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DOT Proposes Charter Broker Regulations (Sept. 2013)

The U.S. Department of Transportation (“DOT”) issued a Notice of Proposed Rulemaking (“NPRM”) on September 30, 2013, proposing to (a) impose new disclosure requirements upon air taxi operators and commuter air carriers (“ATOs/CACs”), and (b) regulate air charter brokers that act as principals in arranging single entity charter air transportation, air ambulance services, and/or charter air transportation under contract with the Federal government. DOT seeks comments on the proposed rules by November 29, 2013.

The NPRM addresses four issues:

1. Air Taxi Operators and Commuter Air Carriers

The NPRM proposes to amend Part 298 (14 C.F.R. Part 298) to restrict ATOs and CACs (which typically operate aircraft with 60 or fewer seats) from soliciting or executing contracts with any person (the “charterer”) for single entity charter air transportation, when such transportation will be performed by other air carriers. Only if ATOs and CACs clearly and conspicuously disclose – in writing – specific information, can they broker or subservice transportation contracts to other air carriers. DOT proposes that ATOs and CACs disclose the following:

- The corporate name and any trade name of the air carrier that will operate the charter flight (the operating carrier or direct air carrier);
- The capacity in which each ATO or CAC is acting in this transaction (i.e., as a principal, as an agent of the charterer, or as an agent of the carrier);
- The existence of any business relationship between the direct air carrier and the ATO or CAC;
- The make and model of the aircraft;
- The total cost of the air transportation, including any carrier-imposed fees and any government-imposed taxes, fees, and charges; and



The firm’s practice encompasses virtually every aspect of aviation law, including advising air taxi operators, commuter air carriers, and charter brokers with DOT’s charter regulations and enforcement policies.

For further information regarding the matters discussed in this article, please contact:

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- The existence and amount of any third party fees for which the charterer may be responsible (such as landing fees, fuel, aircraft parking or hangar fees, etc.).

Once the charterer and the ATO or CAC sign a contract for the transportation services, the charterer must receive written notice “within a reasonable time” of any changes to the contracted transportation. If the ATC or CAC does not provide reasonable notice of the change, the charterer must have an opportunity to cancel the contract and to receive a full refund, presumably of the transportation cost.

The NPRM, importantly, clarifies that an ATO or a CAC is subject to the prohibitions on unfair and deceptive trade practices, similar to those applicable to the larger airlines. For example, an ATO cannot misrepresent the services it offers, the points it services, or the flights it has agreed to arrange.

2. New Class of Indirect Air Carriers

The NPRM also proposes to establish a new class of indirect air carriers called “air charter brokers” in a new Part 295 of the DOT regulations. Part 295, if finalized, will permit air charter brokers to act as principals in marketing and offering single entity charter air transportation aboard large and small aircraft. Under the NPRM, brokers do not need to register or apply for authorization; Part 295 instead grants an exemption, which authorizes brokers to provide indirect air carrier services.

The NPRM will impose disclosure requirements upon air charter brokers when they act as principals (namely indirect air carriers) in arranging air transportation services. Under the NPRM, the disclosure requirements do not apply when an air charter broker acts as an agent of the direct air carrier or as an agent of the charterer.

Specifically, air charter brokers – acting as indirect air carriers – must disclose clearly and conspicuously all of the following information in solicitation or marketing materials (including on a website):

- The corporate name and any trade name of the direct air carrier operating the flight;
- The capacity in which the air charter broker is acting in this transaction (namely as an indirect air carrier);
- The existence of any business relationship between the operating carrier and the broker;
- The make and model of the aircraft;
- The total cost of the air transportation, including any carrier-imposed fees and any government-imposed taxes, fees, and charges;
- The existence and amount of any third party fees for which the charterer may be responsible (such as landing fees, fuel, aircraft parking or hangar fees, etc.); and
- The existence or absence of liability insurance held by the air charter broker that covers the charterer and the passengers.

If any of the above-information changes after the charterer signs a contract for the transportation services, the broker must provide reasonable notice of the change. Under the NPRM, the charterer can cancel the flight and receive a full refund when the broker fails to provide reasonable notice. By way of example, DOT suggests that

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notice of changes 24 hours before the flight departs will not constitute reasonable notice. With respect to refunds, the NPRM requires that the air charter broker provide credit card refunds within seven business days and cash/check refunds within 20 days of receiving a complete claim from the charterer. This parallels the requirements that currently apply to larger airlines.

The NPRM confirms that air charter brokers cannot engage in unfair and deceptive trade practices. For example, a broker cannot misrepresent that it is an air carrier. It also cannot misrepresent the services it offers or the flights it has agreed to arrange.

3. Air Ambulance Services

DOT proposes to formalize a blanket exemption it granted in a 1983 order (Order 83-1-96) to indirect air carriers that arrange emergency air ambulance services. The disclosure requirements identified in (2) above will not apply to brokers that market and offer (as indirect air carriers) air ambulance transportation services. The NPRM, however, requires that these brokers comply with the consumer protection policies stated in new Part 295.

4. Air Charter Broker Services Under Contract with the Government

As clarified in the NPRM, air charter brokers engage in common carriage when they solicit contracts to provide transportation services to the Federal government. As a result, these brokers must comply with the consumer protection policies set forth in new Part 295.

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Among other things, DOT requests comments on whether it should set a specific time limit for notice of any changes to the transportation services contracted. It also seeks comments on a proposed change to the definition of "single entity charter." Under the NPRM, this term means "a charter for the entire capacity of the aircraft, the cost of which is borne by the charterer and not directly or indirectly by individual passengers, except in cases in which individual passengers self-aggregate to form a single entity." DOT wants industry comment on whether individuals should be permitted to form their own group and travel on single entity charter flights – even though the individuals in a group may pay for a portion of the transportation cost.

In addition, DOT asks for comments on its proposal to apply existing refund rules to transportation arranged by air charter brokers. DOT, moreover, would like comments on whether air charter brokers should provide the same disclosures with respect to air ambulance services as with respect to single entity air transportation services.

If you have any questions regarding the NPRM or its impact on your services, please do not hesitate to contact Zuckert, Scoutt & Rasenberger, L.L.P.

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