



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

Issued by the Department of Transportation
On the 27th day of January, 2009

Pascan Aviation, Inc.

Served January 27, 2009

**Violations of 49 U.S.C. §§ 41301 and 41712
and 14 CFR Part 294**

DOT-OST-2009-0001

CONSENT ORDER

This order concerns unauthorized air transportation by Pascan Aviation, Inc., (Pascan) between Canada and the United States in violation of 14 CFR Part 294 and 49 U.S.C. §§ 41301 and 41712. It directs Pascan to cease and desist from further violations of the Department's rule and these statutory provisions and assesses a compromise civil penalty of \$20,000 (US).

Pascan is a foreign air carrier within the meaning of 49 U.S.C. § 40102(a)(21). Pascan operates scheduled flights within the province of Quebec, Canada, and provides passenger and cargo charter air service primarily in Quebec and the Canadian Arctic. In addition, over a period of time, Pascan operated a number of flights to and from the United States. On March 10, 2000, Pascan received economic authority from the Department to engage in transborder charter air transportation with small aircraft pursuant to 14 CFR Part 294.¹ In order for such authority to become effective, 14 CFR 294.33 requires that Canadian charter air taxi operators obtain safety authority from the Federal Aviation Administration (FAA) in the form of operations specifications issued under 14 CFR Part 129. However, Pascan never obtained operations specifications from the FAA and, therefore, never had effective economic authority from the Department, in contravention of section 294.33 and 49 U.S.C. § 41301, which requires that foreign air carriers obtain a permit from the Department, or a valid

¹ Part 294 provides an exemption for "Canadian charter air taxis" from the permit requirements of 49 U.S.C. § 41301, provided that such carriers register with the Department and have the requisite level of liability insurance. The exemption authority conferred under Part 294 is available only to carriers that operate "small" aircraft, which is defined in section 298.2(i) as "any aircraft designed to have a maximum passenger capacity of not more than 30 seats"

exemption from the permit requirement, such as that available to Canadian charter air taxis under Part 294, prior to commencing service to the United States. Violations of section 41301 also constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Pascan states that it hired a consulting firm to prepare and file the necessary documentation to obtain authority to operate in the United States. According to Pascan, the consulting firm assured Pascan that it was authorized to fly into the United States; however, while the firm successfully obtained economic authority from the Department, it failed, unbeknownst to Pascan, to properly obtain Part 129 operations specifications from the FAA. Pascan claims that it did not discover that it was not authorized to fly into the United States until notified by the Office of Aviation Enforcement and Proceedings (Enforcement Office). According to Pascan, it ceased operations into the United States immediately after discovering that it had been flying into the United States without proper authority from the Department and the FAA. At all times relevant to this matter, Pascan points out that it has cooperated with the Department. Pascan states that it is working with the FAA to obtain the appropriate safety authority from that agency.

The Enforcement Office has carefully considered all of the information provided by Pascan Aviation, Inc., but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Pascan Aviation, Inc., have reached a settlement of this matter. Without admitting or denying the violations described above, Pascan Aviation, Inc., agrees to the issuance of this order to cease and desist from future violations of 14 CFR Part 294 and 49 U.S.C. §§ 41301 and 41712 and to the assessment of \$20,000 (US) in compromise of potential civil penalties otherwise assessable. The Enforcement Office believes this compromise is appropriate in view of the nature and extent of the violations in question, serves the public interest, and creates an incentive for all foreign air carriers to comply fully with the requirements of 14 CFR Part 294 and 49 U.S.C. §§ 41301 and 41712.

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 Pascan Aviation, Inc., violated 14 CFR Part 294 and 49 U.S.C. § 41301 by holding out and operating air service between Canada and the United States without effective economic authority from the Department.
3. We find that, by engaging in the conduct and violations described in paragraph 2 of this order, Pascan Aviation, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order Pascan Aviation, Inc., and all other entities owned and controlled by, or under common ownership and control with Pascan Aviation, Inc., and their successors and assignees, to cease and desist from future violations of 14 CFR Part 294 and 49 U.S.C. §§ 41301 and 41712.

5. We assess Pascan Aviation, Inc., a compromise civil penalty of \$20,000 (US) in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this total penalty amount, \$10,000 shall be due and payable within 20 days of the issuance of this order. The remaining \$10,000 will become due and payable if Pascan Aviation, Inc. violates this order's cease and desist provisions within one year following the date of issuance of this order, or fails to comply with the payment provisions of this order, in which case the entire unpaid portion of the \$20,000 shall become due and payable immediately, and Pascan Aviation, Inc. shall be subject to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible additional enforcement action for failure to comply with this order.

6. Payment shall be made by wire transfer through the Federal Reserve Communications 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 unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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