



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

Issued by the Department of Transportation  
On the 2nd day of August

**Arrowhead Express, Inc.**

**Violations of 49 U.S.C. §§ 41101 and 41712  
and 14 CFR Part 296**

**Docket OST 2007-26781**

**Served: August 2, 2007**

**CONSENT ORDER**

This consent order concerns unlawful holding out of direct air transportation by Arrowhead Express, Inc. (Arrowhead) that constitutes violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Part 296. This consent order directs Arrowhead to cease and desist from further violations of these provisions and to pay a compromise civil penalty of \$10,000.

Arrowhead is a Michigan-based air freight forwarder registered under 14 CFR Part 296, which exempts indirect cargo air carriers that comply with its provisions from, among other things, the certificate requirement found in 49 U.S.C. § 41101.<sup>1</sup> An indirect cargo air carrier is any U.S. citizen that undertakes to engage indirectly in air transportation of property, and uses for the whole or any part of such transportation the services of an air carrier or a foreign air carrier that directly engages in the operation of aircraft under a certificate, regulation, order, or permit issued by the Department as specified in 14 CFR 296.3. Operating, advertising, or otherwise holding out air service without having the requisite economic authority is a violation of 14 CFR 296.10 and 49 U.S.C. § 41101. Moreover, unauthorized holding out of air service constitutes an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In the past Arrowhead has held out direct air transportation. For example, an e-mail solicitation dated July 6, 2006, included language representative of a direct air carrier. The e-mail stated that “[Arrowhead has] 22 planes based across the country.” It also referred to “our fleet...of long-range Falcons...Convairs... and 727’s” and stated that “[o]ur new high bypass Falcons fly direct to anywhere in the United States to [sic] Mexico.” As a final selling point, the e-mail admonished consumers to “remember that we have the ONLY long-range Falcon 20’s aircraft [sic] in the industry” (emphasis in original).

<sup>1</sup> 14 CFR Part 296 grants exemptions from certain provisions of Subtitle VII of Title 49 U.S.C.

In mitigation, Arrowhead states that it understands that its e-mail solicitations may not have been viewed by the DOT as being entirely clear with respect to the entity that actually operates the aircraft that are used to transport the cargo of Arrowhead's clients. Accordingly, soon after the Department brought this issue to Arrowhead's attention, it took steps to ensure that all future solicitations and advertisements clearly indicate that Arrowhead is not the entity operating the aircraft. In addition, Arrowhead states that its July 6, 2006, email was only sent by Arrowhead to individuals and organizations with whom Arrowhead had previously made preliminary contact and therefore these individuals and organizations were likely aware that Arrowhead did not operate its own aircraft. Arrowhead further states that it never intentionally sought to hold itself out as an air carrier.

The Enforcement Office has carefully considered the facts in this case, including the information provided by Arrowhead Express, Inc., but continues to believe that enforcement action is warranted. Arrowhead Express, Inc., 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, and 14 CFR Part 296 and to the assessment of \$10,000 in compromise of potential civil penalties. Of this amount, \$5,000 shall be paid under the terms described below. The remaining \$5,000 shall be suspended for 12 months following the service date of this order and then forgiven unless Arrowhead Express, 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 Arrowhead Express, Inc., may be subject to additional enforcement action. This compromise assessment is appropriate considering the nature of the violations described herein and serves the public interest as a deterrent to future unauthorized holding out of air service by Arrowhead Express, Inc., as well as by other similarly situated companies.

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 Arrowhead Express, Inc., violated 49 U.S.C. § 41101 and 14 CFR Part 296 by holding out air transportation without proper economic authority;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Arrowhead Express Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Arrowhead Express Inc., and all other entities owned or controlled by or under common ownership and control with Arrowhead Express Inc., and their successors and assignees, to cease and desist from further similar violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Part 296;

5. We assess Arrowhead Express Inc., a compromise civil penalty of \$10,000 in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3, above. Of this total amount, \$5,000 shall be due and payable 30 days from the issuance date of this order. The remaining \$5,000 shall be suspended for 12 months following the date of issuance of this order and then forgiven unless Arrowhead Express, Inc. violates this order's cease and desist provisions or payment provisions within the 12-month period, in which case the entire unpaid amount shall become due and payable immediately and Arrowhead Express, Inc., may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject Arrowhead Express Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
6. Arrowhead Express Inc. shall make the payment set forth in ordering paragraph 5, above, by wire transfer through the Federal Reserve Communications System, otherwise 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**

(SEAL)

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