



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Foreign Air Carriers; Unfair and Deceptive Advertising; Enforcement Policy

AGENCY: Office of the Secretary (DOT).

ACTION: Notice.

SUMMARY: The Department's Office of Aviation Enforcement and Proceedings issues this notice to clarify its enforcement policy with regard to the advertising of service to or from the U.S. by foreign carriers. The notice advises foreign carriers that advertising service for which they lack the requisite economic authority from the Department violates the authority provisions of 49 U.S.C. Sec. 41301 and is an unfair and deceptive practice under 49 U.S.C. Sec. 41712 that may warrant enforcement action, even if the carrier has an application for such authority pending before the Department.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Tel. No. (202) 366-9349.

United States of America, Department of Transportation, Office of the Secretary, Washington, D.C.

Advertising of Scheduled Service in Foreign Air Transportation-Use of the Notation "Subject to Government Approval"

Notice

During a recent investigation, it came to the attention of the Office of Aviation Enforcement and Proceedings (AEP) that some foreign air carriers may be holding out service from the U.S. to foreign points for which they lack U.S. economic authority under 49 U.S.C. Sec. 41301. The issue arose in connection with listings by a foreign carrier on the internet and in the Official Airline Guide (OAG) which related to service that was the subject of its application for authority. The application was pending at the time the advertisements appeared. The carrier included with the listings in question a statement that the service was "subject to government approval," to indicate that the service was contingent on receiving Department approval and might not be provided. It also stated to AEP that it accepted no reservations for the service in the U.S. We asked the carrier to remove the listings in question and it agreed. Since similar practices may be widespread, we believe it appropriate to disseminate AEP's policy on matters of this kind to all foreign carriers operating or planning to operate from the U.S.

AEP has in the past applied and will continue to apply the same standards to the advertisement of proposed service by foreign carriers as it currently applies under Department regulations to U.S. applicants for certificate authority. Section 201.5 of the Department's rules (14 CFR 201.5) provides that U.S. applicants for certificate authority may not "advertise, list schedules or accept reservations" or "accept payment or issue tickets" for their proposed service until the relevant application has been approved by the Department. Although section 201.5 is specifically limited to U.S. applicants for **air** carrier authority, we will continue our practice of following a consistent policy in evaluating the advertisements and schedule listings of foreign air carriers. We will therefore consider it an unfair and deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. Sec. 41712, as well as a violation of the authority provisions of 49 U.S.C. Sec. 41301, for a foreign air carrier to hold out service in the U.S. for which it does not have all requisite authorizations from the Department at the time of the holding out.

By the term "holding out," we refer to listing or advertising service in any medium reasonably likely to reach the U.S. public, such as computer reservations systems (CRSs), the internet, or published media, such as the Official Airline

Guide. Clearly, if the appropriate authority is the subject of an application pending with the Department, the service may not be listed or advertised. A note stating that the listed service is "subject to government approval" where an application is pending within the Department is not sufficient to avoid a violation of 49 U.S.C. Sec. 41712 and Sec. 41301. Moreover, a violation is not avoided by refusing to take reservations or accept payment for tickets. On the other hand, a carrier may hold out service with a notation that service is "subject to government approval" if the carrier has the requisite U.S. authority but is awaiting approvals from **foreign** governments only for the service advertised.

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings, C-70, 400 7th St., S.W., Washington, D.C. 20590. A copy of this notice will be published in the Federal Register.

Dated: September 24, 1997.

By:

Samuel Podberesky,
Assistant General Counsel for Aviation Enforcement and Proceedings.

[1] Section 201.5 further prohibits issuance of tickets or acceptance of payment for a carrier's proposed service until its authority has become effective or the Department specifically authorizes sales. Under the rule, after Department approval but prior to receipt of effective authority, a carrier may advertise, take reservations and publish schedules (but not accept payment), provided such advertising or schedules prominently state the following: "This service is subject to receipt of government operating authority."