CHAPTER 2 FOREIGN AIR CARRIERS OPERATING TO THE U.S. AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE OUTSIDE THE U.S.

Section 1 Background and FAA Authority

12-80 DEFINITIONS.

A. **Dry Lease.** The term dry lease means any arrangement whereby a lessor agrees to provide entire aircraft without crew to an operator, and the lessee maintains operational control. The lessee operator of the aircraft must hold the necessary economic and operating authority for the aircraft, and it must exercise operational control over the aircraft. Accordingly, the lessee must provide the necessary flight and cabin crewmembers, ground personnel, dispatchers, and ground facilities to operate the leased aircraft.

B. **Foreign Air Carrier.** Any person, not a citizen of the United States, who undertakes, whether directly or indirectly by lease or any other arrangement, to engage in foreign air transportation.

C. **Foreign Air Taxi.** For this chapter only, this means any person, not a citizen of the United States, who is authorized by its State and the U. S. Government to operate small aircraft only in nonscheduled foreign air transportation.

D. **Foreign Air Transportation.** The carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between a place in the United States and any place outside the United States; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

E. **Interchange Agreement.** An aircraft interchange, or interchange flight, is a regularly scheduled, single-plane through service linking a route of one air operator at the interchange point to a route of a second air operator with the same aircraft being crewed by and under the operational control of the respective authorized operator on each route. An interchange provides passengers with the benefit of a single-plane service on what is essentially an interline operation and may provide additional benefits to the operators involved in terms of better aircraft utilization.

F. **Kind of Operation.** Means one of the various operations a Title 14 of the Code of Federal Regulations (14 CFR) part 129 operator is authorized to conduct, as specified in its operations specifications (OpSpecs); i.e., domestic, flag, supplemental, commuter, or on-demand operations.

G. **Lease.** A contract by which one person grants the right of exclusive possession and use of a certain aircraft to another person for a specified period or a defined number of flights.

H. **Lessor.** The term lessor means the party from which the aircraft is leased.
I. Lessee. The term lessee means the party to which the aircraft is leased.

J. Principal Base of Operations. The primary operating location of a part 129 operator as established by the certificate holder.

K. Regular Airport. An airport used by a part 129 operator in scheduled operations and listed in its OpSpecs.

L. Small Aircraft. For this chapter only, this means any aircraft having a maximum certificated takeoff weight of 12,500 pounds or less.

M. Scheduled Operation. Any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the part 129 operator or its representative offers in advance the departure location, departure time, and arrival location. It does not include any passenger-carrying operation that is conducted as a public charter operation under 14 CFR.

N. Wet Lease. The term wet lease means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember to another person. A wet lease does not include a code sharing arrangement. (See 14 CFR part 110, § 110.2.)

12-81 DEPARTMENT OF TRANSPORTATION (DOT) AUTHORITY AND ROLE.

A. Economic Authority. Before any foreign air carrier or foreign operator may conduct any passenger or cargo operations to and from the United States, it must obtain a permit issued by the DOT under Title 46 of the United States Code (49 U.S.C.) §§ 41301 through 41306 or other appropriate economic or exemption authority issued by the DOT.

B. Application. Applicants for § 402 permits, including renewal, amendment, or transfer of a permit must file an application required by 14 CFR part 211 with the DOT. Before any economic authority is issued, the DOT must determine that the applicant is fit, willing, and able to perform such foreign air transportation and to conform to U.S. rules and regulations, and that such air transportation will be in the public interest. In granting economic authority to a foreign air carrier, the DOT may impose certain terms, conditions, and limitations based on public interest considerations and bilateral agreements between the State of the foreign air carrier and the U.S. Government. The exercise of the privileges granted by the DOT is subject to compliance with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

C. North American Applications. Canadian charter air taxi operators register for economic authority under 14 CFR part 294 to operate transborder services between Canada and the United States. Mexican charter air taxi operators file application for foreign air carrier permits under part 211, § 211.10. Foreign air taxis from Canada and Mexico register or file, respectively, with the Licensing Division (P-45) of the DOT’s Office of Aviation Operations. Approval of foreign air taxis from Canada and Mexico to operate within the United States is subject to the bilateral agreements between the respective governments and compliance with all

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applicable laws of the United States. All the above operations are exempt from the North American Free Trade Agreement (NAFTA.)

12-82 FEDERAL AVIATION ADMINISTRATION’S (FAA) AUTHORITY AND ROLE.

A. Title 14 CFR. Title 14 CFR contains the basic authority for promoting safety of flight of civil aircraft in air commerce and for regulating the global operations of U.S.-registered aircraft. The regulations prescribe minimum safety standards and reasonable rules and regulations to accomplish the agency’s safety function. With respect to foreign operators, the predominant operating standards are found in 14 CFR parts 91 and 129. In general, the FAA’s authority to regulate foreign operators using foreign registered aircraft is limited to assuring compliance with all the applicable operating rules, the ability to safely navigate and communicate within the U.S. National Airspace System (NAS), and protecting persons and property on the ground. In addition, if a foreign operator uses any U.S.-registered aircraft, other 14 CFR parts apply (e.g., parts 21, 43, 61, 63, and 65).

- Any U.S.-registered aircraft operated by a foreign air carrier is considered a foreign civil aircraft. The U.S. registration does not convey any additional authorization to the foreign air carrier beyond that granted in its OpSpecs.
- The scope of the foreign air carrier’s operations is limited to that granted in its DOT economic authority and reflected in its OpSpecs issued by the FAA, regardless of the State of Registry of its aircraft.

B. OpSpecs. Each foreign air carrier conducting operations within the United States, and each foreign air carrier or foreign person operating U.S.-registered aircraft solely outside the United States in common carriage must conduct its operations in accordance with OpSpecs issued by the Administrator under part 129. Each foreign air carrier conducting operations within the United States must conduct its operations in accordance with the standards contained in Annex 1 (Personnel Licensing), Annex 6 (Operation of Aircraft), Part I (International Commercial Air Transport—Aeroplanes) or Part III (International Operations—Helicopters), as appropriate, and in Annex 8 (Airworthiness of Aircraft) to the Convention on International Civil Aviation.

C. Employee’s Duties and Responsibilities. Each foreign air carrier must keep each of its employees, and other persons working in its operations, informed of the provisions of its OpSpecs that apply to that employee’s or person’s duties and responsibilities. OpSpecs issued under part 129 are effective until:

1) The foreign air carrier or foreign person surrenders them to the FAA;

2) The Administrator suspends or terminates the OpSpecs; or

3) The OpSpecs are amended as provided in § 129.11. Guidance is provided for amendment in Volume 12, Chapter 2, Section 8.

12-83 FAA’S FOREIGN ASSESSMENT PROGRAM. The Flight Standards (AFS) International Aviation Safety Assessment (IASA) program involves assessing whether another
country's oversight of its air carriers that operate, or seek to operate, into the United States complies with minimum international standards for aviation safety. Under the Chicago Convention, FAA has a right to determine if other States meet the International Civil Aviation Organization (ICAO) standard.

A. IASA. The IASA program focuses on a country’s ability, not the individual air carrier, to adhere to international standards and recommended practices for aircraft operations and maintenance established by the ICAO. IASA is based on AFS’s policy regarding U.S. operations of foreign air carriers. The purpose of the IASA is to determine if foreign air carriers that operate between the United States are properly licensed and have safety oversight provided by a competent Civil Aviation Authority (CAA) in accordance with ICAO standards.

B. Categorization of Results of IASA Assessments. IASA uses two categories: Category I (CAT I) (in compliance with minimum international standards for aviation safety) and Category II (CAT II) (not in compliance with minimum international standards for aviation safety). The FAA assessed this country’s CAA and determined that it does not provide safety oversight of its air carrier operators in accordance with the minimum safety oversight standards established by the ICAO. For those countries not serving the United States at the time of the assessment, an asterisk “*” will be added to their CAT II determination. This category consists of two groups of countries.

C. Air Carriers with Existing Operations to the United States. The first group is countries that have air carriers with existing operations to the United States at the time of the assessment. While in CAT II status, carriers from these countries will be permitted to continue operations at current levels under heightened FAA surveillance. Expansion or changes in services to the United States by such carriers are not permitted while in CAT II, although new services will be permitted if operated using aircraft wet leased from a duly authorized and properly supervised U.S. carrier or a foreign air carrier from a CAT I country that is authorized to serve the United States using its own aircraft and flightcrew.

D. Air Carriers Without Existing Operations to the United States. The second group is countries that do not have air carriers with existing operations to the United States at the time of the assessment. Carriers from these countries will not be permitted to commence service to the United States while in CAT II status, although they may conduct services if operated using aircraft wet leased from a duly authorized and properly supervised U.S. carrier or a foreign air carrier from a CAT I country that is authorized to serve the United States with its own aircraft and flightcrew. No other difference is made between these two groups of countries while in a CAT II status.

E. CAT II IASA Rating. Unless there are serious and immediate safety concerns about a specific carrier, a CAT II IASA rating does not normally result in the termination or reduction of flights to the United States by that country’s air carriers. In practice, its air carriers may continue to operate to the United States at current levels of service. (In the case of on-demand carriers, the process uses an analysis of the number of flights conducted over the last 12 months, prior to the date of the downgrade in category, to establish the pre-existing level of service.) However, since the foreign carrier’s CAA is not overseeing existing operations in accordance with minimum international standards, AFS will not normally approve additions or substitutions.
to the “OpSpecs” of carriers from IASA CAT II countries until the CAA regains CAT I status. This means essentially that a CAT II country is not permitted to increase the number of flights to the United States or to substitute aircraft in the existing fleet, although AFS will consider requests for substitutions of like aircraft (e.g., substitution of a Boeing 727-200 for a 727-200). In such cases, an exchange for same make and model of aircraft may be considered for maintenance purposes such as a heavy check or significant modification. In those limited cases, the particulars shall be submitted to the manager of AFS-50 for consideration and approval of such a substitution, while the carrier’s authority is under a CAT II country.

F. Ramp Inspections. FAA inspectors will also conduct more frequent ramp inspections, as called out under the Heightened Surveillance List (HSL), on the carriers of a CAT I or 2 country when their aircraft are in the United States.

G. Code-Sharing. An IASA CAT II rating also has consequences for code-sharing. Under code-share policy guidelines established in the spring of 2000, the DOT will generally not allow a U.S. carrier’s code to be carried on a foreign carrier’s aircraft unless: (a) the foreign air carrier’s home country CAA has an IASA CAT I rating; and (b) the foreign air carrier passes a safety audit by its U.S. code-share partner. If a country in CAT I is downgraded to CAT II, the DOT will generally require that the U.S. airline’s code be removed from any service operated by the foreign air carrier. The rationale for this policy is full disclosure to the consumer. A passenger who purchases a ticket marketed and/or operated by a foreign air carrier has no expectation of U.S. Government oversight of the operation. On the other hand, a passenger who purchases a ticket marketed under the code of a U.S. carrier is purchasing a U.S. carrier’s service and has an expectation that the level of foreign carrier safety will be equivalent to that of the U.S. carrier over the entire journey. This expectation is not met if the foreign air carrier’s home country is not capable of providing safety oversight at least to minimum international standards. To prevent any consumer misconception, the DOT therefore requires the U.S. carrier to remove its code from the services of foreign air carriers from CAT II countries. A carrier from a CAT II country may mitigate the consequences of CAT II status by wet leasing aircraft from a CAT I country carrier or by registering its own aircraft in a CAT I country, where safety oversight will be provided by that country’s CAA.

RESERVED. Paragraphs 12-84 through 12-103.