

**§ 375.36**

(c) A charge reasonably related to the value of meals and beverages furnished enroute shall not be deemed to constitute compensation or hire for purposes of this section.

**§ 375.36 Lease of foreign civil aircraft without crew.**

Foreign civil aircraft that are leased without crew to an air carrier or citizen or permanent resident of the United States, and used by the lessee in otherwise authorized air transportation or commercial air operations, may be operated into, out of, and within the United States in accordance with any applicable regulations prescribed by the Federal Aviation Administration.

**Subpart E—Operations Requiring Specific Preflight Authorization of Filing**

**§ 375.40 Permits for commercial air operations.**

(a) *Permit required.* Except for aircraft being operated under a foreign air carrier permit, an exemption, or as otherwise provided in Subpart D or H of this part, foreign civil aircraft may engage in commercial air operations only if there is carried on board the aircraft a permit issued by the Department in accordance with this subpart authorizing the operations involved.

(b) Aircraft are not authorized to engage in air transportation under this section. Where an operation involves the carriage of persons, property or mail for compensation or hire, the Department will determine whether particular flights for which a permit is sought will be in common carriage, and therefore in air transportation, based on all the facts and circumstances surrounding the applicant's entire operations. The burden rests upon the applicant in each instance to demonstrate by an appropriate factual showing that the contemplated operation will not constitute common carriage from, to or within the United States. In general, an applicant that holds itself out to the public, or to a particular class or segment, as willing to furnish transportation for hire is a common carrier.

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**§ 375.41 Agricultural and industrial operations within the United States.**

Foreign civil aircraft shall not be used for such commercial air operations as crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting or similar agricultural or industrial operations within the United States, including its territorial waters and overlying airspace, unless a permit has been issued by the Department and the operation is conducted in accordance with all applicable State and local laws and regulations as well as the applicable provisions of this part.

**§ 375.42 Transport operations—occasional planeload charters.**

Occasional planeload charters may be authorized where, because of their limited nature and extent, special equipment or facilities utilized, or other circumstances pertaining to them, it appears that they are not within the scope of the applicant's normal holding out of transportation services to the general public. Such charters are normally limited to those in which the entire capacity of the aircraft is engaged by a single charterer, and since they are occasional in nature, should not exceed for any one applicant more than six flights during a calendar year. This part does not authorize operations that involve solicitation of the general public such as is usually involved in the transportation of individually-ticketed passengers or individually-waybilled cargo, or in which the charterer is a travel agent, a charter operator, a broker, an air freight forwarder or any other organization that holds itself out to the general public to provide transportation services. Carriage of cargo for the operator's own account is governed by the provisions of this section if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft.

**§ 375.43 Application for foreign aircraft permit.**

(a) Applications for foreign aircraft permits shall be submitted on OST Form 4509, (Appendix A), in duplicate,

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addressed to the Chief, Discrete Operations Branch, Licensing Division, P-45, Office of Aviation Operations. Upon a showing of good cause, applications may be made by telegram or by telephone.

(b) Applications shall contain a proper identification (including citizenship) of the applicant (the operator of the aircraft concerned) and of the owner thereof (if different from the applicant), a description of the aircraft by make, model, and registration marks; and a full description of the operations for which authority is desired, indicating type and dates of operations and number of flights, and routing. In the case of cargo flights, the names of all contractors, agents, if any, and the beneficial owner of the cargo, and a description of the cargo and of the proposed operations shall be provided. In the case of passenger flights, a full identification and description of the group chartering the aircraft, and identification of the travel agent, if any, shall be provided. Applications shall also contain a statement as to whether the applicant's homeland allows operators of U.S.-registered aircraft to conduct similar operations.

(c) Applications shall be filed at least 15 days in advance of the proposed commencement date of the operations. The Department may direct the applicant to serve copies of its application on additional persons. Late applications may be considered by the Department upon a showing of good cause.

(d)(1) Any party in interest may file a memorandum supporting or opposing an application. Two copies of each memorandum shall be filed within 7 business days after the application is filed but no later than the proposed commencement date of the operations. Memoranda will be considered to the extent practicable; the Department may act on an application without waiting for supporting or opposing memoranda to be filed.

(2) Each memorandum shall set forth the reasons why the applications should be granted or denied, accompanied by whatever data, including affidavits, the Department is asked to consider.

(3) A copy of each memorandum shall be served on the applicant.

(e)(1) Unless otherwise ordered by the Department, each application and memorandum filed in response shall be available for public inspection at the Licensing Division of the Office of Aviation Operations immediately upon filing. Notice of the filing of all applications shall be published in the Department's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Department finds that disclosure of all or part of the information should be withheld under applicable provisions of law, and the public interest does not require disclosure, it will order that the injurious information be withheld.

(Approved by the Office of Management and Budget under control number 2106-0002)

### § 375.44 Issuance of permit.

(a) The Department will issue a foreign aircraft permit if it finds that the proposed operations meet the requirements of this part and are in the public interest. Foreign aircraft permits may be conditioned or limited by the Department. Permits must be carried aboard the applicant's aircraft during flight over U.S. territory, and are not transferable.

(b) In determining whether to grant a particular application, the Department will consider, among other factors, the extent to which the country of the applicant's nationality deals with U.S. civil aircraft operators on the basis of substantial reciprocity, and whether the operation is otherwise in the public interest.

### § 375.45 Records and reports of occasional planeload charters.

(a) *Cargo documents.* The holder of a permit for cargo operations shall issue a manifest or shipping document to its shipper with respect to each shipment.

(b) [Reserved]

(c) *Contents of documents for passenger flights.* The holder of a permit for passenger charters originating or terminating in the United States shall require each charterer to file with it