



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

Issued by the Department of Transportation
on the 26th day of December 1996

**Gulfstream International
Airlines, Inc.,**

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

CONSENT ORDER

This order concerns violations by Gulfstream International Airlines, Inc., (Gulfstream) of the Department's requirements regarding the advertising or solicitation of air transportation and the price to be paid for such transportation. The advertisements in question failed to comply with Part 399 of the Department's regulations (14 CFR Part 399) and constituted an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712. This consent order directs Gulfstream to cease and desist from future violations and to pay a compromise civil penalty.

Gulfstream is a certificated carrier that provides scheduled passenger, air freight, and air ambulance services under the Department of Transportation's rules and regulations. Section 399.84 of those regulations requires that any advertising or solicitation for air transportation that states a price for such air transportation must state the entire price to be paid (14 CFR 399.84). The Office of Aviation Enforcement and Proceedings (Enforcement Office) has, as a matter of enforcement policy, permitted carriers to separately state government-imposed, per-passenger taxes and fees collected by carriers, such as custom fees, departure taxes, and passenger facility charges, only if such fees are clearly noted elsewhere in the advertisement and their amount stated. Failure to specifically state the dollar amounts of such fees makes it impossible for consumers to determine the full price to be paid for the advertised transportation. In addition, the Enforcement Office's policy regarding the listing of fares that are "each-way based on a round-trip ticket purchase" requires that such language be placed in the ad prominently and proximately to the fare advertised. Any violation of section 399.84 would constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In April 1996, Gulfstream was warned by the Enforcement Office's Aviation Consumer Protection Division about a deficient ad the carrier published in the April 3, 1996, edition of the Florida *Sun-Sentinel*. That advertisement failed to adequately disclose the dollar amounts of passenger facility charges and other departure taxes and fees in violation of section 399.84. At that time, Gulfstream was given the Department's guidance materials regarding advertising compliance and Gulfstream promised to abide by all Department rules in the future. However, that has not been the case.

Gulfstream placed advertisements in the August 25, September 1, and September 8, 1996, editions of the *Miami Herald*, promoting fares to various destinations in Florida and the Caribbean. Those ads were deficient in two respects. First, the airline did not include in the advertised fare a "Florida local charge" that it listed below the advertised fare in the fine print. That charge did not reflect a government-imposed or -approved per-passenger tax or fee. Second, the airline failed to state prominently and proximately to the advertised fares that the fares were each-way based on a round-trip ticket purchase. Thus, the above-described ads violated Part 399 of the Department's regulations by not stating the full price to be paid and thereby constituted an unfair or deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Gulfstream states that the airline did not intend to mislead the public by including a "Florida local charge" in the fine print of the advertisements, that Gulfstream did not charge its customers the "Florida local charge" after the Department brought the deficiency to the airline's attention, and that Gulfstream has instituted new internal procedures to insure that all future advertisements comply with the applicable Department of Transportation rules and regulations. The Enforcement Office notes that Gulfstream has cooperated with the Department in resolving this matter.

In order to avoid litigation and without admitting or denying the alleged violations described above, Gulfstream has reached a settlement of this matter with the Enforcement Office. Under this order, Gulfstream consents to cease and desist from future violations of section 399.84 and 49 U.S.C. § 41712 and to the assessment of \$15,000 in civil penalties in compromise of potential civil penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of the assessed civil penalty, \$7,500 will be paid under the terms set forth below. The remaining \$7,500 will be forgiven if Gulfstream refrains from further violations of the Department's applicable requirements for a period of one year following the issuance of this order. The Enforcement Office believes that the assessment of a civil penalty of \$15,000 in this instance is warranted in light of the nature and extent of the deficiencies in Gulfstream's above-referenced advertisements. This order and the penalty that it assesses will provide a strong incentive for all carriers to comply with the Department's advertising requirements.

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 Gulfstream International Airlines violated 14 CFR 399.84 by advertising a fare that failed to adequately disclose the dollar amounts for passenger facility charges and other government-imposed per-passenger departure taxes and fees, and by failing to prominently and proximately disclose in its ads that the listed fares were each-way based on a round-trip ticket purchase;
3. We find that by engaging in the conduct described in paragraph 2, Gulfstream International Airlines engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Gulfstream International Airlines to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712, as described above; and
5. Gulfstream International Airlines is assessed \$15,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 of this order. Of the assessed civil penalty, \$7,500 shall become due and payable according to the following schedule: \$2,000 shall be paid within 15 days of the service date of this order and another \$4,000 shall be paid in two equal installments of \$2,000 due on March 1, 1997, and May 1, 1997. The remaining \$1,500 will be due on July 1, 1997. Payments 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 attached instructions. The remaining \$7,500 of the assessed civil penalty shall be suspended for one year from the date of issuance of this order and then forgiven unless Gulfstream International Airlines fails to make payments as directed by this order or, within that year period, engages in any other violation of the requirements described in this order, in which case the unpaid portion of the \$15,000 penalty shall become due and payable immediately. Failure to pay the penalty as ordered will subject Gulfstream International Airlines to the 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 motion for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)