

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

**Notice of Department of Transportation Requirements Regarding
Flights to College Bowl Games and other Special Events**

NOTICE

This notice is to provide guidance to colleges and other organizations wishing to arrange charter flights, including flights to football bowl games, NCAA basketball playoff games, or other special events. The notice is also intended to provide information regarding the economic licensing and operational certification of air carriers by the U.S. Department of Transportation (DOT). It is important that colleges and other entities are fully aware of this information since they often charter aircraft to travel to events and we wish to avoid instances of organizations (1) contracting with entities that hold no DOT economic authority; (2) unknowingly chartering aircraft from entities that are not subject to the most stringent safety standards and oversight of the Federal Aviation Administration (FAA), a DOT operating administration; or (3) reselling seats on a charter flight without their first having obtained proper authority to do so.

There are generally two primary avenues whereby a college or other entity may seek to sponsor air transportation to a college bowl game or other special event.

The organization may choose to (1) contract directly with a carrier to provide the air transportation to the bowl game or other special event or (2) contract with a Public Charter Operator or an air charter broker, who would, in turn, locate a direct air carrier to provide the air transportation.

Contracting Directly With an Air Carrier

If the college or other entity chooses to contract with the air carrier directly, they should be aware of the economic requirements that govern the carrier's operations. Before any U.S. aircraft operator can hold itself out to the public as providing interstate scheduled or charter service, it must have DOT economic authority. In general, such authority is granted to large aircraft operators in the form of an air carrier certificate issued under 49 U.S.C. § 41101. Prior to granting such authority, this Department must find a carrier to be "fit", which entails a determination that the carrier has adequate financial resources, a competent management team and a proper compliance disposition. This fitness requirement is a continuing one and we monitor certificated carriers to ensure their compliance with the requirement. In addition, certificated carriers must meet certain DOT economic rules such as minimum liability insurance requirements (see, 14 CFR Part 205) and escrow requirements to protect charterers (see, 14 CFR Part 212).

Likewise, the FAA requires that any U.S. aircraft operator providing scheduled or charter service with large aircraft must comply with the safety-related certification and operating rules of Part 121 of the Federal Aviation Regulations (14 CFR Part 121). Those regulations are the most detailed and stringent of any

of the FAA's aircraft operating rules and the FAA provides heightened safety surveillance of carriers subject to Part 121.

There are, however, operators of large, jet-powered passenger aircraft that are not required to have DOT economic authority or to comply with 14 CFR Part 121. These operators are regulated under the safety standards of Part 125 of the Federal Aviation Regulations (14 CFR Part 125). While these aircraft operators may conduct "private" air services for a few entities for compensation or hire, they do not have authority to transport the general public by engaging in common carriage (e.g., holding out to the general public, or a segment of the general public such as colleges, through advertisements or telephone listings or through agents or brokers, or otherwise acquiring a reputation for common carriage). Since carriers operating under Part 125 are not authorized to hold out to the general public, Part 125 does not contain safety standards as stringent as Part 121. Likewise, carriers lawfully operating under Part 125 hold no economic license from DOT and are not required to comply with DOT's insurance or monetary escrow requirements. You should therefore inquire about the specific authority under which the carrier you will be using will operate.

In addition to determining whether the air carrier has appropriate authority, any organization that contracts with an air carrier directly and wishes to resell seats on the charter flight to the public (for example, to its students or alumni, to the press, or to its club members), whether or not as a profit-making venture, should understand its own role as an "indirect air carrier," whose reselling of the air transportation must be licensed under the Department's Public Charter regulations.

Public Charter operators must comply with the requirements of 14 CFR Part 380. Among the most important requirements of 14 CFR Part 380 are the rules designed to prevent economic harm to charter passengers, including the requirements that 1) before any sales of seats takes place there is in place an approved Public Charter prospectus based upon a contract between the charter operator and a direct air carrier covering the transportation to be sold and 2) all payments by charter participants to charter operators be covered in full by a security agreement or in part by a security agreement with the payments themselves being placed directly into an escrow account. There are other specific rules governing Public Charter solicitation and the content of the charter contract between the Public Charter operator and the charter participants, including provisions on the cancellation of trips and a participant's right to a refund.

Exemptions From the Public Charter Requirements

We recognize that organizations may have only a short time after learning of an event in which to organize participation in a charter flight, such as might occur with a bowl game or NCAA basketball playoff appearance. The Department has always been willing to work with organizations that can show that an exemption from certain of its rules is in the public interest. While such matters are reviewed on a case-by-case basis, in seeking such relief, an organization should be prepared to show, at a minimum, that it has a contract with a carrier holding appropriate authority for the flight and that appropriate financial arrangements are in place to protect consumer payments.

Using a Public Charter Operator or an Air Charter Broker

Organizations may contract with a Public Charter operator to organize a charter flight. Any organization that does so should assure itself that the Public Charter operator has complied with the requirements of Part 380, as described above (and Part 381, where applicable, as described below). Organizations may also contract directly with an air carrier through an “air charter broker.” An air charter broker cannot misrepresent itself as an air carrier and, because it does not hold authority from the Department, it cannot in its own right contract to sell air transportation. Therefore, it must generally have authority to act either (1) as the agent of a chartering organization in contracting with an air carrier or (2) as the agent of the air carrier in contracting with a chartering organization. Air charter brokers also may act merely as a “go-between” without being involved in the actual contract between the carrier and the charter customer, e.g., by locating a customer for an air carrier and being paid a finder’s fee by the carrier, but this is a rare occurrence.

Organizations using air charter brokers should be aware that, since the Department does not license air charter brokers, there is no DOT-required financial security in place to protect an organization’s payments to a broker that is the lawful agent of the organization or who acts in a “go-between” function. With respect to air charter brokers that state that they are acting as the agent of one or more air carriers, prior to signing a contract for air services organizations should take steps to assure themselves of the agency relationship and that the

carrier represented is properly licensed by DOT and FAA to provide the air transportation.¹

Tickets to a Game or Other Special Event Sold in Conjunction With a Flight

It is also important to note that specific rules apply to situations where tickets to a game or other special event are being offered in conjunction with a flight, whether it is a charter flight or a regularly scheduled flight. Under 14 CFR Part 381, an entity that offers special event or game tickets in connection with a flight must be in physical possession of a sufficient number of tickets or have a written contract for the tickets, which must be directly traceable to the actual sponsor of the game or other special event. Failure to meet Part 381's requirements can entitle a participant to a full refund, including the price of the air fare.

We seek the chartering public's cooperation and assistance to ensure that they arrange an enjoyable and secure traveling experience. If you have any questions or desire additional information, please contact Dayton Lehman, Deputy Assistant General Counsel for Aviation Enforcement and Proceedings, or Lisa

¹ On October 8, 2004, this office issued a notice regarding the lawful role of air charter brokers in the provision of air transportation and our enforcement policy covering such operations. The notice, which was published in the *Federal Register*, provides information on a variety of topics involving air charter brokers, including contracting procedures and marketing. 69 Fed. Reg. 61429, Oct. 18, 2004; erratum published 69 Fed. Reg. 62321, Oct. 25, 2004. The notice may be found on the office's website at: <http://airconsumer.ost.dot.gov/rules/BrokerNoticeFinal.pdf>.

Swafford-Brooks, Senior Attorney in that office, at (202) 366-9342. If you wish to ascertain whether a particular aircraft operator has DOT air carrier economic authority, you may contact Bill Bertram, Chief of the Air Carrier Fitness Division at (202) 366-1062.

By:

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Aviation Enforcement and Proceedings*

Dated: December 13, 2006

An electronic version of this document is available on the World Wide Web at

<http://dms.dot.gov/reports>

and at

<http://airconsumer.ost.dot.gov/rules/guidance.htm>