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Navigating the DOT's New Charter Broker Rules

By James W. J. Cooling

On February 14, 2019, the Department of Transportation's final air charter rule took effect, changing the landscape for both charter brokers and air taxi operators. The rule has been codified under 14 CFR Parts 295 and 298. The intent of the rule is to simplify and clarify the requirements for air charter brokers. However, it may leave us with as many questions as it does answers.

First, the new Part 295 defines an "air charter broker" as either an indirect air carrier or a bona fide agent, thus applying the rule to agents. The rule also does not require any registration or approval process for air charter brokers, allowing what is effectively self-certification by complying with Part 295. Similar to the previous requirements, all advertising by a broker must "clearly and conspicuously state that the air charter broker is an air charter broker, and that it is not a direct air carrier," and must also state that all transportation is "provided by a properly licensed direct air carrier." Thus, any mailing or website advertisements should include this language in a place that it will be viewed by any potential customers. The rule also set out actions that are prohibited as unfair and deceptive practices, such as misrepresentations as to the service or qualifications of the broker.

The biggest changes are the new disclosure requirements. There are now two categories of disclosures to a customer: (a) information that must be disclosed prior to any contract between the broker and the customer, and (b) information that must be disclosed upon request by the customer.

In the first category mentioned above, the following must be disclosed prior to entering in to a contract: (1) the corporate name, including any D/B/As, of the direct air carrier for the trip to be flown; (2) the capacity in which the broker is acting (e.g. indirect air carrier or agent of the customer); and (3) the liability insurance held by the broker, including disclosing if there is none.

The second category does not require disclosure unless requested by the customer, and includes: (1) if acting as an agent of the customer, whether the broker has a relationship with the direct air carrier (the existence of a relationship must be disclosed,

but not the business terms); (2) the total cost of the air transportation, including any broker or government fees (which does not need to be itemized); and (3) the existence of any fees required to be paid to third parties.

Failing to meeting these disclosure requirements is not taken lightly. If the disclosures are not provided to the customer in accordance with the regulation, the customer must be given a right to cancel the trip for a full refund. The DOT also understands that the information disclosed could change between the time of the contract and the date of the flight, and therefore the rule requires that any changes to the information be disclosed to the customer within a reasonable time, meaning the customer has enough time to make an informed decision and accept or reject the change.

The DOT also includes a new view of payment by individual passengers. The rule defines "single entity charter" as a charter of the entire capacity of the aircraft, where only the primary charter customer pays the amount with no cost to the other passengers. However, in this same definition an exception was carved out which allows passengers to "self-aggregate" to form a single entity charter on small aircraft. This seems to imply the passengers could pay for they own seat in such an instance, but the guidance from the DOT is not clear and has not yet been tested.

Air taxis and commuter carriers under Part 298 must make similar disclosures to customers as brokers, and also are prohibited from the same unfair and deceptive practices.

This is a brief overview of the highlights of the DOT's new rule, and should only be viewed as a summary of some of the major requirements. The final rule can be found at:

https://www.federalregister.gov/documents/2018/09/17/2018-18345/increasing-charter-air-transportation-options

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