



Applications by foreign civil aircraft operators to conduct in excess of six planeload charter flights per year under 14 CFR Part 375

Introduction

14 CFR Part 375 governs the navigation of foreign civil aircraft in the United States, including the operation of certain commercial services by operators of such aircraft. In particular, §375.42 provides that the Department may authorize “occasional planeload charters” by a foreign aircraft operator,¹ only where those operations do not constitute an engagement in foreign air transportation within the meaning of Title 49 of the U.S. Code.²

In practice, the Department has limited such §375.42 operations to private carriage flights, where the transportation is not held out or sold to the general public, and is limited to single charterers (single entity charters).³ In keeping with the limited nature of these operations, §375.42 states that “since they are occasional in nature, [they] should not exceed for any one applicant more than six flights during a calendar year.”⁴

While the Department has traditionally limited Part 375 planeload charter operations to this six flight per year standard, §375.70 provides that an operator

desiring to navigate a foreign civil aircraft within the United States other than as specifically provided in this part may petition the Department for a special authorization to conduct the particular flight or series of flights. Such authorization may be issued only if the Department finds that the proposed operation is fully consistent with the applicable law, that the applicant’s homeland grants a similar privilege with respect to operators of U.S.-registered aircraft, and that the proposed operation is in the interest of the public of the United States.

Thus, a foreign aircraft operator that wishes to operate more than six planeload charter flights per year under Part 375, may request a special authorization to conduct such operations under §375.70. Based on our experience in reviewing past applications, we believe that it could be

¹ More specifically, §375.40 requires that a foreign civil aircraft operator obtain a foreign aircraft permit to conduct such commercial operations; §375.42 defines the scope of operations that may be authorized; and §375.43 describes the application procedures an operator must follow in order to obtain a foreign aircraft permit.

² In order to conduct foreign air transportation operations, a foreign entity would need to obtain from the Department a foreign air carrier permit under 49 U.S.C. 41301, or an exemption from that permit requirement under 49 U.S.C. 40109.

³ Thus, for example, Part 375 cannot be used for operations on behalf of a charter tour operator or air freight forwarder, both of which market their services to the general public.

⁴ In addition, operators of authorized Part 375 flights may permit passengers to stop over at one or more U.S. points (so long as all traffic has its origin or destination outside the United States), but operators are prohibited by statute (49 U.S.C. 41703(c)) from carrying cabotage traffic (traffic moving wholly within the United States).

found to be in the public interest, after review of properly-filed applications, to approve a total of up to twelve one-way or round trip flights per year under §375.70, subject to conditions, as discussed more fully below.⁵

Application for a Special Authorization under §375.70

An applicant foreign aircraft operator should explicitly request a “Special Authorization” under §375.70, to relieve the operator of the six-flight-per-year standard in §375.42, and to authorize the applicant to operate up to the number of yearly (either calendar or another 12-month period) payload charter flights (one-way or round-trip) it wishes to conduct between a point or points outside the United States and a point or points in the United States.

Consistent with the provisions of §375.40, §375.42, §375.43, and OST Form 4509, the application should include the following information:

- the name, business address, and citizenship of the applicant (the operator of the aircraft);
- a contact person responsible for the application, with address and telephone number (processing will be expedited if the applicant also includes a fax number and email address);
- a description of the aircraft to be used for the operations, including make, model, and registration (tail) number (an applicant should list all the aircraft that it might use in conducting the operations);
- a general description of the operations for which authority is desired; and
- a statement as to whether the applicant’s homeland allows operators of U.S.-registered aircraft to conduct similar operations.

As required in §375.70, the applicant should include a justification for the requested exception from the six flight per year standard.⁶ The applicant should also include a copy of its Air Operator’s Certificate, as needed by the FAA.

The application would not need to include specific information about individual flights to be operated (i.e., the name of the charterer or the routing of the flights), since that information is unlikely to be known by the operator on a prospective basis.

The application for a Special Authorization should be in letter form, addressed to:

Office of International Aviation
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

The application may be faxed to the Department at (202) 366-3694 or emailed to the addresses shown in the attachment below.

⁵ This would only be six more flights than we currently authorize under §375.42.

⁶ Such justification could be based the operator’s anticipated need to conduct more than six flights per year, the public benefits to be derived from such operations, and the existence of reciprocity on the part of the applicant’s homeland for the type of operations at issue.

Processing of an Application for a Special Authorization under §375.70

Once the Department receives an application for Special Authorization under §375.70, it will provide public notice of the request in the Department's Weekly List of Applications Filed.⁷ Under the Department's rules, interested parties may file comments to the application within seven business days after the initial filing of the request. The Department will also advise the Federal Aviation Administration (FAA) of the application, and seek its advice as to whether that agency knows of any reason why the requested authority should be withheld on safety grounds. The Department will not act on an application for this authority unless and until it receives this safety advice from the FAA. Note that the FAA cannot process this request for safety advice if the application does not include a copy of the applicant's Air Operator's Certificate.

Once a complete application has been filed, the period for responsive pleadings has passed (and any such pleadings have been received), and the FAA has given its safety advice, the application is ready for Department action.

As noted above, under the provisions of §375.70, the Department will approve a request for a Special Authorization if it finds that the operations proposed meet applicable U.S. law, that there is reciprocity on the part of the applicant's homeland, and if the operations are otherwise in the public interest (note that the Department would consider the safety advice from the FAA as a part of its determination of the public interest).

If the application meets these standards, the Department could approve the request, for up to a one-year period. As is its past practice under §375.70, the Department would require that:

- The operator, to be consistent with the application procedures in §375.40, §375.42, and §375.43, notify the Department, in writing (by letter, fax, or email) of the specific routing of each flight at least three business days before its planned departure, unless a waiver is granted. This is necessary because the authorization could be for up to one year. The Department would reserve the right to withhold or withdraw an approved Special Authorization as to a specific flight if it determines that the operator's conduct of a flight in a proposed city-pair market would not be in the public interest of the United States;
- The operator advise it, in writing, if it has not actually conducted a flight for which it provided the above notice to the Department (this would allow the Department to monitor the usage of the authorized flights by the operator); and
- The operator (1) comply with all applicable requirements of 14 CFR Part 375; (2) comply with all applicable requirements of the FAA contained in the Federal Aviation Regulations (including 14 CFR Part 91), and applicable Orders of the FAA; (3) comply with all applicable U.S. Government requirements concerning security; and (4) carry on board each authorized aircraft a copy of the approval.

Additional information on putting together the necessary application is attached.

⁷ This list can be accessed through the Department's Dockets Management System, <http://dms.dot.gov>.

Application for a 12-flight per year authorization

An application for the 12-flight per year authorization should be made to DOT by letter. A suggested format is set forth below, with brackets indicating information which the applicant needs to supply. The application may either be faxed to the Department at (202) 366-3694, or emailed to:

catherine.brown@dot.gov and to george.wellington@dot.gov

SAMPLE APPLICATION LETTER:

Mr. Paul L. Gretch
Director, Office of International Aviation
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Mr. Gretch:

[Full name of applicant] requests a Special Authorization under 14 CFR §375.70 to authorize it to operate up to 12 [one-way or round-trip] [passenger or cargo] charter flights during the period [calendar year or other 12-month period] between a point or points outside the United States and a point or points in the United States.

The following information is presented, consistent with the provisions of Part 375:

Applicant: [show full name of the applicant]

Address: [show full street address of the applicant]

Citizenship: [show identity of the homeland of the applicant, the names and nationalities of all persons or entities that hold more than five percent of the voting stock in the company, and the names and nationalities of the company's president and board members]

Contact: [person responsible for the application, with address, telephone number, fax number and email address]

Aircraft: [list the aircraft to be used for the operations, showing make, model, and registration (tail) number—this should include all the aircraft that might be used for the flights]

Proposed Operations: [a general description of the operations; the applicant should be as specific as possible, but does not have to show city-pairs, since they will likely not be known at this time]

Reciprocity: [a statement as to whether the applicant's homeland will allow operators of U.S.-registered aircraft to conduct similar operations]

Basis for Approval: [provide justification for the increase to 12 flights--this could be the applicant's anticipated need to conduct more than six flights per year, the public benefits to be derived from such operations, and the existence of reciprocity for the type of operations at issue]

A copy of our Air Operator's Certificate is attached to this application.

Sincerely,

[company representative]

May, 2007