



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Issued by the Department of Transportation
On the Twentieth day of December, 2010**

A-Liner-8 Aviation, Inc.,

**Violations of 49 U.S.C. §§ 41101 and
41712**

Docket OST 2010-0005

Served December 20, 2010

CONSENT ORDER

This order concerns violations of 49 U.S.C. §§ 41101 and 41712 by A-Liner-8 Aviation, Inc., (A-Liner-8) for engaging in air transportation without the required economic authority from the Department of Transportation (the Department). It directs A-Liner-8 to cease and desist from such future unlawful conduct and assesses a compromise civil penalty of \$20,000.

In addition to complying with applicable Federal Aviation Administration (FAA) safety-related requirements, in order to engage directly or indirectly in air transportation, a citizen of the United States¹ is required to hold economic authority² from the Department

¹ A "citizen of the United States" includes a corporation organized in the United States that 1) meets certain specified numerical standards regarding the citizenship of its president, officers and directors, and holders of its voting interest and 2) is under the actual control of citizens of the United States. 49 U.S.C. § 40102(a)(15).

² Generally, the Department grants economic authority to large aircraft operators (i.e., operators of aircraft, such as the DC-9 aircraft operated by A-Liner-8, that were originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds) in the form of a certificate of public convenience and necessity issued under 49 U.S.C. § 41102 or an all cargo certificate issued under 49 U.S.C. § 41103. Before granting economic authority, the Department must find a carrier to be "fit," which entails a determination that the carrier is owned and controlled by U.S. citizens and has adequate financial resources, a competent management team, and a positive compliance disposition. This fitness requirement is a continuing one and the Department monitors "certificated" carriers to ensure their compliance. Certificated carriers must also meet certain Departmental economic rules, such as liability insurance requirements (14 CFR Part 205) and escrow requirements to protect charterers' funds and expectations (14 CFR 212.8 and 380.34). In addition, certificated carriers must also receive safety certification from the FAA and comply with the appropriate set of associated operating rules prescribed by that agency.

Large aircraft operators that engage in common carriage without the appropriate DOT and FAA authorizations harm consumers by denying them the level of protection afforded by duly licensed carriers

pursuant to 49 U.S.C. § 41101, or an exemption from that provision. “Air transportation” includes the transportation of passengers or property by aircraft as a common carrier for compensation between two places in the United States or between a place in the United States and a place outside of the United States.³ Common carriage, in the context of air service, consists of the provision or holding out of transportation by air to the public for compensation or hire.⁴ From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of that service, constitutes “engaging” in air transportation.⁵ Under Department enforcement case precedent, violations of section 41101 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.⁶

A-Liner-8 is a citizen of the United States incorporated in Michigan that operates a DC-9 aircraft (N112PS) pursuant to 14 CFR Part 125, an FAA rule applicable to private carriage operations with large aircraft. A-Liner-8 has never held economic authority from the Department. However, on at least one occasion, A-liner-8 has operated a flight that the Enforcement Office determined did not comply with the restrictions inherent to private carriage operations by Part 125 operators, which violates 49 U.S.C. §§ 41101 and 41712.

In mitigation, A-Liner-8 asserts that any violation was inadvertent and inconsistent with the numerous safeguards which A-Liner-8 has implemented and which were in place at the time of such flight. A-Liner-8 states that, in order to ship auto parts, air operators must regularly contract with logistics companies and, as such, must rely upon certifications made by such logistics companies regarding the identity of the ultimate auto parts recipient (e.g., General Motors, Chrysler, etc.). A-Liner-8 further states that the long-standing safeguards implemented by the firm and enhanced by recent improvements as a result of the Enforcement Office’s investigation, constitute A-Liner-8’s continuing best efforts to ensure that such certifications are accurate, thereby allowing A-Liner-8 to remain in full compliance with its Part 125 responsibilities. A-Liner-8 states that it is fully committed to working with the Department and taking all steps necessary to ensure continued compliance with the Department’s requirements.

that have been found fit by the Department and are complying with the proper FAA safety regulations. In addition, such operators, whose regulatory compliance costs are lower, place duly licensed common carriers at a competitive disadvantage.

³ 49 U.S.C. §§ 40102(a)(5), (a)(23), and (a)(25).

⁴ See, e.g., *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516 (5th Cir. 1993).

⁵ Prior to 1994, when Title 49 of the United States Code was recodified and simplified, 49 U.S.C. § 41101 stated that no carrier could “engage” in air transportation without appropriate authority. Although the wording of section 41101 now states that what is prohibited is “providing” air transportation without authority, Congress made clear when it recodified Title 49 that in doing so it did not intend any substantive change to the statute. Act of July 5, 1994, Pub. L. 103-272, § 6(a), 108 Stat. 745, 1378.

⁶ See, e.g., *Principal Air Services, LLC, and David C. Bernstein, Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2006-7-13 (Jul. 11, 2006).

The Enforcement Office has carefully considered all of the information provided by A-Liner-8, and continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and A-Liner-8 have reached a settlement of this matter. Without admitting or denying the violations described above, A-Liner-8 agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and to the assessment of \$20,000 in compromise of potential civil penalties otherwise assessable. The Enforcement Office believes this compromise is appropriate in view of the nature and extent of the violations in question, serves the public interest, and creates an incentive for all Part 125 operators to comply fully with the requirements of 49 U.S.C. §§ 41101 and 41712.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that A-Liner-8 Aviation, Inc., violated 49 U.S.C. § 41101, as described above, by conducting common carriage air services without economic authority from the Department;
3. We find that, by engaging in the conduct and violations described in paragraph 2, above, A-Liner-8 Aviation, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order A-Liner-8 Aviation, Inc., and all other entities owned and controlled by, or under common ownership and control with A-Liner-8 Aviation, Inc., and their successors and assignees, to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712;
5. We assess a compromise civil penalty of \$20,000 in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this total amount, \$10,000 will become due and payable in two equal installments of \$5,000. The first installment of \$5,000 is due and payable within 30 days of the issuance date of this order, and the second installment of \$5,000 is due and payable within 90 days of the issuance date of this order. The remaining \$10,000 shall become due and payable if A-Liner-8 Aviation, Inc., violates this order's cease and desist provisions or the payment provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately. Failure to pay the penalty as prescribed below shall subject A-Liner-8 Aviation, Inc., to the assessment of interest, penalties, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order; and
6. Payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers shall be executed in accordance with the instructions contained in the Attachment to this order.

This order will become a final order of the Department ten days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

ROSALIND A. KNAPP

Deputy General Counsel

(SEAL)

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