



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

Issued by the Department of Transportation  
On the 15<sup>th</sup> day of November, 2010

**Friendship Airways, Inc.  
d/b/a Yellow Air Taxi**

**Violations of 49 U.S.C. §§ 41101, 41712 and  
14 CFR Parts 205 and 298**

**Docket OST 2010-0005**

**Served November 15, 2010**

**CONSENT ORDER**

This consent order concerns violations by Friendship Airways, Inc., d/b/a Yellow Air Taxi (Yellow Air Taxi), of the Department's liability insurance coverage rules, as stated in 14 CFR Parts 205 and 298 and related statutory requirements, 49 U.S.C. §§ 41101 and 41712. It directs Yellow Air Taxi to cease and desist from future violations of 14 CFR Parts 205 and 298 and 49 U.S.C. §§ 41101 and 41712, and assesses the carrier a compromise civil penalty of \$30,000.

**Applicable Law**

Pursuant to 49 U.S.C. § 41101, no citizen of the United States may engage in air transportation without first having been awarded economic authority in the form of a certificate of public convenience and necessity (CPCN) from the Department of Transportation (Department). Part 298 creates an exemption from the certificate requirement of section 41101 for a class of carriers called commuter air carriers, which as defined by section 298.2 are carriers that carry passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules with small aircraft. Any person desiring to provide air transportation as a commuter air carrier must obtain a commuter air carrier authorization from the Department pursuant to Part 298. Engaging in air transportation without an effective CPCN or a valid exemption, such as that available under Part 298, violates section 41101

and is also considered by the Department to constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Section 298.3(b) establishes the prerequisites for commuter air carriers to conduct operations, and specifically section 298.3(b)(4) requires that commuter air carriers have and maintain in effect accident liability insurance coverage in accordance with 14 CFR Part 205, and maintain a current certificate of insurance evidencing such coverage on file with the Department. Pursuant to section 298.3(c), the operations of holders of commuter air carrier authorizations who no longer meet the requirements enumerated in section 298.3(b), including that pertaining to liability insurance, are not covered by the Part 298 exemption and are therefore illegal.<sup>1</sup>

Further, as stated above, Part 205 enumerates the requirements for accident liability insurance coverage needed by direct air carriers. Specifically, section 205.3 prohibits a direct air carrier from engaging in air transportation unless it has in effect aircraft accident liability insurance. Likewise, section 298.37 prohibits commuter air carriers from engaging in air transportation unless they hold effective liability insurance in accordance with Part 205.

### **Facts and Conclusions**

Yellow Air Taxi holds a commuter air carrier authorization from the Department pursuant to 14 CFR Part 298. For a period of time in 2010, Yellow Air Taxi's liability insurance policy or coverage was canceled because of nonpayment of the premium and subsequent to cancellation it continued to operate flights in air transportation for a short period without the requisite liability insurance coverage. Yellow Air Taxi's commuter air carrier authorization became invalid at the time its insurance coverage was canceled and the flights Yellow Air Taxi operated during the time period that it did not hold liability insurance coverage were performed in violation of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 205.3 and 298.37.

### **Mitigation**

In mitigation, Yellow Air Taxi states that its insurance cancellation was not intentional, but rather resulted from a clerical oversight. Yellow Air Taxi states that its management did not know that its insurance was canceled until after it had operated a number of flights, and once management became aware of the cancellation, Yellow Air Taxi immediately ceased operations. Yellow Air Taxi further points out that it has cooperated with the Department throughout this matter, and that it has no prior history of violating the above-cited statutes and regulations.

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<sup>1</sup> The effectiveness of a CPCN is also conditioned upon maintaining in effect at all times liability insurance coverage in accordance with Part 205. 49 U.S.C. § 41112.

### Decision

The Enforcement Office has carefully considered the information provided by Yellow Air Taxi and continues to believe that enforcement action is warranted. The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office and Yellow Air Taxi have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Yellow Air Taxi consents to the issuance of this order to cease and desist from future violations of 14 CFR Parts 205 and 298 and 49 U.S.C. §§ 41101 and 41712, and to the assessment of \$30,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future noncompliance with the Department's liability insurance coverage rule by all 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 information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Friendship Airways, Inc., d/b/a Yellow Air Taxi, violated 14 CFR 205.3 and 298.37 by engaging in air transportation without effective liability insurance coverage;
3. We find that by engaging in the conduct described in paragraph 2 above, Friendship Airways, Inc., d/b/a Yellow Air Taxi, failed to meet the requirements for the holders of commuter air carrier authorizations under the Part 298 exemption to 49 U.S.C. § 41101, and as a result operated in violation of 49 U.S.C. § 41101;
4. We find that by engaging in the conduct described in paragraphs 2 and 3 above, Friendship Airways, Inc., d/b/a Yellow Air Taxi, engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order Friendship Airways, Inc., d/b/a Yellow Air Taxi, and all other entities owned or controlled by, or under common ownership and control with Friendship Airways, Inc., d/b/a Yellow Air Taxi, their successors, affiliates, and assigns, to cease and desist from further similar violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 205.3 and 298.37. Failure to comply with this cease and desist provision shall subject Friendship Airways, Inc., d/b/a Yellow Air Taxi and all other entities owned or controlled by, or under common ownership and control with Friendship Airways, Inc., d/b/a Yellow Air Taxi, their successors, affiliates, and assigns to further enforcement action;

6. We assess Friendship Airways, Inc., d/b/a Yellow Air Taxi, a compromise civil penalty of \$30,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4 above. Of this total penalty amount, \$15,000 shall be due in three-equal installments. The first payment of \$5,000 shall be due and payable within 45 days of the date of issuance of this consent order. The second payment of \$5,000 is due and payable on January 17, 2011. The third payment of \$5,000 is due and payable on March 17, 2011. The remaining \$15,000 shall become due and payable immediately if Friendship Airways, Inc., d/b/a Yellow Air Taxi, violates this order's cease and desist or payment provisions during the 12 months following the service date of this order, and Friendship Airways, Inc., d/b/a Yellow Air Taxi, also may be subject to further enforcement action for failure to comply with this order; and
7. Payments 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 penalty assessment as ordered will subject Friendship Airways, Inc., d/b/a Yellow Air Taxi, to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and to 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 motion.

**BY:**

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

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