



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

Issued by the Department of Transportation  
on the 8th day of February, 2006

**Aéro Péninsule Ltée d/b/a Air Optima**

**Violations of 49 U.S.C. §§ 41301 and 41712**

**Served February 8, 2006**

**OST 2006-23528**

**CONSENT ORDER**

This order concerns unauthorized air transportation by Aéro Péninsule Ltée d/b/a Air Optima between Canada and the United States in violation of 49 U.S.C. §§ 41301 and 41712. It directs Air Optima to cease and desist from further violations of these statutory provisions and to pay a compromise civil penalty of \$17,500 (US).

Air Optima, a foreign air carrier within the meaning of 49 U.S.C. § 40102(a)(21), provides charter air service from its base in Miramichi, New Brunswick, Canada. At all times relevant to the violations described herein, Air Optima did not hold economic authority from the Department or safety authority from the Federal Aviation Administration (FAA). Notwithstanding its lack of economic authority, Air Optima has held out air service between Canada and the United States and, on a number of occasions, operated such service in contravention of 49 U.S.C. § 41301, which requires that foreign air carriers obtain permit authority from the Department prior to commencing service to the United States.<sup>1</sup> Holding out, as well as the actual operation, of such unauthorized air transportation violates section 41301. Violations of section 41301 also constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

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<sup>1</sup> Part 294 of the Department's regulations (14 CFR Part 294) provides an exemption for "Canadian charter air taxis" from the permit requirements of section 41301, provided that such carriers register with the Department and have the requisite level of liability insurance. The exemption authority conferred under Part 294 is available only to carriers that operate "small" aircraft, which is defined in section 298.2(i) as "any aircraft designed to have a maximum passenger capacity of not more than 30 seats ... ."

In mitigation, Air Optima states that it did not intend to violate the Departmental permit requirement. At all times in this matter, it has cooperated fully with the Office of Aviation Enforcement and Proceedings (Enforcement Office).

The Enforcement Office has carefully considered all of the information provided by Aéro Péninsule Ltée d/b/a Air Optima but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Aéro Péninsule Ltée d/b/a Air Optima have reached a settlement of this matter. Without admitting or denying the violations described above, Aéro Péninsule Ltée d/b/a Air Optima agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712 and to the assessment of \$17,500 (US) in compromise of potential civil penalties otherwise assessable. Of this amount, \$8,750 shall be paid under the terms described below. The remaining \$8,750 shall be suspended for 18 months following the service date of this order and then forgiven unless Aéro Péninsule Ltée d/b/a Air Optima violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately, and Aéro Péninsule Ltée d/b/a Air Optima may be subject to additional enforcement action. The Enforcement Office believes this compromise is appropriate in view of the nature and extent of the violations in question<sup>2</sup>, serves the public interest, and creates an incentive for all foreign air carriers to comply fully with the requirements of 49 U.S.C. §§ 41301 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 Aéro Péninsule Ltée d/b/a Air Optima violated 49 U.S.C. § 41301 by holding out and operating air service between Canada and the United States without economic authority from the Department.
3. We find that, by engaging in the conduct and violations described in paragraph 2, above, Aéro Péninsule Ltée d/b/a Air Optima engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order Aéro Péninsule Ltée d/b/a Air Optima and all other entities owned and controlled by, or under common ownership and control with Aéro Péninsule Ltée d/b/a Air Optima and their successors and assignees, to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712.
5. We assess Aéro Péninsule Ltée d/b/a Air Optima a compromise civil penalty of \$17,500 (US) in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3, above. Of this amount, \$2,188 shall be due and payable on March 10, 2006, and August 10, 2006, respectively, and \$2187 shall be due and payable on February 10, 2007, and July 10, 2007, respectively. The remaining \$8,750 shall be suspended for 18 months after the service date of this order, and then forgiven unless Aéro Péninsule Ltée d/b/a

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<sup>2</sup> This compromise of civil penalties otherwise due and payable takes into account, among other factors, the carrier's size and ability to pay.

Air Optima violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Aéro Péninsule Ltée d/b/a Air Optima may be subject to additional enforcement action.

6. We order Aéro Péninsule Ltée d/b/a Air Optima, to pay the compromise civil penalty assessed in ordering paragraph 5, above, in accordance with the schedule of payments in that paragraph. Said 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. Failure to pay the compromise civil penalty as ordered shall subject Aéro Péninsule Ltée d/b/a Air Optima to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this consent 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**

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