

# New Regulations for Charter Brokers

**Wednesday,  
October 17, 2018  
9:00-10:30**

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# New Regulations for Charter Brokers

## DOT's World View

- Air Carriers
- Ticket Agents
- Charterers/Passengers/Participants

# New Regulations for Charter Brokers

## Air Charter Brokers (ACBs) – pre-February 14, 2019

- Agent for customer
- Agent direct air carrier (operator)
- Middleman
- Individual exemption
- Indirect air carrier (e.g. public charter operator)\*

\*Not a broker

# New Regulations for Charter Brokers

## ACBs – as of February 14, 2019

- Part 295 flights
  - Indirect/foreign indirect air carriers
  - Bona fide agents
  - “holds out, sells, or arranges single entity charter air transportation using a direct air carrier”
- Non-Part 295 flights
  - Agent for charterer or direct air carrier
  - Middleman
  - Individual exemption
  - Indirect air carrier (e.g. public charter operator)

# New Regulations for Charter Brokers

## Indirect/Foreign Indirect Air Carriers

- Definition – “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”
- No registration requirement
- No financial security requirement
- Single entity charter

# New Regulations for Charter Brokers

## Bona Fide Agent

- New addition to Final Rule
- Definition – “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”
- Agency relationship – “expressly authorized” requirement
- Single entity charter

# New Regulations for Charter Brokers

## Single Entity Charter

- Definition – “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”
- Self Aggregation
  - No definition in rule
  - NBAA definition (from NPRM comments)

# New Regulations for Charter Brokers

## Self-aggregation

- Forum (online or otherwise)
- Lead passenger
- Secondary passengers
- Internal negotiations
- Broker's role
- Passengers' obligations

# New Regulations for Charter Brokers

## Due Diligence Requirement

- DOT Authority
- FAA Authority
- Foreign Authority
- Can't hold out air transportation DAC can't hold out in its own right
- NBAA Best Practices for Air Charter Brokering
- Resources

# New Regulations for Charter Brokers

## Deregulation & Customer Protection

- Brokers
  - New Opportunities and Responsibilities
- Direct Air Carriers (Operators)
  - New Responsibilities

# New Regulations for Charter Brokers

## Broker Applicability

- **Pro-Competitive**
  - Permits brokers to hold out & sell in their own right
    - Applies to any single entity charter on any size aircraft operated under Part 135 or Part 121
    - Separate contracts with customer and direct air carrier OK
  - Clarified and codified policy regarding broker aircraft livery
    - Broker livery OK so long as
      - Direct air carrier name also prominent on aircraft
      - Customers not otherwise misled about broker status
    - ◆ See new section 295.23

# New Regulations for Charter Brokers

## Broker Prohibited Practices Codified

- **Longstanding prohibited practices codified**

- Use properly licensed direct air carrier
- Misrepresentations
  - Broker is an aircraft operator, including through use of logo
  - Quality or kind of service, type of aircraft
  - Crew qualifications
  - Fares or charges for charter services
  - Charter has been arranged when not the case
  - Selling charter with reason to believe it is not legal

- **One new prohibited practice codified**

- Membership in an organization that audits brokers or aircraft operators or that one meets an audit standard, if untrue
- ◆ Prohibited practices considered unfair/deceptive and unfair method of competition. See new section 295.50

# New Regulations for Charter Brokers

## New Rules Imposed on Brokers

- **Clear & conspicuous notice broker is not a direct air carrier**
- **Disclosures required before contract signed**
  - Name of direct air carrier, including DBAs
  - Capacity in which broker is acting for transaction
  - Whether broker has liability insurance

# New Regulations for Charter Brokers

## New Rules Imposed on Brokers - 2

- **Disclosures upon request before contract signed**
  - If broker is agent of customer, any relationship with direct air carrier that has a bearing on selection of the direct air carrier
  - Total cost of the charter, including taxes and all fees paid by customer to broker – no requirement to itemize
  - Existence and amount of fees customer must pay directly to third parties, e.g., fuel, landing, hanger
- **If Information not known at time of contract or changes**
  - Disclose within a reasonable time of broker knowing
  - In all events, disclosure required prior to departure

# New Regulations for Charter Brokers

## New Rules Imposed on Brokers - 3

- **Failure to provide accurate or timely information**
  - Customer may cancel charter contract, including additional services, and receive full refund for services not received
  - In all events, disclosure required prior to departure
    - ◆ See new section 295.24 on disclosures
- **Refund Requirements**
  - Brokers subject to DOT's rule requiring "prompt refunds"
  - Credit cards: within 7 days of receipt of documents necessary for credit refund
  - Cash: within 20 days of receiving complete refund request
    - ◆ See new section 295.26 and 14 CFR Part 374

# New Regulations for Charter Brokers

## Enforcement

- **Cease and Desist Order**
- **Civil Penalty**
  - Up to \$32,140 per violation, per day for a continuing violation
- **Revocation of Exemption Granted by Rule**
  - Egregious or repeated violations
- **Criminal Penalties**
  - Knowing and willful violations
  - Unlikely unless significant consumer harm

# New Regulations for Charter Brokers

## Direct Air Carrier Applicability

- **Applies only to Part 298 air taxi & commuter air carriers**
- **Intended to mirror broker rules**
- **New Disclosures required before contract signed**
  - If flight “brokered,” name of direct air carrier operating flight, including DBAs
  - If flight “brokered,” capacity in which brokering air carrier is acting for transaction, e.g., principal, agent of customer or agent of operating carrier
- **Disclosures upon request before contract signed**
  - If flight “brokered,” any relationship with operating carrier that has a bearing on its selection
  - Total cost of the charter, including taxes and all fees paid by customer to carrier – no requirement to itemize
  - Existence and amount of fees customer must pay directly to third parties, e.g., fuel, landing, hanger, or estimate

# New Regulations for Charter Brokers

## Operator Applicability - 2

- **Information not known at time of contract or changes**
  - Disclose within a reasonable time of direct carrier knowing
  - Except for exigent circumstances, disclosure required prior to departure
- **Penalty for failure to meet disclosure requirements**
  - Customer may cancel charter contract, including additional services, and receive full refund for services not received

# New Regulations for Charter Brokers

## Direct Air Carriers' Specific Prohibited Practices

- **New rule listing specific prohibited practices**
  - Mirror those applicable to brokers
  - Noteworthy specified misrepresentations
    - The carrier that will operate flight, when it has been brokered to another direct air carrier
    - Membership in an auditing organization or that the direct air carrier meets an audit standard, if not true
    - Permitting a broker to use its name or logo so that public is misled about the broker's status
- ◆ Prohibited practices are considered unfair/deceptive and unfair method of competition. See new section 298.90

# New Regulations for Charter Brokers

## Enforcement

- **Cease and Desist Order**
- **Civil Penalty**
  - Up to \$32,140 per violation, per day for a continuing violation
- **Revocation of Authority**
  - Egregious or repeated violations
- **Criminal Penalties**
  - Knowing and willful violations
  - Unlikely unless significant consumer harm

# New Regulations for Charter Brokers

## Questions?

- You know you have them.
- You know you want to ask them.
- Help us help you!



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