



DOT FINAL RULE ON AIR CHARTER BROKERS

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By **Lonnie Anne Pera**

The U.S. Department of Transportation (“DOT”) issued a Final Rule on September 17, 2018 establishing a new class of indirect air carriers called “air charter brokers.” This Final Rule allows air charter brokers to provide single entity air transportation of passengers. This rule will become effective on **February 14, 2019**.

As a technical matter, the Final Rule establishes an exemption for air charter brokers that want to hold out, sell or undertake to arrange single entity charter air transportation using direct air carriers that operate large or small aircraft. This exemption applies to air charter brokers that serve either as bona fide agents for charterers or air carriers or as principals. When this rule becomes effective, air charter brokers do not need to obtain separate DOT authorization and can offer services under the exemption, provided they fully comply with the rules stated in a new Part 295 of DOT’s regulations.

Under the exemption, an air charter broker may “hold out, sell, or otherwise arrange” single entity charter air transportation by air carriers that have the requisite DOT economic authority and Federal Aviation Administration (“FAA”) operating authority. The Final Rule also permits the air charter broker to advertise broker services. All advertisements must clearly and conspicuously state that (i) it is an air charter broker, (ii) it is not an airline with operational control of aircraft, and (iii) a properly licensed air carrier will operate the advertised air services.



The firm’s practice encompasses virtually every aspect of aviation law, including advising air charter brokers, air taxi operators, and commuter carriers on licensing and disclosure requirements.

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DOT FINAL RULE ON AIR CHARTER BROKERS

Page 2 of 3

Importantly, the Final Rule requires the air charter broker to disclose (a) specific information to the charterer and (b) other information when requested by the charterer. With respect to (a), the air charter broker must disclose to the charterer:

- (1) The corporate name of the airline with operational control of the aircraft and any other names the airline uses;
- (2) The capacity in which the air charter broker is acting in contracting the air transportation (*i.e.*, as an indirect air carrier, indirect foreign air carrier, agent of the charterer, or agent of the airline); and
- (3) The existence or absence of liability insurance held by the air charter broker covering the charterer, passengers, and property on the charter flight, and the monetary limits of such insurance.

If the charterer requests additional information (as referenced in (b) above), the air charter broker must disclose the following:

- (a) If the air charter broker is acting as charterer's agent, the existence of any corporate or business relationship (including a preexisting contract) between the broker and the carrier with operational control of the flight;
- (b) The total cost of the air transportation paid by the charterer to or through the air charter broker, including any broker or carrier-imposed fees or government-imposed taxes; and
- (c) The existence and amount of any fees collected by third-parties (including fuel, landing fees, and aircraft parking or hangar fees) that will be the charterer's responsibility.

The air charter broker must disclose the above information at contract (if known then) or within a reasonable time after the information becomes available. If any information changes, the air charter broker must update the charterer with the new information within a reasonable time after the change has occurred. When the broker does not provide required or requested information within a reasonable time, the air charter broker must give the charterer an option to cancel the contract and receive a full refund.

The Final Rule, moreover, requires that the air charter broker issue "prompt" refunds of all monies paid for charter air transportation when the air carrier cannot perform the contracted transportation or when such refunds are otherwise due. A refund is due, for example, when the air charter broker does not make the required disclosures within a reasonable time, as set forth in the Final Rule. For payments by credit card, the air charter broker must issue a credit within seven (7) business days of the charterer's demand for a refund. The broker must refund payments made in cash or check within twenty (20) business days of the charterer's demand for a refund.

DOT FINAL RULE ON AIR CHARTER BROKERS

Page 3 of 3

Importantly, the Final Rule prohibits an air charter broker from engaging in unfair and deceptive practices or unfair method of competition. To minimize uncertainty in the industry, DOT has enumerated various (but not all) practices that are unfair and deceptive. For example, the air charter broker cannot misrepresent the carrier in operational control of the aircraft, the quality of the aircraft, the schedule or itinerary, the availability of insurance, or the fares and/or charges for the air transportation services. The air charter broker also cannot misrepresent that a contract for a specific direct air carrier or aircraft exists, when the broker does not have a binding air commitment with the carrier. The air charter broker will face an enforcement action, if it engages in these and other unfair and deceptive practices.

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The Final Rule does not become effective until February 14, 2019. This means that – until that date – an air charter broker cannot hold out, sell, or arrange single entity charter air transportation as a principal, unless the broker otherwise obtains a written exemption or waiver from DOT. Until February 14, 2019, the air charter broker must continue to serve as an agent for either the charterer (e.g., the single entity) or the air carrier and must continue to comply with DOT's 2004 written guidance.

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

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