



**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 February, 2007**

In the matter of the revocation of the Canadian Charter
Air Taxi Registration of

**FLIGHT-OPS INTERNATIONAL, INC., d/b/a
SKYXPRESS AIRLINE**

Pursuant to the provision of 14 CFR 294.50

Docket OST 2003-15099

Served February 21, 2007

**ORDER TO SHOW CAUSE
PROPOSING TO REVOKE CANADIAN CHARTER AIR TAXI
REGISTRATION**

SUMMARY

By this order, we propose to revoke the Canadian charter air taxi authority, issued pursuant to 14 CFR Part 294, of Flight-Ops International, Inc., d/b/a SkyXpress Airline (Flight-Ops) on the basis that the carrier no longer holds effective Federal Aviation Administration (FAA) safety authority.

14 CFR PART 294

In order to engage in foreign air transportation¹, foreign air carriers must hold economic authority in the form of a permit issued by the Department pursuant to 49 U.S.C. § 41301.² However, Part 294 of the Department's regulations provides an exemption from the permit requirement in section 41301 for a class of foreign air carriers called "Canadian charter air taxis," provided such carriers register with the Department and

¹ "Foreign air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft. 49 U.S.C. § 40102(23).

² All carriers must also obtain safety authority from the Federal Aviation Administration.

maintain liability insurance as required by 14 CFR Part 205.³ The exemption applies only to *charter* air service between the United States and Canada and is restricted to carriers that use aircraft in their charter operations that were originally designed to have a maximum passenger capacity of no more than 30 seats. Conversely, the exemption is not available to carriers that operate or propose to operate scheduled service between the United States and Canada or to carriers using aircraft in their charter operations that were originally designed to have a maximum passenger capacity of more than 30 seats.

BACKGROUND

In November 2002, the Department approved Flight-Ops' initial registration as a Canadian charter air taxi. At the time, Flight-Ops was owned by Canadian citizens Mr. Mark Kotris (65%) and Mr. Robert Brown (35%). Mr. Kotris and Mr. Brown also served as the company's president and vice president; Mr. Gregory G. Paul served as its operations manager and chief pilot. As of May 2006, Mr. Kotris was still the president of Flight-Ops.

After its Part 294 registration was approved, Flight-Ops began operating air service between Kalispell, Montana, and Calgary, Alberta. As stated above, under the terms of the exemption authority of 14 CFR Part 294, Flight-Ops was limited to charter operations only. However, shortly after the Department approved its registration, Flight-Ops began operating a number of flights between Kalispell and Calgary pursuant to a schedule published on its Internet website.

On June 17, 2003, the Department's Deputy General Counsel issued Consent Order 2003-6-24, in which the Department found⁴ that Flight-Ops had violated 49 U.S.C. § 41301 by commencing scheduled air service to and from the United States prior to obtaining a foreign air carrier permit. The Department also found that Flight-Ops violated 14 CFR 294.31 by holding out and operating flights into the United States under a business name not listed on its registration. Lastly, the Department found that the violations of sections 41301 and 294.31 constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. The order assessed a civil penalty of \$8,000 against Flight-Ops, half of which was to have been forgiven if Flight-Ops complied with the order's cease and desist and payment provisions. The other

³ 14 CFR 294.3.

⁴ A consent order issued by the DOT Deputy General Counsel in an aviation enforcement case becomes an "action 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 initiative. 14 CFR 385.32. No such petition was received with respect to the consent order against Flight-Ops and the Department elected not to review the findings in the order. Thus, the Flight-Ops Air consent order is an action of the Department. See also *American Airlines, Inc., Violations of 49 U.S.C. §§ 40127, 41310, 41702, and 41712* DOT Docket 2003-15046, Order Denying Motion of American Airlines, Inc., to Dismiss (August 21, 2003) (recognizing Enforcement Office consent orders as Department precedent).

half was ordered to be paid in four \$1,000 installments on certain dates between July and October 2003.

In May 2003, after being contacted by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) about its unauthorized scheduled Kalispell-Calgary operations, described above, Flight-Ops filed with the Department 1) a request for an exemption from 49 U.S.C. 41301 in order to engage without a foreign air carrier permit in trans-border, scheduled air service using small aircraft and 2) an amended Part 294 registration notifying the Department that it was doing business as "SkyXpress Airline." On June 3, 2003, the Department approved Flight-Ops' amended Part 294 registration pending issuance by the FAA of the carrier's Part 129 operations specifications. On August 1, 2003, the Department granted Flight-Ops a one-year renewable exemption to engage in trans-border, scheduled air service.⁵ However, Flight-Ops never requested that the exemption be renewed. Accordingly, on August 1, 2004, at the end of the one-year term, the exemption expired.

In accordance with the payment schedule set forth in Order 2003-6-24, Flight-Ops paid the first installment of its penalty on July 17, 2003. However, Flight-Ops subsequently failed to make any of the remaining payments as required. On May 5, 2004, the Department's accounting office sent the carrier a letter requesting back payments to which the carrier failed to respond adequately. Thereafter, the Department's accounting office and the Enforcement Office attempted to contact the carrier informally, but were unsuccessful. Accordingly, the Department referred the entire amount of the unpaid penalty, including the portion that was to have been forgiven plus additional penalties and interest, to the U.S. Department of the Treasury for collection.

On May 10, 2006, for reasons unrelated to Flight-Ops' failure to pay the civil the penalty assessed in Order 2003-6-24, the Canadian Transportation Agency suspended Flight-Ops' license to operate international service between the United States and Canada. On June 10, 2006, the suspension was made permanent. On May 29, 2006, citing the suspension of its operating authority from the Canadian government, Flight-Ops surrendered its Part 129 operations specifications to the FAA's Renton, Washington, Flight Standards District Office.

TENTATIVE FINDINGS

Pursuant to 14 CFR 294.50(h), the registration of a Canadian charter air taxi may be revoked if the carrier's FAA operations specifications are suspended or terminated. Based on the fact that Flight-Ops' operations specifications have been terminated, we hereby tentatively propose to revoke the carrier's Canadian charter air taxi registration.

⁵ *Notice of Action Taken*, Flight-Ops International d/b/a SkyXpress Airline, Exemption from 49 U.S.C. § 41301 (DOT Docket 2003-15099) (August 1, 2003).

While we base our tentative decision herein on section 294.50(h), we point out that, had Flight-Ops' Part 129 operations specifications not been surrendered, we could have proposed, in the alternative, to revoke Flight-Ops' Part 294 registration on public interest grounds. Under 14 CFR 294.50(i), the registration of a Canadian charter air taxi may be revoked if the Department finds that it is no longer in the public interest for the carrier to hold a registration. We believe that Flight-Ops' failure to comply with the payment provisions of Order 2003-6-24 evinces a poor compliance disposition on its part and that the public interest would, therefore, not be served by continuing to allow Flight-Ops to hold a Canadian charter air taxi registration. However, the surrender of Flight-Ops' operations specifications renders it unnecessary for us to base our decision on public interest grounds.

We now give interested parties an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated in this order.

OBJECTIONS

Interested persons shall have 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections shall be due 7 days thereafter. We expect such persons to direct their objections, if any, to the points at issue and to support such objections with detailed analyses. If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*See* Part 302, Rules 19 and 20); if not, the reasons why not should be explained. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to the revocation of Flight-Ops' exemption authority.

ACCORDINGLY:

1. We direct all interested persons to show cause as to why we should not issue an order making final the tentative findings and conclusions stated above and revoke the 14 CFR Part 294 registration of Flight-Ops International d/b/a SkyXpress Airline.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the proposed revocation of the exemption set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, PL-401, Washington, D.C. 20590, in Docket OST-2003-15099, and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order. Answers to objections shall be filed no later than 7 days thereafter.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.⁶
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.
5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

ANDREW STEINBERG
Assistant Secretary
for Aviation and International Affairs

*An electronic version of this document is available on the
World Wide Web at <http://dms.dot.gov>*

⁶ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

**SERVICE LIST FOR
FLIGHT-OPS INTERNATIONAL, INC., d/b/a
SKYXPRESS AIRLINE**

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