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## Update: U.S. Department of Transportation Advertising Guidelines

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*The U.S. Department of Transportation (DOT) has strict industry guidelines for air transportation advertising and has issued consent orders and civil penalty fines for violations. The following is an overview of the DOT enforcement policies. DOT expects U.S. and foreign airlines, tour operators, online travel companies, travel agencies, cruise lines or any other parties selling air transportation to comply with these policies.*

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### Advertisements

DOT considers any solicitation for air transportation, regardless of the medium, to constitute an advertisement. This includes not only traditional print, radio, and television solicitations, but also travel brochures, billboards, press releases, fare quotes provided by reservations agents, and solicitations on the Internet, including email and Web sites. DOT's advertising rules also apply to advertisements where air fares are "bundled" with a hotel, cruise, tour, car or other service.

### Taxes and Fees

As a matter of policy, DOT allows for certain taxes and fees to be broken out and excluded from the advertised air fare if they are imposed by a government entity and on a per-passenger basis, and are not ad valorem in nature (i.e., not calculated as a percentage of the fare price). Examples of allowable per-passenger taxes and fees include passenger facility charges, U.S. Customs fees, federal domestic flight segment fees, and international arrival and departure fees. Where such taxes and fees are excluded, notice of the exclusion must be displayed prominently and in proximity to the advertised air fare, or through an asterisk directing the reader to an explanation, so that consumers can determine the full fare. The amounts of these excluded taxes, or at least a range, also must be stated, as in "fares do not include up to \$\_\_\_ in government taxes and fees, including the September 11th Security Fee."

### September 11th Fee

The Transportation Security Administration (TSA) imposes a security service fee on air travel. Since the fee is assessed on a per-passenger basis, it may be broken out in fare advertisements, as illustrated

above. If broken out, however, it must be specifically referred to as the “September 11th Security Fee.” Failure to comply with the requirement is considered by DOT to be an unfair and deceptive practice.

### Baggage Fees

DOT has developed special rules for providing consumers with advance notice of possible airline baggage fees. Appropriate disclosure requirements vary by the type of advertisement, e.g., print, telephone reservations, Internet, etc.

### Fuel or Insurance Surcharges

One common mistake is for air carriers and ticket agents to exclude fuel surcharges and insurance fees from advertised air fares. Only government imposed, per-passenger taxes and fees that are not *ad valorem* can be excluded from advertised fares. Fares that do not include applicable fuel surcharges, insurance fees, or other similar “surcharges” imposed by carriers or ticket agents violate the rule, and could lead to enforcement action.

### Internet Advertisements

To accommodate the emergence of the Internet in the sale of air transportation, the DOT has permitted a full explanation of taxes, fees and conditions to be provided via hyperlinks that take the viewer to the bottom of the screen, or to a separate screen, where the explanation is displayed. Internet ads that quote a fare that is not the full fare or has significant restrictions should have an explicit statement that additional charges apply immediately adjacent to the fare with a hyperlink to a full explanation. Guidance on fare restrictions applies equally to Internet fare advertisements, including banner ads and pop-up ads placed on either the seller of air transportation’s site or external sites, and to e-mail advertisements. Additionally, any air fare advertised on the Internet must be available at the time it is advertised. DOT has developed special guidance for air fares displayed to a consumer executing a search on a Web site applying flexible parameters (e.g., departure dates or connections).

### Conditions and Restrictions

Restrictions on an advertised air fare such as minimum/maximum stay and roundtrip purchase requirements, fees for ticket changes, certain baggage fees, and nonrefundable conditions must be displayed prominently and in proximity to the advertised air fare. If there are any deadlines for obtaining the advertised fare, then such time restrictions must be clearly stated in the advertisement. Any advance purchase conditions, routing requirements (e.g., if the fare is not available on non-stop flights) and limitations in certain markets must also be disclosed. Moreover, any change to the final price for air transportation after receipt of partial payment constitutes an unfair and deceptive practice where such a policy is not disclosed prominently and in proximity to the advertised fare. Additionally, the Department considers any change to the final price after receipt of full payment to constitute an unfair and deceptive practice. Finally, obligatory airline-imposed fees for lap infants must be disclosed prior to purchase of the accompanying adult’s fare.

### Availability

If the number of seats available at the advertised price is limited, disclose the restriction along the lines of “seats are limited and may not be available on every flight.” As a matter of enforcement policy, DOT requires that advertised fares be available in reasonable quantities (at least 10% of seat inventory) and for a sufficient period of time after the advertisement is published (usually 72 hours unless otherwise stated in the advertisement). Separate disclaimers around availability apply to brochures and other materials with a long shelf life. When an advertisement is repeatedly published, the same requirements apply each time the advertisement is re-published.

### "Free" Tickets and Applicable Restrictions

If an advertisement promotes free tickets in conjunction with the purchase of one or more tickets or a marketing promotion, applicable restrictions must be disclosed. If taxes must be paid on the free ticket, the previously mentioned notice requirements apply.

### Advertising Consistency

Parties advertising air fares are responsible for all ads that they directly publish or cause to be published. This includes ads placed with advertising agencies and airline partners, including commuter airlines. DOT requires all advertisements to be internally consistent. For example, the large print information must conform to information elsewhere in the ad. An ad must not state that a package includes "all taxes" when additional taxes are listed in a disclaimer section. Finally, where an advertisement states that flights are "non-stop" the flights must be non-stop, not "through" flights.

### Public Charters

Advertisements for charter flights should disclose that flights are charters and include the name of the charter operator, the name of the airline, and a reference to the Operator Participant Agreement. Such flights must not be advertised or sold until a public charter prospectus has been filed with the DOT and assigned a public charter number. Charter flight solicitations must also comply with DOT's full fare advertising rule.

### Other Issues

DOT has also established enforcement policies addressing more complex advertising issues.

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