

# Proposed Rules

Federal Register

Vol. 78, No. 189

Monday, September 30, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Parts 295 and 298

[Docket No. DOT-OST-2007-27057]

RIN 2105-AD66

#### Enhanced Consumer Protections for Charter Air Transportation

**AGENCY:** Office of the Secretary (OST), U.S. Department of Transportation.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** The U.S. Department of Transportation (Department) seeks comment on four new proposals to strengthen the legal protections provided to consumers of charter air transportation. First, this proposal would require air taxis and commuter air carriers that sell charter air transportation but rely on others to perform that air transportation to make certain consumer disclosures as recommended by the National Transportation Safety Board (NTSB). This proposal would also create a new class of indirect air carriers to be called "air charter brokers" to provide as principals single entity charter air transportation of passengers aboard large and small aircraft. In addition, this NPRM would codify the exemption authority granted to indirect air carriers to engage in the sale of air transportation related to air ambulance services. Finally, the NPRM would make clear and codify that certain air services performed under contract with the Federal Government are in common carriage.

**DATES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before November 29, 2013.

**ADDRESSES:** You may file comments identified by the docket number DOT-OST-2007-27057 by any of the following methods:

- *Federal Rulemaking Portal:* go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493-2251.

*Instructions:* You must include the agency name and docket number DOT-OST-2007-27057 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Dols, Deputy Assistant General

Counsel, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Room W98-312, Washington, DC 20590, (202) 366-9342, [jonathan.dols@dot.gov](mailto:jonathan.dols@dot.gov). You may also contact Lisa Swafford-Brooks, Chief, Aviation Licensing and Compliance Branch, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Room W98-304, Washington, DC 20590, (202) 366-9342, [lisa.swaffordbrooks@dot.gov](mailto:lisa.swaffordbrooks@dot.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Transportation (DOT) is issuing this notice of proposed rulemaking (NPRM) to improve the air travel environment for consumers of single entity charter air transportation based on its statutory authority to license entities engaging in air transportation, 49 U.S.C. 41101, and its statutory authority to prohibit unfair and deceptive practices in air transportation, 49 U.S.C. 41712. First, the Department is taking action to protect consumers by ensuring that consumers of single entity charter air transportation have adequate information about the operator of chartered aircraft and by enumerating certain prohibited unfair and deceptive practices by air taxis and commuter air carriers. Second, also to protect consumers, the Department is creating a new class of indirect air carriers called air charter brokers and establishing required disclosures and enumerating certain prohibited unfair and deceptive practices for this class. Third, the Department is codifying a 1983 Civil Aeronautics Board order granting exemption authority to indirect air carriers that provide air ambulance services. Fourth, the Department is clarifying that the contracting for air transportation with the Federal government under a GSA Schedule involves common carriage operations.

Subject	Proposed rule
1. NTSB Recommendation .....	Requires air taxis and commuter air carriers that sell charter air transportation, but rely on others to perform that air transportation, to make certain disclosures, including the name of the direct air carrier operating the service and any other name in which that direct air carrier holds itself out to the public. Enumerates certain prohibited unfair and deceptive practices or unfair methods of competition by air taxis registered with the Department and commuter air carriers.

Subject	Proposed rule
2. New Class of Indirect Air Carrier .....	Creates an “air charter broker” class of indirect air carrier. Requires air charter brokers to make certain disclosures. Enumerates certain prohibited unfair and deceptive practices or unfair methods of competition by air charter brokers.
3. Air Ambulance Services .....	Codifies the exemption authority granted in 1983 to indirect air carriers that provide air ambulance services.
4. Air Services Provided Under Contract with the Federal Government.	Clarifies and codifies that certain air services performed under contract with the Federal government are in common carriage.

### A. NTSB Recommendation

As a result of an aircraft accident that involved, among other issues, questions regarding the identity of the operator of the aircraft, on August 4, 2006, the National Transportation Safety Board (NTSB) recommended that the Department require the following information be disclosed to customers and passengers at the time an air charter contract is arranged and anytime thereafter if such information changes: (1) The name of the company in operational control of the aircraft during flight; (2) any other “doing business as” names contained in the Operations Specifications of the carrier in operational control during the flight; (3) the name of the aircraft owner; and (4) the names of all brokers involved in arranging the flight (available at [http://www.nts.gov/Recs/letters/2006/A06\\_43.pdf](http://www.nts.gov/Recs/letters/2006/A06_43.pdf)). In response, on January 26, 2007, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking comment from interested parties on the recommendations of the NTSB. We received 23 comments on this rulemaking.

Of the 18 comments that touched on the disclosure requirements proposed in the ANPRM, 14 supported requiring disclosure of the entity in operational control of the aircraft during the flight and seven of those comments further supported requiring disclosure of associated “doing business as” names. Only one comment supported disclosing the name of the aircraft owner, and that comment suggested that such disclosure should be made only “upon request” of the person or entity contracting for air transportation. According to the commenters, owners do not affect the safety of the flight, members of the public might get a false sense of security based on the reputation of the owner of the aircraft, and owners would be less likely to make aircraft available for charter should they not be entitled to privacy. In addition, most commenters opposed the disclosure of the aircraft owner and all brokers involved in arranging the flight, if different from the entity in operational control of the

aircraft, primarily on the basis that these entities do not affect the safety of the flight. Four comments objected to any disclosures.

Of the 23 comments, 13 addressed the form in which the disclosures would be made. Of these, five indicated that verbal notice would be sufficient, four indicated that written notice should be required, two indicated that the adequacy of verbal notice would be dependent on the specific situation, and two indicated that an “express communication” would be sufficient. “Express communication” was not defined.

Aside from the accident that resulted in the recommendation to the Department from the NTSB regarding notice to consumers of the name of the operator of an on-demand charter flight, the Department is aware that on-demand charter operators often “broker” or “sub-service” a contract for air transportation to another carrier when they are unable to perform the service themselves. There are various reasons why this may occur. For example, a suitable aircraft may be available when the contract for the air service is made with the customer, but may not be available due to mechanical or other reasons at the planned departure time. In other cases, the carrier may not operate the type of aircraft best suited or requested for the flight, but in order not to lose a valued customer or new business, the carrier accepts the contract knowing it will have to find another carrier to operate the flight.

It has been the longstanding policy of the Department in other contexts that it is an unfair and deceptive practice and unfair method of competition for an air carrier or a ticket agent to hold out or sell air transportation on one carrier when the service will be performed by another carrier. (See 14 CFR Part 257, requiring notice of the operating carrier involving scheduled code-share and long-term wet lease operations; see also 14 CFR 380.30 and 380.32, requiring that public charter participants be told the name of the direct carrier operating the charter flight.)

Consumers deserve to be protected in situations in which direct air carriers enter into contracts for air transportation, either (1) intending from the outset to “broker” or “sub-service” that contract to be operated by another direct air carrier, or (2) subsequent to entering into the contract, out of necessity, needing to broker or sub-service that contract to be operated by another direct air carrier, regardless of the reason for such action. Accordingly, the Department is proposing to amend 14 CFR Part 298 to prohibit air taxi and commuter air carriers from soliciting or executing contracts for single entity charter air transportation to be performed by another carrier without first providing clear and conspicuous written disclosure to the person or entity that contracts for that air transportation of: (1) The corporate name of the direct air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that carrier holds itself out to the public; (2) the capacity in which the air taxi is acting in contracting for the air transportation; (3) the existence of any corporate or pre-existing business relationship with the direct air carrier that will be in operational control of the aircraft on which the air transportation is to be performed; (4) the make and model of the aircraft to be used for the air transportation (e.g., Learjet 60 XR); (5) the total cost of the air transportation, including any carrier-imposed fees or government-imposed taxes and fees; and (6) the existence of any fees and their amounts, if known, including fuel, landing fees, and aircraft parking or hangar fees, charged by third parties for which the charterer will be responsible for paying directly. If the carrier that is to operate the flight changes after a contract is arranged, this NPRM would require that a written notice be provided to the charterer within a reasonable time after the carrier that contracted with the charter customer learns of the change. A “reasonable” time would be enough time for the consumer to make an informed decision as to whether he or she wants to accept the change. For

example, should the carrier to operate the flight change one week before the flight date, the Department would find it "reasonable" for notice to be given within 24 hours of the carrier becoming aware of the change. On the other hand, the Department would not find it "reasonable" for notice to be given less than two hours before departure in such a circumstance, since that would not give the consumer time to make an informed decision as to whether to accept the change. At that point, the consumer would already be fully prepared for the flight and may in fact already be en route to the airport. The Department asks for comments on whether it should set a specific time limit, e.g., 24 hours, for such notice to be provided. Moreover, we are proposing that the charter customer be entitled to a full refund, at his or her option, if reasonable notice is not given as described above. We are not proposing to require carriers to obtain confirmation from the charter customer of receipt of the notice; however, we ask for comment on whether we should require such confirmation and, if so, what type of confirmation would be appropriate in any given situation, including oral contracts.

We are also proposing to enumerate certain prohibited unfair and deceptive practices or unfair methods of competition by air taxis registered and commuter air carriers. We request comment on whether any of these practices should not be enumerated in the final rule.

We wish to make clear that nothing in this proposal is intended to authorize a direct air carrier to hold out service as a direct air carrier on a specific aircraft, or type of aircraft, that it is not authorized to operate by Department and the Federal Aviation Administration (FAA). This includes holding out large aircraft services when one has authority to operate only small aircraft and holding out scheduled services when one has authority to operate only on-demand services. Such actions always have been, and remain, a violation of the direct air carrier's authority and an unfair and deceptive practice and unfair method of transportation. We invite all interested persons to comment on the issues raised in this notice. Our final action will be based on the comments and supporting evidence filed in this docket and on our own analysis.

#### **B. New Class of Indirect Air Carriers**

Air charter brokers are persons or companies that do not currently hold DOT economic authority to function either as an indirect air carrier or as a

direct air carrier, but that arrange air transportation services for prospective charter customers (charterers) to be provided by direct air carriers. Under current law, since brokers have no authority to hold out air transportation in their own right as a direct or an indirect air carrier, to comply with existing law they must act as the agent of a charterer or the agent of a carrier. Of course, they may also act as a true "middle-person" and simply facilitate a contract directly between the charterer and carrier, but such arrangements are, in the Department's experience, the exception rather than the rule. The typical air charter broker operating lawfully today is, under applicable law, a "ticket agent." A ticket agent is defined in 49 U.S.C. 40102(a)(45) as "a person (except an air carrier, a foreign carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation."

The increased market for business aviation-related air charters, primarily using small aircraft, along with the growth of the Internet, has, in turn, created a significant growth in the number and role of air charter brokers. In today's business aviation market, air charter brokers increasingly play a role in marketing air transportation services to be operated by direct air carriers and in providing charterers with convenient access to thousands of direct air carriers and a wide range of aircraft. Air charter brokers also often provide charterers with various ancillary services that are not provided by most direct air carriers, such as ground transportation, catering special meals, and general concierge services. The Department has responded to the proliferation of air charter brokers, as described more fully below, by conducting considerable industry outreach to make clear to air charter brokers that they may not mislead the public about their status. In addition, the Department has taken enforcement action against a number of air charter brokers found to have engaged in unfair and deceptive practices and unfair methods of competition.

In order to engage directly or indirectly in air transportation of passengers, a citizen of the United States is required to hold economic authority from the Department pursuant to 49 U.S.C. 41101, or an exemption from that statutory requirement, such as those provided by 14 CFR Part 298 for direct air carriers operating small aircraft, by 14 CFR Part 296 for indirect air carriers that hold out and sell air freight services, and by 14 CFR Part 380

for indirect air carriers that hold out and sell public charter passenger flights. Similarly, persons or entities that are not U.S. citizens are required to hold economic authority under 49 U.S.C. 41301, or an exemption from that statutory requirement, such as those provided by 14 CFR Part 294 to Canadian charter carriers to operate small aircraft, by 14 CFR Part 297 to foreign indirect air carriers to engage in indirect air carriage of cargo, and by 14 CFR Part 380 to foreign indirect air carriers to hold out and sell public charter passenger flights. Indirect air carriers must use direct air carriers that meet the economic licensing requirements of the Department and the appropriate safety certification requirements of the FAA or, if appropriate, a foreign government authority.

The Department, and its predecessor, the Civil Aeronautics Board (CAB), have long sought to permit the marketplace to govern the sale of air transportation, provided appropriate consumer protections are in place. To this end, the Department has authorized various classes of indirect air carriers to engage in air transportation. For example, as described above, in 1977, the Department authorized air freight forwarders by exemption to engage in indirect air carriage of cargo, provided that foreign air freight forwarders first register with the Department and that both U.S. and foreign freight forwarders give consumers certain important notices, including whether they are acting in their individual capacity or as the agent of an airline. (14 CFR Parts 296 and 297.) In 1980, with regard to passenger air transportation, the CAB implemented 14 CFR Part 380 to authorize a class of indirect air carrier called public charter operators to engage in charter air transportation on a per-seat basis. Unlike direct air carriers, public charter operators are not required to undergo fitness determinations examining their financial fitness, managerial competence, and compliance disposition. However, public charter operators must instead comply with strict requirements set forth in Part 380 designed to ensure an adequate level of protection for consumers and their funds. In this regard, for example, public charter operators may not hold out or sell charter flights without first having a contract with a direct air carrier to perform those flights; they must have in place comprehensive financial security measures to protect passenger deposits; they must adhere to certain contract conditions governing important

provisions, such as flight changes or cancellations and refunds; and they must file with and have approved by the Department a prospectus covering each flight in their public charter program. In addition, in 1983, the CAB authorized entities that arranged air ambulance services to operate as indirect air carriers to engage in the sale of air ambulance services provided that they used direct air carriers holding appropriate economic and safety authority. (Order 83-1-36, 99 C.A.B. 801 (1983))

The Department also has always believed that accurate, timely, and clearly presented information is essential so that consumers can make informed decisions about their flight choices. Therefore, the Department has had longstanding, comprehensive rules applicable to ticket agents, including air charter brokers, that prohibit them from, among other things: (1) Misleading the public into believing they are air carriers; (2) misleading the public about the qualifications of pilots or the safety record or certification of air carriers, aircraft, or crew; (3) misleading the public about the quality or kind of service, including the size or type of aircraft and route to be flown; and (4) selling air transportation without a binding commitment with a direct air carrier for that transportation. (14 CFR 399.80.)

In October 2004, in response to the growth in the air charter broker industry and certain problems that accompanied that growth which had come to the Department's attention, including the unlawful holding out of air transportation by air charter brokers, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) issued a notice providing guidance on the lawful role of air charter brokers in providing air transportation. <http://airconsumer.ost.dot.gov/rules/BrokerNoticeFinal.pdf>. That notice reminded air charter brokers that: (1) Without authority, they may not hold out air transportation in their own right or enter as principals into contracts with customers to provide air transportation; and (2) as ticket agents, they may not engage in various practices enumerated in 14 CFR 399.80 as unfair and deceptive or unfair methods of competition, including creating the false impression that they are an air carrier. The Enforcement Office suggested in the guidance that each air charter broker should, in any advertisement of its services, clearly convey the fact that the broker is not a direct air carrier and that the air service advertised will be provided by a properly licensed direct

air carrier. Although the guidance recognized the public benefits that could flow where air charter brokers were able to act as a principal in providing air transportation and invited air charter brokers to seek exemptions from existing Department regulations to offer such services, that offer has not proven useful, primarily due to the business model of today's air charter brokers, as described below. Moreover, despite this guidance and continued outreach efforts by Department staff through participation at industry seminars and conferences, as well as through more informal guidance, there have been many instances in which the Department has found it necessary to take enforcement action against air charter brokers for violations of the licensing requirements of 49 U.S.C. 41101 and the prohibition against engaging in unfair and deceptive practices and unfair methods of competition of 49 U.S.C. 41712 and 14 CFR 399.80.

Despite the growth in the marketplace for the services of air charter brokers, the regulations that now exist to authorize indirect air carriers to engage in passenger air transportation are not conducive to the industry served by air charter brokers. In this regard, air charter brokers, particularly those involved with business aviation-related air charters, have not been able to take advantage of the authorizations noted above for other indirect air carriers, a situation that may have stifled innovation and consumer benefits that normally flow from a more open, competitive marketplace. For example, Part 380 has been the only lawful means of offering indirect air transportation services for passengers other than those in need of air ambulance services, but it would be extremely difficult for an air charter broker to comply with that regulation for single entity business-related air charters. In particular, under Part 380 an air charter broker would need to file a prospectus with the Department detailing the charter program and could not vary from the schedule of flights filed without first filing an amendment. In addition, Part 380 dictates the specific terms of the contract of carriage between the passenger and indirect air carrier, such as those involving advertising, delays, cancellations, and refunds, in order to protect passenger expectations. Part 380 also is designed to protect passengers' financial interests as well, through bonding and escrow requirements applicable to public charter operators as well as to the airlines that operate public charter flights.

The business models of the on-demand air charter industry, including the services provided by the majority of air charter brokers that use the services of on-demand air carriers, do not easily fit into the requirements of Part 380. Customers are often businesses or high-net worth individuals, and the flight itinerary is of the customer's choice and the customer can change it at any time, including en route. In addition, other important contract terms, such as aircraft type and charter price, are subject to negotiation. Moreover, unlike the vast majority of airlines operating flights for public charters, which must undergo a stringent fitness test and also escrow charter funds, the fitness and financial protections applicable to the small air carriers operating on-demand charter flights are minimal. In this regard, air taxi operators may operate "small aircraft" (those that as originally designed to have 60 passenger seats or fewer or a maximum payload capacity of 18,000 pounds or less) after filing a registration statement with the Department stating that they are a U.S. citizen and have requisite liability insurance and listing the aircraft that they operate. Under Part 298, air taxi operators must provide public notice of their policies on baggage liability and denied boarding compensation. (14 CFR 298.30.) Because of the nature of their business model and the nature and specific provisions of Part 380, air charter brokers cannot reasonably be expected to provide their services under Part 380 or an exemption from certain of its provisions. Accordingly, in recognition of the important public benefits in connection with air transportation that air charter brokers might provide, we are proposing to allow air charter brokers to operate as indirect air carriers, subject to appropriate consumer protection provisions.

More specifically, we are proposing to create a class of indirect air carrier to be named "air charter brokers" that are permitted as principals in their own right to engage in single entity charter air transportation aboard large and small aircraft pursuant to exemptions from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation) and to establish rules for the provision of indirect air transportation of passengers by air charter brokers.

The Department also seeks comment on the last clause in the proposed definition of a "single entity charter" that would allow individuals who self-aggregate to form a single entity, despite the fact that they may be bearing a portion of the cost of the charter. If the

Department were to accept the definition as it is currently proposed, would it be necessary to change to the definition of single entity charter in 14 CFR Part 212?

Under this proposal, air charter brokers would, in essence, self-identify. In other words, there would be no formal licensing process or registration, as is the case currently with indirect air carriers engaging in air transportation in connection with air ambulance services and U.S. air freight forwarders engaging in the indirect air carriage of cargo. (Nothing in this proposal would apply to persons or entities that, as an employee or *bona fide* agent of an air carrier, hold out, sell, or undertake to arrange air transportation, or as a *bona fide* agent of a charterer, arrange for air transportation for that charterer.) Commenters who do not want the Department to allow air charter brokers to self-identify should propose an alternative and provide information regarding the costs to the government to administer and to air charter brokers to comply with their proposed alternative.

While the Department proposes a system of self-identification for all air charter brokers, we ask whether the Department should adopt a registration system applicable only to non-U.S. citizen air charter brokers, similar to that in place for foreign air freight forwarders, so that the Department can ensure that a grant of such authority to non-U.S. citizens is in the public interest, including consideration of whether there is effective reciprocity in the treatment of U.S. air charter brokers in other countries? Regardless of whether a registration system for non-U.S. air charter brokers is adopted, we are tentatively of the opinion that requiring certain disclosures by all air charter brokers to protect charter customers is in the public interest. In this regard, we propose to require that an air charter broker disclose clearly and conspicuously in any solicitation materials its status and the fact that it is not a direct air carrier and will use an authorized direct air carrier to provide the transportation it offers. We also propose to require that a charterer be informed in writing, prior to purchasing the air transportation, of the following: (1) The corporate name of the direct air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that carrier holds itself out to the public; (2) the capacity in which the air charter broker is acting in contracting for the air transportation, i.e., as an indirect air carrier, as an agent of the charterer, or as an agent of the direct air carrier that

will be in operational control of the flight; (3) the existence of any corporate or business relationships with a particular direct air carrier(s) that may or will be used for the air transportation; (4) the make and model of the aircraft to be used for the transportation (e.g., Learjet 60 XR); (5) the total cost of the air transportation paid to the air charter broker, including any air charter broker or carrier-imposed fees, or government-imposed taxes and fees; (6) the existence of any fees and their amounts, if known, including fuel, landing fees, and aircraft parking or hangar fees, charged by third parties for which the charterer will be responsible for paying directly; and (7) the existence or absence of liability insurance held by the air charter broker covering the charterer and passengers and property on the charter flight, and the monetary limits of any such insurance. We ask for comment on whether there is additional information that should be provided to charterers or whether any of the aforementioned information is not essential and need not be provided charterers. For example, we are disposed to conclude, as we have in other contexts, that consumers deserve to know the direct air carrier on which they will be travelling before committing to a charter flight. (See 14 CFR Parts 257 and 380)

Under this NPRM, if any of the seven items listed above that we are proposing that air charter brokers disclose in writing to charter customers prior to purchase changes subsequent to the contract being formed, the air charter broker would be required to provide this new information to the consumer within a reasonable time of such information changing. A "reasonable" time would be enough time for the charterer to make an informed decision as to whether he or she wants to accept the change. For example, should the carrier to operate the flight change one week before the flight date, the Department would find it "reasonable" for notice to be given within 24 hours of the carrier becoming aware of the change. On the other hand, the Department would not find it "reasonable" for notice to be given two hours before departure in such a circumstance, since that would not give the charter customer time to make an informed decision as to whether to accept the change. At that point, the charterer would already be fully prepared for the flight and may in fact already be en route to the airport. The Department asks for comments on whether it should set at specific time limit, e.g., 24 hours, for such notice to be provided.

If reasonable notice is not provided, the consumer would have the option of

receiving a full refund if he/she no longer wished to take the flight because of the change. We are not proposing to require air charter brokers obtain confirmation from the charterer of receipt of the notice; however, we ask for comment on whether we should require such confirmation and, if so, what type of confirmation would be appropriate in any given situation, including oral contracts.

With regard to the proposed requirement to provide written notice of the total cost of the air transportation prior to purchase, we recognize that, as is customary in the on-demand charter industry, the ultimate price of the air transportation normally borne by the charterer, including the amount of government taxes and fees applicable to that price, may be dependent on factors whose cost is not known at the time a contract is signed, such as the cost of fuel at the time of travel, aircraft wait time, or aircraft repositioning costs. We propose that, in such an event, the requirement to disclose the "total" cost in writing prior to purchase would be considered met so long as the air charter broker conspicuously identifies and discloses the existence of all items that may impact the total cost, including the range of fees associated for each item, as well as any factors which would cause the fees to be in the high or low range. The fare advertising requirements in 14 CFR 399.84 would not apply. We ask for comment on this approach.

In addition, the Department asks for comment on its proposal to subject air charter brokers to 14 CFR Part 374, which implements statutes and regulations governing credit transactions, including those requiring credit card refunds within seven business days of receiving complete documentation. The Department's longstanding policy on cash refunds, which recently was codified with regard to scheduled airlines, requires cash refunds within 20 days of receipt of full documentation of such a request. Should the Department impose similar cash refund requirements in this rule for air charter brokers? If not, what distinguishes the business of air charter brokers that supports their not being required to comply with such refund requirements?

We are also proposing to enumerate certain prohibited unfair and deceptive practices or unfair methods of competition by air charter brokers. We request comment on whether any of these practices should not be enumerated in the final rule.

We are also considering imposing a requirement on air charter brokers to retain certain records for the purpose of

determining regulatory compliance. If so, what specific records should the Department require air charter brokers to retain?

### C. Air Ambulance Services

Entities that arrange air ambulance services as indirect air carriers have been authorized through a blanket exemption granted in 1983 by the Civil Aeronautics Board to engage in the sale of air transportation in connection with air ambulance services. Order 83–1–36, 99 C.A.B. 801 (1983). The only condition placed to date upon this class of indirect air carrier has been that they use direct air carriers holding appropriate Federal economic and safety authority for such operations.

Over the years, the Department's Aviation Enforcement Office has received informal complaints, primarily from companies involved in the air ambulance industry, regarding the conduct of other individual air ambulance indirect air carriers. Those complaints generally have alleged that an indirect air carrier has misled the public about the nature of its operations, such as inducing the public to believe that it operates aircraft when it does not. Such conduct violates the licensing requirements of 49 U.S.C. 41101 and therefore the exemption authority of Order 83–1–36 and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712. The Department has provided guidance about the role of indirect air carriers providing air ambulance services and has found it necessary to take enforcement action against a number of air ambulance indirect carriers for engaging in the unlawful practices noted above. Similar enforcement action has been taken based on information uncovered during investigations undertaken by the Enforcement Office on its own initiative.

The fundamental nature of these violations stems from the failure of air ambulance indirect air carriers to provide the public information about the nature of their operations in a clear and conspicuous manner. Consumers of the services of air ambulance indirect air carriers deserve no less protection than persons using the services of the air charter brokers. As such, we are proposing to require that indirect air carriers that provide air transportation in connection with air ambulance services ensure appropriate protections for consumers of those services similar to those proposed for air charter brokers.

Specifically, we propose to codify the blanket exemption authority granted air ambulance indirect air carriers by Order

83–1–36 under the new Part 295. Under the proposed rule, the provisions prohibiting unfair and deceptive practices and enumerating specific prohibited practices in section 295.50 would apply to air ambulance indirect air carriers, e.g., misrepresentations that the air charter broker is a direct air carrier. However, air ambulance indirect air carriers would be excluded from the disclosure requirements of section 295.24, e.g., the corporate name of the direct air carrier in operational control of the aircraft. We invite comment on this proposal in general, as well as on whether any of the specific provisions of proposed section 295.24 should apply to indirect air carriers engaged in air ambulance services. Commenters opposed to including air ambulance indirect air carriers under proposed Part 295 should be specific as to why the rule or any specific provision contained in the rule, such as the disclosure requirements in section 295.24, should not apply. For example, are there certain types of air ambulance indirect air carriers for which the complying with the disclosure requirements would not be feasible or reasonable given the nature of their operations, e.g., emergency medical evacuations.

### D. Air Services Performed Under Contract With the Federal Government

This NPRM also addresses air charter broker issues relating to contracts with the Federal government. On November 25, 2009, CSI Aviation Services, Inc., an aviation broker providing services to the Federal government, filed an application for an exemption to permit it to act as a principal in contracts with Federal government agencies. On April 14, 2010, the Department issued a final order exempting CSI and other similarly situated air charter brokers from the requirements of 49 U.S.C. 41101 and applicable Department regulations to the extent necessary for such air charter brokers to engage in domestic and foreign indirect air transportation of persons, property, and mail pursuant to contracts with Federal government agencies arranged under the General Services Administration ("GSA") Schedule Special Item Number ("SIN") 599–5, Air Charter Services-Brokers. (Order 2010–4–7, Issued April 13, 2010.) The Department noted that the rulemaking at issue here was being developed, but decided that it was not in the public interest to prohibit air charter brokers from engaging in indirect air transportation under contract with the U.S. Government via the GSA Schedule pending completion of a broader rulemaking proceeding. That exemption authority was

subsequently extended in March 2011 for another year. (Department Order 2011–3–8, issued March 3, 2011.)

Then, on April 1, 2011, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its opinion in *CSI Aviation Services, Inc., v. U.S. Dept. of Transportation*, a case involving an air charter broker's challenge to a warning letter from the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office). The Enforcement Office warned the air charter broker that, in its opinion, the air charter broker was unlawfully holding out air transportation by being on a General Service Administration's schedule listing companies as available to contract as principals with Federal government agencies to provide air transportation when it held no economic authority to do so. The court found, among other things, that the Department failed adequately to explain its interpretation of the statutory definition for "air transportation," and, in particular, why it considered CSI's arrangement with GSA to constitute "common carriage." Although the court preliminarily determined that CSI's operation under the GSA schedule arrangement involving only government entities did not appear to be "common carriage," it left open the possibility that the Department may "reasonably conclude otherwise in the future after demonstrating a more adequate understanding of the statute." (*CSI Aviation Services, Inc.*, No. 09–1307, slip op. at 14 (D.C. Cir. April 1, 2011)). We appreciate the Court's advice and take this opportunity to clarify any misunderstanding regarding the matter and to codify, through this rulemaking, the long-standing position of various courts, as followed by the Department and the Civil Aeronautics Board before it and as supported by Congressional intent, that contracting for air transportation with the Federal government, with limited exceptions not applicable to our action here, involves common carriage operations.

As early as 1925, the U.S. Supreme Court held that transportation provided to a Federal government agency amounted to common carriage. *St. Louis, B. & M. Ry. Co. v. United States*, 268 U.S. 169, at 173 (Apr. 27, 1925.) ("[i]n respect to furnishing transportation, a railroad ordinarily bears to the government the same relation that it does to a private person using its facilities."). Other Federal courts have made clear that transportation provided under contract with the government is no less common carriage than that provided private

parties. *U.S.A.C. Transport, Inc., v. United States*, 203 F.2d 878, at 879 (10th Cir. 1953), citing *United States v. Schupper Motor Lines, Inc.*, 77 F. Supp. 737 (1948). Thus, transportation provided for or on behalf of the government, as opposed to transportation provided by the government, amounts to common carriage.

The fact that transportation provided for a government entity amounts to common carriage is also seen in the longstanding policies and regulations of the Department and the CAB before it. In this regard, 14 CFR Part 212 provides non-safety related rules applicable to U.S. and foreign direct air carriers operating passenger or cargo charter flights in air transportation. "Air transportation" includes the transportation of passengers by air as a "common carrier" between places in different states or between a place in the United States and a place outside the United States. (49 U.S.C. 40102(a)(5), (a)(23), and (a)(25)) In the context of aviation, a "common carrier" is a person or other entity that, for compensation or hire, holds out or provides to the public transportation by air between two points. (*Woolsey v. NTSB*, 993 F.2d 516, 522–23 (5th Cir. 1993)) Section 212.4(b)(2) of the Department's regulations, 14 CFR 212.4(b)(2), specifically authorizes certificated and foreign air carriers to conduct single entity charters pursuant to contracts with the Department of Defense (DOD). The substantive requirements of section 212.4(b)(2) were originally established in 1966 when the CAB revised its economic regulations to set forth the terms, conditions, and limitations for the conduct of "certificated supplemental air transportation," which was defined, in essence, to mean charter trips in air transportation pursuant to a certificate of public convenience and necessity. In the final rule, the CAB defined the term "charter flight" to include "[a]ir transportation of persons and/or property pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department." 31 FR 4771, March 22, 1966. Clearly the CAB and the Department, as well as the DOD, considered contracts with that agency to amount to common carriage operations to be regulated by the Department to the extent necessary.

Support for this conclusion is also found in the Department's regulations at 14 CFR Parts 241 and 298 that require reporting of operations in air transportation and foreign air transportation by airlines. There is a

special category in Part 241 for reporting of "Nonscheduled Military Passenger/Cargo" and "Nonscheduled Military Cargo" operations by large certificated air carriers (14 CFR Part 241, Sec. 19–4) and the Department requires certificated air carriers, as well as air taxi and commuter air carriers to report, in these special categories, domestic and international military operations. (14 CFR Part 241, Sec 19–6 and 14 CFR 298.70, respectively) It is axiomatic that only flights in common carriage and therefore under the Department's jurisdiction are subject to its reporting requirements.

Support for the conclusion that contracts with the Federal government for air transportation constitute common carriage is also found in Congressional action. In this regard, the "Fly America Act" requires that U.S. government agencies shall ensure that government financed air transportation is provided by "an air carrier holding a certificate under 49 U.S.C. 41102." (49 U.S.C. 40118) The original text of the statute when it first became law in 1975 states that Federal agencies shall "procure, contract for, or otherwise obtain" air transportation provided by "air carriers holding certificates under section 401 of the [Federal Aviation Act] to the extent authorized by such certificates or by regulations or exemption of the Civil Aeronautics Board . . ." *International Air Transportation Fair Competitive Practices Act of 1974* (Pub. L. 93–624, Jan. 3, 1975). Although the text of the statute has been substantially amended since 1975, it has retained the essential requirement that government funded air transportation must be provided by a certificated "air carrier," which is a statutorily defined term—"a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation" (49 U.S.C. 40102(a)(2))—applicable only in the context of common carriage. Congress clearly envisioned that contracts with the government for air transportation are in common carriage. Had it thought otherwise, Congress could have used a broader term in the Fly America Act in place of "air carrier," such as "aircraft operated by a U.S. citizen," which would have covered both common carriage and private carriage, yet still achieve the main purpose of the Fly America Act. Congress chose not to do so, indicating that it was mindful of the difference between common carriage, requiring adherence to economic licensing requirements and the highest level of safety, and private carriage, which has no economic licensing requirements and is not required to

meet the same higher safety standards required of common carriers.

We are therefore taking this opportunity to reemphasize the Department's longstanding determination that contracts with the Federal government arranged under the GSA Schedule involving government entities are in fact in "common carriage" and subject to the Department's jurisdiction and to codify that such contracts arranged by air charter brokers also involve common carriage by including such a provision in our proposed rule on air charter brokers. In addition, in keeping with Congressional intent that government financed air transportation be provided by an air carrier holding a certificate under 49 U.S.C. 41102 or an exemption from that provision, we are proposing to require that all contracts for air transportation with government entities arranged by air charter brokers through the GSA Schedule must comply with the Fly America requirements of 49 U.S.C. 40118. Failure to comply with this requirement would be cause to revoke an air charter broker's authority on public interest grounds.

## Regulatory Analysis and Notices

### A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined not to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has not been reviewed by the Office of Management and Budget under that Executive Order. The Regulatory Evaluation finds that the benefits for the proposed rule exceed its costs. The passenger benefits from the proposed requirements are not possible to quantify. The value of this rulemaking would be the increased transparency for both the public and competitors in this market. There is also value in the timely and accurate production of information to aid in consumer decision-making, but this also cannot be quantified. The baseline or midrange estimate of costs incurred by air charter brokers and carriers over a 20-year period at a 7 percent discount rate is \$1.256 million. More detail on the estimates can be found in the preliminary Regulatory Impact Analysis associated with this proposed rule.

### B. Executive Order 13132 (Federalism)

This Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This notice does not propose any

regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. It does not propose any regulation that imposes substantial direct compliance costs on State and local governments. It does not propose any regulation that preempts state law, because States are already preempted from regulating in this area under the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

### C. Executive Order 13084

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

### D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. It requires that agencies review regulations that may have a significant economic impact on a substantial number of small entities, and if possible to fit regulatory and informational requirements to the scale of the entities subject to regulation. However, if it is determined that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Our analysis identified a total of 2,121 small direct air carriers (i.e., U.S. air carriers that provide air transportation exclusively with aircraft that seat no more than 60 passengers) that could potentially be affected by the requirements of this NPRM. In addition, we are treating all the indirect air carriers (i.e., air charter brokers including those that provide air ambulance services) as small entities. The criteria for identifying small business entities are provided by the

Small Business Administration in its publication, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*. These size standards are customarily based on an entity’s gross receipts or its employment. There is no North American Industry Classification System (NAICS) code for air charter brokers. Industries that are similar to air charter brokers are *Nonscheduled chartered passenger air transportation* (NAICS code 481211), *Travel agencies* (NAICS code 561510) and *All other travel arrangements and reservations services* (NAICS code 561599). It is important to note that firms in NAICS code 481211 provide transportation services, while air charter brokers do not. If air charter brokers were treated as analogous to these firms, all air charter brokers would be small entities.

The Department believes that the cost impact of this rulemaking on air taxis is *de minimis*, since the only requirement in this NPRM that would mandate affirmative action on their part is a disclosure requirement.

With regard to air charter brokers, there are three requirements that would apply to them. Two of these requirements involve disclosure. First, in their solicitations and advertising materials, the NPRM would require air charter brokers to disclose certain information in writing to consumers. Second, before entering into contracts for a flight or series of flights, the NPRM would require air charter brokers to disclose certain additional information. The third, the NPRM would mandate that air charter brokers make prompt refunds of monies paid for single entity charter air transportation when such refunds are due.

The Department does not consider this cost to be significant, especially since a sizeable part of the air charter broker industry already makes such disclosures as part of current business practice. As a result, the Department certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Department requests comments from affected entities on this finding and determination.

### E. Paperwork Reduction Act

This NPRM does not propose any new collections of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 49 U.S.C. § 3501 *et seq.*).

### F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

#### List of Subjects

##### 14 CFR Part 295

Air charter brokers.

##### 14 CFR Part 298

Exemptions for air taxi and commuter air carrier operations.

Issued this 11th day of September, 2013 at Washington, DC, under authority delegated in 49 CFR part 1.27.

**Kathryn B. Thomson,**

*Acting General Counsel.*

Accordingly, 14 CFR chapter II is proposed to be amended as follows:

- 1. A new Part 295 is added to read as follows:

#### PART 295—AIR CHARTER BROKERS

Sec.

##### Subpart A—General

- 295.1 Purpose.
- 295.3 Applicability.
- 295.5 Definitions.

##### Subpart B—Exemption Authority

- 295.10 Grant of economic authority; exemption from the Statute.
- 295.12 Suspension or revocation of exemption authority.
- 295.17 Contract with government entities.

##### Subpart C—Consumer Protection

- 295.20 Use of duly authorized direct air carriers.
- 295.22 Misrepresentations.
- 295.24 Disclosures.
- 295.26 Refunds.

##### Subpart D—Violations

- 295.50 Unfair and deceptive practices and unfair methods of competition.
- 295.52 Enforcement.

**Authority:** 49 U.S.C. Chapters 401, 411, 413, and 417.

##### Subpart A—General

#### § 295.1 Purpose.

This part creates a new class of indirect air carrier—air charter brokers—to provide indirect air transportation of passengers on single entity charters aboard large and small aircraft by granting exemptions to such air charter brokers from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation), and establishes rules, including consumer protection provisions, for the provision of such air transportation by air charter brokers.



**§ 295.3 Applicability.**

(a) This part applies to any person or entity acting as an air charter broker as defined in this part with respect to single entity charter air transportation that the air charter broker, as a principal in its own right, holds out, sells or undertakes to arrange aboard large and small aircraft. Except for the disclosure requirements found at 295.24, this part also applies to persons or entities authorized by Civil Aeronautics Board Order 83-1-36 to engage in air transportation as indirect air carriers in connection with air ambulance services and described in that order as air ambulance operators.

(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. This part does not apply to a person or entity acting as the *bona fide* agent of a charterer in arranging for air transportation for that charterer. This part does not authorize air charter brokers to hold out, sell, or undertake to arrange scheduled air transportation in their individual capacity or on behalf of air carriers.

**§ 295.5 Definitions.**

For the purposes of this part:

(a) *Air transportation* means interstate or foreign air transportation, as defined in 49 U.S.C. 40102(5), 40102(23), and 40102(25).

(b) *Air charter broker* means a person or entity that holds out, sells, or undertakes to arrange payload, single entity passenger charter air transportation, other than as an employee or *bona fide* agent of an air carrier or a charterer, using a direct air carrier, or using another provider of air transportation.

(c) *Charterer* means the person or entity that contracts with an air charter broker for the transportation of the passengers flown on a charter flight.

(d) *Charter air transportation* means charter flights in air transportation and foreign air transportation authorized under Part A of Subtitle VII of Title 49 of the United States Code.

(e) *Direct air carrier* means a U.S. or foreign air carrier that provides or offers to provide air transportation and that has control over the operational functions performed in providing that transportation.

(f) *Indirect air carrier* means a person or entity that, as a principal, holds out, sells, or arranges air transportation and separately contracts with direct air carriers or other providers to perform such air transportation.

(g) *Single entity charter* means a charter for the entire capacity of the

aircraft, the cost of which is borne by the charterer and not directly or indirectly by individual passengers, except in cases in which individual passengers self-aggregate to form a single entity.

(h) *Statute* means Subtitle VII of Title 49 of the United States Code (Transportation).

(i) *Large aircraft* means any aircraft originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

(j) *Small aircraft* means any 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.

**Subpart B—Exemption Authority****§ 295.10 Grant of economic authority; exemption from the statute.**

To the extent necessary to permit air charter brokers to hold out, sell, or undertake to arrange single entity charter air transportation, air charter brokers are exempted from the following provisions of Subtitle VII of Title 49 of the United States Code, except for the provisions noted below, only if and so long as they comply with the provisions and the conditions imposed by this part: Chapter 411, Chapter 413, Chapter 415, and Chapter 419. Air charter brokers are not exempt from the following provisions: Section 41310 (nondiscrimination) with respect to foreign air transportation.

**§ 295.12 Suspension or revocation of exemption authority.**

The Department reserves the power to suspend or revoke the exemption authority of any air charter broker, without a hearing, if it finds that such action is necessary in the public interest or is otherwise necessary in order to protect the traveling public.

**§ 295.17 Contracts with government entities.**

Contracts by air charter brokers with the Federal government arranged under the GSA Schedule for air transportation are in common carriage and must meet the requirements of 49 U.S.C. 40118.

**Subpart C—Consumer Protection****§ 295.20 Use of duly authorized direct air carriers.**

Air charter brokers are not authorized under this part to hold out, sell, or otherwise arrange charter air transportation to be operated by a person or entity that does not hold the requisite form of economic authority from the Department and appropriate

safety authority from the Federal Aviation Administration and/or, if applicable, a foreign safety authority. Air charter brokers are not authorized under this part to hold out air transportation to be performed by a direct air carrier that the direct air carrier would not in its own right be able to hold out.

**§ 295.22 Prohibited unfair and deceptive practices and unfair methods of competition.**

An air charter broker or foreign air charter broker shall not engage in any unfair or deceptive practice or unfair method of competition.

**§ 295.24 Disclosures.**

(a) All solicitation materials and advertisements, including Internet Web pages, published or caused to be published by air charter brokers shall clearly and conspicuously state that the air charter broker is an air charter broker, and that it is not a direct air carrier in operational control of aircraft, and that the air service advertised will be provided by a properly licensed direct air carrier.

(b) Before entering into a contract for a specific flight or series of flights, air charter brokers must disclose the following information in writing to the charterer, which may be accomplished through electronic transmissions. If the transaction occurs orally, the following information must be disclosed orally, and again in any written correspondence, including correspondence confirming the purchased air transportation.

(1) The corporate name of the direct air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that direct air carrier holds itself out to the public.

(2) The capacity in which the air charter broker is acting in contracting for the air transportation, i.e., as an indirect air carrier, as an agent of the charterer, or as an agent of the direct air carrier that will be in operational control of the flight.

(3) The existence of any corporate or business relationship between the air charter broker and the direct air carrier that will be used for the air transportation.

(4) The make and model of the aircraft to be used for the transportation (e.g., Learjet 60 XR).

(5) The total cost of the air transportation paid to the air charter broker, including any air charter broker or carrier-imposed fees, or government-imposed taxes and fees.

(6) The existence of any fees and their amounts, if known, including fuel,

landing fees, and aircraft parking or hangar fees, charged by third parties for which the charterer will be responsible for paying directly.

(7) The existence or absence of liability insurance held by the air charter broker covering the charterer and passengers and property on the charter flight, and the monetary limits of any such insurance.

(c) If the information required to be disclosed in paragraph (b) of this section is not known at the time the contract is entered into, air charter brokers must provide the information in paragraph (b) of this section to the charterer within a reasonable time after such information becomes available.

(d) If the information in paragraph (b) of this section is not provided to the charterer within a reasonable time after becoming available, air charter brokers must provide the charterer with the opportunity to cancel the contract for air transportation, including any services in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services.

(e) In all circumstances, air charter brokers must disclose the information in paragraph (b) of this section to the charterer prior to the start of the air transportation.

(f) If the information in paragraph (b) of this section changes after the air transportation covered by the contract has begun, air charter brokers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available.

(g) If the changes in information described in paragraph (f) of this section are not provided to the charterer within a reasonable time after becoming available, air charter brokers must provide the charterer with the opportunity to cancel the remaining portion of the contract for air transportation, including any services paid in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services not yet provided.

#### **§ 295.26 Refunds.**

Air charter brokers must make prompt refunds of all monies paid for charter air transportation when such transportation cannot be performed or when such refunds are otherwise due, as required by 14 CFR 374.3 and 12 CFR Part 226 for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases.

### **Subpart D—Violations**

#### **§ 295.50 Unfair and deceptive practices and unfair methods of competition.**

(a) Violations of this Part shall be considered to constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. 41712.

(b) In addition to paragraph (a) of this section, the following enumerated practices, among others, by an air charter broker or foreign air charter broker are unfair or deceptive practices or unfair methods of competition in violation of 49 U.S.C. 41712:

(1) Misrepresentations that may induce members of the public to reasonably believe that the air charter broker or foreign air charter broker is a direct air carrier.

(2) Using or displaying or permitting or suffering to be used or displayed the name, trade name, slogan or any abbreviation thereof, of the air charter broker, in advertisements, on or in places of business, or on or in aircraft or any other place in connection with the name of an air carrier or with services in connection with air transportation, in such manner that it may mislead or confuse the traveling public with respect to the status of the air charter broker.

(3) Misrepresentations as to the quality or kind of service, type or size of aircraft, time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(4) Misrepresentations as to qualifications of pilots or safety record or certification of pilots, aircraft or air carriers.

(5) Misrepresentations that passengers are directly insured when they are not so insured. For example, where the only insurance in force is that protecting the air carrier in event of liability.

(6) Misrepresentations as to fares, charges, or special priorities for air transportation or services in connection therewith.

(7) Misrepresentations as to membership or involvement with a particular organization that audits air charter brokers or direct air carriers, or that the air charter broker or any direct air carriers to be used for a particular flight meets a particular standard set by an auditing organization.

(8) Representing that a contract for a specified direct air carrier, aircraft, space, flight, or time, has been arranged, without a binding commitment with a direct air carrier for the furnishing of such definite reservation or charter as represented.

(9) Selling or contracting for air transportation while knowing or having reason to know or believe that such air transportation cannot be legally performed by the entity that is to operate for the air transportation.

(10) Misrepresentations as to the requirements that must be met by charterers in order to qualify for charter flights.

#### **§ 295.52 Enforcement.**

In case of any violation of any of the provisions of the Statute, or of this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding under section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance. The violator may also be subject to civil penalties under the provisions of section 46301 of the Statute, or other lawful sanctions, including revocation of the exemption authority granted in this part. In the case of a willful violation, the violator may be subject to criminal penalties under the provisions of section 46316 of the Statute.

### **PART 298—[AMENDED]**

■ 2. The authority citation for 14 CFR Part 298 continues to read as follows:

**Authority:** 49 U.S.C. 41102, 41708, and 41709.

■ 3. A new § 298.90 is added to read as follows:

#### **§ 298.90 Disclosures.**

(a) Air taxi operators or commuter air carriers are prohibited from contracting with charterers for charter flights that will be operated by another direct air carrier without first clearly and conspicuously disclosing in writing to the charterer that the flight will be operated by another direct air carrier and providing the following disclosures to the charterer:

(1) The corporate name of the direct air carrier in operational control of the aircraft on which the air transportation is to be performed, and any other names in which that direct air carrier holds itself out to the public.

(2) The capacity in which the air taxi operator or commuter air carrier is acting in contracting for the air transportation, i.e., as a principal, as an agent of the charterer, or as an agent of the direct air carrier that will be in operational control of the flight.

(3) The existence of any corporate or business relationship between the air taxi operator or commuter air carrier

and the direct air carrier that will be in operational control of the charter flight.

(4) The make and model of the aircraft to be used for the transportation (e.g., Learjet 60 XR).

(5) The total cost of the air transportation, including any carrier-imposed fees or government-imposed taxes and fees.

(6) The existence of any fees and their amounts, if known, including fuel, landing fees, and aircraft parking or hangar fees charged by third-parties for which the charterer will be responsible for paying directly.

(b) If the information required to be disclosed in paragraph (a) of this section is not known at the time the contract is entered into, air taxi operators or commuter air carriers must provide in writing the information in paragraph (a) of this section to the charterer within a reasonable time after such information becomes available.

(c) If the information in paragraph (a) of this section is not provided to the charterer within a reasonable time after becoming available, air taxi operators or commuter air carriers must provide the charterer with the opportunity to cancel the contract for air transportation, including any services in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services.

(d) In all circumstances, air taxi operators or commuter air carriers must disclose the information in paragraph (a) of this section to the charterer prior to the start of the air transportation.

(e) If the information required to be disclosed in paragraph (a) of this section changes after the air transportation covered by the contract has begun, air taxi operators or commuter air carriers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available.

(f) If the changes in information described in paragraph (e) of this section are not provided to the charterer within a reasonable time after becoming available, air taxi operators or commuter air carriers must provide the charterer with the opportunity to cancel the remaining portion of the contract for air transportation, including any services paid for in connection with such contract, and receive a full refund of any monies paid the charter air transportation and services not yet provided.

■ 4. A new § 298.100 is added to read as follows:

**§ 298.100 Prohibited unfair and deceptive practices and unfair methods of competition.**

An air taxi or commuter air carrier subject to this part shall not engage in any unfair or deceptive practices or unfair method of competition in holding out, selling, or operating charter flights. The following enumerated practices, among others, by an air taxi or commuter air carrier are unfair or deceptive practices or unfair methods of competition:

(a) Misrepresentations that may induce members of the public to reasonably believe that the air taxi or commuter air carrier will be, or is, in operational control of a flight when that is not the case.

(b) Misrepresentations as to the quality or kind of service, type or size of aircraft, and points served.

(c) Misrepresentations as to the quality or kind of service, type or size of aircraft, time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(d) Misrepresentations that passengers are directly insured when they are not so insured. For example, where the only insurance in force is that protecting the air taxi or commuter air carrier in the event of liability.

(e) Misrepresentations as to fares, charges, or special priorities for air transportation or services in connection therewith.

(f) Representing that a contract for specified direct air carrier, aircraft, space, flight, or time, has been arranged, without a binding commitment with a direct air carrier for the furnishing of such definite reservation or charter as represented.

(g) Selling or contracting for air transportation while knowing or having reason to know or believe that such air transportation cannot be legally performed by the entity that is to operate the air transportation.

[FR Doc. 2013-23142 Filed 9-27-13; 8:45 am]

BILLING CODE 4910-9X-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 201, 203, 1005, and 1007**

[Docket No. FR 5707-P-01]

RIN 2502-AJ18

**Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages**

AGENCY: Office of Secretary, HUD.

ACTION: Proposed rule.

**SUMMARY:** The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created new section 129C in the Truth-in-Lending Act (TILA), which establishes minimum standards for considering a consumer's repayment ability for creditors originating certain closed-end, dwelling-secured mortgages, and generally prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good-faith determination of a consumer's ability to repay the loan according to its terms. Section 129C provides lenders more certainty about meeting the ability-to-repay requirements when lenders make "qualified mortgages," which are presumed to meet the requirements. Section 129C authorizes the agency with responsibility for compliance with TILA, which was initially the Federal Reserve Board and is now the Consumer Financial Protection Bureau (CFPB), to issue a rule implementing these requirements. The CFPB has issued its rule implementing these requirements, referred to throughout this proposed rule as the CFPB final rule.

The Dodd-Frank Act also charges HUD and three other Federal agencies with prescribing regulations defining the types of loans that these Federal agencies insure, guarantee, or administer, as applicable, that are qualified mortgages. Through this proposed rule, HUD submits for public comment its definition of "qualified mortgage" for the types of loans that HUD insures, guarantees, or administers that aligns with the statutory ability-to-repay criteria of TILA and the regulatory criteria of the CFPB's definition, without departing from HUD's statutory missions. In this rulemaking, HUD proposes that any forward single family mortgage insured or guaranteed by HUD shall meet the criteria of a qualified mortgage, as defined in this rule, and HUD seeks comment on all components of its definition.

**DATES:** *Comment Due Date:* October 30, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to