National Air Transportation Association
The Voice of Aviation Business

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Docket Management Facility
U.S. Department of Transportation
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Room W12-140
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RE: DOCKET NO. DOT-OST-2007-27057; ENHANCED CONSUMER PROTECTIONS FOR CHARTER AIR TRANSPORTATION

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate, and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation, and the military.

NATA appreciates the opportunity to submit comments to the Department of Transportation (DOT) in response to the Notice of Proposed Rulemaking (NPRM) to impose additional requirements on charter transportation, particularly when brokering of the transportation occurs.

Overall, the NPRM represents a positive step and NATA welcomes the DOT engaging in the rulemaking process to ensure that an appropriate level of regulation exists. The association offers comment on several areas of concern; most importantly that the new class of indirect air carriers, known as air charter brokers, are not required to provide any identifying information to the Department.

I. APPLICABILITY

NATA strongly recommends that the DOT take this opportunity to clarify the boundaries and requirements for various arrangements brokers operate under today and that will continue to be available once this NPRM is finalized. These arrangements include acting as the agent of the charterer, agent of an air carrier and as an air charter broker. Only the last circumstance, the new

indirect air carrier class known as an air charter broker, requires compliance with proposed part 295.

Agent of a Charterer

While NATA supports the ability for a broker to continue to operate as an agent of the charterer, and therefore remain outside the scope of part 295, it is imperative to ensure existing and prospective brokers clearly understand the limits and conditions of agency status.

If brokers feel that they can avoid the part 295 requirements by stating that they are an agent for the charter customer then it is likely that some will do so, especially if there is ambiguity over the limits of agent status. While the proposed § 295.3 states that *bona fide* agents of a charterer are exempt, there is no real discussion in the preamble as to what qualities, when present or absent, would be factors in a determination by the Department as to whether the agency agreement is in fact *bona fide*.

NATA suggests that DOT provide clarification stipulating that when acting as an agent for a charterer, it is necessary for the actual charter customer (not the broker-agent) to sign agreements for carriage with the direct air carrier. We believe this is consistent with existing DOT guidance regarding the proper role of a customer agent. This is a necessary clarification to ensure that the required disclosures and information from the ultimate direct air carrier is properly communicated to the consumers and that the role of the broker is truly that of an agent in order remain outside the requirements of part 295.

Agent of an Air Carrier

Proposed § 295.3(b) states that part 295 does not apply to those acting as an employee or agent of an air carrier. NATA recommends the addition of clarifying language to this paragraph to address a specific type of brokering situation. There are air carriers that own a brokering business and/or have employees who engage in brokering activity. In some cases, the flights are brokered to the owning/employing air carrier. NATA agrees that these activities should be excluded from part 295.

However, NATA believes there are numerous air carriers where most, if not all, of the brokering activity results in passenger charters being operated by a different direct air carrier than the one which owns/employs the brokers. It is our position that these activities fall within the intended scope of part 295.

NATA suggests additional text at § 295.3(b) to clarify. Added text is **bold underlined**.

> "(b) This part does not apply to a person or entity that, as an employee or as a *bona fide* agent of an air carrier, holds out, sells, or undertakes to arrange air transportation **for that air carrier**. This part does not apply. . . "

Self-Aggregation/Single Entity Charter

It is common within the air taxi industry for groups of people to collectively decide to charter an aircraft and to then bear the cost for that transportation individually (i.e. split the bill). So long as the aggregation of the passengers occurs prior to the contracting of a carrier for a particular flight, there is no violation of either FAA or DOT regulations. NATA agrees that this type self-aggregation should not trigger the applicability of part 295.

In contrast to that type of self-aggregation activity, there are several membership clubs and other entities that offer their members services to facilitate aggregation. Whether these entities are acting as an indirect air carrier, to whom part 295 applies, or whether they are able to act as an agent should be given careful consideration by the DOT on a case-by-case basis.

II. AIR CHARTER BROKER REGISTRATION

NATA objects to the self-identification of brokers as proposed. NATA does not take lightly a recommendation to impose new regulations. However the NPRM lacks the "teeth" necessary to accomplish the DOTs stated goals of taking action to protect consumers and improving the air travel environment for consumers of chartered transportation without some form of registry for the part 295 brokers.

NATA appreciates the difficulty the DOT has had in quantifying and determining the costs to the brokering industry to comply with any proposed rules. A broker can, with ease, establish itself, conduct business transactions with customers and air carriers and then simply vanish only to re-emerge under a new business name with a new website and phone number. This fluid nature is a significant reason DOT has experienced difficulty quantifying the industry for the required regulatory impact analyses, and also why some form of official registry is absolutely necessary to provide legitimacy to the many professional and ethical brokers and enforceability of the regulations upon the bad actors.

The public interest, specifically consumer protection concerns, are clearly served by an accessible registry of air charter brokers. An online, searchable registry would allow consumers to independently verify the status of a broker prior to engaging in a contract. In the event of a complaint or a report of non-compliance, knowing where and how to contact a broker is absolutely necessary if the DOT is to have an effective enforcement mechanism. Anything less will severely undermine the efficacy of the rule.

To minimize cost and time burdens on industry and DOT, NATA believes that a simple internet-based registry is a workable solution.

Registry data collected by DOT should include:

- Business name (and any DBA's)
- Name of business' principal point of contact

- Physical address
- Phone number
- Website
- Citizenship status
- Date listing created, dates of any updates, and date business closed, if applicable

The DOT should require under part 295 that any broker acting as an indirect air carrier supply (and update as appropriate) the above data. The required information is not difficult to obtain or produce, therefore the burden on a broker to comply with this simple registry would be minimal. NATA estimates a broker would spend three hours or less per year to supply this information and perform any necessary updates.

The DOT would need to create a database and webpage to house the information and make it accessible to the public. The webpage would need to permit brokers the ability to create a log-in for an initial entry of information and provide on-going access for updates.

Ideally, this webpage would be designed to allow users search the database by any of the criteria. Penalties for acting as an air charter broker without creating an entry on the registry, or for providing false information should also be clearly defined.

The NPRM asked whether foreign brokers should have a registry requirement. NATA believes that creating the system described above presents an opportunity to capture information on both U.S. citizen brokers and non-U.S. citizen entities and that it is appropriate to collect this data.

III. DISCLOSURES

NATA believes that the general concepts articulated by the DOT as the basis for the disclosures set forth in proposed §§ 295.24 and 298.90 are appropriate. NATA does not recommend additional disclosures for either section. Recommendations for modifications to specific disclosures are identified below.

Oral vs. Written Disclosures

Section 295.24(b) permits oral disclosures and requires that any subsequent written correspondence also include the disclosures. Section 298.90(a), the corresponding provision for air taxi operators, contains no such similar language. NATA recommends adopting the language regarding oral disclosures in § 295.24(b) for § 298.90(a) to recognize the permissibility of oral disclosures for air taxi operators.

Likewise, § 295.24(c) and § 298.90(b) address disclosures of information not available at the time a contracted is entered into. Section 298.90(b) requires air taxi operators to, "provide *in writing* the information . . . within a reasonable time" (emphasis added).

There is no requirement to provide updated disclosures in writing for air charter brokers in § 295.24(c). No argument is provided to explain the permitting of oral disclosures by air charter brokers but prohibition of them for air taxi operators. Therefore, NATA recommends striking the words "in writing" from § 298.90(b).

Meaning of "Corporate or Business Relationship"

Sections 295.24(b)(3) and 298.90(a)(3) contain similar language requiring disclosure of any "corporate or business relationship" to the charterer. This term is not elaborated upon within the preamble and NATA is concerned that a lack of clarity could lead to problems demonstrating compliance. It would seem that an ownership of one entity by another is covered, but is there a "business relationship" as envisioned by DOT if the broker has a lease to rent office space from a direct air carrier when there is no ownership, of any degree, of the broker by the air carrier? NATA requests DOT provide some clarifying examples as to what would and would not require disclosures.

Make and Model of Aircraft

Disclosure of the specific make and model of aircraft to be used is required at §§ 295.24(b)(4) and 298.90(a)(4). NATA recommends revising this disclosure to state the "cabin class" or "type of aircraft" that will be provided. In many cases, such as travel card programs, the aircraft make and model isn't known up front and can change. In such arrangements, the customer is typically aware that a specific make and model is not guaranteed. However, the customer usually is promised a specific "cabin class" or "type of aircraft." In this context, "cabin class" or "type of aircraft" would refer to the capacity, overall size, range, or other general features of an aircraft. A contract with the customer may specify a "large cabin jet" or a "mid-range turboprop". This is understood upfront and NATA believes that the broker should provide the charter customer with specific make and model examples to demonstrate the "cabin class" or "type of aircraft" that they will use. As this information will be part of the initial disclosures, should a consumer wish to request a specific make and model of aircraft, they can engage the broker in that negotiation, choose to do business with a different broker, or seek out a direct air carrier with that specific aircraft available. Ultimately, the consumer is informed of their various options and understands up front whether the contract they are negotiating includes a specific make and model. If the customer chooses to proceed with a "cabin class" or "type of aircraft" agreement it will be done from an informed perspective.

Furthermore, the terms "make" and "model" are not standardized within industry or government. They are not defined by the FAA in 14 CFR Part 1 — Definitions & Abbreviations. At times, an aircraft can be well known by a designation that is purely a manufacturer's marketing term and not what is listed on the specific aircraft's Type Certificate Data Sheet (which is the FAA's formal description of the aircraft). Requiring disclosure based upon to undefined and/or unclear terminology could result in misunderstandings between brokers and charter customers, a situation contrary to the purpose of these new requirements.

Cost and Fees

NATA has no objection to the disclosure of this information to the consumer. As written however, the disclosures required at § 295.24(b)(5-6) and § 298.90(a)(5-6) could create confusion. NATA recommends merging the two disclosures into one. As a matter of practical application, the total cost of transportation identified in disclosure (5) cannot be determined until after all the fees listed in disclosure (6) have been determined. This is because the Federal Excise Tax applicable to commercial transportation includes a percentage tax imposed on the "total cost" of transportation (to include the fees listed in disclosure (6)).

As the DOT notes, due to the nature of chartered transportation, often times the total cost of the transportation is not known prior to the initiation of the transportation. This is well-known and understood by consumers.

NATA proposes rewording proposed disclosure (5) as follows, eliminating disclosure (6) and renumbering the remaining disclosures as appropriate.

Suggested § 295.24(b)(5) and § 298.90(a)(5):

> "The total cost of the air transportation, including any air charter broker or carrier-imposed fees, any other fees and amounts (if known), including fuel, landing fees, and aircraft parking or hangar fees and government-imposed taxes and fees."

Timing of Disclosures

In general, disclosures will be provided to the charterer as soon as available. NATA objects to the inclusion of a specified time prior to transportation for disclosures to occur. Sections 295.24(e) and 298.90(d) indicate that there are circumstances where an update may not occur until just prior to transportation. This is important to preserve as the minimum regulatory requirement and the flexibility it provides is of benefit to the consumer. The ad hoc nature of the industry necessitates flexibility, particularly when an aircraft maintenance issue arises during a multi-leg trip. Operators strive to ensure their passengers are able to meet their desired timetable and will endeavor to obtain a replacement aircraft, perhaps from another air carrier, in order serve customer needs. This could result in certain details not being available until the last minute.

NATA believes a standard of supplying disclosure updates, "as soon as available but no later than the beginning transportation" is appropriate. As DOT is aware, the typical consumer of charter transportation is generally considered somewhat sophisticated with regard to the logistics of such transportation and the contractual process involved. It seem appropriate that issues such as the "reasonableness" for the timing of an updated disclosure item are best addressed on a case-by-case basis in the customer's contract for transportation.

Confirmation of Disclosures

With regard to the necessity of a required confirmation of disclosures, NATA does not support a confirmation. The air charter broker or air taxi operator can only attempt to make the communications, and perhaps document any attempt, but they cannot force a response from the customer. Again, NATA anticipates that when a charter is arranged, that the customer will supply the necessary information to facilitate disclosures.

It is expected that during the initial process of negotiating the contract the customer will provide to the broker the names and preferred contact method for any persons who should receive the required disclosures.

IV. REFUNDS

Part 295 brokers

Because the Department is not proposing any licensing fees, establishing any liability insurance requirements, or escrowing of funds for the part 295 brokers, and given the significant dollar value of many chartered flights, NATA believes it is appropriate to apply certain consumer protections including the applicability of regulations for credit card refunds, and cash refund rules currently applicable to the scheduled airlines.

Amount of Refund

When reading § 298.90(c) and (e) paragraph (c) implies that it relates to disclosures made prior to the initiation of the first flight leg of any given trip and that (e) is applicable when some portion of the full trip has already occurred. NATA requests clarification that this is the correct reading of the regulations.

Presuming this reading is correct, NATA does not disagree that a consumer requested refund, when based upon a material change in the agreed upon transportation, should be provided in full. Any refund requested by a customer after the initiation of a trip should be limited to amounts already paid for transportation that did not occur. A customer should not be eligible to request a refund, even in the case of a material change to the transportation agreement, if the customer agrees and accepts the revised transportation terms.

As an example, assume a customer arranges for a two-leg round trip on a small jet and there is a mechanical failure of the aircraft after the outbound leg that prevents using the aircraft for the return flight at the originally planned time. The air carrier offers the customer the ability to wait an additional day while the aircraft is serviced and then return on their second leg at that time, or the customer may accept a similar capacity turbo-prop aircraft and leave at the planned departure time. Should the customer accept either option, there would be no refund available. If the customer rejects both options and contacts another carrier to conduct the one-way flight any refund due would be limited to amounts already paid for the second flight. In no case should the customer be eligible for a refund for amounts paid related to the first flight leg.

V. Recordkeeping

NATA believes recordkeeping under part 295 is required given that DOT's only direct involvement with a broker is likely to be after a suspicion of noncompliance or when a complaint is filed. NATA suggests that part 295 require the air charter broker to retain, for a period of at least two years, records sufficient to show:

1. compliance with § 295.24(b),
2. that the disclosures made in accordance with § 295.24(b) were accurate (i.e. proof liability insurance was in effect if was disclosed),
3. customer itineraries,
4. contracts between the air charter broker and direct air carriers, and
5. contracts between the air charter broker and the charter customer.

VI. Unfair and Deceptive Practices

NATA supports the unfair and deceptive practices listed at §§ 295.50 and 298.100.

VII. Air Ambulance Operations

NATA agrees that it is appropriate to codify the long-standing blanket exemption related to indirect air carrier entities that arrange air ambulance services.

NATA appreciates the DOT's efforts to address concerns related to air charter brokering. This NPRM is a promising first step and the association looks forward to an on-going dialog with the Department on this issue.

Sincerely,

John McGraw
Director
Regulatory Affairs