

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

**Notice to Colleges and Universities Organizing
Flights to College Bowl Games and other Special Events**

NOTICE

This notice provides guidance to colleges, universities, and other organizations wishing to arrange charter flights, including flights to special events, such as football bowl games and NCAA basketball playoff games. This notice is intended to help these organizations avoid (1) unknowingly contracting with airlines that do not have economic authority from the Department of Transportation's Office of the Secretary (OST) and are not subject to the oversight and stringent safety standards of the Federal Aviation Administration (FAA), a Department of Transportation (DOT) operating administration; (2) reselling individual seats on charter flights without first complying with the Department's Public Charter rules; and (3) using a Public Charter Operator or a charter broker that is not in compliance with OST and FAA rules.

Colleges and other organizations often obtain air transportation by one of three ways: (1) by contracting directly with an airline that will operate the flight, (2) by reselling individual seats on charter flights themselves (i.e. assuming the role of a Public Charter Operator) or (3) by doing business with a Public Charter Operator or air charter broker.

Contracting with an Airline

If a college or other organization chooses to contract directly with a direct air carrier, it should be aware of the requirements that govern the airline's operations.

OST Certificated Airlines

Generally, most colleges or other organizations select to contract directly with 14 CFR Part 121 or Part 135 airlines for air transportation to special events such as bowl games. Before such an airline can advertise that it provides interstate scheduled or charter air transportation, it must obtain economic authority from DOT's Office of the Secretary (OST), which for U.S. airlines usually comes in the form of an "air carrier certificate." Prior to granting a certificate, OST must find a carrier to be "fit," which means that the carrier has adequate financial resources, a competent management team, a proper compliance disposition, and is owned and controlled by U.S. citizens. OST continuously monitors a carrier's operations to ensure that it remains fit. In addition, certificated carriers must meet additional OST requirements, such as maintaining minimum liability insurance and establishing an escrow to protect charterers or consumers.

Furthermore, all OST certificated airlines, are required by the FAA to comply with the stringent safety-related certification and operating rules in 14 CFR Parts 121 and 135, depending on whether they operate scheduled or charter service and on the size of aircraft that they use.

Part 125 Aircraft Operators

There are certain operators of large passenger aircraft that are not required to have OST economic authority and do not operate under Part 121 or Part 135 operating rules.

These operators follow the FAA safety rules in 14 CFR Part 125 (Part 125). Part 125 operators may not hold out their services to the public. Colleges or other organizations may purchase the entire capacity of an aircraft from a Part 125 operator to transport a select group of individuals (e.g., a football team) to bowl games or other special events. However, colleges or other entities are prohibited from charging a fee for any of the seats on such a flight.

Acting as a Public Charter Operator

Sometimes, colleges or other organizations that directly contract with an airline wish to resell individual seats on charter flights to its students, alumni, the press, booster club members or others. In such cases, the organization assumes the role of an “indirect air carrier.” Indirect air carriers may not sell individual seats until they have been licensed to do so as a Public Charter Operator in accordance with DOT’s Public Charter regulations.

Public Charter Operators must comply with a specific set of regulations, 14 CFR Part 380 (Part 380), that are designed to prevent economic harm to consumers. Among other things, this rule requires the filing and approval of a charter prospectus with the DOT’s Office of the Secretary before any sale of seats takes place.¹ Additionally, Public Charter Operators must ensure that they maintain a security agreement to cover all

¹ See www.dot.gov/policy/aviation-policy/licensing/public-charters.

payments received from charter participants in the event the flight does not take place. Part 380 also has requirements regarding advertising, the cancellation of trips, and a charter participant's right to a refund.

DOT recognizes that organizations may seek to organize a charter flight on short notice, such as might occur with a bowl game or an NCAA basketball playoff appearance, where the location and exact date of the event are not known far in advance. DOT may grant a waiver from certain DOT rules if it finds that the waiver is in the public interest. DOT has always been willing to work with organizations to determine whether a waiver is appropriate. While such matters are reviewed on a case-by-case basis, an organization seeking a waiver should be prepared to show, at a minimum, it has a contract with a direct air carrier holding appropriate authority for the flight and that appropriate financial arrangements are in place to protect consumer payments.

Using a Public Charter Operator or an Air Charter Broker

Rather than choosing to become a Public Charter Operator themselves, colleges or other organizations may direct students, members of the media or their members to an existing Public Charter Operator or the college or organization may use an air charter broker to organize a charter flight. Any organization that does so should take reasonable steps to ensure that the Public Charter Operator has complied with the requirements of Part 380 as described above. Organizations may also contract with an airline through an "air charter broker." An air charter broker is not itself an airline and cannot represent that it is one. Because it does not operate aircraft or hold authority from the DOT, it cannot in its own right contract to sell air transportation. Instead, it either acts as the agent of a chartering organization, such as a university, and contracts with a direct air carrier (i.e., the entity that actually operates the flight) or it acts as the

agent of the direct air carrier and contracts with a chartering organization. Air charter brokers also may act as a “go-between” without being involved in the actual contract between the carrier and the charter customer (e.g., by locating a customer for an air carrier and being paid a finder’s fee by the carrier), but this is a rare occurrence.

Organizations using air charter brokers should be aware that, since DOT does not license air charter brokers, payments to air charter brokers are not protected by DOT rules, regardless of whether the payments are made to a broker that is the lawful agent of the organization or carrier, or one that serves a “go-between” function. When an air charter broker represents that it is acting as the agent of a direct air carrier, the contracting college or organization should ensure that it understands the nature of the agency relationship between the broker and airline, and that the airline is properly licensed by OST and FAA to provide the air transportation.² The college or organization should not sign a contract for air services until it has ascertained this information.

Offering Tickets to a Game or Other Special Event Sold in Connection with a Flight

Specific rules apply to situations where tickets to a game or other special event are being offered in connection with a flight, whether it is a charter flight or a regularly scheduled flight. Specifically, an organization that offers game or special event tickets in connection with a flight must be in physical possession of a sufficient number of tickets or have a written contract for the tickets, which must be directly traceable to the actual sponsor of the game or other special event.

² On October 8, 2004, OST issued a notice regarding the lawful role of air charter brokers in the provision of air transportation and its enforcement policy covering such operations. The notice, which was published in the *Federal Register*, provides information on a variety of topics involving air charter brokers, including contracting procedures and marketing. 69 Fed. Reg. 61429, Oct. 18, 2004; erratum published 69 Fed. Reg. 62321, Oct. 25, 2004. The notice may be found on the DOT’s website at: <http://www.dot.gov/airconsumer>.

Consumers are entitled to a full refund, including the price of the airfare, if a tour operator offers game or other special event tickets, but does not have physical possession of a sufficient number of tickets or a written contract for the tickets.

DOT appreciates the chartering public's cooperation and assistance in ensuring an enjoyable and secure traveling experience. If you have any questions or desire additional information, please contact Jonathan Dols, Deputy Assistant General Counsel for Aviation Enforcement and Proceedings, or Lisa Swafford-Brooks, Chief, Aviation Licensing Compliance Branch, at (202) 366-9342. If you wish to ascertain whether a particular aircraft operator has DOT air carrier economic authority, you may contact Laura Remo, Chief of the Air Carrier Fitness Division at (202) 366-9721.

By:

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An electronic version of this document is available at

<http://www.dot.gov/airconsumer>