



July 14, 1995

**THE FOLLOWING LETTER WAS SENT TO THE ATTACHED LIST OF**

**U.S. & FOREIGN AIRLINE, and TRAVEL AGENCY EXECUTIVES**

This letter follows up on previous advertising guidance we have provided air carriers and concerns the listing in "air tour package" fare advertisements by airlines and/or their agents (including travel agents) [hereinafter "sellers"] of (1) additional charges for government-imposed taxes and fees that are collected by sellers and (2) other charges and fees associated with such packages that may be collected by airports, hotels, or other entities. This letter also contains information supplementing Secretary Peña's December 20, 1994, letter regarding percentage-off advertising.

Based on a review of a variety of advertisements in newspapers from different parts of the country, we have noted a widespread disparity in the methods by which air carriers, and travel agents advertising in conjunction with specific air carriers, have listed government-imposed taxes and fees as well as other charges in advertisements for air tour packages. Some of the advertisements have been inconsistent with our full-price advertising rule and long-standing enforcement policies. The purpose of this letter is to provide guidance on how these charges should be advertised. To accomplish this purpose, it is being sent to U.S. major and national carriers, larger foreign carriers, and larger travel agencies.

Section 41712 of Title 49 of the United State Code prohibits unfair or deceptive practices or unfair methods of competition by air carriers or their agents (49 U.S.C. § 41712 (1994)). Section 399.84 of the Department's regulations (14 CFR 399.84) requires any advertising or solicitation for air transportation that states a price for such air transportation to state the entire price to be paid to the seller. These "full-price" advertising requirements apply to package offerings where an air fare is bundled with a hotel, cruise, tour, car rental, or other services.

As we have advised the industry in the past (see, e.g., December 20, 1994, letter from Secretary Peña and May 1992 letter from our office), our office, as a matter of enforcement policy, has permitted sellers to state separately in fare advertisements government-imposed and -approved per-passenger taxes and fees, such as customs fees, departure taxes, and passenger facility charges (PFCs), so long as the charges are levied and collected on a per-passenger basis and their existence and amount are clearly indicated in the advertisement. This office considers advertisements which do not comply with this policy to violate both section 41712 of Title 49 and section 399.84 of the Department's regulations, and we have pursued enforcement action where such advertisements have failed to comply with these requirements. (See, e.g., Orders 95-1-39, 93-4-40, 92-10-41, and 92-7-19.)

The above policy on the listing of government-imposed fees in fare advertisements includes fees imposed by foreign governments (e.g., foreign departure taxes or port charges). If these fees are collected by sellers and are imposed on a per-passenger basis, they may be listed separately in air tour package advertisements. With regard to the separate disclosure of such fees in advertisements where multiple destinations are listed, a maximum fee amount may be stated, a fee may be listed for each destination, or the fees may be listed as a range. The word "approximately" or a range of amounts may be used to account for minor currency exchange fluctuations. If these types of taxes or charges are collected by the government entity (e.g., an airport or port authority) and not the seller, 14 CFR 399.84 is not applicable, but under 49 U.S.C. § 41712 the advertisement must disclose the existence of the charges and highlight that the charges will be collected by the foreign authority.

Similarly, in other situations where passengers will incur additional mandatory charges or fees but the charges or fees are not paid to the seller of the air tour package, the seller must make clear in the advertisement the nature of the fee to be paid and the party (e.g., hotel, car rental company, or travel/vacation club) to whom the surcharge or fee is to be paid. For instance, if a hotel, not the seller, collects an "energy surcharge," "linen charge," or "security fee," the advertisement should identify the type of surcharge or fee and note that payment is made directly to the hotel. This type of disclosure will put consumers on notice about additional charges they will incur in connection with their trip and ensure compliance with the statutory requirement under section 41712 to avoid deception. It will also aid this office in determining, without a more formal investigation, whether a charge is properly stated separately.

Advertisements also must be internally consistent so as not to mislead the consumer. One newspaper advertisement we reviewed declared that "all taxes and service charges are included" in the air tour package, but the fine print contained a statement that the foreign departure taxes and hotel service charges were excluded. In this situation, the advertisement violated section 41712 even if the charges or fees are paid to an entity other than the seller (*i.e.*, an airport authority or hotel) because the conflicting statements render the ad deceptive. In another instance, one airline's recent newspaper advertisement listed several different air tour packages on one page, with each ad using different language about what costs were included in the package. One package included "all applicable taxes," another included "air and hotel taxes," and yet another included "hotel taxes and hotel service charges." Such language differences are confusing, at best, and may mislead consumers about what is or is not included in the air tour package.

Generally, advertisers should favor more precise terminology and avoid confusing terms that could mislead consumers. As noted above, there are situations in which the Department cannot, without further inquiry, ascertain whether the charge is properly stated separately in accord with our enforcement policy. For instance, one advertisement noted in the fine print "additional airport charges" when it should have used language to the effect that the "fare does not include passenger facility charges of \$\_\_\_\_." Another advertisement cited "additional international fees" in the fine print when it should have stated that "international departure taxes of approximately \$\_\_\_\_ are not included in the quoted price." Greater precision in terms enables consumers to approximate the total cost of their travel and this office to more informally monitor advertisements to ensure that they comply with our regulations.

As a reminder of information that has been disseminated widely in the past (*See, e.g.*, 54 FR 31,052; July 26, 1989, and the May 1992 industry letter cited above), fees imposed by government entities on other than a per-passenger basis, such as *ad valorem* fuel taxes, per-room charges, and per-day auto rental charges, must be included in the advertised total price to be paid to the seller and may not be stated separately. Furthermore, general phrases that preclude consumers from calculating an actual, maximum, or range of fees, such as "additional taxes and surcharges may apply" are not permitted under our full-price advertising rule, except where, as noted above, they are collected by someone other than the carrier and the advertisement so states. Carriers and agents are, however, encouraged to include the amount of such additional charges to foster full disclosure and thereby avoid customer disputes.

The following examples are intended to illustrate acceptable ways of listing various fees and surcharges not included in a total air tour package price:

1. Does not include foreign departure/security/port charges of up to approximately \$(amount) per passenger, depending on destination.
2. Approximate per-passenger foreign departure/security/port charges also not included: (city), \$(amount); (city), \$(amount); etc.
3. Does not include foreign departure/security/port charges of approximately \$(amount) to \$(amount) per passenger, depending on destination.
4. Foreign departure taxes/port charges of up to approximately \$(amount) per passenger are not included in the package price and must be paid directly to the appropriate airport/port authority.
5. (5) Does not include hotel energy/linen/service charges to be paid directly to the hotel. (Note: If paid directly to the carrier or its agent, these charges must be included in the overall price.)
6. State-imposed rental car tax of \$2 per-day payable to the rental car company is not included in the air tour package price. (Note: If paid directly to the carrier or its agent, these charges must be included in the overall price.)

Please bear in mind that the examples set forth above are intended as guidance only. We recognize that other methods by which carriers disclose government-imposed fees and taxes in advertisements may be acceptable, and we do not intend to limit carriers in their use of appropriate alternatives. Our regulations, however, mandate that a consumer be able to easily determine from a fare advertisement the full price to be paid to the seller for the entire air tour package advertised, recognizing that certain of the relatively *de minimis* charges mentioned above may have to be presented in terms of approximations or ranges, and section 41712 prohibits ads from otherwise being deceptive, as well.

In addition to the above matters, this office wants to reemphasize its enforcement policy with respect to percentage-off advertising. In Secretary Peña's December 20, 1994, letter to air carriers, the Secretary discussed the "benchmark" fares (the fares to which the savings are being compared) in terms of two requirements. First, the "benchmark" fare must have been offered for sale in reasonable quantities immediately prior to the ad for the new fare. Second, the advertisement must either identify and describe the "benchmark" fare, or the "benchmark" fare must be "a discount fare comparable to the advertised fare, with similar restrictions." This office interprets "a discount fare comparable to the advertised fare, with similar restrictions" to mean the **lowest priced** discount fare comparable to the advertised fare, with similar restrictions. This interpretation comports with the statutory requirement of section 41712 and with our long-standing enforcement policies with respect to these types of advertisements. It also comports with the Secretary's stated objective of ensuring that consumers actually receive the savings they should expect to receive based on the advertised statements.

In order to provide the widest and most effective distribution possible of the information in this letter, we ask that each airline provide a copy of this letter to any of its agents that might advertise air tour packages using the airline's services. Since we are sending this letter to several major travel agencies and are asking airlines to ensure distribution to their agents, we want to remind travel companies to the extent that they act as ticket agents as defined in 49 U.S.C. § 40102, i.e., sell air travel packages as a principal or as an agent of an airline, that 49 U.S.C. § 41712 applies to them and that 14 CFR 399.80 of the Department's regulations defines certain practices by such companies as unfair and deceptive in violation of the statutory provision. For example, pursuant to 14 CFR 399.80(f), ticket agents may be subject to enforcement action in their individual capacity for misrepresenting fares or services in connection with air tour packages. Accordingly, we remind all travel companies acting as ticket agents to adhere to the Department's rules and enforcement policies regarding advertising of air transportation and services in connection with such transportation.

If you have questions or desire additional information about our policies, please contact Dayton Lehman, my deputy, or Larry Organ of my staff at (202) 366-9342. Our FAX number is (202) 366-7152. You may also contact Hoyte Decker, Assistant Director of our Airline Consumer Protection Division, at (202) 366-2220.

Sincerely,

Samuel Podberesky

Assistant General Counsel for

Aviation Enforcement and Proceedings

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Mr. T.J. Kim V P -- Americas Korean Air 6101 W. Imperial Hwy. Los Angeles, CA 90045	Dr. Agnes Huff Director, Public Affairs Singapore Airlines Limited 5670 Wilshire Blvd. Suite 1800 Los Angeles, CA 90036	Ms. Doris Cunningham Claims Dept. Lacsa 630 Fifth Ave. Suite 246 New York, NY 10111

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Ms. Gloria Bohan Omega World Travel 3102 Omega Office Park Fairfax, VA 22031	Mr. Jack Alexander 1055 Lenox Park Blvd. Atlanta, GA 30319	Ms. Linda Garback 1441 E. Maple Road Troy, MI 48083
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Mr. Andrew Pesky Zenith Travel 16 E. 34th St. New York, NY 10022	Mr. William Best AAA Travel Agency of Michigan 17380 N. Laurel Park Drive Livonia, MI 48152	Mr. Harry Hammontree Woodside Travel Services 845 S. Third St. Louisville, KY 40203
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