

PART 297 – FOREIGN AIR FREIGHT FORWARDERS AND FOREIGN COOPERATIVE SHIPPERS ASSOCIATIONS

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AUTHORITY: 49 U.S.C. Chapters 401, 417.

SOURCE: ER-1159, 44 FR 69635, Dec. 4, 1979,
unless otherwise noted.

Subpart A—General

§ 297.1 Purpose.

This part establishes registration procedures and operating rules for foreign air carriers that engage indirectly in interstate or foreign air transportation of property. It relieves these carriers from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation), and establishes simplified reports for them.

[ER-1294 49 FR 19684, May 7, 1982, as amended at 60 FR 43527, Aug. 22, 1995]

§ 297.2 Applicability.

This part applies to interstate air transportation of property and to foreign air transportation of property and to foreign air transportation of property outbound from the United States by foreign indirect air carriers. It also applies to applications for registration as a foreign indirect air carrier of property.

§297.3 Definitions.

For purpose of this part:

(a) *Foreign air freight forwarder* means a foreign indirect air carrier that is responsible for the transportation of property from the point of receipt to point of destination, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, of another foreign indirect cargo air carrier as defined in part 296 of this chapter.

(b) *Foreign cooperative shippers association* means a bona fide association of shippers operating as a foreign indirect air carrier on a nonprofit basis that undertakes to ship property by air for the account of such association or its members, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, of a foreign indirect cargo air carrier as defined in part 296 of this chapter.

(c) *Direct air carrier* means an air carrier or foreign air carrier directly engaged in the operation of aircraft under a certificate, regulation, order, or permit issued by the Department of Transportation of the Civil Aeronautics Board.

(d) *Foreign indirect air carrier* means any person, not a citizen of the United States, who undertakes indirectly to engage in the air transportation of property.

[ER-1159, 49 FR 69635, Dec. 4, 1979, as amended by ER-1294, 47 FR 19684, May 7, 1992; Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

§297.4 Joint loading.

Nothing in this part shall preclude joint loading, meaning the pooling of shipments and their delivery to a direct air carrier for transportation as one shipment, under an agreement between two or more indirect air carriers or foreign indirect air carriers.

§297.5 Foreign air freight forwarder as agent.

A foreign air freight forwarder may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A foreign air freight forwarder shall not act as the agent of any direct air carrier with respect to shipments accepted for forwarding.

§297.6 Foreign cooperative shippers associated as agent.

A foreign cooperative shippers association may act as agent of a shipper, or a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A cooperative shippers association shall not act as an agent of any direct air carrier with respect to shipments accepted in its capacity as an indirect air carrier.

[ER-1235, 46 FR 38496, July 28, 1981]

**Subpart B—Exemption for Foreign
Indirect Air Transportation of
Property**

§297.10 Exemption from the Statute.

(a) Foreign indirect air carriers with an effective registration under this part are exempted from the following provisions of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to arrange their air freight shipments:

- (1) Section 41302 (Permits);
 - (2) Section 41504 and 41510(a) (Tariffs);
 - (3) Section 41510(b) (Solicitation of rebates) to the extent necessary to permit them to solicit, accept, or receive fees from direct air carriers;
 - (4) Section 41501 (Carrier's duty to establish just and reasonable rates, etc.);
- and

(5) If awarded interstate air transportation operating rights, any other provision of the Statute that would otherwise prohibit them from engaging in the interstate indirect air transportation of property.

(6) Section 41310 (nondiscrimination) with respect to interstate and overseas air transportation.

(b) Direct air carriers are exempted from Chapter 415 of the Statute to the extent necessary to permit them to pay, directly or indirectly, fees to foreign air freight forwarders and foreign cooperative shippers associations on consolidated shipments.

[ER-1336, 48 FR 22705, May 20, 1983, as amended by ER-1382, 49 FR 25226, June 20, 1984; Docket No. 47939, 57 FR 40103, Sept. 2, 1992, 60 FR 43527, Aug. 22, 1995]

§297.11 Disclaimer of jurisdiction.

The Department declines to exercise its jurisdiction over foreign indirect air carriers of property with respect to shipments that originate in a foreign country. The Department reserves the right to exercise its jurisdiction over any foreign indirect air carrier of property at any time it finds that such action is in the public interest.

§297.12 General requirements.

(a) The direct air transportation provided must be performed by direct air carriers that hold authority under section 41102, 41103, 41302, or 41701 of the Statute or are operating under part 298 of this chapter;

(b) Only U.S. citizen direct air carriers may provide direct air transportation operations in interstate air transportation.

(c) Foreign indirect air carriers that hold authority to engage in foreign air transportation must apply additionally for permission to consolidate foreign in interstate air transportation.

[ER -1294, 47 FR 19684, May 7, 1982, as amended at 60 FR 43527, Aug. 22, 1995]

**Subpart C—Registration for Foreign
Air Freight Forwarders
And Foreign Cooperative
Shippers Associations**

§297.20 Filing for registration.

(a) Not later than 60 days before the start of operations as a foreign indirect air carrier, every foreign air freight forwarder and foreign cooperative shippers association shall apply for registration with the Department, unless upon a showing of good cause, the Director, Office of Aviation Analysis, allows application at a later time.

(b) Application shall consist of filing with the Department's Office of Aviation Analysis, Special Authorities Division, two copies of completed OST Form 4506, which may be obtained from the Department of Transportation, Special Authorities Division.

[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended by ER-1265, 49 FR 56602, Nov. 18, 19981; Docket No. 47939, 57 FR 40103, Sept. 2, 1992, 60 FR 43527, Aug. 22, 1995]

§297.21 Objections to registration application.

Persons objecting to registration by a foreign air freight forwarder or foreign cooperative shippers association shall file their objections with the Office of Aviation Analysis, Special Authorities Division, within 28 days of the filing date of the registration forms. The Department will list the names and nationality of all persons applying for registration in its Weekly Summary of Filings.

[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992, 60 FR 43527, Aug. 22, 1995]

§297.22 Procedure on receipt of registration application.

After review of a registration form filed under §297.20, the Department will take one or more of the following actions:

(a) Indicate by stamp on OST Form 4506 the effective date of registration, and return to the carrier the duplicate copy of OST Form 4506 as evidence of registration with the Department under this part;

(b) Reject an application for registration for failure to comply with this part, for reasons relating to the failure of effective reciprocity, or if the Department finds that it is in the public interest to do so.

(c) Request additional information from the applicant;

(d) Issue an order subjecting a carrier's exercise of authority under this part to such terms, conditions, or limitations as may be required by the public interest, or

(e) Institute a proceeding under section 41302 of the Statute.

[E.R.-1159, 44 FR 69635, Dec. 4, 1979, as amended by ER-1294, 47 FR 19685, May 7, 1982; Docket No. 47939, 57 FR 410103, Sept. 2, 1992; 60 FR 43527, Aug. 22, 1995]

§297.23 Waiver of sovereign immunity.

By accepting an approval registration form under this part, a carrier waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the carrier in any court or any tribunal in the United States based upon any claim arising out of operations by the carrier under this part.

§297.24 Notification to the Department of change of operations.

(a) No later than 30 days before any change in its name or address or any temporary or permanent cessation of operations, each foreign indirect air carrier shall notify the Department's Office of Aviation Analysis, Special Authorities Division, of the change by resubmitting OST Form 4506.

(b) The registrant shall apply for an amendment of its registration not later than 30 days after any person listed on its existing registration as owning or holding beneficial ownership of 10 percent or more of the registrant's stock no longer has an interest of 10 percent or more, or after any person not so listed becomes an owner or holder of 10 percent or more. Application for amendment shall be made by resubmitting OST Form 4506, but the existing registration shall remain valid pending Department action on the amendment.

[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended by Docket No. 47939, 57 FR 40103, September 2, 1992; 60 FR 43527, Aug. 22, 1995]

§297.25 Cancellation or conditions of registration.

The registration of a foreign indirect air carrier may be canceled or subjected to additional terms, conditions or limitations if:

(a) It files with the Department a written notice that it is discontinuing foreign indirect air carrier activities;

(b) It fails to perform air transportation services as authorized;

(c) It fails to file the report required by this part;

(d) A substantial ownership or control interest is acquired by persons who are not citizens of the country or citizenship of the registrant;

(e) There is a failure of effective reciprocity; or

(f) The Department finds it is in the public interest to do so.

[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended by ER-1294, 47 FR 1985, May 7, 1982]

Subpart D—General Rules for Foreign Indirect Air Carriers

§297.30 Public disclosure of cargo liability insurance.

Every foreign air freight forwarder shall give notice in writing to the shipper, when any shipment is accepted, or the limits of its cargo liability insurance, or of the absence of such insurance, and the limits of its liability, if any. The notice shall be included clearly and conspicuously on all of its rate sheets and airwaybills, and on any other documentation that is given to a shipper at the time of acceptance of the shipment.

§297.31 Preparation of airwaybills and manifests.

(a) Each registered foreign indirect air carrier shall prepare an accurate airwaybill describing completely all services rendered to or on behalf of the shipper, including the conditions under which the contract will be completed, in its capacity as a foreign indirect air carrier. A copy of the airwaybill shall be given to the consignor and to the consignee.

(b) Each registered foreign indirect air carrier shall prepare an accurate manifest showing every individual shipment included in each shipment consigned for transportation to a direct air carrier.

(c) A waiver of paragraph (a) of this section may be granted by the Department upon a written application by the foreign indirect air carrier not less than 30 days before the shipment to which it relates is transported, if the waiver is in the public interest, and is warranted by special or unusual circumstances.

Subpart E [Reserved]

Subpart F—Violations

§297.50 Enforcement

In case of any violation of any of the provisions of the Statute, or 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 to compliance; or to civil penalties under the provisions of section 46301 of the Statute; or in the case of willful violation, to criminal penalties under the provisions of section 46316 of the Statute; or other lawful sanctions including cancellation of registration.

[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended at 60 FR 43527, Aug. 22, 1995]