



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

Issued by the Department of Transportation
on the 6th day of August, 2004

**AAA Washington/Inland
Violations of 49 U.S.C. § 41712
and 14 CFR 399.84**

**Docket OST 2004-16943
Served August 6, 2004**

CONSENT ORDER

This consent order concerns print advertising of airfares by AAA Washington/Inland (AAA) that fail to comply with the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399) and constitute an unfair and deceptive practice in violation of 49 U.S.C. § 41712. The order directs AAA to cease and desist from further violations and assesses the company \$10,000 in civil penalties for the violations.

AAA, as a ticket agent, is subject to the advertising requirements of Part 399. Under section 399.84, any advertising or solicitation for air transportation or an air-inclusive tour that states a price for such transportation or tour must state the *entire* price to be paid by the consumer. However, pursuant to its enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges and departure taxes, to be stated separately in advertisements, so long as the charges are levied 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 so that consumers can determine the full fare to be paid. Advertisements that include only general statements that do not allow consumers to calculate the full fare to be paid do not comply with section 399.84 or the Department's enforcement case precedent. Advertisements that do not comply with the applicable requirements also constitute "unfair and deceptive practices" in violation of 49 U.S.C. § 41712.

AAA is also subject to the requirements concerning the Transportation Security Administration's (TSA) security service fee program. In December 2001, the TSA promulgated a regulation, 49 CFR Part 1510, which imposed a fee in the amount of \$2.50 per enplanement per passenger (with a \$10 maximum per round trip) on air transportation originating at most airports in the United States. Pursuant to section 1510.7, all direct air carriers are required to identify the security service fee specifically as the "September 11th Security Fee" in advertisements and solicitations for air transportation in which the security fee is not included in the advertised fare. This office considers a travel agent's

failure to identify the September 11th Security Fee as required by the rule to be an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

Between January 25, 2004, and March 17, 2004, AAA ran a series of advertisements in the *Seattle Times* in which it failed to properly disclose taxes and fees that were in addition to the advertised base air fares. Specifically, AAA advertised vacation package tours, including airfare to Hawaiian and foreign destinations, with promotional prices subject to terms disclosed in the fine print of the advertisements stating, "Gov't misc. fees/taxes and excursions not included." The advertisements failed to state the amount of the taxes and failed to properly identify the September 11th Security Fee, which was excluded from the advertised base fare. As noted above, advertisements that include only general statements that do not allow consumers to calculate the entire price to be paid violate 14 CFR 399.84 and 49 U.S.C. § 41712 and advertisements that do not properly identify the September 11th Security Fee when it is excluded from the advertised base fare violate 49 U.S.C § 41712.

In mitigation, AAA states that it had no intention of providing misleading information. AAA points out that it took steps to correct its print advertisements as soon as the matter was brought to its attention by staff of the Department. In addition, at all times during this matter, AAA notes that it has worked with the Office of Aviation Enforcement and Proceedings (Enforcement Office) staff and sought its guidance to ensure that future advertisements comply with Departmental regulations.

The Enforcement Office has carefully considered all of the facts of the case, including the information provided by AAA and the corrective measures it has adopted, but continues to believe that enforcement action is warranted. AAA, in order to avoid litigation and without admitting or denying the alleged violations, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and of 14 CFR Part 399.84, and to the assessment of \$10,000 in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$5,000 shall be due and payable within 30 days of the issuance of this order and \$5,000 shall be suspended for one year following the issuance of this order, and then forgiven unless AAA violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and AAA may be subject to additional enforcement action. The Enforcement Office believes that this compromise is appropriate, serves the public interest, and creates an incentive for all ticket agents, airlines and other sellers of air transportation to comply fully with the requirements of 49 U.S.C. § 41712 and 14 CFR Part 399.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;

2. We find that AAA Washington/Inland has violated 14 CFR 399.84 by causing to be published airfare advertisements that failed to state the entire price to be paid for the advertised air transportation;
3. We find that by engaging in the conduct described in ordering paragraph 2 above and by failing to properly identify the September 11th Security Fee in its airfare advertisements, AAA Washington/Inland also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. AAA Washington/Inland and all other entities owned and controlled by, or under common ownership and control with AAA Washington/Inland and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. AAA Washington/Inland is assessed \$10,000. In compromise of the potential civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above, payment of \$5,000 shall be made within 30 days of the date of issuance of this order. The remaining \$5,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless AAA Washington/Inland violates this order's cease and desist or payment provisions, in which case the entire amount shall become due and payable immediately and AAA Washington/Inland may be subject to additional enforcement action. Failure to pay the compromise assessment as ordered will subject AAA Washington/Inland to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
6. Payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)