



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

Issued by the Department of Transportation  
On the Twentieth day of December, 2010

**National Air Cargo Group, Inc., d/b/a National  
Airlines**

**Violations of 49 U.S.C. §§ 41101 and 41712 and  
14 CFR 201.5(a)**

**Docket OST 2010-0005**

**Served December 20, 2010**

**CONSENT ORDER**

This consent order concerns unauthorized air transportation by National Air Cargo Group, Inc., d/b/a National Airlines (National) in violation 49 U.S.C. §§ 41101 and 41712 and 14 CFR 201.5(a). It directs National to cease and desist from future violations of these provisions and assesses the carrier a compromise civil penalty of \$20,000.

**Applicable Law**

In addition to applicable Federal Aviation Administration (FAA) safety-related requirements, to engage legally in air transportation, a citizen of the United States<sup>1</sup> is required to hold economic authority from the Department pursuant to 49 U.S.C. § 41101 or an exemption from that provision. Operating, advertising, or otherwise holding out air transportation services to the public without having such authority is a violation of 49 U.S.C. § 41101. In addition, 14 CFR 201.5(a) provides that U.S. applicants for certificate authority may not advertise, list schedules, or accept

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<sup>1</sup> 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).

reservations or accept payment or issue tickets for their proposed service until the relevant application has been approved by the Department. Violations of section 41101 and section 201.5 also constitute “unfair or deceptive practices” in violation of 49 U.S.C. § 41712.

### **Background**

National is a Michigan-based air carrier that since October 22, 2004, has held a certificate from the Department to provide all-cargo air transportation. On July 9, 2010, and August 13, 2010, National applied for authority to engage in interstate and foreign charter transportation of persons, property, and mail. During the pendency of its application, National advertised its ability to transport passengers by air. By advertising passenger air transportation before it received effective economic authority for that service, National violated section 201.5 and engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, National states that the information regarding the passenger aircraft was put on its website by marketing staff that were not aware of the prohibition on holding out prior to grant of authority. National asserts that its senior management was unaware that this material was on the company’s website until Department staff called it to the company’s attention. The carrier’s management immediately took down the entire website until the relevant portions had been expunged. The carrier states that the information was available to the public only a short time, and it generated no inquiries from the public concerning passenger service. Further, National states that it did not engage in any discussions with potential customers, nor did it disseminate any other information concerning the availability of passenger charter capacity.

### **Decision**

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by National, but continues to believe that enforcement action is warranted. The Enforcement Office and National have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, National consents 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 201, and to the assessment of \$20,000 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 is a strong deterrent against future noncompliance with the Department’s requirements governing the conduct of applicants for economic authority.

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 National Air Cargo Group, Inc., d/b/a National Airlines violated 49 U.S.C. § 41101 and 14 CFR 201.5(a) by advertising passenger air transportation without having first been granted the authority to engage in passenger air services;
3. We find that by violating 49 U.S.C. § 41101 and 14 CFR 201.5(a) as described in ordering paragraph 2, above, National Air Cargo Group, Inc., d/b/a National Airlines has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order National Air Cargo Group, Inc., d/b/a National Airlines and all other entities owned or controlled by or under common ownership National Air Cargo Group, Inc., d/b/a National Airlines and their successors and assignees, to cease and desist from violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 201.5(a). Failure to comply with this cease and desist provision shall subject National Air Cargo Group, Inc., d/b/a National Airlines and their successors and assignees to further enforcement action;
5. We assess National Air Cargo Group, Inc., d/b/a National Airlines a compromise civil penalty of \$20,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$10,000 shall be due and payable within twenty (20) days of the date of the issuance of this order. The remaining \$10,000 shall be due and payable immediately if National Air Cargo Group, Inc., d/b/a National Airlines violates this order's cease and desist or payment provisions during the twelve (12) months following the service date of this order; and
6. We order National Air Cargo Group, Inc., d/b/a National Airlines to pay the compromise civil penalty assessed in ordering paragraph 5, above, 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 as ordered shall subject National Air Cargo Group, Inc., d/b/a National Airlines to the 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 ten (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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