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

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PROHIBITION ON DECEPTIVE PRACTICES  
IN THE MARKETING OF AIRFARES  
TO THE PUBLIC USING THE INTERNET

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NOTICE

This is to remind all airlines, travel agents, and other sellers of air transportation that use the Internet to market air transportation fares to the public to ensure that the public is not misled about the fares being offered, and to point out a particular problem involving so-called "fuel surcharges" that has come to our attention regarding the holding out of fares over the Internet.

During the past several years, we have disseminated a number of notices to the industry addressing a variety of fare advertising issues. One of those letters, dated March 18, 1996, noted the increased use of the Internet in the sale of air transportation and specifically addressed the fact that, just as is the case with the marketing of airfares via print media, marketers of airfares using the Internet must comply with Department regulations and enforcement precedent with respect to their Internet sites. This includes not only adherence to the Department's full-fare advertising rule (14 CFR 399.84), but also rules and enforcement case precedent in other areas concerning

deceptive practices, such as disclosure of code-share relationships and critical purchase and travel restrictions. That letter, as well as other industry letters regarding price advertising, may be reviewed by going to the Internet site of the Department's Office of the General Counsel at <http://www.dot.gov/ost/ogc/index.html>.

Despite this earlier advice, we have discovered a serious problem with price advertising on the websites of a number of major airlines and large Internet travel agencies. Under 14 CFR 399.84, fare advertisements by air carriers or their agents must state the full fare charged the consumer. The intent of the rule is to ensure that members of the public are given adequate fare information on which to base their airline travel purchasing decisions. Failure to state the full fare in advertisements, in addition to violating the rule, constitutes an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. 41712.

The Department has provided interpretive guidance on the rule and, through a number of enforcement-related consent orders, has recognized certain exceptions to the "full fare" advertising standard. In accordance with this enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long as the charges are levied by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid.

On several websites that we have examined, fare disclosure differs according to the search path selected by the consumer. For searches in which the consumer specifies a date of travel in the search request, we have found that the sites make the disclosures required by section 399.84. With respect to

searches where the consumer indicates no preference for travel dates but selects a flexible search, however, we have found fare displays with disclosures that are not adequate. More specifically, this latter type of search path produces a fare display in which a so-called "fuel surcharge" is mentioned either (1) in a separate screen, under "more rules," or (2) at the bottom of the display as a footnote, together with other applicable charges. The footnote merely states that a fuel surcharge may apply, and the consumer cannot find out whether it in fact does apply to a particular purchase until he or she goes to the booking page. Since such "fuel surcharges" are not government fees imposed on a per-passenger basis, their exclusion from the advertised fare and separate display (even where the amount is stated) does not fit within the exceptions to the full-fare advertising rule recognized in the Department's enforcement case precedent. Where these "fuel surcharges" (or similar carrier-imposed surcharges) are listed separately and are not included in the basic fare presented to the public, this is deceptive and violates 14 CFR 399.84. Such listings in other media have led to enforcement action in the past.

Airlines, travel agents, and other sellers of air transportation, in order to comply with the Department's fare advertising rule, must ensure that any ticket price displayed on their site includes all components required by the Department's full fare rule. Non-government surcharges and fees, such as fuel surcharges and service fees, as well as *ad valorem* excise taxes, must be included in the stated fare. Other charges that under Department case precedent may be legitimately excluded from the base fare, such as PFCs, international departure taxes collected by a carrier or its agent, and other per-person taxes or fees imposed by a government entity, may be noted on a website in a prominent link, proximate to the stated fare, that takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed.

As noted above, we are aware of a number of sites that do not comply with the Department's fare advertising requirements. We have already taken or intend to take steps, including enforcement action if necessary, to ensure that consumers are not misled and that all Internet sites conform to the requirements of the Department's fare advertising rule. We urge all airlines, travel agents, and other sellers of air transportation to ensure that their websites conform to the requirements of the Department's advertising rules and enforcement case precedent. We also caution airlines that they may be held responsible for the actions of their lawful agents, particularly where the carrier's creation of so-called "surcharges" makes violations by their agents more likely and carriers have not taken appropriate steps to halt such practices.

Questions concerning this notice or the applicability of the Department's fare advertising rules may be addressed to the Office of Aviation Enforcement and Proceedings.

Thank you for your cooperation on this important issue.

By:

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*Assistant General Counsel for  
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(SEAL)

*An electronic version of this document is available on the World Wide Web at  
<http://dms.dot.gov/reports>*