

## THOMSON REUTERS PRACTICAL LAW

## Logistics: Freight Forwarding

by Practical Law Commercial Transactions

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*This Practice Note gives a broad overview of the role and regulation of domestic and international freight forwarders in the transportation network and the supply chain, including ocean freight forwarders and air freight forwarders.*

Shippers, who are typically the suppliers or buyers of goods, have a variety of options in the transportation of goods. Some shippers transport goods in their own vehicles or other means of transport. However, many shippers engage outside transportation companies called carriers to provide transportation services either overland, by sea or air, or a combination using a variety of transportation conveyances.

While many shippers contract directly with carriers to provide transportation services, they also frequently engage freight forwarders to organize all aspects of the transportation on their behalf when they:

- Lack logistical know-how.
- Have a large volume of shipments that makes individual transportation contracts unfeasible.
- Want to exploit the freight forwarder's economies of scale and access to shipping discounts, even if they do not have a large volume of shipments.
- Require coordination of shipments that require intermodal transportation.
- Want to move exported goods to an overseas destination.

For more information on the role of carriers and other transportation service providers in the supply chain, see [Practice Note, Logistics: Transportation Service Providers Overview](#). For more information about the supply chain generally, see [Practice Note, Supply Chain Overview](#). For a sample pro-carrier transportation agreement for a shipper to enter into directly with a truck carrier, see [Standard Document, Transportation Agreement \(Pro-Carrier\)](#). For a sample pro-shipper transportation agreement for a shipper to enter into directly with a truck carrier, see [Standard Document, Transportation Agreement \(Pro-Shipper\)](#).

### Tasks Performed by Freight Forwarders

A freight forwarder, or a forwarder or forwarding agent, is an expert in logistics management that organizes shipments on behalf of shippers. Freight forwarders are not carriers and do not take possession of the goods. Rather, a shipper engages a freight forwarder to coordinate all aspects of the transportation of goods, including contracting with carriers and other logistics providers on behalf of the shipper based on a consolidated price quote obtained by the freight forwarder which, depending on the nature of carriage, may include:

- Freight costs.
- Port charges.
- Consular fees.
- Costs of special documentation.

- Insurance costs.
- Handling fees.

Freight forwarders provide a variety of services, including:

- Rendering advice on packing methods.
- Arranging to have the goods:
  - packed for shipment; and
  - placed in containers.
- Arranging to contract with carriers and reserve the necessary space on a truck, vessel, train, aircraft, or other transportation conveyances.
- Providing information about hazardous materials shipping compliance.
- Preparing all documents on behalf of a transportation service provider, for example, the bill of lading.
- After shipment, routing the documents to the shipper, the buyer, or to a paying or other bank, as appropriate.

An international freight forwarder has additional responsibilities for the transportation and customs clearance of goods across international borders (see [International Freight Forwarders](#)).

## International Freight Forwarders

International shipments are substantially more complicated than domestic shipments because they:

- Typically involve intermodal transportation, including a combination of:
  - inland transportation from the shipper's facility to the airport or seaport of embarkation;
  - air or ocean freight from the port of embarkation to the seaport or airport of disembarkation in the destination country; and
  - inland transportation from the port of debarkation to the facility designated by the importer.
- Invoke the laws and regulations of:
  - the country of origin;
  - the high seas and international air space; and
  - the destination country.

International freight forwarders must coordinate the various activities of the various participants in international logistics, including:

- Ocean freight, air cargo, and other international carriers.
- Custom brokers, who arrange for the payment of [tariffs](#) on imported goods and help to clear goods through customs barriers in the destination country (see [Practice Note, US and International Regulation of Tariffs](#)).
- Marine terminal operators (MTOs), who provide wharfage, dock, warehouse, and other marine terminal facilities to ocean freight carriers moving cargo in US foreign commerce. MTOs include:
  - public port authorities that own and maintain and sometimes directly operate the marine terminal facilities; and
  - private terminal operators that lease terminals from a public port authority and operate the leased terminals as a private business.
- Non-vessel-operating common carriers, who are common carriers that hold themselves out to the public to provide ocean transportation services and issue their own bills of lading, but are middlemen who do not operate the vessels by which ocean transportation services are provided.

Therefore, in addition to all of the tasks typically performed by domestic freight forwarders, international freight forwarders typically provide a variety of additional services, including working with shippers to:

- Review all documents prepared by the shipper to ensure compliance with letter of credit payment terms in an international sale of goods transaction using a letter of credit (see [Practice Note, Commercial Letters of Credit](#)).
- Process all documents related to foreign trade.
- Assist the shipper in export control compliance, including obtaining export control licenses.

Freight forwarders share compliance responsibilities under the Export Administration Regulations (EAR) with the shippers that they work with even when the forwarder takes action based on information or instructions furnished by the shipper. A forwarder may not proceed with any transaction knowing that a violation of the EAR has occurred, or is about to occur. For more information about export regulation requirements, see [Complying with US Export Control Regulations Checklist](#).

## Regulation of Freight Forwarders

International freight forwarders include:

- Ocean freight forwarders, who arrange and organize ocean shipments on behalf of shippers (see [Ocean Freight Forwarders](#)).
- Air freight forwarders, who arrange and organize air shipments on behalf of shippers (see [Air Freight Forwarders](#)).

### Ocean Freight Forwarders

Ocean freight forwarders (OFF) are individuals or companies located in the US that:

- Arrange cargo transportation to an international destination by sea, including:
  - inland transportation of shipments from origin to the vessel; and
  - transportation on ocean-going vessels on behalf of shippers.
- Prepare and process the documentation relating to shipments, for example:
  - export declarations, bills of lading, and other export documentation; and
  - advance notice of shipments to banks, shippers, and consignees.
- Perform activities related to shipments, for example:
  - arrange warehouse space;
  - arrange cargo insurance; and
  - clear shipments in accordance with US Government export regulations.

Ocean freight forwarders are ocean transportation intermediaries (sometimes referred to as OTI) that are regulated by the Federal Maritime Commission (FMC), an independent federal agency that has wide-ranging authority to regulate the activities of ocean freight forwarders under the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 ([46 U.S.C. §§ 40101-41309](#)). The FMC:

- Licenses US ocean freight forwarders.
- Administers bonding requirements of both US and foreign-based ocean freight forwarders.
- Reviews and monitors the activities of ocean freight forwarders.

For more information about the FMC, see [Practice Note, Logistics: Federal Agencies Overview: Federal Maritime Commission \(FMC\)](#).

An ocean freight forwarder engaged in US foreign commerce must:

- Be licensed by the FMC to handle ocean freight ([46 C.F.R. § 515.3](#)).
- Submit proof of financial security in a form and amount determined by FMC to be adequate to ensure its financial responsibilities (46 C.F.R. Part 515 subpart C). These can include:
  - a surety bond, by filing with the FMC a valid bond on Form FMC-48 to be issued by a surety company acceptable by the Secretary of the Treasury;

- insurance, by filing with the FMC evidence of insurance on Form FMC-67 showing coverage for damages arising from any transportation-related activities under the Shipping Act of the insured forwarder; or
- a guaranty, by filing with the FMC evidence of a guaranty on Form FMC-68 showing coverage for damages arising from any transportation-related activities under the Shipping Act of the covered forwarder.

## Air Freight Forwarders

Air freight forwarders must obtain an indirect air carrier (sometimes referred to as an IAC) certification from the Transportation Security Administration (TSA). TSA is a government agency that is:

- Part of the Department of Homeland Security (DHS).
- Responsible for providing effective and efficient security for passenger and freight transportation.

An air freight forwarder falls within the definition of an indirect air carrier because it is person or entity within the US that is not in possession of a Federal Aviation Administration air carrier operating certificate but that:

- Undertakes to engage indirectly in air transportation of property.
- Uses the services of a passenger air carrier for all or any part of that transportation.

As an IAC, an air freight forwarder must adopt and comply with a security program that meets the TSA's security requirements, including taking specified actions to vet the security credentials of shippers.

US freight forwarders that handle air shipments frequently seek accreditation as a cargo agent from Cargo Network Service (CNS), the US subsidiary of the International Air Transport Association (IATA). Neither CNS nor IATA are government agencies, but are the main trade associations for the world's airlines and allied service providers and help to formulate industry policy on critical aviation issues.

Air freight forwarders that desire CNS accreditation must meet specified financial, operational, and compliance standards. At a minimum, they must:

- Be engaged in the promotion and sale of international air cargo transportation for the specified period of time.
- Have the minimum specified level of working capital.
- Have the minimum specified net worth.

## PRODUCTS

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