



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

**Issued by the Department of Transportation
On the 19th day of November, 2010**

**New Flight Solutions, Inc., d/b/a New Flight
Charters**

**Violations of 49 U.S.C. §§ 41101 and
41712 and 14 CFR Part 399**

Docket 2010-0005

Served November 19, 2010

CONSENT ORDER

This order concerns apparent violations by New Flight Solutions, Inc., d/b/a New Flight Charters, (New Flight) of the Department's aviation licensing requirements, 49 U.S.C. § 41101, and 49 U.S.C. § 41712, which prohibits ticket agents and air carriers from engaging in unfair and deceptive trade practices and unfair methods of competition. This order also concerns New Flight's separate and distinct violation of 14 CFR 399.80(a), which proscribes certain practices by ticket agents that constitute unfair and deceptive practices and unfair methods of competition. This order directs New Flight to cease and desist from such further violations and assesses New Flight a compromise civil penalty of \$40,000.

APPLICABLE LAW

Citizens of the United States¹ are required under 49 U.S.C. § 41101 to hold economic authority² from the Department, either in the form of a "certificate of public convenience and

¹ A "citizen of the United States" includes a corporation organized in the United States that 1) meets certain specified standards regarding the citizenship of its president, officers and directors, and holders of its voting interest and 2) is under the actual control of citizens of the United States. 49 U.S.C. § 40102(a)(15).

² This authority is separate from any safety authority required by the Federal Aviation Administration.

necessity” or in the form of an exemption³ from the certificate requirement, to engage directly or indirectly in air transportation. “Air transportation” is the transportation of passengers or property by air as a common carrier between two places in the United States or between a place in the United States and a place outside of the United States or the transportation of mail by air.⁴ In the context of aviation, a “common carrier” is a person or other entity that, for compensation or hire, holds out and/or provides public transportation by air between two points.⁵

Air charter brokers that do not have economic authority may not hold out air transportation. Such conduct constitutes “engaging” in air transportation and violates 49 U.S.C. § 41101.⁶ Under the Department enforcement case precedent, violations of section 41101 also constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.⁷ Furthermore, as ticket agents pursuant to 49 U.S.C. § 40102(a)(45), air charter brokers may not create the false impression that they are direct air carriers when they are not. Such misrepresentations violate 14 CFR 399.80(a) and, like violations of section 41101, are also considered by the Department to violate 49 U.S.C. § 41712.⁸

BACKGROUND

New Flight is a Wyoming corporation that specializes in air charter broker services. It does not hold economic authority from the Department, nor does it operate aircraft as a common carrier.

³ For example, exemptions may take the form of direct air carrier authority as an air taxi pursuant to 14 CFR Part 298 (limited to aircraft originally designed for 60 passenger seats or fewer) or indirect air carrier authority as a public charter operator pursuant to 14 CFR Part 380. An entity or person who is directly engaged in the operation of aircraft that are used to provide air transportation is a “direct air carrier.” An entity or person who is not a direct air carrier, but solicits in his or her own right members of the public to purchase air transportation, is an “indirect air carrier.”

⁴ 49 U.S.C. §§ 40102(a)(5), (a)(23), and (a)(25).

⁵ *See Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516, 522-23 (5th Cir. 1993).

⁶ From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of air service, constitutes “engaging” in air transportation. Prior to 1994, when Title 49 of the United States Code was recodified and simplified, 49 U.S.C. § 41101 stated that no carrier could “engage” in air transportation without appropriate authority. Although the wording of section 41101 now states that what is prohibited is “providing” air transportation without authority, Congress made clear when it recodified Title 49 that in doing so it did not intend any substantive change to the statute. Act of July 5, 1994, Pub. L. 103-272, § 6(a), 108 Stat. 745, 1378.

⁷ *See, e.g., OneSky Network, LLC, Violations of 49 U.S.C. § 41101 and 41712 and 14 CFR Part 399*, Order 2007-6-1 (June 4, 2007).

⁸ *See, e.g., Imperial Jets, Inc., Violations of 49 U.S.C. § 41101 and 41712 and 14 CFR Part 399*, Order 2007-4-7 (April 6, 2007).

An investigation of New Flight's Internet advertising practices by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a). Specifically, New Flight's Internet website contained statements that reasonably could have led a consumer to conclude that New Flight is a direct air carrier, which it is not. Individually and in aggregate, these statements strongly implied that New Flight operated aircraft in providing on-demand air charter services. Through these statements on its Internet website, New Flight held out direct air transportation when it did not have proper economic authority, thereby violating 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a).

MITIGATION

In mitigation and explanation, New Flight states that at the time of the alleged violations it was the contracted exclusive agent for an air carrier, owned a charter aircraft operated by an air carrier, and brokered aircraft for clients. Upon request New Flight provided supporting documentation and information to the DOT. New Flight states that it believed the representations on its website and advertisements were truthful and accurate, that it was not representing itself as an air carrier or as a party exercising operational control over charter aircraft, and that it had clearly stated its functions and relationships in its advertisements and on website pages in large print. New Flight states that it was immediately responsive to the DOT and promptly modified its website upon receipt of requested guidance from the Department.

DECISION

The Department and its Federal Aviation Administration (FAA) require all direct air carriers to meet rigorous licensing requirements prior to commencing service and continuing thereafter to ensure the safety of their operations and to protect the rights of consumers. Allowing air charter brokers that do not have operational control of aircraft to hold out as though they are direct air carriers that do, has the effect of circumventing these requirements and therefore denying members of the public the protections that these requirements are designed to afford. It also hinders the ability of consumers to make informed decisions about the safety and financial viability of the direct air carrier they will be using.

The Enforcement Office has carefully considered the facts of this matter, including those provided by New Flight Solutions, Inc., d/b/a New Flight Charters, and believe that enforcement action is necessary. The Enforcement Office and New Flight Solutions, Inc., d/b/a New Flight Charters, have reached a settlement of this matter in order to avoid litigation. Without admitting any violation of the regulations, New Flight Solutions, Inc., d/b/a New Flight Charters, consents to the issuance of an order to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80, and to the assessment of \$40,000 in compromise of potential civil penalties. This compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by New Flight Solutions, Inc., d/b/a New Flight Charters, and other air charter brokers and ticket agents.

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 New Flight Solutions, Inc., d/b/a New Flight Charters, violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that New Flight Solutions, Inc., d/b/a New Flight Charters, violated 14 CFR 399.80(a), as described above, by misrepresenting itself as a direct air carrier;
4. We find that, by engaging in the conduct described in paragraphs 2 and 3, above, New Flight Solutions, Inc., d/b/a New Flight Charters, engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. We order New Flight Solutions, Inc., d/b/a New Flight Charters, to retain copies of all advertising material, including newspaper advertisements and print-outs of all versions of its Internet website, that it has caused to be published in the one year period following the service date of this order and, upon request, to provide those copies to the Office of Aviation Enforcement and Proceedings;
6. We order New Flight Solutions, Inc., d/b/a New Flight Charters, and all other entities owned and controlled by or under common ownership with New Flight Solutions, Inc., d/b/a New Flight Charters, and its successors and assignees, to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a). Failure to comply with this cease and desist provision shall subject New Flight Solutions, Inc., d/b/a New Flight Charters, and all other entities owned and controlled by or under common ownership with New Flight Solutions, Inc., d/b/a New Flight Charters, and its successors and assignees, to further enforcement action;
7. We assess New Flight Solutions, Inc., d/b/a New Flight Charters, a compromise civil penalty of \$40,000 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, \$20,000 shall be due and payable in 5 equal installments of \$4,000 each. The first payment of \$4,000 shall be due and payable within 30 days of the date of issuance of this consent order. The second payment of \$4,000 shall be due and payable on February 18, 2011. The third payment of \$4,000 shall be due and payable on May 9, 2011. The fourth payment of \$4,000 shall be due and payable on July 28, 2011. The fifth payment of \$4,000 shall be due and payable on October 16, 2011. The remaining \$20,000 shall become due and payable immediately if New Flight Solutions, Inc., d/b/a New Flight Charters, violates this order's cease and desist or payment provisions during the 12 months following the service date of this order; and
8. We order New Flight Solutions, Inc., d/b/a New Flight Charters, to pay the compromise civil penalty assessed in ordering paragraph 7, above, by wire transfers through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers 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 New Flight Solutions, Inc., d/b/a New Flight Charters, 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 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)

*An electronic version of this document is available at
www.regulations.gov*