CHAPTER II--OFFICE OF THE SECRETARY, DEPARTMENT OF TRANSPORTATION (AVIATION PROCEEDINGS)

PART 294--CANADIAN CHARTER AIR TAXI OPERATORS

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Source: ER-1297, 46 FR 45991, Oct. 27, 1981, unless otherwise noted.

Subpart A—General

§294.1 Applicability and purpose.

This part establishes a classification of foreign air carriers known as "Canadian charter air taxi operators," and establishes registration procedures for these carriers operating or seeking to operate transborder services between Canada and the United States. This part also exempts Canadian charter air taxi operators from certain provisions of the Subtitle VII of Title 49 of the United States Code (Transportation), and establishes rules applicable to their operations in the United States. This part does not provide exemption from the safety regulatory provisions of the Statute that are administered by the U.S. Department of Transportation through the Federal Aviation Administration (FAA), and Canadian charter air taxi operators in the conduct of their operations must observe all applicable safety standards and requirements.


§294.2 Definitions.

As used in this part:

(a) Agreement means the Air Transport Agreement Between the Government of the United States and the Government of Canada, signed at Ottawa, February 24, 1995, with Annexes and any amendments, supplements, reservations, or supersessions to it.

(b) Canadian charter air taxi operator means a foreign air carrier that is substantially owned and effectively controlled by Canadian citizens, the Government of Canada, or both, whose foreign air transportation operations are limited to charter air service between points in Canada and points in the United States, and that does not use large aircraft in those operations.

(c) Charter air service means nonscheduled commercial air transportation of persons and their accompanied baggage, and of property, on a time, mileage, or trip basis where the entire planed load capacity of one or more aircraft has been engaged, or the transportation of mail by aircraft.

(d) Large aircraft means any aircraft that are not small aircraft as defined in this section.

(e) Maximum authorized takeoff weight has the meaning assigned to it in regulations of the Canadian Transport Commission.

(f) Maximum certificated takeoff weight means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate. This weight may be found in the airplane operating record or in the airplane flight manual that is incorporated by regulation into the airworthiness certificate.

(g) Maximum passenger capacity means the maximum number of passenger seats for which an aircraft is configured.

(h) Maximum payload capacity means the maximum certificated takeoff weight of an aircraft less the empty weight as defined in section 63 of part 29 of this chapter, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward’s supplies, etc.). For purposes of this part, the allowance for weight of the crew, oil and fuel is as follows:

(1) Crew—200 pounds per crew member required under FAA regulations;

(2) oil—0 pounds;

(3) fuel—the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart, assuming VFR weather conditions and flights not involving extended overwater operations. However, in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA, maximum payload capacity means the maximum zero fuel weight less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward’s supplies, etc., but not including disposable fuel or oil).

(2) [Reserved]

(i) Small aircraft means any aircraft designed to have:

(1) A maximum passenger capacity of not more than 90 seats and a maximum
payload capacity of not more than 7,500 pounds, and/or
(2) maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

§ 294.3 General requirements for Canadian charter air taxi operators.

A Canadian charter air taxi operator shall conduct charter air service between the United States and Canada only if it:
(a) Has been registered by the Department under this part;
(b) Does not directly or indirectly utilize large aircraft in charter air services;
(c) Has and maintains in effect liability insurance coverage that complies with the requirements set forth in subpart B of this part and has and maintains a current certificate of insurance evidencing such coverage on file with the Department;
(d) Has and maintains in effect and on file with the Department a signed counterpart of Agreement 13600 (OST Form 4523) and complies with all other requirements of part 203 of this chapter;
(e) Has effective authority from the Government of Canada to conduct charter air service between the United States and Canada.
(f) Has been granted Federal Aviation Administration operations specifications required under part 129 of the Federal Aviation Regulations;
(g) Is substantially owned and effectively controlled by Canadian citizens, or the Government of Canada, or a combination of both; and
(h) Complies with the terms, conditions, and limitations of this part.

The reporting requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 3354-0069.


Subpart B—Exemption

§ 294.10 Exemption authority.

Canadian charter air taxi operators registered under this part are exempt from the following provisions of the Statute to the extent necessary to perform charter air service between the United States and Canada, and as long as they comply with the terms, conditions, and limitations of this part:
(a) Section 41202 (permits);
(b) Section 41501 (carrier’s duty to observe reasonable rates);
(c) Section 41310 (discrimination);
(d) Section 41313 (aviation disaster family assistance plans for foreign air carriers).

Subpart C—Registration for Exemption

§ 294.20 Applying for registration.

To apply for registration under this part, a Canadian charter air taxi operator shall file with the Department’s Office of International Aviation, Special Authorities Division, the following:
(a) A currently effective certificate of insurance (see § 294.40); and
(b) Three copies of OST Forms 4523 and 4565, which may be obtained from the Department’s Office of International Aviation, Special Authorities Division. All the information required by OST Form 4508 shall be filled in, and it shall be certified by a responsible officer of the applicant Canadian charter air taxi operator.

(-approved by the Office of Management and Budget under control number 3354-0069)


§ 294.21 Procedure on receipt of registration form.

(a) The Department will list the names and addresses of all persons applying for registration under this part in its Weekly Summary of Filings.
§ 294.22 Notification to the Department of change in operations or identifying information.

Registrants shall file a copy of OST Form 4505 with the Department's Office of International Aviation, Special Authorities Division, upon any of the following events. The filing shall be sent by electronic mail, or other means, so as to be received by the Department not later than 30 days after the reported event has occurred.

(a) The carrier changes its name. When a carrier refiles OST Form 4505 to indicate a change of name:
(1) A registration ceases to be in effect unless the Government of Canada amends the registrant's Air Carrier Operating Certificate to reflect the registrant's new name within 60 days of the name change and the registrant submits to the Department a copy of its amended Canadian authority.
(2) The registrant must also refile three copies of Agreement 18000 (OST Form 4233) under its new name;
(3) The registrant must also refile its certificate of insurance under its new name; and
(4) The registrant must also advise the appropriate FAA office referred to in §294.33 of the carrier's new name.

(b) The carrier changes its designated agent.

(c) A change occurs in the carrier's ownership and control resulting in a person acquiring a beneficial or voting interest in the registrant of 10 percent or more. The name(s), address(es), citizenship(s), and percentages of ownership of the new owners shall be indicated on the form. Acquisition of ownership interest by persons who are not citizens of the country of citizenship of the registrant may invalidate the registration.

(d) The carrier temporarily or permanently ceases operations.

(Approved by the Office of Management and Budget under control number: 3010-0031)

Subpart D—General Rules for Registrants

§ 294.30 Scope of service and equipment authorized.

(a) Upon fulfillment of the requirements of § 294.3 of this part, the registrant will have Department authority to engage in charter air services between any point or points in Canada and any point or points in the United States using small aircraft.

(b) Nothing in this part shall be construed as authorizing the operation of large aircraft in charter air service, and the exemption provided by this part to Canadian charter air taxi operators that register with the Department extends only to the direct operations of charter air service in accordance with the limitations and conditions of this part using aircraft designed to have:

(1) A maximum passenger capacity of no more than 50 seats and a maximum payload capacity of no more than 7,500 pounds, and/or

(2) A maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

(c) A Canadian charter air taxi operator shall not use large aircraft for charter air service until it has been granted a permit by the Department under section 41303 of the Statute or granted an exemption under section 41701 of the Statute. Its application for such a permit or exemption should refer to the registration under this part. Registration under this part will be canceled when a section 41303 permit has been granted by the Department for the use of large aircraft in foreign charter air service.


§ 294.31 Use of business name.

(a) A Canadian charter air taxi operator, in holding out charter air service to the public and performing its charter operations, shall do so only in the names in which its registration is issued under this part. The Department may require a Canadian charter air taxi operator to change such names where they appear to be inconsistent with the public interest.

(b) [Reserved]

§ 294.32 Security arrangements for operating Public Charters.

When a Canadian charter air taxi operator performs a Public Charter under part 380 of this chapter, either:

(a) The Canadian charter air taxi operator shall meet the bonding or escrow requirements applicable to foreign air carriers as set forth in § 212.8 of this chapter.

(b) The Canadian charter air taxi operator shall ensure that it does not receive any payments for the charter until after the charter has been completed. In this case, its contracts with the charter operator and the charter operator’s depository bank, if any, shall state that the charter operator or bank, as applicable, shall retain control of and responsibility for all participant funds intended for payment for charter air service until after the charter has been completed, notwithstanding any provision of part 380.


§ 294.33 Compliance with the regulations of the Federal Aviation Administration.

(a) Registrants under this part shall obtain FAA operations specifications required under part 129 or other applicable rules of the Federal Aviation Regulations prior to beginning operations into the United States. Registrants shall write to the FAA office at one of the following addresses to obtain instructions on how to apply for FAA authority.

(b) If the registrant’s business address is located on or east of 76 degrees West Longitude (in or east of Ottawa, Ontario) it should write to: Federal Aviation Administration, General Aviation District Office No. 1, Albany County Airport, Albany, New York 12211.

(c) If the registrant’s business address is located on or east of 100 degrees West Longitude (in or east of Minneapolis, Minnesota) and west of 76 degrees West Longitude (west of, but not including, Ottawa, Ontario) it should write to: Federal Aviation Administration, Flight Standards District Office, 1
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Airport Way, Rochester, New York 14624.

(g) If the registrant's business address is west of Winnipeg, Manitoba, it should write to: Federal Aviation Administration, General Aviation District Office, 1601 Lind Avenue, SW., Renton, Washington 98055.


§ 294.34 Advance approval by the Department.

The Department, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the registrant under the authority granted by this part, if it finds such action to be consistent with the public interest.

Subpart E—Insurance Requirements

§ 294.40 Aircraft accident liability insurance requirements.

No Canadian charter air taxi operator shall engage in charter air service unless such carrier has and maintains in effect aircraft accident liability coverage that meets the requirements of part 205 of this chapter. Evidence of such insurance coverage, in the form of a certificate of insurance, as required in part 205 of this chapter, shall be maintained on file with the Department's Office of International Aviation, Special Authorities Division, at all times.

(Approved by the Office of Management and Budget under control number 3024-0025)


Subpart F—Cancellation of Registration and Presidential Review

§ 294.50 Cancellation, revocation, or suspension of registration.

The registration of a carrier subject to this part may be revoked, canceled, suspended, modified, or otherwise subjected to additional terms and conditions by the Department if:

(a) The carrier files with the Department a written notice that it is discontinuing operations;

(b) The carrier is the holder of a section 4302 permit to perform large aircraft charters under the Agreement;

(c) Substantial ownership or effective control is acquired by persons who are not (1) citizens of Canada, (2) the Government of Canada, or (3) a combination of both;

(d) The Government of Canada terminates or suspends authority it granted to the registrant to conduct charter air service between the United States and Canada;

(e) The Agreement between the two countries is terminated;

(f) The registrant fails to have proper insurance coverage, or fails to file or keep a current insurance certificate on file with the Department;

(g) The registrant fails to comply with the terms, conditions, or limitations of this part;

(h) The carrier's operations standards issued by the FAA are suspended or terminated;

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


§ 294.51 Presidential review.

A Department order under § 294.50 (e), (g), or (i) shall be subject to stay or disapproval by the President within 60 days.

Subpart G—Authorizations and Waivers

§ 294.60 Applications for authorization to conduct individual operations or programs not otherwise permitted by this part.

(a) Where the terms, conditions, or limitations of this part, particularly § 294.31, require prior approval of individual flights or charter programs, the registrant shall apply for such approval by filing three copies of OST Form 4540 with the Office of International Aviation, Foreign Air Carrier Licensing Division. OST Form 4540 may be obtained from the Foreign Air Carrier Licensing Division.
Office of the Secretary, DOT

(b) Action on the application for authorization filed under paragraph (a) of this section will normally be taken within 30 days after the application is filed. The Department will consider requests for faster action that include a full explanation of the need for expedited action.


§ 294.61 Waivers.

The Department upon application or on its own initiative may waive any of the provisions of this part if it finds such action to be in the public interest.

Subpart H—Violations

§ 294.70 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 46105 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance; or to impose civil penalties under the provisions of section 46301 of the Statute; or in the case of a willful violation, to impose criminal penalties under the provisions of section 46316 of the Statute; or to impose other lawful sanctions, including revocation of registration.


Subpart I—Terms, Conditions, and Limitations of This Part

§ 294.80 Waiver of sovereign immunity.

By accepting an approved registration under this part, a registrant waives any right it may possess to assert any defense of sovereign immunity in any action or proceeding instituted against it in any court or other tribunal in the United States based upon any claim arising out of its operations under this part.

§ 294.81 Local traffic prohibited.

(a) Except as set forth in paragraph (b) of this section or § 294.60, a registrant shall not carry passengers, cargo, or mail between two or more United States points for compensation or hire.

(b) A registrant may grant stopover privileges at any point or points in the United States to passengers and their accompanied baggage as part of a single continuous operation to or from Canada.


§ 294.83 Compliance with certain international agreements.

A registrant shall not operate any aircraft under this part unless it:

(a) Complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;

(b) Complies with all applicable provisions of the Agreement; and

(c) Complies with all applicable provisions of any treaty, convention, or agreement affecting international air transportation to which the United States and Canada are parties.

§ 294.84 Air competency requirements.

Registrants shall conform to the airworthiness and airmen competency requirements prescribed by the Government of Canada for Canadian international air service.

§ 294.85 Charterworthiness standards.

(a) Registrants may perform U.S.-originating charters authorized under Annex B (III)(A) of the Agreement as follows: Commercial air transportation of passengers and their accompanied baggage, and of property, on a time, mileage, or trip basis, where the entire passenger capacity of one or more aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such group, or other small aircraft operations may be authorized under any amendments, supplements, reservations, or supersessions of the Agreement.

(b) Registrants may perform Canadian-originating charters authorized by Annex B (III)(B) of the Agreement and any amendments, supplements, reservations or supersessions of it. Such
§ 294.86 Charters may be performed only to the extent authorized by the Air Carrier Regulations of the Canadian Transport Commission applicable to operations by small aircraft.

§ 294.86 Industrial/agricultural/other nontransport air operations prohibited.

A registrant shall not engage in flights for the purpose of industrial or agricultural operations (e.g., crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, aerial photography) within the United States unless it has obtained a permit from the Department under part 375 of this chapter.

§ 294.87 Compliance with Canadian licenses.

A registrant shall not, in the performance of operations authorized by this part, use any aircraft or conduct any operations except in accordance with the authority and conditions contained in the registrant’s applicable Canadian licenses.

PART 296—INDIRECT AIR TRANSPORTATION OF PROPERTY

Subpart A—General

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§ 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 indirect air carrier.

§ 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.