Effective on February 14, 2019 the long-awaited new charter broker rules go into effect. The rules amend 14 CFR Part 295. The rules apply to Air Charter Brokers who are defined as indirect air carriers, foreign indirect carriers or bona fide agents that sell and/or arrange charter transportation using a direct air carrier. A bona fide agent (included in the definition of Air Charter Broker) means an agent (i) of a single entity charterer who needs a charter flight or (ii) of a direct air carrier seeking to provide single entity charter transportation. The new rules clarify that Air Charter Brokers may only arrange or sell, as applicable, charter flights (i) from an operator that has both Department of Transportation economic authority and FAA safety authority, (ii) that are within the operator’s scope of authority, and (iii) from an operator that is a citizen of the United States as defined under 49 U.S.C. 40102(a)(15) if the flight is interstate or intrastate.

The new rules have new disclosure requirements which add transparency into the transactions involving Air Charter Brokers. Some of the disclosures are required and others must be disclosed if the charter customer (Charterer) requests the information. It is important for Air Charter Brokers to understand what must be disclosed and include it automatically starting on February 14, 2019 and it is also important that Charterers know what other information they are entitled to be told if they request the information.

**AIR CHARTER BROKERS MUST DISCLOSE:**

1. The name of the direct air carrier who will be in operational control of the aircraft and any other names that direct air carrier uses when holding itself out to the public.
2. The capacity in which the Air Charter Broker is acting (who are they representing, what is their role).
3. The existence or absence of liability insurance carried by the Air Charter Broker and the monetary limits, if such coverage exists.

**AIR CHARTER BROKERS MUST DISCLOSE UPON REQUEST FROM CHARTERER:**

1. If acting as the agent for the Charterer, then Air Charter Brokers must disclose any business relationships between the Air Charter Broker and the direct air carrier that may have any bearing on the Air Charter Brokers’ selection of the specific direct air carrier for the flight.
2. Total cost of the charter flight to be paid by Charterer which may, but are not required to be itemized.
3. Existence of any fees and amounts collected by third parties which Charterer will be responsible for (i.e. fuel charges, landing fees, hangar fees, etc.)

If the information that must be disclosed is not known at the time the flight arrangements are made, then details must be provided within a reasonable time, which will depend on the specific circumstances, so the Charterer has enough time to decide whether to accept or decline the change/new information. If the information is not given in a reasonable time, the Charterer has a right to cancel the flight with a full refund. For example, if the Air Charter Broker books a flight on behalf of a Charterer but after the booking the direct air carrier changes due to scheduling issues, the Air Charter Broker must disclose the direct air carrier change to the Charterer within a reasonable amount of time, then the Charterer decides whether to accept the replacement direct air carrier. If the disclosure is not made within a reasonable amount of time, then the Charterer is entitled to cancel the flight and obtain a full refund.

What is “a reasonable amount of time” will be determined on a case by case basis depending on the specific facts of the flight.

In addition to the new disclosure requirements, the new rules have advertising rules and a list of 11 enumerated unfair or deceptive practices that must be avoided by Air Charter Brokers. The enumerated unfair or deceptive practices include that an Air Charter Broker may not represent that a contract for a flight exists with a direct air carrier if no binding commitment from the direct air carrier has been obtained. Further, an Air Charter Broker cannot sell or contract for a flight they know cannot be legally performed. Additionally, an Air Charter Broker may not mislead Charterers into believing the Air Charter Broker is a direct air carrier. Violators of the new enumerated unfair or deceptive practices are subject to significant civil penalties and in the case of willful violations, criminal penalties.

The new rules are intended to provide consumer protections and provide transparency to transactions involving Air Charter Brokers. They have been in development since the NTSB made a safety recommendation to the FAA in 2006. After 13 years, the new rules provide some new protections but did not go as far as some people hoped, which would have included the creation of a registry of Air Charter Brokers. Time will tell if the new rules provide the intended consumer protections and transparency.