



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

Issued by the Department of Transportation  
on the **9th day of February, 2004**

**Scott Aviation, Inc.**

**Violations of 49 U.S.C. §§ 41101  
and 41712 and 14 CFR 298.31**

**Docket OST-2004-16943**

**Served February 9, 2004**

**CONSENT ORDER**

This consent order concerns unlawful operations by Scott Aviation, Inc., (Scott Aviation) that constitute violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Part 298. This order assesses a compromise civil penalty of \$65,000 and directs Scott Aviation to cease and desist from further violations of these statutory provisions and regulations.

Scott Aviation is an air taxi operator registered by the Department under 14 CFR Part 298. As such, Scott Aviation is exempt from the certificate requirements otherwise applicable under 49 U.S.C. § 41101, provided that, among other things, it limits its air transportation operations to aircraft that are designed to have a maximum passenger capacity of sixty seats or less or a maximum payload capacity of 18,000 pounds or less.<sup>1</sup> An air taxi operator that carries passengers or property in air transportation using aircraft that exceed these design specifications must possess a certificate of public convenience and necessity in accordance with 49 U.S.C. § 41101. Operating, advertising or otherwise engaging in air transportation services for the public using aircraft that exceed these design specifications without having such authority violates the conditions of the exemption authority granted under Part 298 and is a violation of 49 U.S.C. § 41101. Moreover, any violation of 49 U.S.C. § 41101 also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Between November 2001 and March 2003, Scott Aviation held itself out as an operator of charter air transportation to numerous charter brokers, using two DC-9-15 aircraft. Those aircraft exceed the size limitations of the carrier's exemption authority provided under Part

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<sup>1</sup> 14 CFR 298.31.

298 from the certificate requirement of 49 U.S.C. § 41101. Although the DC-9's in question are owned by AGS Partnership, an affiliated<sup>2</sup> company licensed by the Federal Aviation Administration under 14 CFR Part 125<sup>3</sup>, Scott Aviation entered into a substantial number of contracts in its own right with various charter brokers to use the aircraft to provide transportation for numerous college and professional sports teams. Moreover, Scott Aviation sent written material to air charter brokers and other members of the general public holding out, in its own name, the availability of the DC-9's for charter flights.

Scott Aviation denies that it sent written material holding out its DC-9 aircraft for charter to the general public. On the contrary, the carrier states that it sent a brochure describing the aircraft only to parties that expressed an interest in purchasing the aircraft, which it claims had been advertised for sale in two aviation industry publications.

In mitigation, Scott Aviation states that it did not intend to hold itself out as the operator of DC-9 aircraft, but that it intended to contract with charter customers as an agent for its affiliated company, AGS Partnership. Scott Aviation asserts that its belief that it was not operating as a common carrier was based on advice received from its local FAA Flight Standards District Office. Moreover, the carrier points out that it stopped operating the DC-9 aircraft once it became aware of the Department's objections. Scott also notes that it is currently pursuing certification by the Department under 49 U.S.C. § 41102 and by the FAA under 14 CFR Part 121. Lastly, Scott Aviation has agreed to work with the Department to educate similarly situated carriers regarding the laws governing the holding out and provision of air transportation and the Department's economic licensing requirements.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) views seriously Scott Aviation's violations of the Department's licensing requirements. The Enforcement Office has carefully considered the facts of this case, including the information provided by Scott Aviation, and continues to believe that enforcement action is necessary. Scott Aviation, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 as described above, and to the assessment of \$65,000 in compromise of potential civil penalties otherwise due and payable. Of this total penalty amount, \$22,500 shall be due and payable within 30 days of the issuance of this order and \$10,000 shall be due and payable on December 15, 2004. Scott Aviation is to be given a credit of not more than \$10,000 for the expenses that it incurs in sponsoring and conducting an industry seminar on the Department's economic licensing requirements to be held before August 15, 2004. This offset is to be made against the last payment that would otherwise be due under this order upon presentation to, and acceptance by, the Enforcement Office of certified expense statements, verified by signature subject to the terms of 18 U.S.C. § 1001.<sup>4</sup> The remaining \$32,500 shall be suspended for two years following the issuance of this order, and then forgiven, unless Scott

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<sup>2</sup> Scott Aviation and AGS Partnership are commonly owned and share substantial managerial and operational resources.

<sup>3</sup> Authority under 14 CFR Part 125 is strictly limited to private carriage operations.

<sup>4</sup> In the event that Scott Aviation is unable to sponsor and stage a public seminar, Scott Aviation shall so advise the Enforcement Office and pay the final \$10,000 installment on or before December 15, 2004.

Aviation violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Scott Aviation may be subject to further enforcement action. The Enforcement Office believes that this compromise is appropriate, serves the public interest, and creates an incentive for all carriers to comply fully with the requirements of 49 U.S.C. §§ 41101 and 41712.

Although the Enforcement Office and Scott Aviation do not believe that the details of the seminar should be described in this order, they do wish to set forth the basic parameters that will govern the conduct of the seminar.<sup>5</sup> In this connection, Scott Aviation has undertaken to sponsor and stage a seminar aimed at instructing air taxis, private charter operators, and operators of large aircraft regarding the laws governing the holding out and provision of air transportation and the Department's economic licensing requirements. The seminar's scope will include, at a minimum, the Departmental and FAA licensing statutes and regulations, the economic authority application process, and Departmental policy regarding common carriage and private carriage for hire operations.<sup>6</sup> The seminar will be held free of charge for all attendees.

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 the order as being in the public interest;
2. We find that Scott Aviation, Inc., violated 14 CFR 298.31, as described above, by engaging in air transportation using large aircraft without appropriate economic authority;
3. We find that Scott Aviation, Inc., violated 49 U.S.C. § 41101, as described above, by engaging in air transportation using large aircraft without appropriate economic authority;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Scott Aviation, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. Scott Aviation, Inc., and all other entities owned and controlled by, or under common ownership and control with Scott Aviation, Inc., and their successors and assignees, are ordered to cease and desist from further similar violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 298.31;

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<sup>5</sup> The Department and the Civil Aeronautics Board, which held jurisdiction over aviation economic issues prior to the Department, have approved industry and company education programs as part of settlement agreements in several prior cases. See, e.g., *London Air Services Limited, Violations of 49 U.S.C. §§ 41301, 41703, and 41712*, DOT Order 2003-1-9; *Tourlite International, Inc., Violations of 14 CFR Part 380*, DOT Order 87-6-6; *Air New England, Enforcement Proceeding*, 83 C.A.B. 1471 (1979); *Overseas National Airways Enforcement Proceeding*, 72 C.A.B. 611 (1977).

<sup>6</sup> Scott Aviation will consult with the Enforcement Office regarding the proposed list of attendees.

6. Scott Aviation, Inc., is assessed \$65,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 4, above; Of the assessed penalty, \$22,500 shall be due and payable within 30 days of the date of issuance of this order and \$10,000 shall be due and payable on December 15, 2004, subject to the modification set forth in ordering paragraph 7. The remaining \$32,500 shall be suspended for two years following the issuance of this order, and then forgiven, unless Scott Aviation, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Scott Aviation, Inc., may be subject to further enforcement action. Failure to pay the penalty as ordered shall also subject Scott Aviation, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and

7. To obtain a modification of the \$32,500 civil penalty payment covered by ordering paragraph 6, Scott Aviation, Inc., shall sponsor and stage a seminar on the Departmental and Federal Aviation Administration licensing statutes and regulations, the economic authority application process, and Departmental policy regarding common carriage and private carriage for hire operations to be held in Chicago, Illinois, before August 15, 2004. Scott Aviation, Inc., shall submit a certified statement detailing its expenses in connection with the seminar to the Office of Aviation Enforcement and Proceedings. Unless disapproved by that office, an offset not to exceed \$10,000 for the expenses shall be applied to the final installment of the civil penalty described in ordering paragraph 6 above that would otherwise be due and payable on December 15, 2004. Scott Aviation, Inc., shall submit its expenses for sponsoring and staging the seminar to the Office of Aviation Enforcement and Proceedings on or before November 15, 2004. Such expenses shall be verified by signature and be subject to enforcement under 18 U.S.C. § 1001; and

8. Payment 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 transfer 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 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

**BY:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

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