horizon Air is assessed \$12,000 in compromise of potential civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of the total penalty amount, \$7,500 shall be due within 15 days of the date of issuance of the order. The remaining \$4,500 will be forgiven unless Horizon fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41712 or Part 399 of the Department's regulations within one year of the date of issuance of this order, in which case the remaining \$4,500 shall become due and payable immediately; and,
6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered will subject Horizon to assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)