

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC**

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**ADVERTISEMENTS OF PERCENTAGE DISCOUNTS ON THE INTERNET AND  
DISCLOSURE OF INSURANCE SURCHARGES AND SECURITY FEES**

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**NOTICE**

The Office of Aviation Enforcement and Proceedings (“Enforcement Office”) has become aware of a number of advertising practices on Internet travel sites which may constitute unfair or deceptive trade practices in violation of 49 U.S.C. § 41712 and related Department rules. The purpose of this notice is to clarify the applicability of section 41712 and our advertising rule, 14 CFR 399.84, to the use of banner ads announcing percentage-off discounts and sale fares. This notice also addresses the disclosure of insurance surcharges and security fees in print and Internet fare advertisements.

In a letter addressed to airlines and travel industry associations dated December 20, 1994, then-Secretary Peña gave notice of the Department’s position on a number of consumer issues, including those involving certain airfare advertising practices. The Secretary clarified that discount sales which offered a percentage off must indicate the benchmark fare to which the discount applied and that that benchmark fare must be an actual fare available for purchase at the time of the sale or just prior to the discount sale. As stated in the December 20, 1994, letter:

Advertisements sometimes promote air fares in terms of a percentage savings (e.g. “Save up to 50%”). However, many such ads make it impossible to determine what the advertised fare is being compared to and how the percentage savings are calculated.

Consumers are entitled to real savings to match what the promotions promise. It is thus the Department’s position that “percentage off” ads are deceptive unless (1) the “benchmark” fare (the fare to which the advertised fare is being compared) was offered for sale in reasonable quantities for a reasonable period immediately prior to the ad for the new fare, and (2) either the ad clearly identifies and describes the “benchmark” fare, or the “benchmark” fare is a discount fare comparable to the advertised fare, with similar restrictions.

This notice is intended to clarify our enforcement policy with regard to “banner” percentage-off advertisements that appear on Internet sites, some of which are not themselves travel sites (i.e., travel agent or airline sites) but subsequently lead the reader to such sites. In some cases, after clicking on the banner, a consumer is sent to the site of a major Internet travel agent. Once transferred to this location, there is no indication which fares are subject to the stated percentage discounts. Generally, a consumer is led from a banner apparently promising a large percentage reduction in fares to an Internet travel agent’s site that has a standard front page inquiry form which seeks information on a consumer’s travel plans. However, the site makes no mention of the percentage discount sale, much less gives an indication of the markets or carriers to which the sale may apply or the applicable benchmark fares. Moreover, there is no way for a consumer to request a list of fares that are subject to the percentage-off sale, nor does the consumer know after providing specific travel plans if the fare quoted is one of the advertised percentage-off fares.

This notice is to advise Internet travel vendors that, although banner advertisements on their own sites or on other sites are permissible, the banner, if it offers a percentage discount, must lead the consumer, within a short sequence of links, to a screen that displays the markets, carriers, and a description of the pertinent benchmark fares to which the discount applies. In addition, banner advertisements which do state a price should (1) provide notice if the advertised fares do not include all taxes and fees and state the amount of those taxes and fees,<sup>1</sup> and (2) list all significant fare conditions in the advertisement or state that conditions apply with a link to another screen or pop-up display that describes those conditions. If the banner advertisement states a price that is an each-way price that is only available with a round-trip purchase, that fact must be stated in the banner advertisement itself.

A second topic which we wish to address is the listing of insurance surcharges and security fees in fare advertisements. All insurance surcharges, since they are not government-imposed or -approved fees assessed on a per-passenger basis, must be included in the advertised price. As the Department has indicated in a number of consent

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<sup>1</sup> 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 or approved 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. However, any fuel surcharges, as well as *ad valorem* taxes, must be included in the advertised fare. By Notice of December 17, 2001, the Department set out the very limited circumstances in which travel agent service fees may be stated separately from the advertised fare on internet sites. (See, the Department website at <http://www.dot.gov/airconsumer>).

orders and in guidance provided to the industry since 1994, only those fees that meet both criteria, that is, are both government-imposed or -approved fees and are assessed on a per-passenger basis, may be excluded and be stated separately from the advertised fare. With respect to security fees, 49 C.F.R. 1510.7 precludes the separate listing of any security fees other than the September 11<sup>th</sup> Security Fee. These guidelines apply to both printed and Internet advertising.

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C-70), 400 7<sup>th</sup> St., S.W., Washington, D.C. 20590.

By:

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