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

**GUIDANCE ON DISCLOSURE OF CODE-SHARE SERVICE
UNDER RECENT AMENDMENTS TO 49 U.S.C. § 41712**

NOTICE

This notice is intended to provide guidance on the disclosure of code-share service in light of recent amendments to 49 U.S.C. § 41712. It is also intended to provide a reminder to ticket agents with respect to their code-share disclosure responsibility, particularly as it concerns the development and provision of Internet websites (websites) that display code-share flights and to air carriers regarding their responsibilities in connection with the websites of their agents.

A recent amendment to section 41712, which has for some time contained a general prohibition against unfair and deceptive practices and unfair methods of competition on the part of air carriers, foreign air carriers and ticket agents, added a new section 41712(c) that specifically requires that these entities disclose in any oral, written or electronic communication to the public, prior to the purchase of a ticket, the name of the carrier providing the service for each segment of a passenger's itinerary. The language is principally intended to address service rendered pursuant to code-share arrangements. In addition, the new language explicitly requires that on websites, disclosure must be made "on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer."¹

The Department's current regulation on the disclosure of code-sharing arrangements, 14 CFR Part 257, which was issued in 1999, is based on the general unfair and deceptive practice language of section 41712. Section 257.5(a) requires, in all websites and other publicly available displays of schedule information, that code-share service be indicated with "an asterisk or other easily identifiable mark and that the corporate name of the transporting carrier and any other name under which that service is held out to the public

¹ Airline Safety and Federal Aviation Administration Extension Act of 2010, Pub.L. No. 111-216, Title II, § 210, 124 Stat. 2362, Aug. 1, 2010.

is also disclosed.” As with the recently amended statutory language, the rule requires that in oral communications with the public, ticket agents must inform the consumer of the code-share service “before booking transportation” and state “the name of the transporting carrier by its corporate name and any other name under which that service is held out to the public.” (Section 257.5(b)) Written notice of code-share service is also required where an itinerary is issued. (Section 257.5(c)(1)) In printed advertisements, including those published via a website, the code-share relationship must be “prominently” disclosed and an abbreviated notice must be included in any radio or television advertisement.² With regard to websites, we have, as a matter of enforcement policy, not pursued enforcement action in cases where disclosure of an operating carrier’s corporate name and other pertinent names was provided through rollover or hyperlinked displays. On the other hand, we have pursued enforcement action where neither such disclosure nor direct disclosure of the operating carrier’s name or names was provided.

The amended language of section 41712 makes explicit that the disclosure of code-share service, in the context of website displays, must be included in any schedule displayed in response to an itinerary request by a consumer. To be “easily visible,” the disclosure should be on the same screen as the itinerary and immediately adjacent to that itinerary and to each alternative itinerary, if applicable. Nothing in section 41712(c) would permit code-share disclosure to be made through a hyperlink or rollover. Code-share service may be highlighted by an asterisk or other mark, but should still include appropriate text on the itinerary display that is easily visible to a viewer, identifying the operating carrier by its corporate name. Because of this new statutory provision, we intend to pursue enforcement action in the future where the only code-share disclosure is by rollover or hyperlinked displays.

To avoid the initiation of enforcement action in the future, air carriers, foreign air carriers, and their ticket agents, including independent website vendors, are advised to promptly modify their practices to conform to these statutory disclosure requirements. In view of the fact that website sellers will need a period in which to modify their website displays, the Aviation Enforcement Office will not begin to enforce the new statutory provision until 60 days after the date of publication of this notice. During the intervening period, we will continue to pursue enforcement action against sites which fail, at a minimum, to provide full disclosure of the operating carrier’s required name or names through hyperlinks or rollovers.

By this notice we are also reminding air carriers of their general responsibility regarding the advertising practices of their agents and in particular with respect to disclosure of code-share service on the agents’ websites. Based on our preliminary review, it appears that most U.S. air carrier websites already comply with section 41712(c), while many of

² For a recent enforcement interpretation of this requirement, see Order 2010-7-4, *Delta Air Lines, Inc., and Northwest Airlines, Inc.*, and Order 2009-7-6, *United Air Lines, Inc.*, July 7, 2009.

their agents' sites do not. Carriers are responsible for the activities of their agents and must ensure compliance with code-share disclosure requirements by those agents, or they could face enforcement action.

We are also taking this opportunity to warn ticket agents, in particular global distribution systems, which may be assisting travel agents to establish airline ticket sales websites, that they should not be providing those agents website software that is not in compliance with the Department's advertising requirements, in general, or code-share disclosure requirements, in particular. Such actions that facilitate violations of Department rules or section 41712 may themselves violate 41712, and we will not hesitate to institute enforcement action against ticket agents in such situations, if appropriate.

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C-70), U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, D.C. 20590.

By:

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