



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

Issued by the Department of Transportation
on the 7th day of September, 2007

Ryan International Airlines, Inc.

Violations of 14 CFR Part 212

Docket OST 2007-26781

Served September 7, 2007

CONSENT ORDER

This consent order concerns wet lease service provided by Ryan International Airlines, Inc. (Ryan), a U.S. carrier, on behalf of AeroSur, S.A.. (AeroSur), a Bolivian carrier, pursuant to a long-term agreement. During the initial stages of the wet lease, an application had not been submitted to the Department for prior approval as required by 14 CFR Part 212. The order directs the carrier to cease and desist from further similar conduct and assesses the carrier a civil penalty of \$20,000.

Section 212.9(a) of the Department's rules requires that U.S. carriers obtain a statement of authorization with respect to all long-term wet leases to foreign carriers. Section 212.10(d)(2) states that applications for approval of such leases must be submitted to the Department at least 45 days prior to commencement of service. A long-term wet lease, as defined in section 212.2, is a lease agreement of 60 days or greater duration or a series of shorter-term leases that indicate a continuing pattern of service extending over a period of greater than 60 days.

Ryan was the direct air carrier in a public charter program operated by AeroSur's affiliate, AeroSur USA, Inc., between Miami and Santa Cruz, Bolivia, from August 2006 to January 2007. Intending to substitute scheduled service for the charter program, Ryan and AeroSur negotiated a long-term wet lease agreement, and AeroSur obtained Department exemption authority to operate wet lease service between Miami and Santa Cruz for one year effective December 14, 2006. The public charter operator, AeroSur USA, notified the Department that, effective January 17, 2007, its charter program would be replaced by scheduled service. Ryan, however, did not apply for approval of its long-term wet lease with AeroSur, as required under section 212.9, until March 6; the authority was conferred the following day. Prior to receipt of that authority, Ryan conducted scheduled service under the long-term wet lease agreement between January 17 and March 7. By engaging in such conduct, Ryan operated in violation of the requirements of sections 212.9 and 212.10.

In mitigation, Ryan states that its delay in seeking Department approval of the wet lease operation for AeroSur was the result of lapses in communication with its lessee. Ryan further states that these lapses created internal confusion which was exacerbated by communications from AeroSur that were consistent with Ryan's misunderstanding. According to Ryan, it was only after several weeks of this status that Ryan administrative officials became aware that the charter program had been superseded by scheduled service from an economic regulatory standpoint. At that point, Ryan states, it promptly sought and obtained appropriate authority.

According to the carrier, these lapses in communication resulted in no harm or inconvenience to the public, since the flights were a one-for-one substitution of scheduled service for a regular "track" charter program. Ryan notes additionally that the 49-day period of operations at issue, standing alone, would constitute only a short-term wet lease not requiring a DOT application or approval. Ryan further states that it has cooperated fully with the Enforcement Office's review of this matter.

We acknowledge Ryan's cooperation in this matter and have taken into account the mitigating factors cited by the carrier; however, the Enforcement Office continues to believe that enforcement action is warranted in this instance. In order to avoid litigation and without admitting or denying the alleged violations, Ryan agrees to the issuance of this order to cease and desist from future violations of 14 CFR 212.9 and 212.10 and to an assessment of \$20,000 in compromise of potential civil penalties, of which one-half will be payable according to the payment schedule described below. The remainder will be forgiven provided the carrier commits no further similar violations over the next year. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This order will serve as a deterrent to future noncompliance with the Department's wet lease approval regulations by Ryan, as well as by other air carriers.

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 Ryan International Airlines, Inc., violated 14 CFR 212.9 and 212.10 by operating service pursuant to a long-term wet lease agreement with AeroSur, S.A., between Miami and Santa Cruz, Bolivia, without timely applying for and obtaining the requisite approval of the lease from the Department;
3. Ryan International Airlines, Inc., its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 CFR 212.9 and 212.10;
4. Ryan International Airlines, Inc., shall submit an affidavit, signed by an appropriate carrier official one year following the service date of this order listing all wet leases under which it has performed service on behalf of a foreign air carrier during that

year, affirming that each long-term wet lease had been submitted for approval by the Department under 14 CFR 212.9 and 212.10, and stating the date of the approval of each;

5. Ryan International Airlines, Inc., is assessed \$20,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2. Of this amount \$10,000 shall be due and payable within 30 days of the service date of this order. The remainder of the penalty shall be suspended for one year following the service date of this order and then forgiven, provided that Ryan International complies with the terms of this order, including its cease and desist, payment and reporting provisions, during the suspension period; if it fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and Ryan International may be subject to further enforcement action; and

6. 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 penalty as ordered shall also subject Ryan International Airlines, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with 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 initiative.

BY:

**ROSALIND A. KNAPP
Deputy General Counsel**

(SEAL)

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