



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

**Issued by the Department of Transportation
On the 21st day of September, 2010**

Craig Air Center, Inc.

Docket OST 2010-0005

**Violations of 49 U.S.C. §§ 41101, 41712, and
41738 and 14 CFR Part 298**

Served September 21, 2010

CONSENT ORDER

This consent order concerns unauthorized scheduled passenger service as a commuter air carrier by Craig Air Center, Inc., (CAC) in violation of 49 U.S.C. §§ 41101, 41712, and 41738 and 14 CFR Part 298, the Department's commuter air carrier requirements. It directs CAC to cease and desist from further violations of these statutory provisions and federal regulation and assesses the carrier a compromise civil penalty of \$25,000.

Applicable Law

Pursuant to 49 U.S.C. § 41101, citizens of the United States¹ must have a certificate of public convenience and necessity from the Department prior to engaging in air transportation. Part 298 creates an exemption from the certificate requirement in section 41101 for a class of carriers called air taxi operators, which are carriers that use only small aircraft² and perform either on-demand service or no more than four round-trips per week in any single market according to a published schedule.³ Scheduled service in

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 Small aircraft are aircraft originally designed to have a maximum passenger capacity of 60 seats or fewer or a maximum payload capacity of 18,000 pounds or less. 14 CFR 298.2.

³ The economic licensing requirements of section 41101 and Part 298 are separate and distinct from the safety-related licensing requirements of the Federal Aviation Administration (FAA), and the FAA's rules regarding scheduled service differ.

excess of this level renders the air taxi operator a “commuter air carrier” for purposes of Part 298. Under 49 U.S.C. § 41738, the Department must find a commuter air carrier “fit, willing, and able” prior to commencing such scheduled service. Section 298.21(d) implements this statutory fitness requirement with respect to air taxi operators seeking to provide service as commuter air carriers. Operating, advertising, or otherwise holding out commuter air service without having first been found fit violates 14 CFR 298.21(d), as well as 49 U.S.C. §§ 41101 and 41738. In addition, violations of this regulation and these statutory provisions also constitute violations of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

Facts and Conclusion

CAC is a Florida-based air taxi registered under 14 CFR Part 298. At all times relevant to this matter, CAC did not hold commuter air carrier authority from the Department. At least as early as May 2009, CAC published on its website a schedule advertising more than four flights between Saint Augustine, Florida, and Marsh Harbor, Bahamas, a level of service that required it to be found fit as a commuter air carrier. For a period of time thereafter, CAC performed the advertised round-trip scheduled services five times per week, thus exceeding the scope of its exemption authority under 14 CFR Part 298 and violating 49 U.S.C. §§ 41101, 41712, and 41738.

Mitigation

In mitigation, CAC states that it did not intentionally advertise and operate services in violation of the Department’s economic licensing requirements. CAC states that as soon as it was notified of the possible violations, it immediately ceased holding out and operating round-trip scheduled services in excess of the four-flight-per-route weekly maximum allowed for air taxis. CAC notes that it has been open and forthright with the Department throughout the investigation, and that it is now in compliance with the Department’s economic licensing requirements.

Decision

The Office of Aviation Enforcement and Proceedings (the Enforcement Office) has carefully considered the information provided by Craig Air Center, Inc., but continues to believe that enforcement action is warranted. The Enforcement Office and Craig Air Center, Inc., have reached a settlement of this matter in order to avoid litigation. Craig Air Center, Inc., consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §§ 41101, 41712, and 41738 and 14 CFR Part 298 of the Department’s regulations, and to the assessment of \$25,000 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

to future noncompliance with the Department's economic licensing requirements by Craig Air Center, Inc., as well as by other 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 discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Craig Air Center, Inc., violated 14 CFR 298.21(d) and 49 U.S.C. §§ 41101 and 41738 by holding out and operating commuter air service without having first been found fit as a commuter air carrier;
3. We find that by violating 14 CFR 298.21(d) and 49 U.S.C. §§ 41101 and 41738 as described in ordering paragraph 2, above, Craig Air Center, Inc., has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Craig Air Center, Inc., and all other entities owned or controlled by or under the common ownership of Craig Air Center, Inc., and its successors and assignees, to cease and desist from violations of 49 U.S.C. §§ 41101, 41712, and 41738 and 14 CFR Part 298;
5. We assess Craig Air Center, Inc., a compromise civil penalty of \$25,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above;
 - a. Of this total penalty amount, \$12,500 shall be due and payable in four equal installments;
 - i. The first payment of \$3,125 shall be due and payable within 30 days after the date of issuance of this order;
 - ii. The second payment of \$3,125 shall be due and payable 60 days after the date of issuance of this order;
 - iii. The third payment of \$3,125 shall be due and payable 90 days after the date of issuance of this order; and
 - iv. The fourth payment of \$3,125 shall be due and payable 120 days after the date of issuance of this order; and
 - b. The remaining \$12,500 shall be due and payable if Craig Air Center, Inc., violates this order's cease and desist or payment provisions within one year following the date of issuance of this order, in which case the entire

unpaid portion of the civil penalty shall be due and payable immediately, and Craig Air Center, Inc., may be subject to additional enforcement action for failure to comply with this order;

6. Failure to pay the penalty as ordered shall also subject Craig Air Center, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
7. Payments shall be made by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions.

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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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