

allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267-7277 or email 7-AWA-Slotadmin@faa.gov, and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph 7.

7. For the duration of this Order, a carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267-7277 or email 7-AWA-Slotadmin@faa.gov, and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at JFK after this order expires.

8. A carrier may not buy, sell, trade, or transfer an Operating Authorization, except as described in paragraph 7.

9. Historical rights to Operating Authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the time-frame authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

i. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

ii. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

b. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations and:

i. The dates within each applicable season it intends to commence and complete operations.

A. For each winter scheduling season, the report must be received by the FAA no later than August 15 during the preceding summer.

B. For each summer scheduling season, the report must be received by the FAA no later than January 15 during the preceding winter.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season.

B. No later than January 15 for the winter scheduling season.

iii. The completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the Operating Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status for the next applicable scheduling season under paragraph 9.

11. The FAA considers the following factors and priorities in allocating Operating Authorizations, which the FAA has determined are available for reallocation—

a. Historical requests for allocation of an Operating Authorization in the same time;

b. New entrant status;

c. Retiming of historic Operating Authorizations;

d. Extension of a seasonal Operating Authorization to year-round service;

e. The effective period of operation;

f. The extent and regularity of intended use with priority given to year-round services;

g. The operational impacts of scheduled demand, including the hourly and half-hour demand and the mix of arrival and departure flights; and

h. Airport facility constraints.

Any carrier that is not approved for allocation of an Operating Authorization by the FAA may request it be placed on a waiting list for consideration should an Operating Authorization in the requested time become available during that scheduling season.

12. If the FAA determines that an involuntary reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at JFK.

13. The FAA may enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any carrier from violating the terms of this Order.

14. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, DC, on September 11, 2018.

**Jeffrey Planty,**

*Deputy Vice President, System Operations Services.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Parts 295 and 298

**RIN No. 2105-AD66**

**[Docket No. DOT-OST-2007-27057]**

#### Increasing Charter Air Transportation Options

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final rule.

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**SUMMARY:** The Department of Transportation (DOT or Department) is issuing a final rule to facilitate innovation and growth in the air charter industry while strengthening the legal protections provided to consumers of charter air transportation. First, this rule allows "air charter brokers" as principals or bona fide agents to provide single entity charter air transportation of passengers. Second, it requires air charter brokers to make certain disclosures including those responsive to a National Transportation Safety

Board (NTSB) recommendation and to make other disclosures upon request. Third, it enumerates certain practices by air charter brokers as prohibited unfair or deceptive practices or unfair methods of competition. Fourth, this rule requires air taxis and commuter air carriers that sell charter air transportation to make certain disclosures including those responsive to an NTSB recommendation and other disclosures upon request. Fifth, it enumerates certain practices by an air taxi or commuter air carrier as prohibited unfair or deceptive practices or unfair methods of competition. At the same time, the Department is not adopting a proposal to codify exemption authority allowing indirect air carriers to engage in the sale of air transportation related to air ambulance services. Nor is it adopting a proposal to codify that certain air transportation services performed under contract with the Federal Government are in common carriage.

**DATES:** This rule is effective February 14, 2019.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Dols, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), [jonathan.dols@dot.gov](mailto:jonathan.dols@dot.gov). You may also contact Lisa Swafford-Brooks, Chief, Aviation Licensing and Compliance Branch, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), [lisa.swaffordbrooks@dot.gov](mailto:lisa.swaffordbrooks@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 30, 2013, the Department published a notice of proposed rulemaking (NPRM) in the **Federal Register**, 78 FR 59880, in which it addressed the following areas: (1) An NTSB recommendation for air taxis and commuter air carriers to make certain disclosures and a prohibition on certain practices by air taxis and commuter air carriers; (2) the creation of a new class of indirect air carrier, a requirement for these entities to make certain disclosures, and a prohibition on certain practices by these entities; (3) the authority of indirect air carriers to engage in sale of air transportation related to air ambulance services; and (4) a clarification regarding air services

performed under contract with the Federal Government.

The Department's proposal to act in response to the NTSB recommendation built upon an advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** on January 26, 2007, 72 FR 3773. The Department received 23 comments in response to the ANPRM, which were summarized in the NPRM.

The Department received 21 comments in response to the NPRM, including one comment representing the views of multiple entities. Of these, 18 comments were from members of the industry, including direct and indirect air carriers, as well as associations representing both direct and indirect air carriers and other aviation businesses. Specifically, these comments represented the views of the Air Charter Association, the Air Medical Operators Association, Air Methods, the Association of Air Medical Services, Blue Feather Charter, Chapman Freeborn, Corporate Flight Management, CSI Aviation, Flex Jet, Flight Options, Jet Logistics, Jet Solutions, the National Air Carrier Association, the National Air Transportation Association (NATA), the National Business Aviation Association (NBAA), Premier Aviation Charter, Public Charters Inc., Sentient Jet, Sentient Jet Charter, and Ultimate Jetcharters. One comment was from Consumers Union, a consumer rights organization; one comment was from the American Society of Travel Agents (ASTA), an association representing travel agents; and another comment was made anonymously. Three comments addressed the NTSB recommendation, 17 addressed the creation of a new class of indirect air carrier, six addressed air ambulance services, and one addressed air services performed under contract with the Federal Government.

In general, almost all commenters supported the proposals regarding the NTSB recommendation, the creation of a new class of indirect air carrier, and codifying the exemption authority for air ambulance services. These comments also provided suggested changes to the Department's proposals. The one comment regarding air services performed under contract with the Federal Government objected to the Department's proposal on that topic in its entirety. The section-by-section analysis will describe each provision of the final rule and respond to the comments received.

**Comments and Responses**

*1. New Class of Indirect Air Carrier*

A. Recognition of an "Air Charter Broker" Class of Indirect Air Carrier (14 CFR 295.1, 295.3, 295.5, 295.7, 295.10, 295.12)

*The NPRM:* In the NPRM, the Department proposed to recognize a class of indirect air carrier to be named "air charter brokers" that are permitted as principals in their own right to engage in single entity charter air transportation aboard large and small aircraft pursuant to exemptions from certain provisions of Subtitle VII of Title 49 of the United States Code. The Department proposed allowing this class of indirect air carrier to self-identify, rather than establish a formal licensing or registration scheme. The Department solicited comment on the establishment of such a scheme, particularly whether one should apply to non-U.S. citizen air charter brokers. In addition, the Department sought comment on whether "single entity charter" should include individuals who self-aggregate to form a single entity charter and whether including self-aggregated groups in this definition would require a change to the definition of a single entity charter in 14 CFR 212.2.

*Comments:* The comments received by DOT demonstrated general support for the recognition of a new class of indirect air carrier. There was some support for expanding the definition of "air charter broker" to include "bona fide agents." NBAA noted that charter customers using the services of an air charter broker acting as an agent were no less deserving of consumer protections than customers of air charter brokers acting as indirect air carriers. Further, NATA encouraged the Department to harmonize the regulatory language regarding disclosures required by air taxi operators/commuter air carriers and by air charter brokers.

Support for a registration scheme, on the other hand was mixed. Entities that favored the creation of a registry commented that self-identification might not adequately protect consumers because unscrupulous air charter brokers could easily change names, that a registry could be used to ensure minimum standards among air charter brokers (e.g., a certain level of insurance or bonding), and that a registry would provide consumers and DOT with contact information for and basic information about the regulated entities. Some commenters stated that such a registry would be inexpensive to maintain, while others stated it would

be costly to maintain. Of the comments in favor of the establishment of a registration scheme, some favored requiring only U.S.-citizen air charter brokers to register, others favored requiring only foreign-citizen air charter brokers to register, and still others favored requiring all air charter brokers to register.

The Department received over a half-dozen comments regarding the proposed definition of “single entity charter,” all but one of which supported the inclusion of individuals who self-aggregate to form a single entity. NBAA proposed making clear that this class of indirect air carrier does not include “fractional ownership program managers” and “in-house corporate travel departments,” and proposed definitions of those two terms. The Air Charter Association of North America expressed concern that the proposed definition was overly broad and undermined consumer protections, including those found in DOT’s rule governing public charters, 14 CFR part 380.

*DOT Response:* The Department is finalizing its proposed rule to recognize an “air charter broker” class of indirect air carrier. Because many commenters raised a valid point that charter customers deserve the same consumer protections whether they use air charter brokers who are acting as indirect air carriers or as bona fide agents, the Department has decided to widen its definition of air charter broker to include bona fide agents and, further, to define that term by regulation. Based on the multiple comments received, this is a natural outgrowth of the NPRM. The Department is also harmonizing, to the extent practicable, the regulatory language regarding disclosures required by air taxi operators/commuter air carriers and by air charter brokers.

The Department has decided not to create a registry of air charter brokers, either U.S. or non-U.S. citizens. After thoroughly reviewing the arguments raised in favor of and in opposition to such a registry, DOT has determined that at this time the potential benefits are ill-defined. The Department may revisit this issue in the future should the need become apparent. The Department notes, however, that this rulemaking does not preclude voluntary registration or “certification” through third parties. For example, air charter brokers may determine that voluntary membership in an association or organization provides the same benefits cited in the comments favoring the creation of a DOT-run registry.

Finally, recognizing the support of most commenters to including self-

aggregated individuals within the definition of “single entity charter,” DOT adopts its proposed definition, but limits the ability of individuals to form self-aggregated groups only to flights to be operated using small aircraft. Thus, there is no need to change the definition of single entity charter in 14 CFR 212.2, since that part is not applicable to any flights performed by a commuter air carrier, air taxi operator, or certificated air carrier operating “small aircraft” under Part 298. Further, it acknowledges concerns, including those of the Air Charter Association of North America that the definition as proposed in the NPRM unnecessarily broadens the definition of a single entity charter and could undermine the consumer protections in the Department’s rule governing public charters, 14 CFR part 380. In addition, the Department is making a non-substantive change by removing the word “passenger” from its “air charter broker” definition so that it references “single entity charter,” a term defined by regulation, rather than “single entity passenger charter.” The Department has decided not to accept NBAA’s proposals regarding “fractional ownership membership program managers” and “in-house corporate travel departments” because those two entities do not provide common carriage air transportation and are therefore already excluded from the scope of this rule.

#### B. Disclosures (14 CFR 295.20, 295.23, 295.24, 295.26)

*The NPRM:* In the NPRM, the Department proposed to require that an air charter broker disclose clearly and conspicuously in any solicitation materials its status and the fact that it is not a direct air carrier and will use an authorized direct air carrier to provide the transportation it offers. The Department also proposed requiring written disclosure of (1) the corporate name of the direct air carrier in operational control of the aircraft and any other names in which the carrier holds itself out to the public (as recommended by the NTSB); (2) the capacity in which the air charter broker is acting; (3) the existence of any corporate or business relationships with a particular direct air carrier; (4) the aircraft type; (5) the total cost of air transportation paid to the air charter broker; (6) the existence of any other amount charged by third parties for which the charterer will be responsible for paying directly; and (7) the existence or absence of liability insurance held by the air charter broker covering the charterer and passengers and property on the charter flight, and the monetary

limits of such insurance. Further, the Department sought public comment on whether any additional disclosures should be required.

Under the proposed rule, any required disclosure must be made within a “reasonable” time, defined as enough time for the charterer to make an informed decision as to whether to accept the change. Failure to provide notice within a “reasonable” time would entitle the consumer the option of receiving a full refund. The Department sought comment on whether to provide a specific time frame for the disclosures and whether to require some sort of confirmation of receipt of the disclosures. In addition, DOT solicited comment on whether the refund requirements of 14 CFR part 374 should apply to air charter brokers.

*Comments:* The comments received in response to the disclosure proposals ran the gamut, with some support for and some objection to each of the seven proposed disclosures. When expressing support for a disclosure, commenters generally cited a consumer need to possess that information. When expressing opposition to a disclosure, commenters generally asserted that consumers would not benefit from that information. In particular, many commenters noted that consumers need not learn the identity of the aircraft’s owner so long as they know the name of the direct air carrier. In addition, some commenters stated that because most customers of air charter brokers are sophisticated consumers with significant bargaining power, the proposed disclosures would be better handled through a negotiated contract. In response to the disclosure of insurance (or lack thereof), several commenters suggested that DOT not only require disclosure, but require that air charter brokers maintain a certain level of insurance. Finally, NATA requested that the Department clarify the meaning of “any corporate or business relationship between the air charter broker and the direct air carrier.” The NBAA further requested that the disclosure of such relationships be limited to those “which may have a substantial bearing upon the air charter broker’s selection of a direct air carrier.” Finally, Chapman Freeborn Airchartering questioned at what level of detail any required itemization must be made.

Both industry and ASTA provided comments against establishing a fixed time in which air charter brokers must disclose any changes in the air transportation arrangements. These comments explained that it would be an unworkable requirement, as some

changes could be very last-minute and thus too late to comply with the prescribed time frame while others could become known far in advance thus rendering the time frame unnecessarily restrictive.

Most commenters expressed opposition to requiring that air charter brokers obtain some form of confirmation of the receipt of any changes to the required disclosures. These commenters stated that obtaining confirmation would not be practicable, as some consumers may simply decline to confirm receipt, and would create an undue burden for air charter brokers forced to obtain one.

Comments regarding DOT's proposal to subject air charter brokers to the refund requirements of 14 CFR part 374 indicated general disapproval. Most commenters wanted parties to negotiate refund provisions in the original contract. These commenters noted that customers of air charter brokers are sophisticated parties with significant bargaining power, that Part 374 may prove unworkable in the air charter broker context, and that DOT should not substitute its judgment for that of individuals in the marketplace. Several suggested that DOT could require refund provisions be disclosed in the original contract rather than impose Part 374 by default. The minority of commenters who expressed support for this portion of the NPRM stated that consumers of air charter broker services deserve the same protections as consumers of other forms of air transportation.

*DOT Response:* Of the seven proposed disclosures, the Department is requiring three and making three others required upon request. Having considered the comments both for and against the proposal, the Department believes that on the whole consumers, regardless of sophistication level, would benefit from an increased amount of information. The Department is not requiring that the type of the aircraft be disclosed since it believes that information is already a part of most charter negotiations. The Department is clarifying what type of "corporate or business relationship between the air charter broker and the direct air carrier" must be disclosed upon request by adding the example of a pre-existing contract between the two entities. Further, the Department is adopting in part NBAA's suggestion that this definition be further refined by adding language that the relationship must have a "bearing" on the transaction. Finally, the Department is changing the language of the disclosure upon request relating to costs to make

clear that detailed itemization is not required.

The Department is not requiring that air charter brokers maintain a certain level of insurance. The Department is aware that most air charter brokers already maintain a certain level of insurance as a good business practice. Establishing a minimum level of insurance would therefore not add additional protection for consumer funds.

The Department agrees with industry and ASTA that regulating the time frame in which disclosures must be made is impracticable, for the reasons provided by those commenters. Therefore, the Department adopts the "within a reasonable time after such information becomes available" standard as proposed in the NPRM. The Department has clarified in the final rule that it is within a reasonable time of becoming available "to the air charter broker." A "reasonable" time would be enough time for the charterer to make an informed decision as to whether he or she wants to accept the additional information or the change. For example, should the direct air carrier to operate the flight change one week prior to the flight date, the Department would find it "reasonable" for notice to be given within 24 hours after such information becomes available to the air charter broker. On the other hand, the Department would not find it "reasonable" for notice to be given two hours before departure in such a circumstance, since that would not give the charterer time to make an informed decision as to whether to accept the change. At that point, the charterer would already likely be fully prepared for the flight and may in fact already be en route to the airport.

Having reviewed the public comments, the Department has decided not to add a requirement that air charter brokers obtain written confirmation that the required disclosures were made or that charterers received notice of any changes to the information that must be disclosed or of any information that was not known at the time the contract was entered. The Department appreciates the burden such a requirement would place on air charter brokers and that some consumers may simply ignore requests for confirmation. Furthermore, such a requirement is likely not necessary since, as several commenters noted, the original signed contract may serve as confirmation that the air charter broker made, and that the consumer received, the required disclosures. The Department notes, however, that air charter brokers are free to obtain such confirmations as a method of guarding

against claims that they did not make the disclosures.

The Department has considered the arguments against applying the refund requirements of 14 CFR part 374 to air charter brokers. The Department nevertheless believes that these requirements are not overly burdensome on air charter brokers, as their crux is establishing a time frame in which refunds should be processed, and provide consumers with useful protections. The Department believes that these are important consumer protections. As such, the Department is adopting the proposed rule on refunds.

#### C. Enumerated Unfair and Deceptive Practices (14 CFR 295.22 and 295.50)

*The NPRM:* In the NPRM, the Department proposed to enumerate ten prohibited unfair and deceptive practices and unfair methods of competition by air charter brokers. First, air charter brokers may not misrepresent themselves as direct air carriers. Second, air charter brokers must not use their names and slogans in connection with the name of the direct air carrier in such a manner that may confuse consumers as to the status of the air charter broker. Third, air charter brokers must not misrepresent the service, type of aircraft, or itinerary. Fourth, air charter brokers must not misrepresent the qualifications of pilots or the safety record and certification of pilots, aircraft, and air carriers. Fifth, air charter brokers must not make misrepresentations regarding insurance. Sixth, air charter brokers must not misrepresent the cost of the air transportation. Seventh, air charter brokers must not misrepresent membership in or involvement with organizations that audit air charter brokers or direct air carriers. Eighth, air charter brokers must not represent that they possess a contract with a direct air carrier until they have received a binding commitment from the direct air carrier. Ninth, air charter brokers must not sell or contract for air transportation that they know cannot be legally performed by the entity that is to operate the air transportation. Tenth, air charter brokers must not misrepresent the requirements that must be met by charterers to qualify for charter flights. The Department solicited comments on which, if any, of these should be enumerated in the final rule. In addition, the Department asked the public to comment on a potential record-keeping requirement to ensure compliance with the proposed regulations.

*Comments:* Members of the public expressed widely divergent views on

what practices, if any, should be enumerated as unfair and deceptive. Two commenters stated that DOT should enumerate only one unfair and deceptive practice and unfair method of competition: That air charter brokers must not misrepresent themselves as direct air carriers. A third commenter expressed a view along these lines, noting that DOT should merely continue its existing enforcement policy of finding an unfair or deceptive practice or unfair method of competition when an air charter broker misrepresents itself as a direct air carrier. A fourth mirrored these comments but also supported enumerating as unfair or deceptive the practice of telling consumers that the broker maintains a certain level of insurance that it does not, in fact, maintain. Three commenters supported all the proposed enumerated unfair and deceptive practices. Another commenter opposed this portion of the proposal in its entirety. In addition, FlexJet asked that the Department clarify that it is not unfair or deceptive to advertise a price that changes due to circumstances beyond the air charter broker's control.

The Department received input regarding a record retention requirement. CSI Aviation expressed support for a requirement, noting that pursuant to Internal Revenue Service requirements, records are maintained for seven years following the date of transportation. NATA proposed a two-year retention requirement. The Air Charter Association voiced support for a retention requirement without proposing a time-frame.

*DOT Response:* The Department is making changes to its proposed rule to harmonize language where appropriate with the text of the section enumerating prohibited unfair and deceptive practices by air taxis/commuter air carriers, 14 CFR 298.90. The significant amount of enforcement activity in this area has led the Department to find such enumeration necessary. In fact, the Department believes that codifying certain actions as unfair or deceptive will lower the amount of enforcement action necessary, as all air charter brokers will be fully aware of what behavior is prohibited. In turn, this will level the playing field for those air charter brokers that do not misrepresent themselves or any part of their services. In response to FlexJet's query, the Department notes that the final rule requires that an air charter broker have a binding contract with a direct air carrier or direct foreign air carrier before representing such to the public. As a result, the largest portion of the charter transportation cost should already be established at the point where FlexJet's

question arises. The final rule already provides air charter brokers with flexibility in quoting total costs and DOT does not believe greater flexibility is needed, despite FlexJet's request.

The Department is choosing at this time not to require a specific record retention period, but may revisit this issue if it becomes clear that efforts to enforce this part are impeded by a lack of such a period, air charter brokers are evading their disclosure obligations to charterers, or charterers are otherwise being harmed.

## 2. Air Taxis and Commuter Air Carriers

### A. Disclosures (14 CFR 298.80)

*The NPRM:* In the NPRM, the Department proposed to amend 14 CFR part 298 to prohibit air taxis and commuter air carriers from soliciting or executing contracts for single entity charter air transportation to be performed by another carrier without first providing clear and conspicuous written disclosure to the person or entity that contracts for that air transportation of: (1) The corporate name of the direct air carrier in operational control of the aircraft and any other names in which the carrier holds itself out to the public (as recommended by the NTSB) (2) the capacity in which the air taxi is acting in contracting for the air transportation; (3) the existence of any corporate or pre-existing business relationship with the direct air carrier that will be in operational control of the aircraft; (4) the make and model of the aircraft to be used; (5) the total cost of the air transportation, including carrier- and government-imposed fees and taxes; and (6) the existence of any fees and their amounts, if known, charged by third parties for which the charterer will be responsible for paying directly. In addition, should the operating carrier change, the Department proposed requiring that written notice be provided to the charter customer when the change becomes known. Should reasonable notice not be given, the Department proposed that the charter customer be entitled to a full refund. The Department sought comment on whether it should set a specific timeframe for such notice and whether it should require carriers to obtain confirmation of receipt of that notice and, if so, what type of confirmation.

*Comments:* Of the three comments on this topic, those from NATA and NBAA generally supported the Department's proposed disclosure requirements, albeit with some changes and clarifications. For example, both sought clarification of what type of "corporate

or business relationship" must be disclosed and NBAA sought clarification on whether the parties could agree in writing to forgo certain disclosures. Furthermore, NATA suggested that the Department harmonize the disclosure requirements imposed on air taxi operators/commuter air carriers and on air charter brokers.

NATA also commented that the Department should refine the requirement that air taxi operators and commuter air carriers disclose the total cost. As proposed, the regulation indicates that government-imposed taxes and fees must be disclosed only as they apply to the total cost of air transportation but not as they apply to any fees (e.g., landing fees and fuel) charged by third parties for which the charterer will be responsible for paying directly. In addition, NATA suggested that the Department change its "make and model" references to "type of aircraft" in order to use an industry standard term.

Neither association advocated for a specified time frame in which disclosures must be made, noting that the fact-specific situations require a flexible "reasonable time" standard like that originally proposed by the Department. Moreover, neither advocated for a regulation requiring the confirmation of the receipt of the proposed disclosures.

On the other hand, the comment filed jointly by Corporate Flight Management, Public Charters Inc., and Ultimate Jetcharters opposed all the Department's proposed disclosure requirements. They asserted that the Department failed to provide evidence of objectionable practices by air taxis and commuter air carriers that would provide a rationale for the proposed rule, noting that the NTSB had advocated only the limited disclosure of the name of the operating carrier and the type of aircraft. In the absence of a demonstrated need for greater regulation, the commenters suggested that DOT allow market forces to work, particularly in this situation, where DOT has acknowledged that the consumers are sophisticated entities. Moreover, they asserted that the Department could rely on its existing enforcement mechanisms should problems arise.

*DOT Response:* The Department is amending 14 CFR part 298 to require air taxis and commuter air carriers to make three disclosures and to make three more upon request. The Department appreciates the comments it received and has incorporated the suggestions of NATA and NBAA into the final rule. First, the Department harmonizes the regulatory language regarding

disclosures applicable to air taxi operators/commuter air carriers in 14 CFR 298.80 with those applicable to air charter brokers in 14 CFR 295.24. The Department clarifies what type of “corporate or business relationship between the air taxi operator or commuter air carrier and the direct air carrier” must be disclosed upon request. The Department adopts in part NBAA’s suggestion that the definition of a corporate or business relationship be further refined by adding language that the relationship must have a “bearing” on the transaction. The Department disagrees with NBAA’s suggestion that the rule indicate that parties may agree in writing to forgo certain disclosures because allowing parties to contract away these protections would severely limit the benefits of the rule.

In addition, based on NATA’s suggestion, DOT is adding language to 14 CFR 298.80(a)(5) to clarify that air taxi operators and commuter air carriers must disclose upon request any government-imposed taxes and fees levied on expenses collected by third parties (e.g., landing fees and fuel) and paid directly by the charterer. Further, the Department is not requiring the type of aircraft to be disclosed since it believes that information is already a part of most charter negotiations.

The Department appreciates the positive feedback received regarding its “reasonable time” standard for making the required disclosures and, having received no alternative suggestions, adopts that standard. As the comments noted, because each situation is fact-specific, it would be difficult to enact a workable specific time frame for disclosures. The Department clarifies in the final rule that it is within a reasonable time of becoming available “to the air or commuter air carrier.” For this same reason, the Department clarifies in the final rule that in an exigent circumstance particular to a passenger the required disclosures do not have to be made prior to the start of the air transportation. In addition, the Department is not adding a requirement that air taxi operators and commuter air carriers obtain written confirmation that the required disclosures were made and that charterers received notice of any changes to the information that must be disclosed or of any information that was not known at the time the contract was entered. The Department notes, however, that air taxi operators and commuter air carriers are free to obtain such confirmations as a method of guarding against claims that they did not make the disclosures.

The Department thoroughly considered the comments of Corporate

Flight Management, Public Charters Inc., and Ultimate Jetcharters. Nevertheless, DOT agrees with NTSB that disclosures are necessary to enhance consumer protection in charter air transportation. Furthermore, DOT also believes that there are significant benefits regarding additional disclosures to charterers when weighing their air transportation options to know the capacity in which the air taxi or commuter air carrier is acting in contracting for the air transportation, the existence of any corporate or business relationship between the air taxi or commuter air carrier and the direct air carrier that will be in operational control of the flight that bears on the selection of the direct air carrier, the type of aircraft to be used for the flight, the total cost of the air transportation, and the existence of any fees and their amounts that are collected by third parties that the charterer will be responsible for paying directly. The Department firmly believes that within this regulatory framework, the market will continue to work, allowing parties to freely contract with each other. In fact, these required disclosures, many of which are already made as good business practices and/or customer service gestures, will provide a more level playing field for all air taxis and commuter air carriers, thus contributing to the correction of any existing market failures.

#### B. Enumerated Unfair and Deceptive Practices (14 CFR 298.90)

*The NPRM:* The NPRM proposed to prohibit certain practices as unfair or deceptive or unfair methods of competition by air taxis and commuter air carriers. Specifically, these misrepresentations involved the entity in operational control of the aircraft, the quality of the aircraft involved, the schedule and itinerary, the insurance carried, the fares or charges levied, the presence of a contract for a specific air carrier or aircraft, and the legal impossibility of completing the specific flight.

*Comments:* Only the NATA and NBAA comments addressed the Department’s proposal to enumerate for air taxis and commuter air carriers certain unfair and deceptive practices and unfair methods of competition. Both associations supported the proposal in its entirety.

*DOT Response:* The Department is adopting the proposed 14 CFR 298.100 and codifying it as 14 CFR 298.90. However, the Department is making changes to its proposed rule to harmonize language where appropriate with the text of the section enumerating

prohibited unfair or deceptive practices by air charter brokers, 14 CFR 295.50. This includes enumerating misrepresentations as to the qualifications and the safety records of pilots, aircraft, and air carriers; membership in, involvement with, and standards set by auditing organizations; the requirements that charterers must meet to qualify for charter flights; and the use of names, trade names or slogans. The Department already considers such misrepresentations by air carriers, including air taxis and commuter air carriers, to be prohibited under 49 U.S.C. 41712. The Department believes that codifying these and other actions as unfair or deceptive will forestall enforcement action as all air taxis and commuter air carriers will be fully aware of what behavior is prohibited. In addition, the second and third enumerated unfair or deceptive practices contained significant overlap. Thus, these subsections are changed in the final rule so that each is a distinct unfair or deceptive practice or unfair method of competition.

#### 3. Air Ambulance Services

*The NPRM:* Since 1983, the Department has authorized entities that arrange air ambulance services as indirect air carriers to engage in the sale of air transportation through a blanket exemption granted by the CAB in Order 81–1–36, 99 C.A.B. 801 (1983). In the NPRM, the Department proposed to codify that exemption. In addition, based upon the number of enforcement actions taken for violations of this exemption authority, as well as the licensing requirements of 49 U.S.C. 41101 and the statutory prohibition on unfair and deceptive practices and unfair methods of competition, 49 U.S.C. 41712, the Department proposed in the NPRM to apply to indirect air carrier air ambulances the same enumerated prohibited practices proposed for air charter brokers in § 295.50, but not to apply to indirect air carrier air ambulances the disclosure requirements applicable to air charter brokers. DOT invited comments on this proposal in general, as well as comments regarding whether any of the specific provisions in section 295.24 should apply to indirect air carrier air ambulances.

*Comments:* All commenters expressed general support for the codification of the Department’s long-standing exemption. Air Methods addressed the application of the enumerated prohibited practices in 295.50 to indirect air carrier air ambulances by proposing that an indirect air medical program name or logo on an aircraft not be considered misleading, so long as the

name of the direct air carrier is displayed in accordance with 14 CFR 119.9(b). Many commenters expressed opposition to applying to air ambulance services the disclosure requirements applied to air charter brokers. Among the reasons given for excluding air ambulance services from these requirements, commenters cited a lack of passenger need and the possible delayed provision of care that could result. The Air Charter Association and the Association of Air Medical Services, on the other hand, disagreed and instead commented that air ambulances should be subjected to the same disclosure requirements as air charter brokers. Moreover, the latter group commented that it would be beneficial for air charter brokers to disclose their medical training level to consumers so that those consumers can better judge the broker's ability to determine the appropriateness of various aspects of flight, e.g., aircraft type, medical staffing, pressurization, etc.

**DOT Response:** The Department appreciates the general support expressed for the codification of its long-standing exemption, but chooses not to do so at this time. The Department will be studying this area further, including reviewing air ambulance complaints to determine what, if any, disclosure or other consumer protection requirements are appropriate in this area for direct and indirect air carrier air ambulances. Our decision here does not in any way alter the authority for entities that arrange air ambulance services as indirect air carriers to engage in the sale of air transportation under the blanket exemption granted by the CAB in Order 81-1-36, 99 C.A.B. 801 (1983).

#### 4. Air Services Provided Under Contract With the Federal Government

**The NPRM:** The Department proposed to codify the longstanding view of its Office of Aviation Enforcement and Proceedings that contracts with the Federal Government arranged under a GSA Schedule are in fact in common carriage and subject to DOT jurisdiction.

**Comments:** CSI Aviation (CSI), the sole commenter on this portion of the NPRM, disagreed with the Department's proposal in its entirety. CSI stated that DOT failed to explain why air charter brokers operating under a GSA Schedule required economic authority from the Department. To the contrary, CSI argued that air transportation services conducted pursuant to the GSA Schedules were not common carriage but were, in fact, private carriage. In addition, CSI commented that because the GSA Schedules are governed by the

Federal Acquisition Regulations, CSI (and similarly situated parties) are already subject to a consumer protection regime far more comprehensive than the regime proposed by DOT. For example, the Federal Acquisition Regulations subject violators to liquidated damages, nonpayment, and even criminal prosecution. Moreover, CSI asserted that the DOT proposal would interfere with GSA's contracting practices.

**DOT Response:** The Department is deferring action on this proposal as it is not clear that additional action is necessary. First, the dearth of feedback on this portion of the NPRM makes it more difficult for the Department to consider the various viewpoints of all stakeholders; the views of the only stakeholder to comment had previously been made clear in Federal court. Second, the paucity of feedback received from stakeholders in the years following the litigation that prompted the proposed codification indicates that the existing consumer protection regime may suffice at this time as asserted by CSI. Third, by having only imperfect information available to it, the Department risks taking action that may have unintended consequences. The Department stresses, however, that it may revisit this issue in the future. It may, for example, receive more input from stakeholders or see that changes in Federal Government procurement practices and rules have changed the level of protection afforded consumers.

#### Regulatory Analyses and Notices

##### A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034 (February 26, 1979)).

The final rule is in part an enabling regulatory action, which would eliminate existing regulatory barriers by recognizing air charter brokers as a new class of indirect air carrier, and would allow air charter brokers as principals to provide single entity charter air transportation of passengers. By removing current regulatory barriers to the sale of single entity charters by air charter brokers, the rule is expected to

result in a reduction in the opportunity costs currently incurred by those air charter brokers that would prefer to act as a principal, thereby resulting in a cost savings for these air charter brokers. The magnitude of these potential costs savings cannot be estimated, in part because under the rule the decision by an air charter broker to act as a principal rather than as an agent is discretionary. Therefore, the number of air charter brokers affected by the enabling aspects of rule and that may experience a cost savings cannot be estimated.

The final rule establishes requirements for actions and disclosures to be made by air charter brokers that result in more accurate and transparent information about brokered air transportation transactions being present in the marketplace for charterers. This includes disclosures that are to be made by air taxi operators that may be selling air charter flights that are operated by some other direct air carrier. The total annual costs of the information disclosure provisions of the final rule are estimated to range from \$1.3 million to \$2.7 million, with a mid-range estimate of \$2.0 million expressed in 2017 dollars.

The Department believes that the final rule will result in benefits from the information disclosure requirements and from the enumeration of prohibitions on specific types of unfair or deceptive practices by air charter brokers, air taxis, and commuter air carriers. These benefits cannot be quantified however.

Additional details regarding the cost savings, costs, and benefits of the final rule can be found in the Regulatory Impact Analysis (RIA) for the final rule which is available in the Docket for this rulemaking.<sup>1</sup>

##### B. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of their regulatory actions on small businesses and other small entities, and to minimize any significant economic impact. When an agency issues a rulemaking proposal, the RFA requires

<sup>1</sup> U.S. Department of Transportation (DOT), Office of the Secretary (OST). "Increasing Charter Air Transportation Options. Final Rule. Regulatory Impact Analysis (RIA)." June 2018. Available in Docket DOT-OST-2007-27057 at <https://www.regulations.gov>.



the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

In the NPRM (78 FR 59880), in lieu of preparing an Initial Regulatory Flexibility Analysis under section 603(a) of the RFA to assess the impact of the rule, the Department performed a certification analysis under section 605(b) of the RFA and certified that the rule will not have a significant economic impact on a substantial number of small entities.<sup>2 3</sup> No comments were received regarding this certification or on the threshold economic analysis and its underlying assumptions that were presented in the NPRM.

The threshold economic analysis that was performed for the certification of the proposed rule under section 605(b) of the RFA determined that although a substantial number of air charter brokers would likely be considered small entities that would be affected by the rule, the economic impact on these small entities would not constitute a significant economic impact on these small entities relative to either gross revenues or profit. The primary changes made to the final rule from the proposed rule include the elimination of provisions that in the proposed rule would have applied to air ambulance services, and to certain air transportation services performed under contract to the Federal government. The elimination of these provisions does not substantively alter the economic analysis and certification of the rule under the RFA as compared to that performed for at the proposed rule stage, other than to remove one class of regulated entity, air ambulance services, that under the final rule are no longer affected and would no longer be subject to disclosure requirements or other provisions. The remaining provisions of

the final rule still affect the same classes of regulated entities including air charter brokers, air taxis, and commuter air carriers, and affect these entities in essentially the same manner and to the same extent in terms of the costs and benefits of the rule.

Accordingly, the Secretary of Transportation certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

#### D. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule does not include any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibility among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

#### E. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

#### F. Paperwork Reduction Act

This rule adopts new information collection requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 49 U.S.C. 3501 *et seq.*). (PRA) The Department will publish a separate notice in the **Federal Register** inviting the Office of Management and Budget (OMB), the general public, and other Federal agencies to comment on the new and revised information collection requirements contained in this document. As prescribed by the PRA, the requirements will not go into effect until OMB has approved them and the Department has published a notice announcing the effective date of the information collection requirements.

#### G. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rule.

#### H. National Environmental Policy Act

The DOT has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration’s implementing procedures, “[p]romulgation of rules, regulations, and directives.” 23 CFR 771.117(c)(20). The purpose of this rulemaking is to eliminate a regulatory barrier to the sale of charter air transportation while providing consumers with information to make informed purchasing decisions. The agency does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Issued this 20th day of August 2018, in Washington, DC, under authority delegated in 49 CFR 1.27(n).

**Steven G. Bradbury,**

*General Counsel.*

For the reasons set forth above, 14 CFR chapter II is amended as follows:

■ 1. Add Part 295 to read as follows:

### **PART 295—AIR CHARTER BROKERS**

#### **Subpart A—General**

Sec.

- 295.1 Purpose.
- 295.3 Applicability.
- 295.5 Definitions.
- 295.7 Agency relationships.

#### **Subpart B—Exemption Authority**

- 295.10 Grant of economic authority; exemption from the Statute.

<sup>2</sup> U.S. Department of Transportation (DOT), Office of the Secretary (OST). “Enhanced Consumer Protections for Charter Air Transportation. Notice of Proposed Rulemaking.” 78 FR 59880. September 30, 2013. Available at: <https://www.gpo.gov/fdsys/pkg/FR-2013-09-30/pdf/2013-23142.pdf> (accessed May 21, 2018).

<sup>3</sup> Regulatory Impact Analysis for Enhanced Consumer Protections for Charter Air Transportation. Notice of Proposed Rulemaking. Available at: <https://www.regulations.gov/contentStreamer?documentId=DOT-OST-2007-27057-0028&attachmentNumber=1&contentType=pdf> (accessed May 21, 2018).



295.12 Suspension or revocation of exemption authority.

### Subpart C—Consumer Protection

295.20 Use of duly authorized direct air carriers.

295.22 Prohibited unfair or deceptive practices or unfair methods of competition.

295.23 Advertising.

295.24 Disclosures.

295.26 Refunds.

### Subpart D—Violations

295.50 Enumerated unfair or deceptive practices or unfair methods of competition.

295.52 Enforcement.

**Authority:** 49 U.S.C. Chapters 401, 411, 413, and 417.

### Subpart A—General

#### § 295.1 Purpose.

Air charter brokers, defined as an indirect air carrier, foreign indirect air carrier or a bona fide agent, provide indirect air transportation of passengers on single entity charters aboard large and small aircraft. This part grants exemptions to such air charter brokers from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation), and establishes rules, including consumer protection provisions, for the provision of such air transportation by air charter brokers.

#### § 295.3 Applicability.

This part applies to any person or entity acting as an air charter broker as defined in this part with respect to single entity charter air transportation that the air charter broker, as an indirect air carrier, foreign indirect air carrier, or a bona fide agent, holds out, sells or undertakes to arrange aboard large and small aircraft.

#### § 295.5 Definitions.

For the purposes of this part:

(a) *Air transportation* means interstate or foreign air transportation, as defined in 49 U.S.C. 40102(a)(5), 40102(a)(23), and 40102(a)(25).

(b) *Air charter broker* means a person or entity that, as an indirect air carrier, foreign indirect air carrier, or a bona fide agent, holds out, sells, or arranges single entity charter air transportation using a direct air carrier.

(c) *Bona fide agent* means a person or entity that acts as an agent on behalf of a single entity charterer seeking air transportation or a direct air carrier seeking to provide single entity charter air transportation, when such charterer or direct air carrier, as principal, has appointed or authorized such agent to act on the principal's behalf.

(d) *Charterer* means the person or entity that contracts with an air charter

broker, direct air carrier, or foreign direct air carrier, for the transportation of the passengers flown on a charter flight.

(e) *Charter air transportation* means charter flights in air transportation authorized under Part A of Subtitle VII of Title 49 of the United States Code.

(f) *Direct air carrier and foreign direct air carrier* mean a U.S. or foreign air carrier that provides or offers to provide air transportation and that has control over the operational functions performed in providing that transportation.

(g) *Indirect air carrier and foreign indirect air carrier* mean a person or entity that, as a principal, holds out, sells, or arranges air transportation and separately contracts with direct air carriers and/or foreign direct air carriers.

(h) *Single entity charter* 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 when individual passengers self-aggregate to form a single entity for flights to be operated using small aircraft.

(i) *Statute* means Subtitle VII of Title 49 of the United States Code (Transportation).

(j) *Large aircraft* means any aircraft originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

(k) *Small aircraft* means any aircraft originally designed to have a maximum passenger capacity of 60 seats or fewer or a maximum payload capacity of 18,000 pounds or less.

#### § 295.7 Agency relationships.

An air charter broker acting as an indirect air carrier or foreign indirect air carrier may choose to act as a bona fide agent in individual cases where a charterer, direct air carrier, or foreign direct air carrier has expressly authorized such agency relationship.

### Subpart B—Exemption Authority

#### § 295.10 Grant of economic authority; exemption from the statute.

To the extent necessary to permit air charter brokers, acting as indirect air carriers or foreign indirect air carriers, to hold out, sell, and undertake to arrange single entity charter air transportation, such air charter brokers are exempted from the following provisions of Subtitle VII of Title 49 of the United States Code, except for the provisions noted, only if and so long as they comply with the provisions and the

conditions imposed by this part: 49 U.S.C. 41101–41113, 49 U.S.C. 41301–41313, and 49 U.S.C. 41501–41511. Air charter brokers are not exempt from the following provision: 49 U.S.C. 41310 (nondiscrimination) with respect to foreign air transportation.

#### § 295.12 Suspension or revocation of exemption authority.

The Department reserves the power to alter, suspend, or revoke the exemption authority of any air charter broker acting as an indirect air carrier, without a hearing, if it finds that such action is in the public interest or is otherwise necessary to protect the traveling public.

### Subpart C—Consumer Protection

#### § 295.20 Use of duly authorized direct air carriers.

Air charter brokers are not authorized under this part to hold out, sell, or otherwise arrange charter air transportation to be operated by a person or entity that does not hold the requisite form of economic authority from the Department and appropriate safety authority from the Federal Aviation Administration and, if applicable, a foreign safety authority. Air charter brokers are not authorized under this part to hold out, sell, or arrange air transportation to be performed by a direct air carrier or direct foreign air carrier that the direct carrier is not authorized in its own right to hold out, sell, or operate. Only direct air carriers that are citizens of the United States as defined in 49 U.S.C. 40102(a)(15) may provide direct air transportation operations in interstate or intrastate air transportation.

#### § 295.22 Prohibited unfair or deceptive practices or unfair methods of competition.

An air charter broker shall not engage in any unfair or deceptive practice or unfair method of competition.

#### § 295.23 Advertising.

(a) All solicitation materials and advertisements, including internet web pages, published or caused to be published by air charter brokers shall clearly and conspicuously state that the air charter broker is an air charter broker, and that it is not a direct air carrier or a direct foreign air carrier in operational control of aircraft, and that the air service advertised shall be provided by a properly licensed direct air carrier or direct foreign air carrier.

(b) Air charter brokers may display their name and logo on aircraft provided the name of the direct air carrier is displayed prominently and clearly on the aircraft and consumers are not otherwise misled into thinking that the

air charter broker is a direct air carrier or direct foreign air carrier.

**§ 295.24 Disclosures.**

(a) Before entering a contract for a specific flight or series of flights with charterers, air charter brokers must disclose to the charterer the information in paragraphs (a)(1),(2), and (6) of this section. Before entering a contract for a specific flight or series of flights with charterers, air charter brokers must, upon request of the charterer, disclose to the charterer the information in paragraphs (a)(3), (4), and (5) of this section. The six disclosures may be accomplished through electronic transmissions.

(1) The corporate name of the direct air carrier or direct foreign air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that direct carrier holds itself out to the public.

(2) The capacity in which the air charter broker is acting in contracting for the air transportation, *i.e.*, as an indirect air carrier, indirect foreign air carrier, as an agent of the charterer, or as an agent of the direct air carrier or direct foreign air carrier that will be in operational control of the flight.

(3) If the air charter broker is acting as the agent of the charterer, the air charter broker must disclose the existence of any corporate or business relationship, including a preexisting contract, between the air charter broker and the direct air carrier or direct foreign air carrier that will be in operational control of the flight that may have a bearing on the air charter broker's selection of the direct carrier that will be in operational control of the flight.

(4) The total cost of the air transportation paid by the charterer to or through the air charter broker, including any air charter broker or carrier-imposed fees or government-imposed taxes and fees. Specific individual fees, taxes, or costs may, but are not required to be itemized.

(5) The existence of any fees and their amounts collected by third-parties, if known (or a good faith estimate if not known), including fuel, landing fees, and aircraft parking or hangar fees, for which the charterer will be responsible for paying directly.

(6) The existence or absence of liability insurance held by the air charter broker covering the charterer and passengers and property on the charter flight, and the monetary limits of any such insurance.

(b) If any of the information in paragraph (a) of this section that is

required to be disclosed to the charterer or requested by the charterer to be disclosed is not known at the time the contract is entered into or changes thereafter, air charter brokers must provide the information to the charterer within a reasonable time after such information becomes available to the air charter broker, such that the charterer has enough time to make an informed decision as to whether to accept the additional information or accept the change.

(c) If the information in paragraph (a) of this section that is required to be disclosed to the charterer or requested by the charterer to be disclosed is not provided to the charterer within a reasonable time after such information becomes available to the air charter broker, air charter brokers must provide the charterer with the opportunity to cancel the contract for charter air transportation, including any services in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services.

(d) In all circumstances, air charter brokers must disclose prior to the start of the air transportation the information in paragraph (a) of this section that is required to be disclosed or that the charterer has requested to be disclosed.

(e) If the information in paragraph (a) of this section that is required to be disclosed to the charterer or requested by the charterer to be disclosed changes after the air transportation covered by the contract has begun, air charter brokers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available to the air charter broker.

(f) If the changes in information described in paragraph (e) of this section are not provided to the charterer within a reasonable time after becoming available to the air charter broker, air charter brokers must provide the charterer with the opportunity to cancel the remaining portion of the contract for charter air transportation, including any services paid in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services not yet provided.

**§ 295.26 Refunds.**

Air charter brokers must make prompt refunds of all monies paid for charter air transportation when such transportation cannot be performed or when such refunds are otherwise due, as required by 14 CFR 374.3 and 12 CFR part 226 for credit card purchases, and within 20

days after receiving a complete refund request for cash and check purchases.

**Subpart D—Violations**

**§ 295.50 Enumerated unfair or deceptive practices or unfair methods of competition.**

(a) Violations of this Part shall be considered to constitute unfair or deceptive practices or unfair methods of competition in violation of 49 U.S.C. 41712.

(b) In addition to paragraph (a) of this section, the following enumerated practices, among others, by an air charter broker are unfair or deceptive practices or unfair methods of competition in violation of 49 U.S.C. 41712:

(1) Misrepresentations that may induce members of the public to reasonably believe that the air charter broker is a direct air carrier or direct foreign air carrier when that is not the case.

(2) Misrepresentations as to the quality or kind of service or type of aircraft.

(3) Misrepresentations as to the time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(4) Misrepresentations as to the qualifications of pilots or safety record or certification of pilots, aircraft, or air carriers.

(5) Misrepresentations that passengers are directly insured when they are not so insured. For example, where the only insurance in force is that protecting the direct air carrier or air charter broker in event of liability.

(6) Misrepresentations as to fares or charges for air transportation or services in connection therewith.

(7) Misrepresentations as to membership in or involvement with an organization that audits air charter brokers, direct air carriers, or direct foreign air carriers, or that the air charter broker or any direct carriers to be used for a particular flight meets a standard set by an auditing organization.

(8) Representing that a contract for a specified direct air carrier, direct foreign air carrier, aircraft, flight, or time has been arranged without a binding commitment with a direct air carrier or direct foreign air carrier for the furnishing of such transportation as represented.

(9) Selling or contracting for air transportation while knowing or having reason to know or believe that such air transportation cannot be legally performed by the direct air carrier or foreign direct air carrier that is to perform the air transportation.

(10) Misrepresentations as to the requirements that must be met by charterers to qualify for charter flights.

(11) Using or displaying or permitting or suffering to be used or displayed the name, trade name, slogan or any abbreviation thereof, of the air charter broker in advertisements, on or in places of business, or on or in aircraft or any other place in connection with the name of an air carrier or foreign air carrier or with services in connection with air transportation, in such manner that it may mislead or confuse potential consumers with respect to the status of the air charter broker.

#### § 295.52 Enforcement.

In case of any violation of any of the provisions of the Statute, or of this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding under 49 U.S.C. 46101 before the Department, or 49 U.S.C. 46106–46108 before a U.S. District Court, as the case may be, to compel compliance. The violator may also be subject to civil penalties under the provisions of 49 U.S.C. 46301, or other lawful sanctions, including revocation of the exemption authority granted in this part. In the case of a willful violation, the violator may be subject to criminal penalties under the provisions of 49 U.S.C. 46316.

### PART 298—EXEMPTIONS FOR AIR TAXI AND COMMUTER AIR CARRIER OPERATIONS

■ 2. The authority citation for Part 298 is revised to read as follows:

**Authority:** 49 U.S.C. 329 and chapters 401, 411, and 417.

■ 3. Revise § 298.80 to read as follows:

#### § 298.80 Disclosures.

(a) Before entering a contract for a specific flight or series of flights with charterers, air taxi operators and commuter air carriers must disclose to the charterer the information in paragraphs (a)(1) and (2) of this section. Before entering a contract for a specific flight or series of flights with charterers, air taxi operators and commuter air carriers must, upon request of the charterer, disclose to the charterer the information in paragraphs (a)(3), (4), and (5) of this section. The disclosures may be accomplished through electronic transmissions.

(1) That the flight will be performed by another direct air carrier or direct foreign air carrier if that is the case. The corporate name of the direct air carrier or direct foreign air carrier in operational control of the aircraft on which the air transportation is to be

performed and any other names in which that direct carrier holds itself out to the public.

(2) If the flight is to be performed by another direct air carrier or direct foreign air carrier, the capacity in which the air taxi operator or commuter air carrier is acting in contracting for the air transportation, *i.e.*, as a principal, as an agent of the charterer, or as an agent of the direct air carrier that will be in operational control of the flight.

(3) If the flight is to be performed by another direct air carrier or foreign direct air carrier and the air taxi operator or commuter air carrier is acting as the agent of the charterer, the air taxi operator or commuter air carrier must disclose the existence of any corporate or business relationship, including a preexisting contract, between the air taxi operator or commuter air carrier and the direct carrier that will be in operational control of the flight that may have a bearing on the air taxi operator's or commuter air carrier's selection of the direct carrier that will be in operational control of the flight.

(4) The total cost of the air transportation paid by the charterer to or through the air taxi operator or commuter air carrier, including any carrier-imposed fees or government-imposed taxes and fees. Specific individual fees, taxes, or costs may, but are not required to be itemized.

(5) The existence of any fees and their amounts collected by third parties, if known (or a good faith estimate if not known), including fuel, landing fees, and aircraft parking or hangar fees for which the charterer will be responsible for paying directly.

(b) If any of the information in paragraph (a) of this section that is required to be disclosed to the charterer or requested by the charterer to be disclosed is not known at the time the contract is entered into or changes thereafter, air taxi operators and commuter air carriers must provide the information to the charterer within a reasonable time after such information becomes available to the air taxi operator or commuter air carrier, such that the charterer has enough time to make an informed decision as to whether to accept the additional information or accept the change.

(c) If the information in paragraph (a) of this section that is required to be disclosed to the charterer or requested by the charterer to be disclosed is not provided to the charterer within a reasonable time after such information becomes available to the air taxi operator or commuter air carrier, air taxi operators and commuter air carriers

must provide the charterer with the opportunity to cancel the contract for air transportation, including any services in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services.

(d) Except in exigent circumstances particular to a passenger, air taxi operators and commuter air carriers must disclose prior to the start of the air transportation the information in paragraph (a) of this section that is required or requested to be disclosed.

(e) If the information in paragraph (a) of this section that is required to be disclosed to the charterer or requested by the charterer to be disclosed changes after the air transportation covered by the contract has begun, air taxi operators and commuter air carriers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available to the air taxi operator or commuter air carrier.

(f) If the changes in information described in paragraph (e) of this section are not provided to the charterer within a reasonable time after becoming available to the air taxi operator or commuter air carrier, air taxi operators and commuter air carriers must provide the charterer with the opportunity to cancel the remaining portion of the contract for charter air transportation, including any services paid for in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services not yet provided.

■ 4. Add Subpart I, consisting of §§ 298.90 and 298.92, to read as follows:

#### Subpart I—Violations

##### § 298.90 Prohibited unfair or deceptive practices or unfair methods of competition.

(a) Violations of this Part shall be considered to constitute unfair or deceptive practices or unfair methods of competition in violation of 49 U.S.C. 41712.

(b) In addition to paragraph (a) of this section, the following enumerated practices, among others, by an air taxi operator or commuter air carrier are unfair or deceptive practices or unfair methods of competition in violation of 49 U.S.C. 41712:

(1) Misrepresentations that may induce members of the public to reasonably believe that the air taxi operator or commuter air carrier will be, or is, in operational control of a flight when that is not the case.

(2) Misrepresentations as to the quality or kind of service or type of aircraft.

(3) Misrepresentations as to the time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(4) Misrepresentations as to the qualifications of pilots or safety record or certification of pilots, aircraft, or air carriers.

(5) Misrepresentations that passengers are directly insured when they are not so insured. For example, where the only insurance in force is that protecting the air taxi operator or commuter air carrier in the event of liability.

(6) Misrepresentations as to fares or charges for air transportation or services in connection therewith.

(7) Misrepresentations as to membership in or involvement with an organization that audits direct air carriers or that the direct air carrier to be used for a flight meets a standard set by an auditing organization.

(8) Representing that a contract for a specified direct air carrier, aircraft, flight, or time has been arranged without a binding commitment with a direct air carrier for the furnishing of such transportation as represented.

(9) Selling or contracting for air transportation while knowing or having reason to know or believe that such air transportation cannot be legally performed by the direct air carrier or foreign direct air carrier that is to perform the air transportation.

(10) Misrepresentations as to the requirements that must be met by charterers in order to qualify for charter flights.

(11) Using or displaying or permitting or suffering to be used or displayed the name, tradename, slogan or any abbreviation thereof, of an air charter broker in advertisements, on or in places of business, or on or in aircraft or any other place in connection with the name of the air taxi or commuter air carrier in such manner that it may mislead or confuse potential consumers with respect to the status of the air charter broker.

#### **§ 298.92 Enforcement.**

In case of any violation of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 46301 of the Statute; or, in the case of a willful violation, to criminal penalties pursuant

to the provisions of section 46316 of the Statute; or other lawful sanctions including revocation of operating authority.

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

#### **21 CFR Parts 117 and 507**

[Docket No. FDA-2016-D-1164]

#### **Determination of Status as a Qualified Facility Under the Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human and Animal Food Rules; Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of availability.

**SUMMARY:** The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a final guidance for industry entitled “Determination of Status as a Qualified Facility Under Part 117: Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food and Part 507: Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals; Guidance for Industry.” This guidance explains our current thinking on how to determine whether a facility is a “qualified facility” that is subject to modified requirements under our rule entitled “Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food” (the Preventive Controls for Human Food Rule) or under our rule entitled “Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals” (the Preventive Controls for Animal Food Rule). This guidance also explains our current thinking on how a facility would submit Form FDA 3942a, attesting to its status as a qualified facility under the Preventive Controls for Human Food Rule and how a business would submit Form FDA 3942b, attesting to its status as a qualified facility under the Preventive Controls for Animal Food Rule.

**DATES:** The announcement of the guidance is published in the **Federal Register** on September 17, 2018.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2016-D-1164 for “Determination of Status as a Qualified Facility Under Part 117: Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food and Part 507: Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals; Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff