

§ 399.83

(e) *Exceptions.* Exceptions to a safeguard set forth in paragraph (c) of this section may be recognized for activities in a foreign country if the Board finds that special circumstances pertaining to the country render the safeguard inappropriate. Exceptions on other grounds may be recognized pursuant to § 399.4.

[PS-29, 30 FR 13781, Oct. 29, 1965]

§ 399.83 Unfair or deceptive practice of air carrier, foreign air carrier, or ticket agent in orally confirming to prospective passenger reserved space on scheduled flights.

It is the policy of the Board to consider the practice of an air carrier, foreign air carrier, or ticket agent, of stating to a prospective passenger by telephone or other means of communication that a reservation of space on a scheduled flight in air transportation is confirmed before a passenger has received a ticket specifying thereon his confirmed reserved space, to be an unfair or deceptive practice and an unfair method of competition in air transportation or the sale thereof within the meaning of section 411 of the Act, unless the tariff of the particular air carrier or foreign air carrier provides for confirmation of reserved space by the means so used.

[PS-58, 39 FR 38096, Oct. 29, 1974]

§ 399.84 Price advertising.

The Board considers any advertising or solicitation by a direct air carrier, indirect air carrier, or an agent of either, for passenger air transportation, a tour (i.e., a combination of air transportation and ground accommodations) or a tour component (e.g., a hotel stay) that states a price for such air transportation, tour, or tour component to be an unfair or deceptive practice, unless the price stated is the entire price to be paid by the customer to the air carrier, or agent, for such air transportation, tour, or tour component.

[PS-113, 49 FR 49440, Dec. 20, 1984]

EFFECTIVE DATE NOTE: At 76 FR 23166, Apr. 25, 2011, § 399.84 was revised, effective Oct. 24, 2011. The effective date of this revision was subsequently delayed to Jan. 24, 2012 at 76 FR 45181, July 28, 2011. The effective date was further delayed to Jan. 26, 2012 at 76 FR

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78145, Dec. 16, 2011. For the convenience of the user, the revised text is set forth below:

§ 399.84 Price advertising and opt-out provisions.

(a) The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (i.e., a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component. Although charges included within the single total price listed (e.g., government taxes) may be stated separately or through links or “pop ups” on websites that display the total price, such charges may not be false or misleading, may not be displayed prominently, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

(b) The Department considers any advertising by the entities listed in paragraph (a) of this section of an each-way airfare that is available only when purchased for round-trip travel to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless such airfare is advertised as “each way” and in such a manner so that the disclosure of the round-trip purchase requirement is clearly and conspicuously noted in the advertisement and is stated prominently and proximately to the each-way fare amount. The Department considers it to be an unfair and deceptive practice to advertise each-way fares contingent on a round-trip purchase requirement as “one-way” fares, even if accompanied by prominent and proximate disclosure of the round trip purchase requirement.

(c) When offering a ticket for purchase by a consumer, for passenger air transportation or for a tour (i.e., a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) that must be purchased with air transportation, a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, may not offer additional optional services in connection with air transportation, a tour, or tour component whereby the optional service is automatically added to the consumer’s purchase if the consumer takes no other action, i.e., if the consumer does not opt out. The consumer must affirmatively “opt in” (i.e., agree) to such a service and the fee for it before that fee is added to the

total price for the air transportation-related purchase. The Department considers the use of “opt-out” provisions to be an unfair and deceptive practice in violation of 49 U.S.C. 41712.

§ 399.85 Notice of baggage fees and other fees.

(a) If a U. S. or foreign air carrier has a website accessible for ticket purchases by the general public in the U.S., the carrier must promptly and prominently disclose any increase in its fee for carry-on or first and second checked bags and any change in the first and second checked bags or carry-on allowance for a passenger on the homepage of that website (e.g., provide a link that says “changed bag rules” or similarly descriptive language and takes the consumer from the homepage directly to a pop-up or a place on another webpage that details the change in baggage allowance or fees and the effective dates of such changes). Such notice must remain on the homepage for at least three months after the change becomes effective.

(b) If a U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent has a website accessible for ticket purchases by the general public in the U.S., the carrier or agent must clearly and prominently disclose on the first screen in which the agent or carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can see these baggage fees. An agent may refer consumers to the airline websites where specific baggage fee information may be obtained or to its own site if it displays airlines’ baggage fees.

(c) On all e-ticket confirmations for air transportation within, to or from the United States, including the summary page at the completion of an online purchase and a post-purchase email confirmation, a U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent that advertises or sells air transportation in the United States must include information regarding the passenger’s free baggage allowance and/or the applicable fee for a carry-on bag and the first and second checked bag. Carriers must provide this information in text form in the e-ticket confirmation. Agents may pro-

vide this information in text form in the e-ticket confirmations or through a hyperlink to the specific location on airline websites or their own website where this information is displayed. The fee information provided for a carry-on bag and the first and second checked bag must be expressed as specific charges taking into account any factors (e.g., frequent flyer status, early purchase, and so forth) that affect those charges.

(d) If a U.S. or foreign air carrier has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier must prominently disclose on its website information on fees for all optional services that are available to a passenger purchasing air transportation. Such disclosure must be clear, with a conspicuous link from the carrier’s homepage directly to a page or a place on a page where all such optional services and related fees are disclosed. For purposes of this section, the term “optional services” is defined as any service the airline provides, for a fee, beyond passenger air transportation. Such fees include, but are not limited to, charges for checked or carry-on baggage, advance seat selection, in-flight beverages, snacks and meals, pillows and blankets and seat upgrades. In general, fees for particular services may be expressed as a range; however, baggage fees must be expressed as specific charges taking into account any factors (e.g., frequent flyer status, early purchase, and so forth) that affect those charges.

(e) For air transportation within, to or from the United States, a carrier marketing a flight under its identity that is operated by a different carrier, otherwise known as a code-share flight, must through its website disclose to consumers booked on a code-share flight any differences between its optional services and related fees and those of the carrier operating the flight. This disclosure may be made through a conspicuous notice of the existence of such differences on the marketing carrier’s website or a conspicuous hyperlink taking the reader directly to the operating carrier’s fee listing or to a page on the marketing