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# NBAA BEST PRACTICES FOR AIR CHARTER BROKERING

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*This National Business Aviation Association (NBAA) publication is intended to provide air charter brokers, charter operators and charter customers with an introduction to industry-wide best practices related to air charter brokering. Readers are cautioned that this publication is not intended to be an exhaustive or exclusive list of practices that may be employed by air charter brokers, and exceptions to these practices may be acceptable in specific situations or transactions. These practices are no substitute for the advice of legal and tax advisors addressing a specific set of facts that air charter brokers may face. Additionally, this version of the handbook is dated September 15, 2009, and does not incorporate any statutes, regulations or guidance released after that date.*

## INTRODUCTION

NBAA recognizes the value-added role brokers can play in arranging air transportation on qualified business aircraft. Air charter brokering has become a significant vehicle to connect qualified suppliers of air transportation with qualified customers. While the role of the air charter broker is not plainly and comprehensively regulated, a number of federal and state agencies have oversight of various matters that air charter brokers encounter on a daily basis. These matters are discussed in this *NBAA Best Practices for Air Charter Brokering* publication.

This document addresses the role air charter brokers play in the Part 135 on-demand air charter industry (focusing on aircraft with seating capacity of 30 seats or fewer) and discusses federal regulations that must be adhered to and the best practices used throughout the air charter brokering industry. Furthermore, it provides information that will help protect air charter brokers in the course of their business. Throughout this document, the term “customer” is used to

represent the end consumer who is seeking air transportation (i.e., the person or entity that is the charterer of the aircraft). NBAA urges all air charter brokers to follow these practices.

## WHAT IS AN AIR CHARTER BROKER?

In addition to more than 2,500-plus charter operators licensed by the Federal Aviation Administration (FAA) (also known as direct air carriers or carriers), there are entities (companies and individuals) that link prospective charter customers with charter operators. These entities are known as *air charter brokers*. An air charter broker matches a consumer’s travel needs with available air charter provided by carriers licensed under Part 135 of the Federal Aviation Regulations (FARs).

Air charter brokers may specialize in specific niches (e.g., air ambulance, long-range or large cabin aircraft) and also may provide access to other services, such as trains, hotels and ground transportation. There also are brokers who service only certain types of customers (e.g., investment capital raising “road trips,” speakers’ bureaus, medical flights), limited types of equipment (e.g., business aircraft, airliners, helicopters) and/or specific types of flights (e.g., passenger, cargo, air ambulance).

An FAA-135 licensed charter operator also may broker aircraft from other fleets to supplement its own capacity. NBAA urges charter operators that engage in such broker activities to confirm that they are consistent with their U.S. Department of Transportation (DOT) and FAA authority (e.g., the charter operator registered with DOT as an air taxi is not offering or holding out an aircraft designed for more than 60 seats). Charter operators should be up-front with their customers when they broker such flights, as the customer should know who the direct air carrier for the flight(s) is.

In the air charter industry there are four broker categories, which are as follows.

### Agent of the Customer

Those who represent charter consumers (acting as an agent of the customer). The customer contracts directly for broker’s services. The contract should explicitly state that the broker is acting as an agent on behalf of the customer.

### Agent of the Air Carrier

An air charter broker who serves as the marketing arm for charter operators (acting as an agent of the air carrier). The broker should have a separate agency contract with the air carrier which, among other things, defines how the broker will be compensated.

### **A True Middleman**

When a broker acts as a true “middleman,” the broker, at the request of a customer, finds an appropriate charter operator, with whom the customer then contracts directly for the charter flights. Or, at the request of a charter operator, the broker as a true middleman finds customers for a flight or series of flights. In this middleman scenario, the broker is neither the agent for the customer nor the agent for the air carrier. The middleman is not involved, in any way, with the provision of air transportation, and the customer pays the broker separately for its services.

### **Indirect Air Carrier**

When an air charter broker purchases air transportation for its own account from a direct air carrier and resells such air transportation to a customer, it is acting as an indirect air carrier (IAC). The broker when acting as an indirect air carrier normally contracts directly with both the customer and the charter operator.

Note: As discussed further below, in order to act as an indirect air carrier, a broker must first obtain economic authority from the DOT. The public charter rules in Part 380 of the DOT’s regulations provide a category of indirect air carrier that several air charter brokers utilize. Because Part 380 does not readily lend itself to planeload brokering as an indirect air carrier, NBAA is currently working with the DOT to create a more user-friendly air charter broker procedure for small aircraft (designed for 30 seats or under), which would streamline the process for obtaining IAC-type authority. No such economic licensing authority is required for the other charter broker classifications.

## **REGULATORY REQUIREMENTS AND BEST PRACTICES**

The following are regulatory requirements and best practices for air charter brokering at federal, state and local levels.

### **Federal Government**

Numerous federal regulatory agencies play a role in the regulation of the air charter industry, which directly affects charter operators and air charter brokers. They are the Transportation Security Administration (TSA), Internal Revenue Service (IRS), FAA and DOT.

The TSA regulates certain passenger and cargo charter flights, and charter operators have TSA-approved security programs. Air charter brokers must know which security requirements will be in effect in order to prepare passengers/cargo adequately in advance of a flight. These security requirements can differ depending on the charter operator’s approved program and area of operations.

Transportation by air is subject to excise taxes, and air charter brokers may be primarily or secondarily responsible for the collection and remittance of taxes to the IRS. The IRS conducts federal excise tax (FET) audits to ensure air transportation tax collection and remittance, and includes

air charter brokers in audits. The *NBAA Federal Excise Tax Handbook* describes air transportation and fuel excise taxes in detail. That document is available to NBAA Members on the Association’s web site at [www.nbaa.org/taxes](http://www.nbaa.org/taxes).

Air charter brokers must be very familiar with a range of FAA operational regulations and restrictions, such as requirements for certificated charter operators, flight duty and rest restrictions, and the need for the charter operator to maintain complete control over its flights/series of flights.

Unlike FAA-certificated charter operators (i.e., direct air carriers) and IACs, charter brokers acting either as an agent for the customer, an agent for the air carrier or the middleman currently are not required to be licensed and/or certificated by the FAA or DOT. However, the DOT in enforcement policy notices has set certain requirements for all air charter brokers, which are summarized here:

- Brokers must be clear with the customer/charterer, as applicable, in all solicitation materials, verbal and written correspondence, contractual documentation and word-of-mouth contact, that they are not the FAA licensed Part 135 operator. The broker cannot create the false impression that they are direct air carriers in their own right by, for example, referring to an aircraft used in the air services they are marketing in a manner that conveys the false impression that they are the air carrier. Such phrases as “our fleet,” “our charters,” “our charter service,” “our aircraft,” “our crews,” “our flightcrews” or “we operate a fleet of” have been found by the DOT to create such an impression even if such phrases are qualified by footnotes or other disclaimer.
- Brokers may not represent themselves as a principal in a transaction (i.e., buying or selling air transportation for their own account) unless they have first received economic authority from the DOT to act as an IAC (see below).
- It is incumbent upon the broker to exercise due diligence to ensure he or she is arranging the charter service that is advertised. For example, if the broker is acting as an agent of customer, the broker must ensure it is, in fact, placing customers on licensed direct air carriers. Similarly, if the broker is advertising that charter customers will be placed on audited charter flights (e.g., “Wyvern-audited,” “ARG/US approved”), then the broker must ensure that the charter operator has met that audit/standard.

### **State and Local Government**

State and local government agency oversight of air charter brokers will vary from state to state, county to county and city to city. Some states have seller-of-travel laws and/or business licensing or registration requirements while others may have none. It is outside of the scope of this document to categorize all state and local government requirements. However, air charter brokers should, at a minimum, investigate seller-of-travel laws, business licensing, registration

and insurance requirements, and state sales and income tax regulations and provide proof of compliance to a customer, upon request.

All brokers must comply with all state and local laws, including, as applicable, seller-of-travel laws for the various states in which broker is doing business.

## GENERAL AIR CHARTER BROKER BEST PRACTICES FOR ALL FOUR CATEGORIES

The following proposed items constitute a set of best practices for all broker types to consider. Air charter customers, who may be considering the services of an air charter broker, also may use these considerations when interviewing air charter brokers. This may help customers gauge the broker's expertise and determine if the broker has the knowledge and skills to meet the needs and expectations of an air charter customer.

- Obtain all necessary state and local business licenses and/or registrations.
  - Have an understanding of the various facets of the charter industry and the role(s) air charter brokers play.
  - Be familiar with the business aviation industry. NBAA's web site and other resources provide an excellent introduction to issues related to business aircraft ownership and operations. These resources provide a solid basis of information for air charter brokers who might not have come from a business aviation background.
  - Learn the various types of aircraft used in business aviation and, in particular, the types of aircraft that might be requested by your customers:
    - *Piston vs. Turboprop vs. Turbojet.* Which type of aircraft is the right one for a particular flight/mission? For instance, a large cabin turbojet aircraft might not be ideal for a one-passenger flight of one hour duration to a small, remote airport.
    - *Aircraft Manufacturers, Makes, Models.* One option might be less expensive per hour, but could take longer for the flight, thus costing the customer more in the long run.
    - *Seating Capacities and Limitations.* For example, an eight-passenger aircraft does not always mean that aircraft has eight full-size seats that comfortably sit an adult. Commonly, one of the seats certified for takeoff on business aircraft is a "belted potty." How would your customer view that if all eight seats were to be filled on a cross-country flight?
    - *Range Capability of Business Aircraft* (generally presented in nautical miles; 1 nm = 1.15 statute miles). Business aircraft design inherently entails trade-offs. Often a trade-off is made between the flight range and the weight of the aircraft passengers and their baggage. An aircraft with a 1,200 nm range might make that with two passengers and luggage, but not with six passengers with luggage. In the latter
- example, a fuel stop might be required, thus adding time to the trip and expense to the customer.
- Be aware that there are governmental regulations and policies directly regulating charter operators and air charter brokers, including those implemented by the DOT, FAA, TSA, IRS and any other applicable federal or state regulatory agency.
  - Know that the air charter broker cannot influence operational decisions that only the licensed charter operator can make. There are strict operational control regulations and policies that the FAA enforces and the charter operator must follow.
  - Stay abreast of regulatory changes and industry trends by attending industry seminars and through professional industry memberships.
  - In every transaction, including those posted on a web site, press release, contract or other form of marketing, be clear as to whether the broker: (1) represents the customer, (2) represents the air carrier, (3) acts as a true middleman or (4), if authorized by DOT, acts as an IAC.
  - Air charter brokers should be aware of insurance policies that may be secured to protect their interest and their customer's interest in the charter transaction.
  - Carry "errors and omissions" insurance in an adequate amount. Errors and omissions insurance will provide you with a level of protection in the event a dispute arises between the air charter broker and the charter operator or customer. For example, if, as a broker, an error is made (such as informing the charter operator of the wrong airport location/code), the policy could cover the costs associated with relocating the aircraft to the proper airport. The policy premiums vary. Your insurance broker can help you determine the appropriate level of insurance and the terms and conditions of the coverage. Discuss with your insurance broker the types of flights you typically may arrange (e.g., domestic or international) and the size/seating capacity of the aircraft (e.g., six-seat turboprop versus 14-passenger large turbojet), as those, and other factors, influence the proper coverage.
  - Perform proper due diligence on all charter operators you will/may use, including the following:
    - Establish a process to screen charter operators before you place charter customers on a flight with a particular operator. Decide in advance which charter operators would be a suitable match for your customers, based on safety audits, insurance coverages/limits, customer service audits, mission/aircraft options, etc. The *NBAA Aircraft Charter Consumer Guide*, available at [www.nbaa.org/charter](http://www.nbaa.org/charter), lists a series of questions designed for pre-screening charter operators.
    - Obtain and review reports from third-party independent safety auditors for operator, aircraft and crew.

- Verify the charter operator has a current Part 135 operating certificate. Obtain a copy of this air carrier certificate. Check the certificate number with the FAA web site at <http://av-info.faa.gov/OpCert.asp>.
- Check for any FAA enforcement actions against the charter operator or any of its flightcrew members. If using a safety auditor, you can obtain that information from the auditor. Otherwise, request accident, incident and enforcement action information from the FAA Flight Standards District Office (FSDO) that oversees the charter operator. The FAA FSDO page is [www.faa.gov/about/office\\_org/field\\_offices/fsdo](http://www.faa.gov/about/office_org/field_offices/fsdo).
- Know which aircraft tail numbers (also referred to as N numbers) are on the operator's "D085." The D085 is one of many "operations specifications" issued to a charter operator. The D085 is the method used by the FAA to track which aircraft a charter company is/are authorized to operate. The charter operator should be willing to fax you a copy of the D085. If a particular tail number is not on the operator's D085, do not book the customer on that aircraft until you are clear on who the operator of that aircraft is, and if the operator is a legal (i.e., FAA licensed) charter operator that meets your pre-screening standards.
- Verify type ratings and qualifications/training of flightcrew members. Obtain that information directly through air carrier. If using a safety auditor service, they will provide that.
- Verify that the charter operator has current Part 298 economic authority from the DOT.
- Verify that the liability insurance carried on potential aircraft is adequate –that is, having liability limits in excess of the minimums required by the DOT – and whether the operator has the ability to list the customer as additional insured on that policy. The DOT Air Carrier Economic Authority web site includes minimum insurance requirements for air carriers, and is available at [http://ostpxweb.dot.gov/aviation/X-50%20Role\\_files/aircarriereconauth.htm?cm\\_sp=ExternalLink\\_-\\_Federal\\_-\\_DOT](http://ostpxweb.dot.gov/aviation/X-50%20Role_files/aircarriereconauth.htm?cm_sp=ExternalLink_-_Federal_-_DOT).
- Ensure that all agreements with the customer, the carrier or any other vendor are in writing and, as necessary, reviewed by qualified legal counsel.
- Determine and place in a written agreement which entity (the charter operator or the air charter broker) will collect and remit the applicable FET to the IRS for the air transportation. For example, some charter operators ink stamp each trip confirmation with language stating the charter broker is responsible for collecting/remitting FET.
- Obtain "day of flight" contact information for the customer and passenger (if different than the customer) to get in touch with them directly in case issues arise during the trip.
- Perform proper due diligence on all customers/passengers, including the following:
  - Obtain the charter customer's information, including: name, business name, addresses and other contact information.
  - Provide passenger information that charter operator will need to conduct security-related vetting in advance of the flight.
  - Be alert to factors or indications that a flight might not be legitimate, and express any concerns you may have to the charter operator. For example, an international trip request that comes in during the middle of the night for one adult and one child might be legitimate (e.g., immediate lift needed due to a family emergency), or it could be a kidnapping. Similarly, be wary of any requests to pay the pilots in cash for a flight, as that is unusual for business aircraft charters and might be an indication of illicit activities.
  - Establish that the charter customer is financially qualified to book a charter flight through pre-payment or a pre-established credit application process. In accordance with contractual arrangements, the broker may be responsible for payment if the charterer defaults.

## BEST PRACTICES FOR AGENT OF THE CUSTOMER

In addition to following the regulatory and general best practices listed above, a broker acting as an agent for the customer should adhere to these best practices:

- Recognize that the air charter broker's role in the transaction is to work as agent for the customer in order to locate availability on a qualified charter aircraft for a proposed flight, and, with the customer's approval, contract for such flight on the customer's behalf.
- Prior to booking any flight or soliciting bids, execute an agency agreement in writing with the customer clearly establishing the terms and conditions of the agreement with the customer including the following:
  - Terms and conditions of the agency relationship between the air charter broker and the customer.
  - Full disclosure of any conflicts of interest. For instance, any pre-existing relationship or affiliation with a particular charter operator (including an agency relationship or a preferred vendor arrangement) should be disclosed at the outset.
  - Representations as to what portions of the charter contract with the air carrier will be disclosed to the customer, including, among others, the charter price.
  - Any special requirements for each flight requested by the customer, including insurance provisions, aircraft requirements, crew requirements, etc.
  - Confirmation that the broker will provide the customer with the option to pre-approve any air carrier or flight prior to the execution of the charter contract with such air carrier and, upon such pre-approval, that the broker will be authorized to sign such charter

contract on behalf of the customer and the customer will be bound by such contract.

- Identify the customer's needs in order to match available aircraft with the specific flight request's mission requirements. Basic preliminary information required to determine potential aircraft are, among other things:
  - Date(s) of flight
  - Number of passengers traveling
  - City destination(s)
  - Preferred cabin amenities
  - Special requests/needs
- Identify the ideal aircraft that would fit the mission's requirements. Verify through resources such as *Business & Commercial Aviation* magazine's *Operations Planning Handbook* or *Purchase Planning Handbook*, or *Jane's All the World's Aircraft*.
- Solicit and evaluate detailed competitive quotes for the customer's flight request.
- Evaluate available aircraft options and make recommendations to the customer based upon specific aircraft availability, customer preferences, cabin amenities, operator/crewmember qualifications and price. Price is only one component of a set of considerations to be evaluated. Air charter brokers should be wary of charter operators who propose pricing significantly lower than their competitors, and air charter brokers should investigate the reasoning behind that lower pricing. NBAA is aware that illegal charter operations exist and these companies do not have to incur the same safety and regulatory compliance costs. To protect yourself and your customers, you should be absolutely certain that you are not arranging a flight with an illegal charter operator. Following these best practices will help prevent such arrangements.
- Provide your customer with an unbiased selection of aircraft from multiple charter operator fleets.
- As agent for the customer, it is *not* an industry best practice for an air charter broker to pre-sell a flight to the customer and then locate a carrier to perform the flight.
  - Note: With the exception of air ambulance brokers, this practice currently is not acceptable to the DOT but may be permitted in the future if the DOT adopts new rules and the air charter broker is acting as a DOT-authorized IAC and, as such, the broker would be specifically authorized to engage in this practice under appropriate DOT-instituted safeguards. However, in this situation, the broker would no longer be acting as agent of the customer.
- To provide value-added service, you may make recommendations as to which option is the best for the customer's particular needs for the specific trip. Provide access to the best aircraft/crew available for a particular mission and negotiate the best value option for the customer's needs to earn repeat customer business.
- Brokers earn customer loyalty by providing exemplary value-added service. Payment for their service is typically earned by securing a discounted price from the charter operator and charging the customer a retail price. This method of compensation is permissible, but it is recommended that the broker make the customer aware of how the broker will be compensated in its capacity as the customer's agent.
- Re-confirm aircraft availability for the customer's flight (i.e., in some cases the charter operator must obtain aircraft owner's approval before booking the specific flight).
- Finalize a written contract with the charter operator which should include, among other things, the following:
  - Aircraft make and model
  - Aircraft tail number
  - Departure airport and arrival airport with flight times, number of passengers, estimated time of departure, estimated time en route, estimated time of arrival and estimated cost for each leg of the flight
  - Cost of flight (firm or estimate)
  - Clear notification of any charges that are not included in the cost of flight
  - Funds held in a separate account (if a deposit is required)
  - Cancellation policy, including policy for refund of deposits
  - Insurance, maintenance and crew provisions
  - Procedure used for collecting and remitting taxes to the appropriate agency
  - Terms and conditions
- Ensure that all agreements with the customer, the charter operator or any other vendor are in writing and, as necessary, reviewed by qualified legal counsel.
- Know what insurance the charter operator carries. Request and obtain a certificate of insurance naming customer as additional insured.
- Prior to the flight's departure, provide the customer with a flight confirmation showing tail number; operator name, including Part 135-license number; and crew names. Ideally, this information would be provided upon booking the flight, if the information is known at that time.
- Any changes to the above arrangements should be communicated to the customer.
  - Note: If there are changes that are unacceptable to the customer (e.g., crew that does not meet desired minimum flight hours, change to aircraft equipment not ideal for the mission of the flight), the customer should have the option to opt out of the flight and make other arrangements without penalty.
- Act as liaison to facilitate arrangement of all non-flight trip details and changes (e.g., ground transportation logistics).
- During the flight, stay in close contact with the charter customer's "day of flight contact" and the charter operator (or its flightcrew as appropriate) to facilitate any flight changes as well as to anticipate and help resolve any issues that may arise during the flight. The agent

of the customer air charter broker also should “flight follow” the aircraft with the customer’s representatives (as directed).

- After the flight, the agent of the customer should verify the accuracy of all charges, facilitate the final collection of funds from the customer, remit payment to the aircraft operator and follow up with the customer.
- Brokers who collect federal excise tax (i.e., segment fees, percentage tax and international passenger taxes) should have knowledge of applicable IRS regulations, keep clear records in accordance with federal and state regulations for record retention and remit payments to IRS collection authorities as required. For more information, review the *NBAA Federal Excise Tax Handbook*.
- Advertising must be clear that the broker is not the direct air carrier. Also, any representations made by such an agent may be subject to DOT price advertising rules. The primary advertising rule enforced by the DOT is its full price rule, found at 14 CFR 399.84. Its enforcement policy interpretations of that rule are found at <http://airconsumer.dot.gov/rules/guidance.htm>.

## BEST PRACTICES FOR AGENT FOR AIR CARRIER

In addition to following the regulatory and general best practices listed above, a broker acting as an agent for the air carrier should adhere to these best practices:

- An agent for the air carrier works at the request of the charter operator to find customers and is an independent outside sales consultant paid by the charter operator in the form of a percentage commission or other compensation arrangement. As agent of the air carrier, the broker cannot represent both sides (customer and air carrier) in the transaction.
- Establish an agency agreement in writing with the air carrier before soliciting the customer, which includes the underlying terms and conditions of the agency relationship including the payment and commission terms.
- The broker, in its capacity as an agent for the carrier, should then enter into a charter agreement with the customer that gives specifics of the particular flight or series of flight, such as:
  - Aircraft type, aircraft age, aircraft tail number
  - Aircraft charter rates
  - Clear notification of any charges that are not included in the estimated cost
  - Payment terms
  - If a deposit is required, funds should be held in a separate account
  - Cancellation policy, including policy for refund of deposits
  - Insurance, maintenance and crew provisions
  - Procedure used for collecting and remitting taxes to the appropriate agency
  - Other terms and conditions

- Advertising must be clear that the broker is not the direct air carrier. Also, any representations made by such an agent may be subject to DOT price advertising rules. The primary advertising rule enforced by the DOT is its full price rule, found at 14 CFR 399.84. Its enforcement policy interpretations of that rule are found at <http://airconsumer.dot.gov/rules/guidance.htm>.

## BEST PRACTICES FOR BROKER AS MIDDLEMAN

The broker as a middleman acts as a “finder” in that it provides a value-added service for the customer by screening charter operators, identifying qualified aircraft and crew, and making recommendations to the customer.

The key difference between the middleman and the agent is that the middleman simply “introduces” the charter customer to the charter operator so that the customer can then negotiate and finalize the arrangements/agreements for the flight(s) on its own, while an agent for the customer takes a more active role in negotiating the charter contract with the charter operator and signing the charter contract, as agent for and on behalf of its customer.

The middleman does not act as the agent of the customer or the agent of the air carrier. To avoid running afoul of regulatory requirements, any broker acting as a middleman should exercise caution to ensure they are not taking on the roles and responsibilities of an agent for either the customer or the air carrier.

In addition to following the regulatory and general best practices listed above, a broker acting as a true middleman should adhere to these best practices:

- Recognize that in the air charter broker’s role in this middleman scenario, the broker is introducing the parties (charter operator and customer) to each other and facilitating their contractual arrangement. As such, the broker is neither the agent of the customer nor the agent to the air carrier. Moreover the middleman is not involved, in any way, with the provision of air transportation, and the customer pays the broker separately for its services.
- Assist the customer and/or the air carrier as they identify their needs in order to properly match available aircraft with the specific flight request’s mission requirements. Basic preliminary information required to determine potential aircraft are, among other things:
  - Date(s) of flight
  - Number of passengers traveling
  - City destination(s)
  - Preferred cabin amenities
  - Special requests/needs
- Assist the customer and/or air carrier as they identify ideal aircraft that would fit the mission’s requirements. Verify through resources such as *Business & Commercial Aviation* magazine’s *Operations Planning Handbook*

or *Purchase Planning Handbook*, or *Jane's All the World's Aircraft*.

- Assist the customer as they solicit and evaluate detailed competitive quotes for the customer's flight request.
- Assist the customer and/or air carrier as they evaluate available aircraft options based upon specific aircraft availability, preferences, cabin amenities, operator/ crewmember qualifications and price. Price is only one component of a set of considerations to be evaluated. Air charter brokers should be wary of charter operators who propose pricing significantly lower than their competitors and air charter brokers should investigate the reasoning behind that lower pricing. NBAA is aware that illegal charter operations exist and these companies do not have to incur the same safety and regulatory compliance costs. To protect yourself and your customers, you should be absolutely certain that you are not arranging a flight with an illegal operator. Following these best practices will help prevent such arrangements. Review the Best Practice for Agent of the Customer section above regarding for additional information.
- If requested by the customer, act as liaison to facilitate arrangement of all non-flight trip details and changes (e.g., ground transportation logistics).
- Advertising must be clear that the broker is not the direct air carrier and does not operate aircraft. Also, any representations made by such an agent may be subject to DOT price advertising rules. The primary advertising rule enforced by the DOT is its full price rule, found at 14 CFR 399.84. Its enforcement policy interpretations of that rule are found at <http://airconsumer.dot.gov/rules/guidance.htm>.

## BEST PRACTICES FOR BROKER AS INDIRECT AIR CARRIER

In order to act as an indirect air carrier (IAC), a broker must first obtain the necessary authority from the DOT. If DOT authority is granted, the broker acts as the principal in the transaction in which he/she buys the capacity from the air carrier and resells it to the customer and assumes responsibility for furnishing the transportation.

The only way to obtain such authority for passenger operations (not including medical/EMS operations) is for the broker to act as a public charter operator consistent with Part 380 of the DOT's regulations. Such regulations place a significant regulatory burden on the IAC broker, including, among other things, the need to enter into a written contract with the direct air carrier, to provide evidence of bonding and/or escrowing of passenger funds, and to file the proposed flight schedule prior to advertising the charter movement. Brokers acting as IACs must comply with all DOT regulations, and it is highly recommended that such brokers comply with all applicable regulatory and general best practices listed above.

NBAA is advocating at the DOT for a streamlined certification/registration procedure for brokers looking to act as IAC's on a pre-formed group charter basis utilizing aircraft certificated for 30 seats or less. Until the current NBAA proposal, or an alternative, has been adopted, a broker cannot legally act as an IAC without complying with the public charter operator requirements contained in Part 380, or obtaining an individual exemption.

Advertising should name the direct air carrier and also should be clear that the broker is not the direct air carrier. Also, any representations made by such a broker acting as an IAC may be subject to DOT price advertising rules. The primary advertising rule enforced by the DOT is its full price rule, found at 14 CFR 399.84. Its enforcement policy interpretations of that rule are found at <http://airconsumer.dot.gov/rules/guidance.htm>.

## TERMS AND CONDITIONS

Each charter broker should obtain written terms and conditions from the charter operator as the details for the flight are finalized and provide those to the charter customer. The terms and conditions will vary from charter operator to charter operator. These terms and conditions typically are provided with the charter quote. Be aware of any limitations a charter operator may impose (e.g., baggage liability, smoking or pet policies). Following are common terms and conditions found in contracts developed:

- *Pricing and Availability.* What is/is not included in the pricing; minimum daily requirements; changes based on itinerary or aircraft; and trip confirmation procedures. Be aware of and insist on broker-as-agent's compliance with DOT's price advertising and other disclosure requirements.
- *Cancellation Policy and Fees.* Penalties and timing for cancellation of a trip may vary if trip is domestic or international.
- *Payment Terms.* When payment is due and penalties for late payment. (Note: Most charter operators require payment in advance of a flight and bill afterwards for charges not included in the quote, such as catering and other fees.)
- *Safety and Security Requirements.* TSA security requirements and the obligations of the customer (e.g., photo identification, prohibited items, passenger conduct).
- *Carriage of Minors.* Any requirements related to carrying unaccompanied minor children. Requirements for parental permissions for transporting minors in international travel.
- *Charter Broker Relationship.* Disclosure of relationship (or lack thereof) with a charter broker(s).
- *Taxes.* Responsibility to collect/remit FET and state taxes, if applicable (e.g., an intrastate charter).



Not all charter operators include all of the above provisions. Air charter brokers must fully understand each set of terms and conditions as put forth by a charter operator. NBAA recommends air charter brokers have qualified aviation legal counsel review terms and conditions that may be unfamiliar or not understood.

## AVIATION INSURANCE CONSIDERATIONS

The charter operator is required to carry aviation insurance. Minimal rates are set by the DOT, and the charter operator ordinarily carries larger amounts of insurance on the aircraft (typically, full hull value and liability insurance ranging from tens of millions of dollars to more than one hundred million dollars, depending on the charter operator and aircraft type). The industry recommended minimum is between \$50 million to \$100 million for turbojet aircraft depending on size of aircraft and needs of the customer. For smaller aircraft, such as turboprops and pistons, insurance limits are more typically in the \$3 million to \$25 million range.

In many cases, depending on the buyer's tolerance of risk, it is possible to add the customer, the charter broker or both to the air carrier's insurance as an additional insured. NBAA recommends that the customer be added as an additional insured on the policy. During normal business hours, this can be done quickly (within a business day) and there is no cost.

It is also possible for the charter broker and/or the customer to purchase a non-owned aircraft supplemental insurance policy.

Each air charter broker should evaluate what level of insurance coverage is necessary for its business model and provide adequate protection for its needs. These insurances may be discussed with a general insurance agent who offers errors and omissions insurance. Prices for coverage may vary and some insurance companies may not offer such a policy for the air charter broker. Be aware of options for your particular business.

The NBAA Tax Committee's Aviation Insurance Working Group has numerous articles and resources related to aviation insurance matters of importance to air charter brokers. These articles are accessible at [www.nbaa.org/taxes](http://www.nbaa.org/taxes).

## RELATED NBAA AND FEDERAL GOVERNMENT RESOURCES

- NBAA Aircraft Charter Resources, including the *NBAA Aircraft Charter Consumer Guide*, [www.nbaa.org/charter](http://www.nbaa.org/charter)
- NBAA Federal Excise Tax Resources, including the *NBAA Federal Excise Tax Handbook*, [www.nbaa.org/fet](http://www.nbaa.org/fet)
- NBAA Resources on Tax and Insurance Issues, [www.nbaa.org/taxes](http://www.nbaa.org/taxes)
- NBAA Resources on Part 135 Operational Requirements, [www.nbaa.org/part135](http://www.nbaa.org/part135)

- DOT Notice, "The Role of Air Charter Brokers in Arranging Air Transportation," <http://airconsumer.dot.gov/rules/BrokerNoticeFinal.pdf>
- DOT Notice, "Use of Branding Materials by Air Charter," [www.nbaa.org/member/ops/part135/brokers/branding.pdf](http://www.nbaa.org/member/ops/part135/brokers/branding.pdf)
- DOT Advanced Notice of Proposed Rulemaking, [www.nbaa.org/member/ops/part135/brokers/dotbrokeranprm.pdf](http://www.nbaa.org/member/ops/part135/brokers/dotbrokeranprm.pdf)
- Additional Guidance on DOT Regulations, <http://airconsumer.dot.gov/rules/guidance.htm>

## ABOUT NBAA

Founded in 1947 and based in Washington, DC, the National Business Aviation Association (NBAA) is the leading organization for companies that rely on general aviation aircraft to help make their businesses more efficient, productive and successful.

Contact NBAA at (800) FYI-NBAA or [info@nbaa.org](mailto:info@nbaa.org). Not a Member? Join today by visiting [www.nbaa.org/join](http://www.nbaa.org/join).

## CREDITS

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