



The New Aircraft Charter Rules: A Deep Dive!

The Aviation Symposium Webinar Series

January 9, 2019

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New Charter Broker Rules

- Effective February 14, 2019
- Amends 14 CFR Parts 295 and 298
- Purpose of change:
 - Increase innovation and growth
 - Improve transparency
 - Strengthen consumer protection

New Charter Broker Rules - Overview

- Allows “Air Charter Brokers” as principals or bona fide agents to provide single entity charter air transportation of passengers
- Requires Air Charter Brokers to make certain disclosures
- Creates a list of prohibited acts by Air Charter Brokers that are deceptive and unfair trade practices
- Establishes new requirements for disclosures by air taxi or commuter air carriers that sell charter air transportation
- Creates a list of prohibited acts by air taxi or commuter air carriers that are deceptive and unfair trade practices

Where Did These Rules Come From?

- On November 28, 2004, a Canadair, Ltd. CL-600 (Bombardier Challenger), operated by Air Castle, crashed on takeoff in snowing conditions, killing 3 persons and injuring 3 others.
- During the investigation, the NTSB noted that:
 - Air Castle was authorized to do business as California Airways, Global Airways, and Global Aviation. Air Castle was owned by Winfair Aviation Group, which also owned several other companies, including Hop-A-Jet, which leased the accident aircraft to Air Castle. However, some company officials claimed that Air Castle was owned by “Jet Alliance,” and the accident aircraft was actually leased to that company.

Where Did These Rules Come From?

- On August 4, 2006, the NTSB made a safety recommendation to the FAA based on the accident, noting that a lack of transparency over aircraft charters might affect a passenger's ability to make safety related decisions.
- NTSB recommended changes be made to give passengers hiring an aircraft under Part 135 the same level of information as a Part 121 air carrier passenger has on who the ultimate operator of the aircraft is.
- On January 26, 2007, the FAA issued an advance notice of proposed rulemaking, and received 23 comments.

Where Did These Rules Come From

- On September 30, 2013, the FAA issued an NPRM based on the four NTSB recommendations and the suggestions it received.
- FAA received 21 comments to the NPRM, which included comments from industry groups such as National Air Transportation Association, Air Medical Operators Associations, Air Charter Association, National Business Aviation Association, American Society of Travel Agents, and National Air Carrier Association.

Creation of New Class of Indirect Air Carrier

- The new rule creates **Air Charter Brokers** which include: indirect air carrier, foreign indirect carrier, or bona fide agent that sells charter air transportation using a direct air carrier.
- **Bona Fide Agent** is an agent of a single entity charterer seeking air transportation **or** a direct air carrier seeking to provide single entity charter transportation.
- **Charterer** is an entity that contracts with an air charter broker, direct air carrier, or foreign direct air carrier for charter transportation of passengers.
- **Direct Air Carrier** is a carrier that offers to provide air transportation who has operational control over the transportation.
- **Indirect Air Carrier** is an entity that holds out, sells, or arranges air transportation and separately contracts with the direct air carrier.

Creation of New Class of Indirect Air Carrier

- **Single Entity Charter** is a charter of the entire capacity of an aircraft where the cost is borne by the charterer and not directly or indirectly by individual passengers except when the individual passengers aggregate to form a single entity for flights to be operated using a small aircraft
- **Small aircraft** are aircraft with 60 or fewer seats or max payload of less than 18,000 pounds.
- **Agency Relationships** are dependent on the express intent of the parties, for example an air charter broker acting as an indirect air carrier can be a bona fide agent where the parties desire it.
- Air charter brokers acting as indirect carriers are exempt from the requirements of having an air carrier certificate (49 USC 41101-41113), foreign air carrier permit (49 USC 41301-41313) and pricing and tariff requirements (49 USC 41501-41511).

Creation of New Class of Indirect Air Carrier

- Air Charter Brokers can only sell or arrange transportation from an operator that has both DOT economic authority and FAA safety authority.
- Air Charter Brokers can only sell or arrange transportation that is within the direct air carrier's scope of authority.
- For purposes of these rules, only direct air carriers that are citizens of the United States may provide direct air transportation in interstate or intrastate air transportation, which are either
 - A partnership where the partners are US citizens, or
 - A US corporation where the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States

Disclosure Requirements

- Before entering into a contract, the air charter broker MUST disclose:
 - The corporate name of the direct air carrier in operational control of the aircraft and any other names in which that direct carrier holds itself out to the public.
 - The capacity in which the air charter broker is acting, *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.
 - 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.

Disclosure Requirements

- Before entering into a contract, **upon request of the charterer**, the air charter broker must disclose:
 - 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.
 - 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.
 - 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.

Disclosure Requirements

- If the information is not known or changes, the information must be provided within a reasonable time
- “Within a reasonable time” depends on the circumstance. For example, if the direct air carrier changed one week prior to the flight, the FAA would consider giving notice within 24 hours of receiving the information, reasonable. The FAA would consider a disclosure of the information 2 hours before flight to be unreasonable.
- If the information is not provided within a reasonable time, the charterer must be given an opportunity to cancel the contract and receive a full refund of the money paid.
- If the information changes while the services are being provided, the new information must be provided in a reasonable time, and if not, the broker must provide the opportunity to cancel the remaining charter and give a refund of money paid for services not yet rendered.

Unfair and Deceptive Trade Practices

- All advertising, solicitation materials, brochures and web pages must clearly state that the entity is an air charter broker, is not a direct air carrier in operational control of an aircraft, and that the services will be provided by a licensed direct air carrier.
- Aircraft Marking: the air charter broker may display their name and logo on the aircraft **if the name of the direct air carrier is also prominently displayed on the aircraft.**
- Violations are treated the same as unfair trade practices related to tickets under 49 U.S.C. 41712.
- Each violation is subject to a civil penalty under 49 USC 46301(a) of \$33,333, or if you are a small business under 49 USC 46301(a)(5)(D) of \$3,334.

Unfair and Deceptive Trade Practices

- Misrepresenting that the air charter broker is a direct air when it is not.
- Misrepresenting the quality or kind of service or type of aircraft.
- Misrepresenting 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.
- Misrepresenting the certification of aircraft or air carriers or their safety record or the qualifications of pilots.

Unfair and Deceptive Trade Practices

- Misrepresenting that passengers are directly insured when they are not. For example, where the only insurance in force is that protecting the direct air carrier or air charter broker in event of liability.
- Misrepresenting fares or charges for air transportation or related services.
- Misrepresenting membership in or involvement with an organization that audits air charter brokers, direct air carriers, or direct foreign air carriers.
- Misrepresenting that the air charter broker or any direct carrier meets a standard set by an auditing organization.

Unfair and Deceptive Trade Practices

- Representing that a contract for a specified direct air carrier, aircraft, flight, or time has been arranged, where no binding commitment exists.
- Contracting for air transportation while knowing or having reason to know that the air transportation cannot be legally performed.
- Misrepresenting the requirements that must be met by charterers to qualify for charter flights.
- Using or displaying a name, trade name, or slogan in such manner that it may mislead or confuse potential consumers with respect to the status of the air charter broker.

Disclosures by Air Taxi and Commuter Air Operations

- FAA tried, to the extent possible, to harmonize the disclosures with the requirements for Air Charter Brokers.
- Before entering into a contract, the air taxi or commuter air carrier must disclose:
 - If the flight will be performed by another direct air carrier and provide the corporate name of the direct air carrier in operational control of the aircraft and any other names in which that direct carrier holds itself out to the public.
 - If the flight is to be performed by another direct 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.

Disclosures by Air Taxi and Commuter Air Operations

- Upon request, before entering into a contract, the air taxi or commuter air carrier must disclose information similar to the “on request” disclosures made by Air Charter Brokers.
- Rule imposes the same requirements for disclosure of newly obtained or changed information including the refund requirement, but provides an exception for “exigent circumstances” particular to passenger, air taxi operators and commuter air carriers.
- Provides same unfair trade practice violations definitions that apply to Air Charter Brokers with minor language changes.
- Provides same civil penalty enforcement provisions.

What did the FAA not do?

- Declined to mandate insurance levels.
- Declined to adopt a proposal to codify exemption authority to allow indirect air carriers to engage in the sale or provision of air ambulance transportation.
- Declined to apply similar disclosure requirements to air ambulance services

What did the FAA not do?

- Declined to create a registry of air charter brokers, but may revisit the issue in the future.
- Declined to adopt a proposal to classify some type of air transportation provided to the federal government as common carriage.
- Does not require the air charter broker to obtain written confirmation that the disclosures were made.

You have 35 Days to Prepare – What Now?

■ Charterer

- Ask for all the information you are entitled.
- Do your homework once you get the information.
- Does the relationship or cost data I got make me rethink the charter or warrant further negotiations?
- Know your rights if the facts change.
- Did I get my notifications in a timely manner?
- Are any changes in the carriage significant enough to warrant cancelling the charter?
- Did I get my refund in the time mandated by the rules?

You have 35 Days to Prepare – What Now?

■ Broker

- Review advertising and information on your website.
- Ensure agents understand their obligations.
- Review and update form contracts.
- Create a procedure for ensuring mandatory disclosures are made.
- Update policies on when and how changed information is provided.
- Review signage and markings on aircraft.
- Review relationships with direct carriers to determine what needs to be disclosed.
- Review insurance policies to see if there is information that needs to be disclosed.
- Review refund procedures.

You have 35 Days to Prepare – What Now?

- Air Taxi and Commuter Air Carriers
 - Review advertising and information on your website, particularly if you use DBAs.
 - Ensure all personnel dealing with the public understand the disclosure requirements.
 - Review and update your contracts.
 - Create a procedure for ensuring mandatory disclosures are made.
 - Devise a policy for when an “exigent situation” exists that warrants not making a new disclosure.
 - Review relationships with other direct carriers that perform services to determine what needs to be disclosed.
 - Review signage and markings on aircraft.
 - Review refund procedures.

Contact Information

If you have any questions, please contact us at:

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