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

Issued by the Department of Transportation
on the 13th day of September, 2001

Salmon Air

Served September 13, 2001

Violation of 49 U.S.C. § 41101 and
14 CFR Part 298

CONSENT ORDER

This order concerns violations by Salmon Air of 14 CFR Part 298 and 49 U.S.C. § 41101. This consent order directs Salmon Air to cease and desist from further violations of those requirements and to pay a compromise civil penalty.

Pursuant to 49 U.S.C. § 41101, an airline must hold certificate authority from the Department in order to sell or otherwise engage in air transportation. From the standpoint of the requirements of 49 U.S.C. § 41101, the advertising or holding out of service, as well as the actual operation of air service, constitutes "engaging" in air transportation.

During the time in question, Salmon Air was properly registered with the Department and authorized to operate as an air taxi under 14 CFR Part 298. However, Salmon Air has been holding out daily service between Salmon, Idaho, and Salt Lake City, Utah, on its website.

Part 298 of the Department's regulations (14 CFR Part 298) provides an exemption from the licensing requirements of 49 U.S.C. § 41101 and permits an air carrier to operate as an air taxi with aircraft with less than 60 seats or a maximum payload of less than 18,000 pounds by complying with the requirements of that part and the insurance requirements of 14 CFR Part 205. However, an air taxi operator that carries passengers on at least five round trips per week on at least one route between two or more points according to its flight schedules that specify the times, days of the week, and places between which those flights are performed is defined as a commuter carrier under 49 U.S.C. § 41738 and 14 CFR § 298.21(d) and must be found "fit, willing and able" to provide such service. Advertising or otherwise holding out air transportation services to the public as a commuter, as Salmon Air has done, without complying with these requirements is a violation of Part 298 and 49 U.S.C. § 41101.¹

¹ On October 4, 2000, Salmon Air filed an application for authority to operate as a commuter carrier. A final order granting Salmon Air authority to operate as a commuter carrier was issued on July 6, 2001. See Order 2001-7-2.

In mitigation, Salmon Air states that its five-day-per-week scheduled service is scheduled cargo service on which it has only one vacant passenger seat. Salmon Air states that it makes that seat available to revenue passengers and, on average, carries one passenger per week. Salmon Air points out that it operates this service to accommodate the schedule of its cargo customer which, at times, results in delays in its passenger transportation and that its operations were in accord with the requirements of the Federal Aviation Administration. Salmon Air asserts that it did not consider the service to be scheduled passenger service subject to the commuter fitness requirements and, accordingly, had no intent to provide the service without appropriate economic authority.

We view seriously the holding out of and engaging in air service by an air carrier without proper authority. After carefully considering all the facts in this case, including those set forth above by Salmon Air, the Office of Aviation Enforcement and Proceedings (Enforcement Office) believes that enforcement action is warranted. In order to avoid litigation, Salmon Air has agreed to a settlement of this matter with the Enforcement Office. Salmon Air consents to the issuance of this order to cease and desist from future violations of 14 CFR Part 298 and 49 U.S.C. § 41101 and to the assessment of \$5,000 in compromise of potential civil penalties otherwise assessable under 49 U.S.C. § 46301. Of this total penalty amount, \$2,500 shall be due and payable within 15 days of issuance of this order. The remaining \$2,500 shall be suspended for one year following issuance of this order, and then forgiven, unless Salmon Air violates this order's cease and desist provision within the one-year period or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Salmon Air may be subject to further enforcement action. This order and the penalty it assesses serves the public interest and represents an incentive for all carriers to comply with the applicable fitness requirements.

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 Salmon Air violated 14 CFR Part 298 and 49 U.S.C. § 41101 by holding out daily passenger service between Salmon, Idaho, and Salt Lake City, Utah;
3. Salmon Air is assessed a civil penalty of \$5,000 in compromise of the civil penalties that might otherwise be assessed for the violation found in Paragraph 2 above. Of the penalty amount, \$2,500 shall be due and payable within 15 days of the issuance of this order. The remaining \$2,500 shall be suspended for one year following the issuance of this order, and then forgiven, unless Salmon Air violates this order's cease and desist provision within that one-year period, or fails to comply with this order's payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Salmon Air may be subject to further enforcement action;

4. Payment of the civil penalties described in Paragraph 3 of this order 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. The wire transfer shall be executed in accordance with the attached instructions; and

5. Failure to pay the penalty as ordered will subject Salmon Air to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

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

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