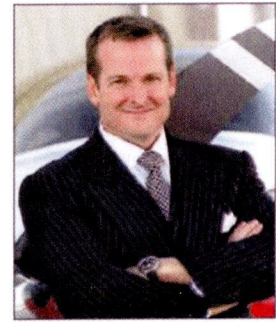


# Charter Broker Disclosure Requirements

New federal law may cause fundamental changes to the FAR Part 135 business.



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**CONGRESS RECENTLY PASSED THE "AIRLINE SAFETY AND FEDERAL Aviation Administration Extension Act of 2010."** While the industry has grown accustomed to an endless series of extensions of the FAA funding mechanism, this particular version is different because it came with an extra 50 pages titled, "Airline Safety and Pilot Training Improvement."

The federal legislators clearly passed the new bill so that they could "do something" about the February 2009 crash of Colgan Air Flight 3407 in Buffalo, N.Y., which was operating for Continental Airlines Inc. According to many observers, the families of those who perished on that flight were instrumental in moving the legislative process forward.

Industry observers have focused on the new requirements for airline pilots to hold an air transport pilot certificate and for the creation of a new Pilot Records Database. The new law also calls for study of a number of safety issues.

However, in at least one section of the bill, Congress mandated change without any study or involvement by the DOT or FAA. The bill requires "Disclosure of Air Carriers Operating Flights for Tickets Sold for Air Transportation."

Given the fact that the new law stems from the crash of a "regional airline" operating for a "major airline," it isn't surprising that Congress would beef up disclosure requirements so that a traveler knows the true identity of the carrier before buying a ticket.

However, the law may impact air charter customers more than the airline customers it was created to protect.

Under the new law, it shall be an "unfair or deceptive practice" for anyone selling air transportation on a commercial carrier to fail to disclose the name of that carrier prior to the purchase.



Colgan Air crash in Buffalo, N.Y., February 2009

"Air carrier" in this context includes those operating under either FAR Part 121 or Part 135. This new law amends an existing unfair and deceptive practices law that the DOT has actively enforced in both the airline and air charter worlds. For example, in 2006, the DOT issued a \$150,000 civil penalty by Consent Order against Platinum Jet Management, which was the operator of the Bombardier Challenger that overran the runway at Teterboro Airport on Feb. 2, 2005. Although Platinum Jet took the position that it provided nothing more than aircraft management services, the DOT found that the company was acting as an unauthorized air carrier. In 2009, the DOT assessed a \$600,000 civil penalty by Consent Order against an Internet ticket agent for failure to properly state full fares in its Internet advertising.

Up until now, DOT enforcement of the prohibition against deceptive trade practices in charter broker advertising has focused on whether the broker has improperly portrayed itself as an air carrier. For example, in a Consent Order against Jet One Jets, the DOT noted that the company's web page titled "Aircraft" included a statement that "[w]e offer a range of aircraft, from heavy jets . . . to helicopters. In addition, each web page contained a footer stating, in relevant part, that Jet One Jets was a "full service private aviation provider," whose services include "private jet operations," and the company's "Services" web page referred to "our private jets" and stated that "[w]e operate in countries around the world." The DOT found that Jet One Jets created the misimpression that it operated aircraft and by doing so, it engaged unlawfully in air transportation.

The new disclosure law contains specific requirements for "Internet offers." It states the name of the air carrier must be "provided on the first display of the website following a search of a requested itinerary in a format that is easily visible to a viewer." Many airline Internet sites already disclosed if a regional airline would be providing one or more legs of a trip before passage of the new law.

However, most air charter brokers do not indicate which air carrier will conduct the trip prior to collecting a customer's money. In some instances, the broker doesn't even know what air carrier will fly a particular trip before the customer pays. In other instances, the broker does know which carrier will be used but withholds that information to prevent the customer from dealing directly with the charter company. The new law could change all that.

The new disclosure requirement raises many questions that will ultimately be answered by the DOT. Hopefully, the department will first provide answers through a policy statement, rather than through civil penalties. **BCA**