



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

Issued by the Department of Transportation  
On the Nineteenth day of April, 2012

**Swift Jet, Inc.**

**Violations of 49 U.S.C. §§ 41301 and 41712 and  
14 CFR 212.9(b)(1)**

**Docket OST 2012-0002**

**Served April 19, 2012**

**CONSENT ORDER**

This consent order concerns violations by Swift Jet, Inc., (Swift Jet) of 14 CFR 212.9(b), the Department's prior authorization requirement rule for foreign air carriers. It directs Swift Jet to cease and desist from future violations of those provisions and assesses the carrier a compromise civil penalty of \$10,000.

Swift Jet is a foreign air carrier that holds a Canadian charter air taxi registration pursuant to 14 CFR Part 294. This registration does not authorize Swift Jet to conduct fifth-freedom charters<sup>1</sup> to or from the United States. Rather, Swift Jet, and all other similarly situated foreign air carriers, must obtain a "statement of authorization" under 14 CFR 212.9(b)(1) prior to performing a fifth-freedom charter. Notwithstanding this requirement, in January 2012, Swift Jet conducted a fifth-freedom charter flight, from Anguilla (QPF) in the Caribbean to Wilmington, DE (ILM) to White Plains, NY (HPN) without having been granted a statement of authorization covering this operation.

Foreign air carriers that engage in air transportation without appropriate economic authority from the Department, including that required by 14 CFR 212.9(b)(1), violate 49 U.S.C. § 41310. Violations of Part 212 and section 41301 also constitute an unfair

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<sup>1</sup> A "fifth freedom charter" is a charter flight that carries traffic that originates and terminates in countries other than the carrier's home country, regardless of whether the flight operates via the home country. 14 CFR 212.3.

and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.<sup>2</sup>

In mitigation, Swift Jet states that it did not intentionally violate any law or regulation of the Department. At the time, Swift Jet believed that it had obtained a Departmental authorization that applied to the flight at issue. Swift Jet further states that it cooperated fully with the investigation by the Enforcement Office and that it has taken steps to ensure future compliance.

The Department views compliance with the Federal aviation statutes and regulations very seriously. Therefore, the Enforcement Office has carefully considered the information provided by Swift Jet and continues to believe that enforcement action is warranted. The Enforcement Office and Swift Jet have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Swift Jet consents to the issuance of this order to cease and desist from future violations of 14 CFR 212.9(b)(1) and 49 U.S.C. §§ 41301 and 41712, and to the assessment of \$10,000 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 prior authorization requirement rule by Swift Jet and other foreign 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 Swift Jet, Inc., violated 14 CFR 212.9(b)(1) by conducting a fifth-freedom charter flight without the requisite Departmental authorization;
3. We find that by engaging in the conduct described in paragraph 2, above, Swift Jet, Inc., violated 49 U.S.C. § 41301, and engaged in an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Swift Jet, Inc., and all other entities owned or controlled by, or under common ownership and control with Swift Jet, Inc., its successors, affiliates, and assignees, to cease and desist from further similar violations of 49 U.S.C. §§ 41301 and 41712 and 14 CFR 212.9(b)(1);

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<sup>2</sup> See, e.g., *ACASS Canada Ltd.*, Violations of 49 U.S.C. §§ 41301 and 41712 and 14 CFR 212.9(b)(1), Order 2010-11-27 (Nov. 24, 2010).

5. We assess Swift Jet, Inc., a compromise civil penalty of \$10,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total amount, \$5,000 is due and payable in five equal installments of \$1,000. The first installment is due and payable within 30 days of the issuance date of this order, the second installment is due and payable within 90 days of the issuance date of this order, the third installment is due and payable within 150 days of the issuance date of this order, the fourth installment is due and payable within 210 days of the issuance date of this order, and the fifth and final installment is due and payable within 270 days of the issuance date of this order. The remaining \$5,000 shall become due and payable if Swift Jet, Inc., violates this order's cease and desist provisions or the payment provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately; and
6. We order Swift Jet, Inc., to pay the compromise civil penalty assessed in ordering paragraph 5, 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 Swift Jet, Inc., 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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