As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on September 7, 2004 to waive the Nonmanufacturer Rule for General Aviation Turboprop Aircraft With Six Or More Passenger Seats. In response, SBA is currently processing a request to waive the Nonmanufacturer Rule for General Aviation Turboprop Aircraft With Six Or More Passenger Seats, North American Industry Classification System (NAICS) 336411. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Authority: 15 U.S.C. 637(a)(17).

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–23271 Filed 10–15–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver of the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Components Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Components Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA's 8(a) Business Development Program.

DATES: This waiver is effective November 2, 2004.

FOR FURTHER INFORMATI0N CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by email at *edith.butler@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on June 29, 2004 to waive the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Components Manufacturing. In response, on July 28, 2004, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Components Manufacturing, North American Industry Classification System (NAICS) 335999.

SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In response to this notice, comments were received from interested parties. SBA has determined from these sources that there are no small business manufacturers of this class of products, and is therefore granting the waiver of the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Components Manufacturing, NAICS 335999.

Authority: 15 U.S.C. 637(a)(17).

Dated: October 8, 2004.

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–23272 Filed 10–15–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice on the Role of Air Charter Brokers in Arranging Air Transportation

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice on the role of air charter brokers in arranging air transportation.

SUMMARY: The Department is publishing the following notice to provide guidance to the aviation industry on the permissible role of air charter brokers in the provision of air transportation.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Deputy Assistant General Counsel, or Jonathan Dols, Senior Attorney, Office of Aviation Enforcement and Proceedings (C–70), 400 7th Street, SW., Washington, DC 20590, (202) 366–9349.

Notice

The purpose of this notice is to provide guidance regarding the lawful role of air charter brokers (*i.e.,* entities, including persons, that link prospective charter customers with direct air carriers) in the provision of air transportation.[1] This guidance will be used by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) in its compliance and enforcement activities associated with 49 U.S.C. 41101 and 41301, which establish the certificate and permit requirements for U.S. and foreign air carriers, respectively, and 49 U.S.C 41712, which prohibits unfair and deceptive practices.

In order to hold out or otherwise engage in air transportation, either directly or indirectly, as a common carrier, a person is required to hold economic authority from the Department of Transportation pursuant to 49 U.S.C. 41101 or 41301, or an exemption from those provisions, such as that provided to air taxis under 14

[1] This notice does not apply to activities that are permitted under 14 CFR parts 296, 297, or 380.

CFR part 298, to certain indirect air carriers functioning as public charter operators pursuant to 14 CFR part 380, or to air freight forwarders pursuant to 14 CFR parts 296 and 297. (This economic authority is in addition to any safety authority necessary under applicable Federal Aviation Administration requirements.) Therefore, air charter brokers without appropriate economic authority may not hold out air transportation in their own right or enter as principals into contracts with customers to provide air transportation.[2] Rather, in entering into contracts to provide air transportation, these air charter brokers must act either as an agent of the direct air carrier or of the customer.[3]

The Enforcement Office has become aware that there are air charter brokers not holding economic authority from the Department who solicit and contract directly with a charter customer for air transportation and then solicit and separately contract directly with a direct air carrier to operate the air service promised to the charter customer under the charter broker's contract with that customer. With respect to payment for the proffered air transportation, two separate transactions commonly occur: (1) The air charter broker collects all of the monies paid by the charter customer pursuant to the broker's contract with the customer, and (2) the air charter broker then turns over a portion of these monies to the direct air carrier pursuant to the broker's separate contract with the carrier. In such instances, the air charter broker is not acting as an agent for the operating carrier or for the charter customer. Rather, the air charter broker is acting as a principal in both transactions, and, with respect to its relationship with the customer, is engaged in air transportation as an indirect air carrier without economic authority in contravention of the statutory and Department licensing requirements described above.

In addition, the Enforcement Office has recently learned that certain air charter brokers that lack economic authority have arrangements with licensed air carriers, in which the brokers hold out in their own right and, as principals, sell charter flights on aircraft that they own or lease and have had placed on the operating certificates of the licensed carriers. In such situations, the Department has found that, to the extent that a direct air carrier knows or has reason to know of the broker's unlawful conduct, the direct air carrier is also engaged in an unfair and deceptive practice or unfair method of competition in violation of 49 U.S.C. 41712.[4] However, we recognize that air charter brokers can provide important public benefits in connection with air transportation, particularly when, akin to public charter operators, they assume the economic risk of such service and are also involved in purchasing and funding the operation of aircraft by certificated carriers. We note that this notice does not preclude brokers from seeking from the Department exemption authority that could permit them to offer services directly to the public in their own right, subject to their implementation of necessary consumer safeguards.

The Enforcement Office is particularly concerned about the unlawful practices described above pertaining to brokers that lack economic authority because they bypass the protections put in place by the Department to afford the public a measure of financial protection where charter flights are involved. In this regard, with respect to traditional single-entity charters using large aircraft,[5] section 212.8 of the Department's rules (14 CFR 212.8) requires a direct air carrier that engages in charter air transportation to maintain a bond, in an unlimited amount, to guarantee performance of all charter flights for which it has contracted, or to maintain an escrow account into which it must deposit immediately all payments received for charter flights until after the flight has been operated.[6] Where an air charter broker is the principal in the transaction with a charter customer and receives payment directly, its actions are not only unlawful, but also create the type of unacceptable risk to the public's funds that the economic licensing requirements of 49 U.S.C. 41101 and the Department's regulations, when followed, are designed to preclude.

Moreover, such arrangements by air charter brokers that do not hold economic authority from the Department also violate specific Department regulations designed to protect the public in other respects from unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. 41712. In this regard, air charter brokers are ticket agents pursuant to 49 U.S.C. 40102(a)(40), which defines a ticket agent as a person, other than a carrier or its employee, who, ''as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation.'' Various provisions of 14 CFR part 399 state that the Department will regard it to be an unfair and deceptive practice or unfair method of competition for a ticket agent, among other things, to create the false impression that it is an air carrier, to advertise in certain ways that confuse the traveling public with respect to a ticket agent's status, and to enter into a contract for air transportation with a customer without first obtaining a binding commitment with an air carrier to perform the promised air transportation.[7] Accordingly, any advertising by an air charter broker without economic authority should clearly convey the fact that the broker is not a direct air carrier and that the air service advertised will be provided by a properly licensed carrier.[8]

[2] Under Department enforcement case precedent, violations of 49 U.S.C. 41101 and 41301 and the Department's licensing requirements constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. 41712. See, *e.g.,* DB Air, Ltd., Violations of 49 U.S.C. 41101 and 41712, Order 2004–2–21 (Feb. 23, 2004); Trans National Travel, Inc., Violations of the Public Charter Rules, 49 U.S.C. 41101 and 49 U.S.C. 41712, Order 94–8–17 (Aug. 12, 1994). Pursuant to 49 U.S.C. 46301, violations of these statutory provisions subject violators to the assessment of civil penalties of up to $25,000 for each violation and $25,000 for each day each such violation continues. The maximum amount is $2,500 per violation per day for individuals or an entity that is a ''small business'' as defined in 15 U.S.C. 632.

[3] A broker would not be considered to be engaging in air transportation and thus would not need to be acting as an agent where, for example, it did not hold out air transportation and merely arranged for the charterer to sign a contract for air transportation directly with the airline.

[4] *See, e.g.,* Frontier Airlines, Inc., Violations of 49 U.S.C. 41712 and 14 CFR part 212, Order 2004–8–19 (Aug. 18, 2004); Miami Air International, Inc., Violations of 49 U.S.C. 41712, Order 2004–4–15 (Apr. 20, 2004); Ryan International Airlines, Inc. Violations of 49. U.S.C. 41712 and 14 CFR part 212, Order 2003–12–15 (Dec. 15, 2003). We note that, pursuant to 14 CFR 212.3(d), a direct air carrier ''must make a reasonable effort to verify that any charterer with which it contracts, and any charter it conducts, meets the applicable requirements of this chapter.''

[5] A ''large aircraft'' means any aircraft designed to have a maximum passenger capacity of more the 60 seats or a maximum payload capacity of more than 18,000 pounds. 14 CFR 298.2. The Department and the Civil Aeronautics Board, which held jurisdiction over aviation licensing matters prior to the Department, have consistently used an aircraft's original design capacity as the test for determining whether an aircraft met this definition, rather than the number of seats or the payload capacity that the aircraft is configured to hold. Order 2003–7–7, issued July 7, 2003; Order 2002–9–4, issued September 5, 2002; See also Part 298 Weight Limitation Investigation, 60 CAB 142, 143 (1972); 44 FR 30081 (May 24, 1979).

[6] Similar protections exist for public charter flights, where the authorized indirect air carrier is required to have a bond or other security arrangement and to escrow payments from charter participants until payment is made to the direct air carrier's own escrow account. 14 CFR 380.34.

[7] 14 CFR 399.80(a), (b) and (j), respectively.

[8] Arrangements in which the air charter broker markets its own aircraft that it has paid a direct air carrier to place on the air carrier's operations specifications have raised issues when the broker seeks to use its livery on the aircraft. Bearing in

Although the proscriptions on deceptive and anticompetitive conduct found in Part 399 are written in general terms, at a minimum, air charter brokers without economic authority (or other ticket agents for that matter) should take care not to hold out as ''airlines,'' ''air carriers,'' ''operators,'' ''airways,'' or in any other way likely to create the false impression that they are direct air carriers in their own right. Toward this end, such entities should not refer to an aircraft used in the air services that they are marketing in a manner that conveys the false impression that they are an air carrier or the operator of the air transportation (*e.g.*, ''our fleet,'' or ''our charters,'' ''our charter service,'' ''our jet operators,'' or ''we operate a fleet of'').

In the course of several recent enforcement investigations, the Enforcement Office has also become aware of the use of air charter brokers by operators of commercial service with large aircraft operated pursuant to 14 CFR part 125. Such operators may not hold out or provide air transportation to the public for compensation or hire, directly or indirectly through third parties.[9] Therefore, air charter brokers who offer transportation services to the public, regardless of whether they hold economic authority in their own right, may not act as an agent of a Part 125 operator with respect to the provision of air transportation. Such actions may be unfair and deceptive practices and unfair methods of competition on the part of the air charter broker, in violation of 49 U.S.C. 41712, and would subject the Part 125 operator to enforcement action for unlawfully engaging in common carriage.

Another area of interest regarding the relationship between Part 125 carriers and air charter brokers that has recently come to our attention involves the use of so-called Internet ''bid bonds'' The Enforcement Office understands that some air charter brokers, who often style themselves as ''charter managers'' or ''logistics companies,'' manage the transportation of cargo for the major auto manufacturers, as well as scores of other customers,[10] who may be the actual shippers of goods or air freight forwarders. These charter managers conduct business through an Internet bid-quote solicitation system that allows subscribing air carriers and Part 125 operators to see and bid on the transportation needed. With respect to such computerized bidding processes, a Part 125 carrier could contract with customers through the charter manager, with the charter manager being an agent for the customers to be served, so long as either (1) the charter manager represents only a few customers or (2) the contracts signed by the Part 125 carrier with the charter manager as agent are specific as to only a small number of delineated customers with whom the Part 125 carrier is dedicated to contracting.[11] The Enforcement Office would likely investigate for unlawful common carriage any situation where the number of different customers whose trips the Part 125 carrier bid on, or with whom the Part 125 carrier contracted through the charter manager, exceeded three.[12]

If there are any questions regarding this notice, please contact Dayton Lehman, Deputy Assistant General Counsel, or Jonathan Dols, Senior Attorney, Office of Aviation Enforcement and Proceedings (C–70), 400 7th Street, SW., Washington, DC 20590, (202) 366–9349.

An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*

Dated: October 8, 2004.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 04–23268 Filed 10–15–04; 8:45 am]

BILLING CODE 4910–62–P

mind the prohibition in 14 CFR 399.80(b) on a ticket agent displaying its name on aircraft in a manner that may mislead or confuse the traveling public as to the agency status of the ticket agent, the Enforcement Office has reviewed such matters on a case-by-case basis and has generally declined to take enforcement action where the name of the carrier is also displayed prominently on the aircraft and consumers are not otherwise misled into believing that the ticket agent is an airline.

[9] See, e.g., Premier Aircraft Management, Inc., Violations of 49 U.S.C. 41101 and 41712 and 14 CFR Part 375, Order 2004–5–11 (May 13, 2004); SportsJet, LLC, Violations of 49 U.S.C. 41101 and 41712, Order 2003–12–23 (Dec. 29, 2003). In addition, 14 CFR 125.11(b) provides that ''[n]o certificate holder may conduct any operation which results directly or indirectly from any person's holding out to the public to furnish transportation.''

[10] We understand that some charter managers may manage air services for up to 200 separate customers.

[11] A Part 125 carrier may only contract to transport goods through a charter manager if the charter manager is acting legally as the agent of the customer. A Part 125 carrier may not enter into a contract with a charter manager in which the Part 125 carrier's obligation is to the charter manager (not the customer) to perform the transportation and the charter manager has a separate agreement to provide the customer air transportation. This is the case because, if the charter manager is not acting as the lawful agent of the customer in its contract with an air carrier, it would be acting either as a direct air carrier, in effect sub-servicing the operation (some charter managers do, in fact, hold authority as direct air carriers), or as an indirect air carrier, i.e., freight forwarder, pursuant to 14 CFR Part 296. A Part 125 carrier can never lawfully carry the traffic of an air carrier (Part 135 or 121) or a freight forwarder since such transportation clearly would be in common carriage. Indeed, we would view seriously the actions of any charter manager acting as a direct or indirect air carrier that contracted in such a manner with a Part 125 carrier. Such actions could, at a minimum, constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712.

[12] Presuming the Part 125 carrier signs a contract with a charter manager/agent representing three customers, the carrier should not participate in any other bid quote solicitation system operated by another charter manager/agent unless doing so involved only bidding on and operating trips for the same three customers. To do so would likely trigger an investigation by the Enforcement Office to determine whether the carrier is engaging in common carriage.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–78]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 12, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Dispositions of Petitions

Docket No.: FAA–2002–13180.

Petitioner: Ryan International Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 91.203(a) and (b).

Description of Relief Sought/Disposition: To permit Ryan International Airlines, Inc., to operate temporarily its U.S.-registered aircraft following the incidental loss or mutilation of that aircraft's airworthiness certificate or registration certificate, or both.

Grant, 10/1/2004, Exemption No. 6571D.

Docket No.: FAA–2003–14252.