

PART 295—AIR CHARTER BROKERS**Subpart A—General**

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AUTHORITY: 49 U.S.C. Chapters 401, 411, 413, and 417.

SOURCE: Docket No. DOT–OST–2007–27057, 83 FR 46874, Sept. 17, 2018, unless otherwise noted.

Subpart A—General**§ 295.1 Purpose.**

Air charter brokers, defined as an indirect air carrier, foreign indirect air carrier or a bona fide agent, provide indirect air transportation of passengers on single entity charters aboard large and small aircraft. This part grants exemptions to such air charter brokers from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation), and establishes rules, including consumer protection provisions, for the provision of such air transportation by air charter brokers.

§ 295.3 Applicability.

This part applies to any person or entity acting as an air charter broker as defined in this part with respect to single entity charter air transportation that the air charter broker, as an indirect air carrier, foreign indirect air

carrier, or a *bona fide agent*, holds out, sells or undertakes to arrange aboard large and small aircraft.

§ 295.5 Definitions.

For the purposes of this part:

(a) *Air transportation* means interstate or foreign air transportation, as defined in 49 U.S.C. 40102(a)(5), 40102(a)(23), and 40102(a)(25).

(b) *Air charter broker* means a person or entity that, as an indirect air carrier, foreign indirect air carrier, or a *bona fide agent*, holds out, sells, or arranges single entity charter air transportation using a direct air carrier.

(c) *Bona fide agent* means a person or entity that acts as an agent on behalf of a single entity charterer seeking air transportation or a direct air carrier seeking to provide single entity charter air transportation, when such charterer or direct air carrier, as principal, has appointed or authorized such agent to act on the principal's behalf.

(d) *Charterer* means the person or entity that contracts with an air charter broker, direct air carrier, or foreign direct air carrier, for the transportation of the passengers flown on a charter flight.

(e) *Charter air transportation* means charter flights in air transportation authorized under Part A of Subtitle VII of Title 49 of the United States Code.

(f) *Direct air carrier and foreign direct air carrier* mean a U.S. or foreign air carrier that provides or offers to provide air transportation and that has control over the operational functions performed in providing that transportation.

(g) *Indirect air carrier and foreign indirect air carrier* mean a person or entity that, as a principal, holds out, sells, or arranges air transportation and separately contracts with direct air carriers and/or foreign direct air carriers.

(h) *Single entity charter* means a charter for the entire capacity of the aircraft, the cost of which is borne by the charterer and not directly or indirectly by individual passengers, except when individual passengers self-aggregate to form a single entity for flights to be operated using small aircraft.

(i) *Statute* means Subtitle VII of Title 49 of the United States Code (Transportation).

(j) *Large aircraft* means any aircraft originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

(k) *Small aircraft* means any aircraft originally designed to have a maximum passenger capacity of 60 seats or fewer or a maximum payload capacity of 18,000 pounds or less.

§ 295.7 Agency relationships.

An air charter broker acting as an indirect air carrier or foreign indirect air carrier may choose to act as a bona fide agent in individual cases where a charterer, direct air carrier, or foreign direct air carrier has expressly authorized such agency relationship.

Subpart B—Exemption Authority

§ 295.10 Grant of economic authority; exemption from the statute.

To the extent necessary to permit air charter brokers, acting as indirect air carriers or foreign indirect air carriers, to hold out, sell, and undertake to arrange single entity charter air transportation, such air charter brokers are exempted from the following provisions of Subtitle VII of Title 49 of the United States Code, except for the provisions noted, only if and so long as they comply with the provisions and the conditions imposed by this part: 49 U.S.C. 41101–41113, 49 U.S.C. 41301–41313, and 49 U.S.C. 41501–41511. Air charter brokers are not exempt from the following provision: 49 U.S.C. 41310 (nondiscrimination) with respect to foreign air transportation.

§ 295.12 Suspension or revocation of exemption authority.

The Department reserves the power to alter, suspend, or revoke the exemption authority of any air charter broker acting as an indirect air carrier, without a hearing, if it finds that such action is in the public interest or is otherwise necessary to protect the traveling public.

Subpart C—Consumer Protection

§ 295.20 Use of duly authorized direct air carriers.

Air charter brokers are not authorized under this part to hold out, sell, or otherwise arrange charter air transportation to be operated by a person or entity that does not hold the requisite form of economic authority from the Department and appropriate safety authority from the Federal Aviation Administration and, if applicable, a foreign safety authority. Air charter brokers are not authorized under this part to hold out, sell, or arrange air transportation to be performed by a direct air carrier or direct foreign air carrier that the direct carrier is not authorized in its own right to hold out, sell, or operate. Only direct air carriers that are citizens of the United States as defined in 49 U.S.C. 40102(a)(15) may provide direct air transportation operations in interstate or intrastate air transportation.

§ 295.22 Prohibited unfair or deceptive practices or unfair methods of competition.

An air charter broker shall not engage in any unfair or deceptive practice or unfair method of competition.

§ 295.23 Advertising.

(a) All solicitation materials and advertisements, including internet web pages, published or caused to be published by air charter brokers shall clearly and conspicuously state that the air charter broker is an air charter broker, and that it is not a direct air carrier or a direct foreign air carrier in operational control of aircraft, and that the air service advertised shall be provided by a properly licensed direct air carrier or direct foreign air carrier.

(b) Air charter brokers may display their name and logo on aircraft provided the name of the direct air carrier is displayed prominently and clearly on the aircraft and consumers are not otherwise misled into thinking that the air charter broker is a direct air carrier or direct foreign air carrier.

§ 295.24 Disclosures.

(a) Before entering a contract for a specific flight or series of flights with

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charterers, air charter brokers must disclose to the charterer the information in paragraphs (a)(1),(2), and (6) of this section. Before entering a contract for a specific flight or series of flights with charterers, air charter brokers must, upon request of the charterer, disclose to the charterer the information in paragraphs (a)(3), (4), and (5) of this section. The six disclosures may be accomplished through electronic transmissions.

(1) The corporate name of the direct air carrier or direct foreign air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that direct carrier holds itself out to the public.

(2) The capacity in which the air charter broker is acting in contracting for the air transportation, *i.e.*, as an indirect air carrier, indirect foreign air carrier, as an agent of the charterer, or as an agent of the direct air carrier or direct foreign air carrier that will be in operational control of the flight.

(3) If the air charter broker is acting as the agent of the charterer, the air charter broker must disclose the existence of any corporate or business relationship, including a preexisting contract, between the air charter broker and the direct air carrier or direct foreign air carrier that will be in operational control of the flight that may have a bearing on the air charter broker's selection of the direct carrier that will be in operational control of the flight.

(4) The total cost of the air transportation paid by the charterer to or through the air charter broker, including any air charter broker or carrier-imposed fees or government-imposed taxes and fees. Specific individual fees, taxes, or costs may, but are not required to be itemized.

(5) The existence of any fees and their amounts collected by third-parties, if known (or a good faith estimate if not known), including fuel, landing fees, and aircraft parking or hangar fees, for which the charterer will be responsible for paying directly.

(6) The existence or absence of liability insurance held by the air charter broker covering the charterer and passengers and property on the charter

flight, and the monetary limits of any such insurance.

(b) If any of the information in paragraph (a) of this section that is required to be disclosed to the charterer or requested by the charterer to be disclosed is not known at the time the contract is entered into or changes thereafter, air charter brokers must provide the information to the charterer within a reasonable time after such information becomes available to the air charter broker, such that the charterer has enough time to make an informed decision as to whether to accept the additional information or accept the change.

(c) If the information in paragraph (a) of this section that is required to be disclosed to the charterer or requested by the charterer to be disclosed is not provided to the charterer within a reasonable time after such information becomes available to the air charter broker, air charter brokers must provide the charterer with the opportunity to cancel the contract for charter air transportation, including any services in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services.

(d) In all circumstances, air charter brokers must disclose prior to the start of the air transportation the information in paragraph (a) of this section that is required to be disclosed or that the charterer has requested to be disclosed.

(e) If the information in paragraph (a) of this section that is required to be disclosed to the charterer or requested by the charterer to be disclosed changes after the air transportation covered by the contract has begun, air charter brokers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available to the air charter broker.

(f) If the changes in information described in paragraph (e) of this section are not provided to the charterer within a reasonable time after becoming available to the air charter broker, air charter brokers must provide the

charterer with the opportunity to cancel the remaining portion of the contract for charter air transportation, including any services paid in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services not yet provided.

§ 295.26 Refunds.

Air charter brokers must make prompt refunds of all monies paid for charter air transportation when such transportation cannot be performed or when such refunds are otherwise due, as required by 14 CFR 374.3 and 12 CFR part 226 for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases.

Subpart D—Violations

§ 295.50 Enumerated unfair or deceptive practices or unfair methods of competition.

(a) Violations of this Part shall be considered to constitute unfair or deceptive practices or unfair methods of competition in violation of 49 U.S.C. 41712.

(b) In addition to paragraph (a) of this section, the following enumerated practices, among others, by an air charter broker are unfair or deceptive practices or unfair methods of competition in violation of 49 U.S.C. 41712:

(1) Misrepresentations that may induce members of the public to reasonably believe that the air charter broker is a direct air carrier or direct foreign air carrier when that is not the case.

(2) Misrepresentations as to the quality or kind of service or type of aircraft.

(3) Misrepresentations as to the time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(4) Misrepresentations as to the qualifications of pilots or safety record or certification of pilots, aircraft, or air carriers.

(5) Misrepresentations that passengers are directly insured when they are not so insured. For example, where the only insurance in force is that pro-

tecting the direct air carrier or air charter broker in event of liability.

(6) Misrepresentations as to fares or charges for air transportation or services in connection therewith.

(7) Misrepresentations as to membership in or involvement with an organization that audits air charter brokers, direct air carriers, or direct foreign air carriers, or that the air charter broker or any direct carriers to be used for a particular flight meets a standard set by an auditing organization.

(8) Representing that a contract for a specified direct air carrier, direct foreign air carrier, aircraft, flight, or time has been arranged without a binding commitment with a direct air carrier or direct foreign air carrier for the furnishing of such transportation as represented.

(9) Selling or contracting for air transportation while knowing or having reason to know or believe that such air transportation cannot be legally performed by the direct air carrier or foreign direct air carrier that is to perform the air transportation.

(10) Misrepresentations as to the requirements that must be met by charterers to qualify for charter flights.

(11) Using or displaying or permitting or suffering to be used or displayed the name, trade name, slogan or any abbreviation thereof, of the air charter broker in advertisements, on or in places of business, or on or in aircraft or any other place in connection with the name of an air carrier or foreign air carrier or with services in connection with air transportation, in such manner that it may mislead or confuse potential consumers with respect to the status of the air charter broker.

§ 295.52 Enforcement.

In case of any violation of any of the provisions of the Statute, or of this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding under 49 U.S.C. 46101 before the Department, or 49 U.S.C. 46106-46108 before a U.S. District Court, as the case may be, to compel compliance. The violator may also be subject to civil penalties under the provisions of 49 U.S.C. 46301, or other lawful sanctions, including

revocation of the exemption authority granted in this part. In the case of a willful violation, the violator may be subject to criminal penalties under the provisions of 49 U.S.C. 46316.

PART 296—INDIRECT AIR TRANSPORTATION OF PROPERTY

Subpart A—General

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

SOURCE: ER–1261, 46 FR 54727, Nov. 4, 1981, unless otherwise noted.

Subpart A—General

§ 296.1 Purpose.

This part establishes rules for the indirect air transportation of property. It creates a class of air carriers to provide this air transportation and grants exemptions from certain provisions of the Subtitle VII of Title 49 of the United States Code (Transportation).

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended at 60 FR 43527, Aug. 22, 1995]

§ 296.2 Applicability.

This part applies to air transportation of property by indirect cargo air carriers, and to persons entering into control relationships with indirect cargo air carriers.

§ 296.3 Indirect cargo air carrier.

An indirect cargo air carrier is any U.S. citizen who undertakes to engage indirectly in air transportation of property, and uses for the whole or any part of such transportation the services of an air carrier or a foreign air carrier that directly engages in the op-

eration of aircraft under a certificate, regulation, order, or permit issued by the Department of Transportation or its predecessor to the extent that those actions, by law, are still in effect, or the services of its agent, or of another indirect cargo air carrier.

[ER–1261, 46 FR 54727, Nov. 4, 1981, as amended by Doc. No. 47939, 57 FR 40103, Sept. 2, 1992; DOT-OST-2014-0140, 84 FR 15934, Apr. 16, 2019]

§ 296.4 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.

§ 296.5 Agency relationships.

An indirect cargo air carrier may act as agent of a shipper, or of a direct air carrier that has authorized such agency, rather than as an air carrier, if it expressly reserves the option to do so when the shipment is accepted.

§ 296.6 Public disclosure of cargo liability limits and insurance.

Every indirect cargo air carrier shall give notice in writing to the shipper, when any shipment is accepted, of the existence or absence of cargo liability accident insurance, and of the limits on the extent of its liability, if any. The notice shall be clear and conspicuously included on or attached to all of its rate sheets and airwaybills.

Subpart B—Exemption for Indirect Air Transportation of Property

§ 296.10 Exemption from the Statute.

(a) Indirect cargo air carriers are exempted from the provisions of 49 U.S.C. Subtitle VII only if and so long as they comply with the provisions of this part and its conditions, and to the extent necessary to permit them to organize and arrange their air freight shipments to provide indirect air transportation, except for the following sections:

(1) Section 41510(b) (solicitation of rebates). However, indirect cargo air carriers are exempt from section 41510(b) to the extent necessary to permit them