

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

**DISCLOSURE OF HIGHER PRICES FOR AIRFARES PURCHASED
OVER THE TELEPHONE VIA AIRLINE TELEPHONE RESERVATION CENTERS
OR AT AIRLINE TICKET COUNTERS, AND SURCHARGES THAT MAY BE
LISTED SEPARATELY IN FARE ADVERTISEMENTS**

NOTICE

This notice is intended to provide guidance on two matters related to compliance with 14 CFR 399.84, the Department's rule on full fare advertising, and the underlying statutory proscription in 49 U.S.C. § 41712 against unfair and deceptive trade practices. First, we address the disclosure in fare advertisements of higher prices, recently introduced by several air carriers, for tickets purchased at ticket counters or by telephone.¹ Second, by this notice, we are advising carriers of the current policy of the Office of Aviation Enforcement and Proceedings (Aviation Enforcement Office) with regard to the disclosure of "government-approved" surcharges.

A number of air carriers and foreign air carriers have recently started charging higher prices for tickets purchased by telephone or at ticket offices. Such airlines advertise base fares on the Internet or in print or other media, make the advertised fares available for purchase via the Internet only, and charge higher prices if customers purchase their tickets via an airline's telephone reservation system or at its airport or city ticket counter. Section 399.84 mandates that the advertised fare be the full fare to be paid by the customer. Any practice of excluding from advertised fares extra "fees" charged to customers that purchase tickets over the telephone through airline reservation centers, or at airport or city ticket counters, therefore, would violate 14 CFR 399.84, and constitute an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In order to avoid enforcement action, carriers and their agents who charge more for tickets not purchased over the Internet (*e.g.* by telephone or at ticket offices) must prominently disclose to customers that specific fares advertised are available only for tickets purchased via the Internet. In addition, we believe that 49 U.S.C. § 41712 and 14 CFR 399.84 require carriers to state in such advertising that tickets cost more than the advertised price if purchased over the telephone or at an airport or city ticket office. Moreover, we believe it would be informative and beneficial for consumers if carriers also state the amount of the increased price in the advertisements, for example, by stating that tickets cost \$5 more if purchased by telephone or at an airport or city

¹ Some carriers have referred to this increase in the price for tickets bought from them over the telephone or at a ticket counter as a "service fee" or by a similar phrase. However, in the context of the full fare advertising rule, such carrier-imposed "fees" are a part of the fare and must be treated as such in airfare advertising.

ticket office. However, this increase in price may not be characterized as a carrier-imposed “fee” lest the advertisement run afoul of the full fare advertising rule.² Accordingly, the Aviation Enforcement Office will pursue enforcement action with regard to the advertisements in question if the increased fare is merely described in terms of a service, processing, administrative, ticketing center, call center, or similar carrier-imposed “fee.”

Carriers, however, may use the aforementioned “fee” terms when describing the additional charge for telephone and/or ticket counter purchases in contexts that do not list specific fares and are thus not subject to 14 CFR 399.84. Carriers may disclose such charges and refer to them as “fees,” for example, in an audio introduction on an airline telephone reservation system, stating that tickets purchased over the telephone via the airline telephone reservation system, and/or at airline ticket counters, are subject to an additional carrier-imposed “fee,” so long as the total fares eventually quoted to consumers include the “fee.”

A second topic we wish to address relates to “government-approved surcharges.” In the past, we have not pursued enforcement action against carriers that listed in fare advertisements “government-imposed and government-approved” surcharges separately from the base fare quotations, so long as the existence of these surcharges and their amounts were stated elsewhere in the advertisement. The “government-approved” surcharges were limited to security surcharges approved in the mid-1980’s that affected foreign air transportation only and were approved by both the foreign government involved and the U.S. government. Recently, tariff regulation, owing to expanded open-skies agreements and other factors, has been revised to the extent that there is no longer a consistent practice of joint approvals of surcharges, in many instances resulting in the filing of tariffs that may include surcharges that are approved by only one government. In addition, the desire of carriers to pass on the higher costs of certain expenses discretely, such as insurance and fuel, has led to such expenses being filed separately from the “base” fare in tariffs, a situation that the Department cannot effectively monitor.³ In view of these developments, the Enforcement Office will no longer allow the separate listing of “government-approved” surcharges in fare advertising. We will consider the separate listing of such charges in fare advertisements an unfair and deceptive trade practice and unfair method of competition in violation of 14 CFR 399.84 and 49 U.S.C. § 41712 and will pursue enforcement action where such violations are found. With respect to “government-imposed” surcharges, for example PFCs and foreign airport charges, however, our policy remains that such charges may be omitted from the fare quotations provided that they are not *ad valorem* in nature, that they are collected on a per-passenger basis, and that their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid.

² The full-fare advertising rule was adopted in large part to eliminate the prior practice where sellers of air transportation hid the true price of tickets by listing “service fees” in the fine print of advertisements. The Aviation Enforcement Office, therefore, does not believe the increased price of tickets purchased at ticket counters or by telephone should be referred to in terms of a “service fee” in fare advertisement because this could lead to significant confusion and a return to the prior unacceptable advertising practice.

³ In open-skies and other markets governed by bilateral agreements containing double-disapproval pricing articles, the Department has exempted carriers from fare filing. See 14 CFR Part 293. See also, Letter from Paul L. Gretch, Director of International Aviation, to air carriers dated October 14, 2004, which was distributed electronically by ATPCO to its members.

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.

By:

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(Seal)

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<http://dms.dot.gov/reports> and <http://airconsumer.ost.dot.gov/rules/index.htm>*