

CHANGE

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

National Policy

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Effective Date:
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SUBJ: Foreign Civil Aircraft Authorizations

- 1. Purpose of This Order.** This change transmits new and revised portions of the order.
- 2. Audience.** The primary audience for this order is the Flight Standards Safety Assurance offices’ aviation safety inspectors (ASI). The secondary audience includes the Safety Standards and Foundational Business offices.
- 3. Where You Can Find This Order.** This change may be accessed by Flight Standards personnel, operators, and the public through the Dynamic Regulatory System (DRS) at <https://drs.faa.gov>.
- 4. Explanation of Policy Changes.** This change incorporates new information, providing guidance on foreign civil aircraft seeking to conduct Required Navigation Performance Authorization Required (RNP AR) or special instrument approach procedures (IAP) and Area Navigation (RNAV) Visual Flight Procedures (RVFP) in the United States, into Volume 12, Chapter 3:
 - Section 2, Lease Agreements, Interchange, Charter Arrangements (Includes 14 CFR Part 375 and Emergency/Repatriation), and Diplomatic Flights; and
 - Section 9, Foreign General Aviation (Not 14 CFR Part 129) and Foreign Civil Aircraft (14 CFR Part 375) Letters of Authorization (new title).
- 5. Disposition of Transmittal Paragraph.** This change will remain in DRS until superseded by a revision to this order.

PAGE CHANGE CONTROL CHART

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VOLUME 12 INTERNATIONAL AVIATION**CHAPTER 3 AGREEMENTS, ARRANGEMENTS, AUTHORIZATIONS, AND PERMITS****Section 2 Lease Agreements, Interchange, Charter Arrangements (Includes 14 CFR Part 375 and Emergency/Repatriation), and Diplomatic Flights****Source Basis:**

- Title 14 CFR § 129.5, Operations Specifications.
- Title 14 CFR § 129.7, Application, Issuance, or Denial of Operations Specifications.
- Title 14 CFR § 129.9, Contents of Operations Specifications.
- Title 14 CFR § 129.13, Airworthiness and Registration Certificates.
- Title 14 CFR § 129.14, Maintenance Program and Minimum Equipment List Requirements for U.S.-Registered Aircraft.
- Title 14 CFR § 129.15, Flightcrew Member Certificates.
- Title 14 CFR Part 212, Charter Rules for U.S. and Foreign Direct Air Carriers.
- Title 14 CFR Part 218, Lease by Foreign Air Carrier or Other Foreign Person of Aircraft with Crew.
- Title 14 CFR Part 375, Navigation of Foreign Civil Aircraft Within the United States.
- Administrative.

2.1 GENERAL.

2.1.1 Purpose. This section provides policy guidance and information for the Federal Aviation Administration (FAA) Flight Standards Service (FS) on international lease agreements and interchange and charter arrangements between United States and foreign air carriers or foreign persons.

2.1.2 Scope. This section applies to FAA managers, supervisors, and aviation safety inspectors (ASI) within the International Field Offices (IFO), all FS offices, the Office of Safety Standards (OSS), and personnel associated with international aviation operations.

2.1.3 Safety Assurance System (SAS) Activity Recording (AR) Codes. None.

2.2 DEFINITIONS. See Volume 12, Chapter 1, Section 1 for information associated with this section.

2.3 LEASE AGREEMENTS. A lease is an agreement by which an aircraft is provided by one party to another. Leases can be either dry, wet, or interchange arrangements, and depending on the kind of arrangement, carry specific requirements for the lessor (the party from which the aircraft is leased) or lessee (the party to which the aircraft is leased).

2.3.1 Critical Components of a Lease. Given the terms of the lease will determine the kind of lease and regulatory requirements, agreements must include the following information pursuant to 14 CFR § 129.9(a)(7):

a) Economic Authority. Department of Transportation (DOT)-approved economic authority, for the lessor, lessee, or both (depending on the situation).

b) Exclusive Legal Possession. An agreement is a lease when it provides the lessee with exclusive legal possession of the aircraft. If the lessor does not transfer legal possession, or the agreement does not state actual aircraft possession is transferred to the lessee, then the agreement is not a lease.

c) Operational Control. Operational control is the exercise of authority over initiating, conducting, or terminating a flight. Operational control (lessor or lessee) is a critical component in defining the type of lease agreement in question.

2.3.2 Dry Leases. A dry lease is any agreement whereby a lessor agrees to provide an aircraft without crew to an operator and the lessee maintains operational control. The dry leasing of U.S.- or foreign-registered aircraft (without crewmembers) by foreign air carriers operating to the United States and foreign persons engaged in common carriage outside the United States is a common practice.

a) Where the lessor of the aircraft is a U.S. or foreign air carrier, the FAA must remove the aircraft from the lessor carrier’s operations specifications (OpSpecs) and list it on the lessee’s OpSpecs.

b) The lessee or the registered owner (if the lessee is not a citizen of the United States) must mail a copy of the dry lease with the Aircraft Registration Branch (AFB-710) per 14 CFR § 91.23(c)(1).

c) The lessee must notify the FAA 48 hours prior to the first flight of the leased aircraft as required by 14 CFR § 91.23(c)(3).

2.3.2.1 Regulatory Compliance. Each foreign air carrier operating to the United States must comply with 14 CFR part 129 and the applicable provisions of 14 CFR part 91.

a) In pertinent part, 14 CFR § 129.13 states: “No foreign air carrier may operate any aircraft within the United States unless that aircraft carries a current registration certificate and displays the nationality and registration markings of the State of Registry, and an airworthiness certificate issued or validated by the State of Registry.” (Title 14 CFR § 129.15 is similar in effect.)

b) When there is ambiguity or uncertainty as to the validity of a flightcrew member license, IFOs should contact the operator and, if needed, follow up with the State of the Operator. If additional assistance is required, IFOs should contact the International Field Office Management Branch (AFS-54). For International Civil Aviation Organization (ICAO) guidance on validation, refer to ICAO Annex 1, Personnel Licensing, for crew licenses, and ICAO Doc 9379, Manual of Procedures for Establishment and Management of a State’s Personnel Licensing System. For additional FAA guidance, to include electronic personnel licenses (EPL), see Volume 12, Chapter 4, Section 10.

c) Per ICAO Doc 8335, Manual of Procedures for Operations Inspection, Certification and Continued Surveillance, for dry lease of an aircraft registered in other States, in order to satisfy

the requirement of Article 32(a) of the Convention on International Civil Aviation (Chicago Convention), validations would be subject to requirements established by the State of Registry.

d) When operating a U.S.-registered aircraft within or outside the United States in common carriage, each foreign air carrier and foreign person also must comply with:

1) All applicable regulatory requirements in 14 CFR, including, but not limited to, the following:

- Title 14 CFR Part 21, Certification Procedures for Products and Articles.
- Title 14 CFR Part 43, Maintenance, Preventive Maintenance, Rebuilding, and Alteration.
- Title 14 CFR Part 61, Certification: Pilots, Flight Instructors, and Ground Instructors (specifically 14 CFR §§ 61.3 and 61.77). Also see Volume 5, Chapter 2.
- Title 14 CFR Part 63, Certification: Flight Crewmembers Other Than Pilots (specifically 14 CFR §§ 63.3, 63.23, and 63.42). Also see Volume 5, Chapter 4.
- Title 14 CFR Part 65, Certification: Airmen Other Than Flight Crewmembers, as applicable.
- Title 14 CFR Part 91, General Operating and Flight Rules (specifically 14 CFR §§ 91.1, 91.701 through 91.703, and 91.706).
- Title 14 CFR Part 129, Operations: Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage (specifically 14 CFR §§ 129.5, 129.7, 129.9, 129.11, 129.14, 129.20, 129.24, and subparts B and C). Refer to 14 CFR § 129.1(b) for U.S.-registered aircraft operated solely outside the United States in common carriage by the foreign person or foreign air carrier.

2) Title 49 of the Code of Federal Regulations (49 CFR) Part 175, Carriage by Aircraft.

3) All applicable orders and regulations of other U.S. agencies and courts, and all applicable laws of the United States.

2.3.2.2 OpSpecs Application. Foreign air carriers operating under 14 CFR part 129 should apply for OpSpecs or seek an amendment of their OpSpecs authorizing the use of any dry-leased U.S.-registered aircraft in accordance with 14 CFR §§ 129.5, 129.7, 129.9, and 129.11. The FAA will process such applications in accordance with Volume 3, Chapter 13, Section 1.

2.3.2.3 Memorandum of Understanding (MOU). There may be an MOU between the State of the Operator and the State of Registry (under a dry lease). The MOU would describe how maintenance oversight functions, duties, and responsibilities are overseen between the two Civil Aviation Authorities (CAA).

2.3.2.4 Chain of Custody. In this context, chain of custody refers to the review of the lessor’s lease when the lessor is a lessee, or sublease of the aircraft being leased to an operator who wants

to operate that aircraft to the United States. Principal inspectors (PI) do not need to establish a chain of custody provided:

a) The lessor is not the owner of the aircraft, but a lessee who is subleasing foreign-registered aircraft to another foreign operator and that foreign operator is requesting to operate that aircraft to the United States; and

b) The FAA assessed each party to the lease and the State of Registry of the aircraft as International Aviation Safety Assessment (IASA) Category (CAT) 1.

2.3.3 Wet Leases. As defined in 14 CFR §§ 110.2 and 119.53, a wet lease is any leasing agreement whereby a person agrees to provide an entire aircraft and at least one crewmember.

a) ICAO uses the term “damp lease” to define an agreement where the lessor provides the aircraft, flightcrew, and possibly one or more of the cabin crew to the lessee. The FAA considers this a “wet lease” and does not use the term “damp lease.”

b) When assessing whether a lease is a wet lease, the FAA considers:

1) Identification of a specific aircraft;

2) Grant of exclusive possession and use of that aircraft to the lessee;

3) Defined duration for the grant of possession and use, or a defined number of flights; and

4) Provision by the lessor of at least one crewmember with the aircraft.

Note: The crewmember may be a pilot, flight attendant (F/A), or flight engineer (FE).

2.3.3.1 Office of the Secretary of Transportation (OST) Characterization. When the OST characterizes a lease as a wet lease, the OST’s definition of the term applies to economic authority. The OST’s characterization of a wet lease does not necessarily make the lessor responsible for operational control, which is one of the safety considerations for a wet lease authorized by the FAA. Therefore, the FAA’s definition of “wet lease” in 14 CFR § 110.2 and in OpSpec A002 is different from OST’s definition and applies solely to the FAA’s safety authority.

2.3.3.2 FAA Restriction. A U.S. air carrier may not wet lease an aircraft from any 14 CFR part 129 foreign air carrier or foreign person, as described in 14 CFR §§ 119.53(b), 121.153(c), and 135.25(d). This restriction is based in part on the prohibition on cabotage under Title 49 of the United States Code (49 U.S.C.) § 41703 and partially on safety oversight considerations under § 44701.

Note: There is an OST exception to the FAA restrictions indicated in paragraph 2.3.3.2. See paragraph 2.6 for more information.

2.3.3.3 Operational Control.

a) The FAA’s policy requires each U.S. air carrier to retain operational control of each wet leased aircraft listed on its OpSpecs regardless of whether the aircraft is U.S.- or foreign-registered. This policy applies to aircraft wet-leased to any foreign air carrier and to any foreign person. The PI should refer the lease to the Office of the Chief Counsel (AGC) if there is any question about operational control, or whether the agreement should be referred to the OST for review as a provision of aircraft with crew or other charter arrangement.

b) To make a proper determination of operational control, it may be necessary to ask the lessor to provide additional information regarding the lease agreement. Title 14 CFR § 119.53 provides that the FAA will consider who exercises authority and responsibility for a specified number of operational functions when determining who has operational control. In cases where doubt or controversy exists, the Administrator will also consider additional factors, such as who is responsible for maintenance, servicing, and crewmember training.

2.3.3.4 OpSpecs Amendments. Prior to engaging in a wet lease operation to or from the United States, a foreign air carrier must apply for, or seek an amendment of, its OpSpecs to list the aircraft in OpSpec A028 as required by 14 CFR § 129.5(a). In support of the amendment, the foreign air carrier must submit to the FAA a copy of the wet lease agreement or a written memorandum of the pertinent terms of the wet lease pursuant to 14 CFR § 129.5(a). The FAA will review the documents pertaining to the wet lease as follows:

a) Identify the aircraft that are subject to the wet lease.

1) If the lessor is a foreign air carrier, OpSpec A003 of the lessor’s OpSpecs must list the aircraft.

2) If the aircraft is U.S.-registered, OpSpec D085 must list the aircraft.

3) If the lessor is a U.S. air carrier, OpSpec D085 must list the aircraft.

b) Determine if the lessor or grantor transfer is legal or actual possession (e.g., custody) of the entire aircraft (see Volume 3, Chapter 18, Section 3, OpSpec A028). If not, the agreement is not covered by 14 CFR § 119.53 and the agreement should be referred to the OST.

c) Determine what air carrier will exercise operational control over the wet lease operations. If the lessor is a U.S. air carrier, it must retain operational control of each wet-leased aircraft. In that scenario, the nationality, registration, and serial number of each aircraft used under the terms of the wet lease agreement will be identified in OpSpec D080 or D087, as applicable, and paragraph D085 of the certificate holder’s (CH) OpSpecs. While conducting operations under this authorization, the lessor may be authorized to use the call sign and flight number(s) of the lessee, provided that, for all flights the lessor CH explains in the Remarks section of the applicable flight plan, the lessor is conducting the flight under the call sign and flight number(s) of the lessee.

d) Confirm that each party to the wet lease agreement holds the necessary operating and economic authority to conduct the wet lease. Each foreign air carrier must hold the appropriate economic authority from the OST to conduct wet lease operations to the United States.

2.3.3.5 FAA/OST Differences. Because of differences in the way the FAA and the OST define and apply the term “wet lease,” the analysis of a wet lease transaction can be complicated. For example, the OST includes wet lease transactions within the scope of what constitutes a charter. The DOT views leases as a form of charter. For DOT economic regulatory purposes, any wet lease scenario that falls short of being long term is simply a charter operation, and DOT rules accordingly provide no distinction between, nor definition of, “short-term” wet leases or subservice. Thus, any arrangement 60 calendar days or fewer, no matter what we would call it (e.g., subservice or short-term), would require prior DOT approval if it fell under subparagraph b)1) or 3) in the following section below. Part charters are essentially nonexistent. When assessing charters, the FAA will consider:

a) Certificated U.S. air carriers shall obtain a Statement of Authorization for each long-term wet lease to a foreign air carrier.

b) Foreign air carriers shall obtain a Statement of Authorization for each:

1) Seventh Freedom charter flight to or from the United States (always for passenger operations, but some carriers hold Seventh Freedom cargo charter authority);

2) Long-term wet lease;

3) Charter flight for which the DOT specifically requires prior authorization under 14 CFR § 212.9(b)(3), (d), or (e) (national security, reciprocity, or other public interest factors); or

4) Part charter.

2.3.3.6 Long-Term Wet Leases Under 14 CFR Part 212. Title 14 CFR part 212 defines long-term wet leases and sets forth specific regulatory guidance for those specific lease arrangements.

a) The wet lessee must hold underlying authority (scheduled or charter) in the markets involved.

b) The airline physically operating the aircraft (wet lessor) needs underlying charter authority. The wet lessor also needs DOT/OST prior authorization for:

1) A wet lease in a Seventh Freedom market for the wet lessor (or in a Third/Fourth Freedom market if required for the carrier).

2) Any wet lease of more than 60 calendar days in duration (or a continuing series of leases for more than 60 calendar days).

2.3.3.7 Wet Lease Types. Operational control under an FAA-defined wet lease will be one of two types.

a) The lessor/U.S. CH will have operational control of the listed aircraft. If the lessor CH will have operational control, that CH is authorized to conduct operations in accordance with each applicable wet lease agreement identified in OpSpec A028, Table 1, Certificate Holder Has Operational Control.

1) The CH issued this authorization must at all times be responsible for and maintain operational control and airworthiness of each aircraft identified in each lease agreement. Table 1 of the OpSpec must list the lease agreement(s).

2) The nationality, registration, and serial number of each aircraft used under the terms of the wet lease agreement will be identified in D080 or D087, as applicable, and D085 of the CH's OpSpecs.

3) While conducting operations under this authorization, the lessor may be authorized to use the call sign and flight number(s) of the lessee, provided that (for all flights) the lessor CH explains, in the Remarks section of the applicable flight plan, that the lessor is conducting the flight under the call sign and flight number(s) of the lessee.

4) Both lessor and lessee CHs will have their role and information on the wet lease agreement documented in paragraph A028 of their respective OpSpecs.

b) The lessor/U.S. CH will not have operational control of the listed aircraft. This type of agreement is rare. For the FAA to approve such an agreement, the parties will have to establish (to the FAA's satisfaction) how the lessee will exercise operational control of the aircraft. The determination of which party will not have operational control must be stated in the respective U.S. CH's OpSpec A028, Table 2, Certificate Holder Does Not Have Operational Control. In the following example, the lessor CH not having operational control will exercise the wet lease agreement(s) listed in OpSpec A028, Table 2, with the following limitations and provisions:

- The lessee, as the party exercising operational control, is solely responsible for the safety and regulatory compliance of the flights.
- The lessee, as the party having operational control in the wet lease agreement listed in Table 2, must at all times be responsible for, and maintain, the operational control and airworthiness of the aircraft identified in each wet lease agreement listed.
- The lessor CH is not authorized to have, and may not have, operational control of any operation conducted by the lessee CH under this paragraph of the OpSpecs.

Note: Both lessor and lessee CHs will have their role and information on the wet lease agreement documented in paragraph A028 of their respective OpSpecs.

2.4 INTERCHANGE ARRANGEMENTS. An interchange arrangement permits two air carriers to connect two or more points on a route using the same aircraft but each operator's crewmembers (all pilot(s) and F/A(s)). For example, Operator A (the primary operator) operates an aircraft from Point X to Point Y (the interchange point). At Point Y, Operator B (the

interchange operator) assumes operational control of the same aircraft to fly from Point Y to Point Z with Operator B’s own crew.

a) Only operators serving the United States under an interchange arrangement are required to maintain continuous liability insurance in accordance with 49 U.S.C. § 41112 and its implementing regulation, 14 CFR § 205.4(b).

b) The U.S. CH who is party to an interchange arrangement is not required to file the arrangement with the AFB-710 Technical Section at P.O. Box 25504, Oklahoma City, OK 73125 per 14 CFR § 121.153(c)(4) because it is not classified as a lease agreement or charter arrangement.

2.4.1 The Primary Operator. The primary operator under an interchange arrangement is the U.S. or foreign air carrier that would normally operate the aircraft if the interchange were not in effect. The primary operator always retains responsibility for control of aircraft maintenance of the aircraft that is the subject of an interchange arrangement.

2.4.1.1 Primary Operator Requirements.

a) OpSpec A003 aircraft authorized by make and model (M/M) (foreign- or U.S.-registered);

b) OpSpec A029 aircraft interchange arrangement;

c) Only U.S.-registered aircraft must be listed in OpSpec D085; and

d) Retain control of aircraft maintenance.

2.4.2 The Interchange Operator. The interchange operator is the other U.S. or foreign air carrier party to the interchange arrangement.

2.4.2.1 Interchange Operator Requirements (Foreign-Registered).

a) Review the operator’s OpSpec A003 to verify aircraft is authorized by M/M. Aircraft must be the same as the primary operator and is authorized in their OpSpecs to conduct the same kind of operations as defined in 14 CFR § 110.2;

b) Issuance of OpSpec A029 aircraft interchange arrangement must be identified by registration number; and

c) Maintain operational control only during the interchange operation.

2.4.2.2 Interchange Operator Requirements (U.S.-Registered).

a) The operator must have the same M/M aircraft in their own OpSpec D085 and be authorized in their OpSpecs to conduct the same kind of operations as defined in 14 CFR § 110.2;

- b) Review the operator’s OpSpecs A003 and D085 to verify aircraft are authorized by M/M; aircraft must be the same as the primary operator;
- c) Issuance of OpSpec A029 aircraft interchange arrangement must be identified by registration number; and
- d) Maintains operational control only during the interchange operation.

2.4.3 The Interchange Points. The interchange points are those airports where an aircraft may be transferred between the primary operator and the interchange operator and must be listed in OpSpec A029. The transfer involves the replacement of the flightcrew/operational procedures of one operator with the flightcrew/operational procedures of the other operator.

Note: The parties to the interchange arrangement may transfer operational control of the aircraft only at an interchange point designated in the appropriate OpSpec paragraphs.

2.4.4 U.S. or Foreign Registry of Interchange Aircraft. Under an interchange arrangement, the aircraft may be of either U.S. or foreign registry. However, if the aircraft is foreign-registered, in order to be operated by a U.S. CH, it must specifically comply with the following:

- a) The aircraft carries an appropriate Airworthiness Certificate issued by the country of registration and meets the registration and identification requirements of that country.
- b) The aircraft is of a type design which is approved under a U.S. type certificate (TC) and complies with all of the requirements of 14 CFR Chapter I that would be applicable to that aircraft were it registered in the United States, including the requirements for issuance of a U.S. Standard Airworthiness Certificate (including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements of 14 CFR Chapter I), except that a U.S. registration certificate and a U.S. Standard Airworthiness Certificate will not be issued for the aircraft.
- c) Pilot certificates must match the State of Registry or have a letter of verification from the State of Registry.
- d) The aircraft is operated by U.S.-certificated airmen employed by the CH.

Note: If the aircraft is of U.S. registry, the foreign air carrier or foreign person must comply with the applicable 14 CFR requirements while it has operational control of the aircraft (see Volume 3, Chapter 13, Section 5).

2.4.5 Sample Scenarios. The following scenarios may arise when amending OpSpec paragraphs to document interchange arrangements involving foreign air carriers and operations to the United States:

Note: List only the interchange points that are located in the United States or the last point of departure before coming to the United States, if it is an interchange point.

a) If the primary operator under an interchange arrangement is either a U.S. operator or a foreign air carrier operating to the United States, the aircraft subject to the interchange will be identified in the primary operator’s OpSpec A029 and included in the primary operator’s aircraft listed in OpSpec A003.

b) If the interchange operator provides service to the United States, the aircraft subject to the interchange will be identified in the interchange operator’s OpSpec. If the interchange operator does not serve the United States, the FAA would not issue OpSpec A029 to the interchange operator. In this case, the interchange points must be located outside the United States.

c) When U.S.-registered aircraft are included under an interchange arrangement between two 14 CFR part 129 foreign air carriers, those aircraft must also be listed in the primary operator’s OpSpec D085.

2.5 CHARTER ARRANGEMENTS. A charter is an arrangement whereby a person agrees to provide all, or part of, the lift capacity of an aircraft it operates to another person for a defined period of time or number of flights. In short, a charter is the provision of a flight service.

Note: Charters cannot be used for scheduled service. Under scheduled service, it would need to be a wet or dry lease agreement or an interchange arrangement.

2.5.1 Elements. In a charter arrangement, several elements are usually present and distinguish a charter from a wet lease arrangement:

- a) The provision of all or part of the aircraft’s lift capacity to another person;
- b) The person contracting for the lift capacity is not the operator of the aircraft;
- c) A specific aircraft is not identified; and
- d) There is no transfer of exclusive possession and use of that aircraft to the other person. For example, the person providing the lift capacity either:

- Retains the right to substitute other aircraft for the aircraft identified in the arrangement; or
- Retains the right to use the aircraft identified in the arrangement for their own purposes when the aircraft is not needed by the operator receiving the lift capacity.

2.5.2 Economic Authority. A foreign air carrier conducting charter operations to or from the United States must hold the appropriate economic authority from the OST. Charter economic authority may be granted in the form of an exemption, foreign air carrier permit, or foreign aircraft permit/special authorization under 14 CFR part 375.

a) Per the DOT, for licensing purposes, alternate airports are considered technical stops. Therefore, foreign air carriers who do not hold economic authority to serve the United States may file U.S. airports as alternate airports for weather reasons under the provisions of 14 CFR § 375.30.

b) The FAA does not issue OpSpecs to these operators. For additional guidance on foreign citizens operating large 14 CFR § 125.1(a) U.S.-registered aircraft into the United States or its territories or possessions, see Volume 2, Chapter 6, Sections 1 and 3. For additional guidance on foreign civil aircraft seeking to conduct Required Navigation Performance Authorization Required (RNP AR) or special instrument approach procedures (IAP) and Area Navigation (RNAV) Visual Flight Procedures (RVFP) in the United States, see Volume 12, Chapter 3, Section 9.

2.5.3 Foreign Civil Aircraft. Title 14 CFR part 375 is an economic regulation that provides oversight for the admission to, and navigation in, the United States of foreign civil aircraft, other than those foreign civil aircraft operated under common carriage authority contained in a foreign air carrier permit or exemption. A definition of foreign civil aircraft can be found in 14 CFR part 375.

a) Some of the operations may be noncommercial in nature, while others involve remuneration of some form.

b) In addition to foreign-registered civil aircraft, 14 CFR part 375 also applies to all foreign-owned and/or controlled U.S.-registered aircraft wishing to operate to/from/within the United States.

c) Foreign-owned and/or controlled U.S.-registered aircraft wishing to operate to/from/within the United States must comply with 14 CFR part 47 or 48.

d) In most cases, manned operations licensed economically under 14 CFR part 375 would operate under 14 CFR part 91 of the FAA’s safety rules. Depending on the type of specialty air service, other rules may apply (e.g., 14 CFR part 133 for rotorcraft external-load operations or 14 CFR part 137 for agricultural operations).

e) For unmanned operations licensed economically under 14 CFR part 375, FAA safety rules include either 14 CFR part 91 or 107. Depending on the type of specialty air service, other rules may apply (e.g., 14 CFR part 133 for rotorcraft external-load operations, or 14 CFR part 137 for agricultural operations). Procedures for the issuance of a Special Flight Authorization (SFA) for foreign civil Unmanned Aircraft Systems (UAS), Optionally Piloted Aircraft (OPA), or OPA/UAS operating in U.S. airspace per the regulatory requirements in 14 CFR § 91.715 may be found in FAA policy memo AIR-600-22-634-PM03, Guidance for the Issuance of a Special Flight Authorization (SFA) for an Unmanned Aircraft System (UAS), Optionally Piloted Aircraft (OPA), or an OPA/UAS.

Note: Title 14 CFR § 133.1 excludes 14 CFR part 107.

f) Flight Standards District Offices (FSDO) issue Letters of Authorization (LOA) to foreign civil aircraft operating under 14 CFR part 133 (see Volume 3, Chapter 51 and Volume 2, Chapter 7) and 14 CFR part 137 (see Volume 2, Chapter 8 and Volume 6, Chapter 6). For the United States-Mexico-Canada Agreement (USMCA) (formerly known as the North American Free Trade Agreement (NAFTA)), FSDOs issue Certificates of Authorization (COA) and/or Letters of Registration (LOR) (see Volume 12, Chapter 3, Section 7).

g) If the request involves a UAS, additional information can be obtained on the Information for International UAS Operators in the United States web page at https://www.faa.gov/uas/resources/foreign_operators or by calling 844-FLY-MY-UA.

Note: PIs may contact the International Program Division (AFS-50) for questions that are not answered at the following internal AFS-50 website: <https://my.faa.gov/org/linebusiness/avs/offices/afx/divisions/afs/afs50.html>.

2.5.4 Manned Charter Operations to the United States Under 14 CFR Part 375. If the foreign air carrier intends to conduct charters to the United States and does not hold FAA-issued OpSpecs, the foreign air carrier may make a request to, and obtain economic authority from, the DOT to conduct “occasional plane load charters” under 14 CFR part 375. (For single requests, no more than 6 per calendar year (per 14 CFR § 375.42); or for batch-processed, prequalified requests, typically no more than 12 per calendar year or as specified by the DOT (per 14 CFR § 375.70), which the foreign air carrier can renew 60 calendar days prior to expiration. At its discretion, the DOT can grant more than 12 flights per calendar year.) Also refer to DOT Notice Amending Conditions Imposed on Certain Special Authorizations and Foreign Aircraft Permits Granted Under 14 CFR Part 375 at <https://www.regulations.gov/document/DOT-OST-1998-20-1055>.

2.5.5 Foreign Civil UAS Aircraft Operations in the United States Under 14 CFR Part 375. Typically, DOT economic approvals for UAS specialty air services under 14 CFR part 375 are granted for a specific duration, but there is no regulatory provision that calls for limiting them to a certain number of flights. The terms of duration may be for a specific time period as requested by the applicant or for a time period determined by the OST, but generally are not for more than one year. See paragraph 2.5.7 for additional information.

2.5.6 Specialty Air Service Operations. Specialty air service operations utilizing manned aircraft or UAS (e.g., UAS aerial photogrammetric analysis of the infrastructure of bridges, UAS aerial photography for documentary filmmaking, UAS aerial firefighting operations, agricultural operations, etc.) generally fall under 14 CFR § 375.41 and require DOT approval before they are conducted. All applicable requirements of 14 CFR, Federal aviation regulations, FAA orders, and all applicable U.S. Government requirements concerning security and hazardous materials (hazmat) apply when conducting these types of operations.

2.5.7 Tracking 14 CFR Part 375 DOT Approvals. IFO PIs can look up the status of a 14 CFR part 375 request on the internal AFS-50 SharePoint website at https://tableau.faa.gov/#/site/_AFS-50AnalysisandReports/views/OPSSOperatorandAirAgencyInformation/Part375Authorizations.

2.6 PROVISION OF ENTIRE AIRCRAFT WITH CREW. Under an OST-approved provision of aircraft with crew arrangement, a foreign air carrier may provide an entire aircraft with crew to a U.S.-certificated air carrier without acting contrary to the FAA’s regulations. FAA regulations generally prohibit a foreign air carrier from wet-leasing aircraft to a U.S.-certificated air carrier.

2.6.1 Arrangement Type. This arrangement has features that are characteristic of a charter, although the parties to the arrangement may characterize it as a wet lease. In both cases, the arrangement might actually be a charter (a services arrangement for provision of a flight service to a customer).

a) If the lessor/grantor never transfers legal possession of the entire aircraft, the arrangement is not a prohibited 14 CFR § 119.53 wet lease.

b) If the arrangement makes it clear that the lessor/grantor never transfers actual possession (custody) of the entire aircraft, the arrangement is not a 14 CFR § 119.53 wet lease and may be considered a charter.

2.6.2 Approval Process. Under regulatory guidance issued by the OST, the foreign operator providing the lift capacity for the U.S. air carrier will include in its application a copy of the arrangement/charter. The FAA will review the arrangement using the essential elements listed below and provide its recommendation to the OST. The OST will review the FAA’s recommendations and determine if the operation meets the requirements of 14 CFR part 212 and is in the public interest, and whether to grant the authorization.

Note: The responsible Flight Standards office or IFO for the operator providing the entire aircraft with crew must maintain a copy of the arrangement as specified in Volume 12, Chapter 4, Section 14.

2.6.2.1 Essential Elements of the Provision. The essential elements of a provision of an entire aircraft with crew arrangement by a foreign air carrier to a U.S. air carrier are as follows:

a) Operational control remains with the operator providing the lift capacity.

Note: The operational control determination will be based on the terms of the arrangement and all other relevant factors, such as authority over initiating, conducting, or terminating a flight.

b) The legal and actual possession (custody) of the aircraft remains with the operator providing the lift capacity. Factors relevant to the determination of legal and actual possession include:

- The right to substitute other aircraft for the aircraft identified in the arrangement; or
- The right to use the aircraft identified in the arrangement for its own purposes when the aircraft is not needed by the operator receiving the lift capacity.

c) The country that issued the Air Operator Certificate (AOC) of the operator providing the lift capacity will oversee the operations and would be continuously rated as IASA CAT 1 under the FAA’s IASA program.

d) The U.S. air carrier obtaining the lift capacity has assessed the level of safety of the service to be provided by the foreign air carrier involved and has found it to be satisfactory. The carrier’s method of assessment and the criteria used must have been previously reviewed by the

FAA and comply with the international standards found in ICAO Annexes 1; 6, Operation of Aircraft; and 8, Airworthiness of Aircraft.

e) Both parties to the arrangement must apply to the OST for any necessary amendments to their economic permits.

2.6.3 Additional Responsibilities of the FAA and Operator.

a) The operator providing the lift capacity must provide all necessary flight and ground crew, crew training, ground handling, communications, dispatch of the aircraft, decision of the particular aircraft to be used in any given operation, and authority over the pilot in command (PIC) in all matters concerning flight operations, and be carried out in accordance with standards and practices as set out in its Flight Operations Manual (FOM).

b) An agreement between 14 CFR part 129 air carriers, or between a foreign person and a 14 CFR part 129 air carrier, to wet lease aircraft or provide an entire aircraft with crew must be reviewed by the FAA against the principles described in this section to determine whether it is a wet lease agreement, typical charter arrangement, or provision of an entire aircraft with crew.

c) The responsible Flight Standards office or IFO for the operator providing the entire aircraft with crew must maintain a copy of the arrangement as specified in Volume 12, Chapter 4, Section 14.

2.7 SPECIAL INTEREST FLIGHTS (SIF). Flights in U.S. territorial airspace from certain States require FAA routing authorizations. For more information, refer to https://www.faa.gov/air_traffic/publications/internationalnotices/. Questions related to SIFs can be directed to the Strategic Operations Security Group (AJR-2200) at 9-ATOR-HQ-IFOS@faa.gov. Additional information can be found in Volume 12, Chapter 4, Section 2 for 14 CFR part 129 operations.

2.8 FOREIGN STATE OR DIPLOMATIC AIRCRAFT OPERATIONS. A foreign government may request to fly an aircraft to transit or land in U.S. territorial airspace. These types of operations do not require FAA OpSpecs nor a DOT permit. These diplomatic clearances are routed through the U.S. Department of State (DOS). The DOS determines whether the operation qualifies as a State or diplomatic flight. For more information, refer to <https://www.state.gov/diplomatic-aircraft-clearance-procedures-for-foreign-state-aircraft-to-operate-in-united-states-national-airspace/>. Some State or diplomatic flights may fall under SIFs. See paragraph 2.7 above. The aircraft may be State aircraft or civil aircraft designated for State or diplomatic purposes. Applicable operating rules in 14 CFR part 91 must be followed. For additional guidance on handling any noncompliance by foreign State or diplomatic aircraft operations with FAA regulations, IFOs must contact the International Operations Branch (AFS-52).

2.9 EMERGENCY CHARTERS OR REPATRIATION FLIGHTS. Foreign air carriers may request charters to the United States due to emergency situations, disaster relief, evacuation/repatriation of citizens, or other similar circumstances. These flights may fall under SIFs. See paragraph 2.7 above. The DOS and/or the DOT may query AFS-50 for safety recommendations related to the foreign operator conducting the flights. AFS-50 will collect any

pertinent data the FAA may have for the operator and will provide that to the DOS and/or the DOT to assist in their approval determinations. Coordination with the DOS, the DOT, the Transportation Security Administration (TSA), and U.S. Customs and Border Protection (CBP) may be necessary. Contact AFS-52 for assistance.

2.9.1 Transit Flights. An emergency charter or repatriation flight may request to transit or make a technical stop in the United States. Title 14 CFR § 375.33 allows foreign civil aircraft to navigate across the territory of the United States or make technical stops for up to 24 hours.

2.9.2 State or Diplomatic. If the emergency charter or repatriation flight is being conducted as a State or diplomatic flight, see paragraph 2.8 above.

2.9.3 Nonrevenue. Title 14 CFR § 375.30 allows foreign civil aircraft not engaged in commercial operations to carry nonrevenue traffic to, from, or between points in the United States. No DOT economic authority or FAA OpSpecs are required.

2.9.4 Revenue. If the emergency charter or repatriation flight is being conducted for compensation or hire, it may be conducted under 14 CFR part 129 or 375. For 14 CFR part 375, see paragraphs 2.5.2 through 2.5.4 and 2.5.7 above. For 14 CFR part 129, see the applicable sections of Volume 12, Chapter 4.

VOLUME 12 INTERNATIONAL AVIATION**CHAPTER 3 AGREEMENTS, ARRANGEMENTS, AUTHORIZATIONS, AND PERMITS****Section 9 Foreign General Aviation (Not 14 CFR Part 129) and Foreign Civil Aircraft (14 CFR Part 375) Letters of Authorization****Source Basis:**

- **Title 14 CFR § 91.103, Preflight Action.**
- **Title 14 CFR § 91.175, Takeoff and Landing Under IFR.**
- **Title 14 CFR § 97.20, General.**

9.1 GENERAL.

9.1.1 Purpose. This section provides the Federal Aviation Administration (FAA) policy and aviation safety inspector (ASI) guidance associated with Letters of Authorization (LOA) available for issuance to foreign General Aviation (GA) operators and foreign civil aircraft (Title 14 of the Code of Federal Regulations (14 CFR) part 375) operating under 14 CFR part 91, henceforth referred to in this section as “foreign GA operators.” This does not include 14 CFR part 129 operators.

9.1.2 Scope. This section is applicable to International Field Offices (IFO) having responsibilities associated with 14 CFR part 91 LOA issuance, based on the service area covering the foreign GA operator’s principal base of operations.

9.1.3 Safety Assurance System (SAS) Activity Recording (AR) Codes. 1220 and 1442. See Volume 3, Chapter 2, Section 2.

9.2 DEFINITIONS. See Volume 12, Chapter 1, Section 1 for information associated with this section.

9.3 BACKGROUND. Title 14 CFR § 91.175 requires that each person, except for U.S. military, wishing to conduct special non-14 CFR part 97 approach procedures obtain FAA authorization. If such a request was made, then the minimum LOAs that would need to be issued to the foreign GA operator by the responsible IFO are LOAs A001, A004, and C381.

9.4 LOAs. All LOAs issued will be from the 14 CFR part 91 Operations Safety System (OPSS) grouping.

9.4.1 LOA A001—Issuance and Applicability. LOA A001 must be issued if the optional LOA C381 is issued. A001 identifies general information about the foreign GA operator, including the legal name of the operator, Responsible Person, principal base of operations address, and mailing address (if different from the principal base of operations address).

9.4.2 LOA A004—Summary of Authorizations. LOA A004 summarizes optional authorizations that have been authorized to the foreign GA operator. To issue an optional LOA,

such as LOA C381, the LOA must first be authorized in the foreign GA operator’s issued LOA A004.

9.4.3 LOA A007—Agent for Service (Optional).

a) Purpose. LOA A007 optionally makes available the designation of an agent for service to the foreign GA operator. The role of the agent for service is defined in Volume 12, Chapter 1, Section 1.

b) Title 14 CFR Part 91. Although there is no regulatory requirement for the agent for service (in or outside of the United States) for foreign GA operators operating foreign-registered aircraft in the United States under 14 CFR part 91, an agent for service designation is helpful to the FAA. It provides an extra point of contact (POC) for the GA operator that the ASI can use when amendments to procedures occur and the POCs for the GA operator are unresponsive.

Note: It is imperative that foreign GA operators are responsive to the FAA when notified of LOA C381 procedure amendments. Conducting/flying an expired procedure is a violation of 14 CFR § 91.103 preflight planning. In addition, for individuals with a foreign address and no U.S. mailing address, voluntary submission of a designated U.S. agent’s name, U.S. postal address, email, and other information is intended to assist in providing expedited service of FAA notices, orders, and correspondence in this matter.

9.4.4 LOA C381—Special Instrument and RNAV Visual Flight Procedures (Optional).

a) General. LOA C381 is an optional authorization available for issuance to foreign GA operators under 14 CFR § 91.175. C381 authorizes special (non-14 CFR part 97) instrument approach procedures (IAP) and departure procedures (DP) and the use of Standard Terminal Arrival Route (STAR) and Area Navigation (RNAV) Visual Flight Procedure (RVFP) operations.

b) Issuing the Authorization. The process for issuing the authorization is similar to that used to issue OpSpec C081 for 14 CFR part 129 (see Volume 12, Chapter 4, Section 4, OpSpec C081) except:

1) Prior to authorization, the International Program Division (AFS-50) and Flight Technologies and Procedures Division (AFS-400) concurrence will be required.

2) The foreign Civil Aviation Authority (CAA) POC will be listed in LOA C381, Table 2, Responsible State Government Official. It is the foreign GA operator’s responsibility to provide the POC’s name, email, and telephone number to the responsible IFO.

Note: Certain special procedures (e.g., Localizer (LOC)/Distance Measuring Equipment (DME) Runway (RWY) 15 and RNAV (Global Positioning System (GPS)) Z RWY 15 to Aspen, CO) allow access to challenging airports with steep, close terrain. Principal Operations Inspectors (POI) may find it helpful to set up an informational sharing meeting that includes AFS-50, the Flight Procedures and Airspace Group (AFS-420), the foreign GA operator, or the foreign GA operator’s CAA POC to discuss FAA Form 8260-7B, Special Procedure

Authorization, requirements (e.g., operator training requirements, equipment requirements, airport requirements, and simulator requirements).

3) The FAA will issue the LOA with an expiration date not to exceed 36 calendar months. If the foreign GA holds 14 CFR part 375 authority, then the expiration date cannot exceed the 14 CFR part 375 authority expiration date.

4) If the foreign operator has an agent for service, then LOA A007 should also be issued. See subparagraph 9.4.3b).

c) Amendments. When making amendments to the operator’s LOAs when ASIs load them from active, all information including the expiration date is autoloading. ASIs will need to manually update the procedure amendment and enter a new expiration date (not to exceed 36 calendar months).

d) Cancellations. If the foreign GA operator is no longer going to use a procedure, the POI must remove the procedure from the foreign GA operator’s LOA and advise AFS-420 that the foreign GA operator is no longer authorized to use that procedure. If the procedure is canceled, AFS-420 will notify the POI, and the POI will remove the procedure from the foreign GA operator’s LOA.

9.4.5 LOA C384—Required Navigation Performance (RNP) Procedures With Authorization Required (AR), Rev 30 or Later (Optional).

a) General. LOA C384 is an optional authorization available for issuance to foreign GA operators. LOA C384 authorizes RNP AR. The regulatory basis for this LOA is 14 CFR § 97.20.

b) Issuing the Authorization. The process for issuing the authorization is similar to that used to issue OpSpec C384 for 14 CFR part 129 (see Volume 12, Chapter 4, Section 4, OpSpec C384) except for the following columns in Table 1:

1) The navigation system make and model (M/M) and software version information is incorporated into a single column (i.e., “Navigation System M/M Software Version” column).

2) The “Autopilot Coupled or Flight Director Required” column information is incorporated into a single column (i.e., “Lowest RNP” column).

9.5 ANNUAL DESK AUDIT/SAS VALIDATION. Responsible ASIs of the office who issued the LOA will conduct an annual desk audit/SAS validation of each foreign GA operator that will include at a minimum:

- Verification of the Responsible Person’s and Responsible State Government Official’s contact information;
- Verification that there are no new amendments to the procedures listed in LOA C381, Table 1;
- Verification of the LOA’s expiration date; and

- If the foreign GA holds 14 CFR part 375 authority, confirm with the foreign GA if they intend to renew the 14 CFR part 375 authority. If the foreign GA intends to renew and LOA C381 has been issued, update the expiration date on C381. If the foreign GA does not intend to renew, then terminate the foreign GA LOAs once they have confirmed that the 14 CFR part 375 authority has expired.

9.5.1 ASI Change. When departing or changing responsibilities (e.g., retiring, taking a position in another FAA office), the ASI should ensure they alert management that this task needs to be completed.

9.5.2 Authorization Renewal. If the LOA is set to expire in less than 12 calendar months from the date of the desk audit, it is recommended that the responsible ASI verify with the foreign GA operator if they will be seeking to renew the authorization.

9.5.2 Inactive LOAs. If the LOA has expired or will no longer be used by the foreign GA operator, ASIs will take action according to the additional guidance in Volume 3, Chapter 2, Section 2 on inactive LOAs.

9.6 COMPLIANCE, ADMINISTRATIVE, AND ENFORCEMENT ACTION. If regulatory noncompliance or any other safety issue is discovered, follow the process contained in Volume 12, Chapter 2, Sections 4 and 6 to determine the appropriate FAA action.

9.7 ADDITIONAL GUIDANCE. For additional guidance on foreign civil aircraft (14 CFR part 375), see Volume 12, Chapter 3, Section 2.