

OPERATIONS CERTIFICATION: FOREIGN AIR TRANSPORTATION CARRIERS

(FOR REFERENCE ONLY)

**OPERATIONS CERTIFICATION: FOREIGN AIR TRANSPORTATION
CARRIERS**

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Chapter A General

129.1 Purpose and Basis

This regulation is made based on “Decision of the State Council on the Enactment of Administrative Licensing for the Confessedly Reserved Items Subject to Administrative Examination and Approval” with the purpose of certifying, supervising and inspecting the operation within the People’s Republic of China of each foreign air transportation carrier to ensure its safe operation within China.

129.3 Applicability

This regulation shall apply to the following foreign air transportation carrier:

- (a) Holds an air operator certificate or other equivalent authority issued by the foreign Civil Aviation Authority to approve its air transportation operation.
- (b) Operates or intends to operate an airplane or helicopter in scheduled or non-scheduled air transportation within China.

129.5 Definitions

- (a) **Air transportation** means the public carriage by civil aircraft of passengers, baggage, cargo, and mail, separately or in any combination, for remuneration or hire;
- (b) **Scheduled air transportation** means the air transportation conducted by the carrier in accordance with the published takeoff time, departure airport and destination airport, including scheduled flight according to published timetable, and extra flight which is temporarily added on a scheduled flight route and informs passengers of the takeoff time in advance, excluding charter flight conducted according to the above time and location negotiated by the carrier and the customer.
- (c) **Non-scheduled air transportation** means an air transportation service performed as other than scheduled air transportation.

129.7 Operation certification requirements and surveillance and inspection: General

- (a) As required by 129.3 of this regulation, no operator of a civil aircraft may conduct air transportation operation within China unless it has been certified and approved according to this regulation by the jurisdictional Regional Administration designated by the CAAC, and been issued Operations Specifications for a Foreign Air Transportation Carrier.

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- (b) A holder of foreign air transportation carrier operations specifications (hereafter referred to as operations specifications holder) shall conduct air transportation operations within China, in accordance with the following:
- (1) This regulation;
 - (2) General Flight Rules of the People's Republic of China and other applicable provisions governing air traffic service;
 - (3) CCAR Part 91 General Operating and Flight Rules;
 - (4) Operations specifications issued under this regulation;
 - (5) ICAO Annex 2 Rules of the Air and Annex 6 Operation of Aircraft;
 - (6) For transport of dangerous goods, CCAR part 276 Rules on Management of Dangerous Goods Transportation by Air.
- (c) The operations conditions and limitations as set forth in the air operator certificate or equivalent document issued by the State of the Operator's Civil Aviation Authority also apply to the operations conducted within China by the operations specifications holder. The approved operations in the foreign air transportation carrier operations specifications issued by the Regional Administration may not exceed the operations approved by the State of the Operator. When it is necessary to modify the foreign air transportation carrier operations specifications issued by the CAAC to the foreign operator due to changes in the foreign air operator's operations specifications or equivalent documents State of the Operator the holder shall immediately notify the Regional Administration and apply for amending the foreign air transportation carrier operations specification within 5 working days according to the requirements in 129.33.
- (d) The operations specifications holder will accept the surveillance and inspection of its aircraft and personnel implemented by the CAAC and the Regional Administration when it conducts operations within China.
- (e) For the Standards and Recommended Practices in International Civil Aviation Convention Annex 6 *Operation of Aircraft* and Annex 18 *The Safe Transport of Dangerous Goods by Air*, the operations specifications holder may make application to the Regional Administration for deviation if the State of the Operator has notified ICAO of the differences. After review, the Regional Administration may approve the deviation if it considers the operations specifications holder has an equivalent level of safety.

129.9 Exemptions in the case of equivalent standards

- (a) After approval by the CAAC, the following foreign air carriers conducting non-scheduled air transportation may conduct the operations within China without being issued foreign air transportation carrier operations specifications provided:
- (1) The flight cycles are not more than 10 within 12 consecutive calendar months or a specific transportation is conducted in a specific period; and
 - (2) The carrier presents the approval for flying to China issued by the State of the Operators Civil Aviation Authority to the CAAC and the air operator certificate or equivalent documents showing its safety operations capability.
- (b) Foreign air carriers approved under paragraph (a) shall accept the surveillance and inspection of its aircrafts and personnel implemented by the CAAC and the Regional Administration when the carrier conducts their operations within China.

Chapter B Operation Certification: Procedures and General

129.21 Application for Foreign Air Transportation Carrier Operations Specifications

- (a) A person applying for foreign air transportation carrier operations specifications must submit an application to the jurisdictional Regional Administration designated by the CAAC.
- (b) The applicant shall submit the following documents:
 - (1) The air operator certificate or equivalent document issued by the applicant's State of the Operator Civil Aviation Authority. It shall prescribe the scope and category of operations it is authorized to conduct;
 - (2) The list of aircraft intended to fly into China. The list shall prescribe the type, nationality, serial number and registration markings of each aircraft;
 - (3) The document showing that economic approval has been obtained. The document shall prescribe the planned airport(s), route(s) and area(s), and flight frequency;
 - (4) The application must be completed according to the requirements in Appendix A of this rule.
- (c) The application shall be completed according to the content prescribed by CAAC (see appendix A). The applicant shall submit the required material and which reflect current conditions, and be responsible for the facticity of the essential contents in the application material.

129.23 Acceptance of the application

- (a) For any application that is incomplete or does not comply with the specified format, the Regional Administration shall notify the applicant of the needed corrections and additional items in writing within 5 working days after receiving the application. If no notification is issued within 5 working days, it means the application is accepted on the 5th work day after receiving the application. The applicant shall submit all amended material according to the notification and the Regional Administration shall accept the application.
- (b) When the Regional Administration accepts or refuses the application, it shall present the written document stamped with the Regional Administration's seal and date to the applicant.

129.25 Review, Decision and Hearing

- (a) After receiving the application, the Regional Administration shall review all submitted materials within 30 work days and make a decision. During this period the Regional Administration will verify all application materials. If any questions arise regarding the information submitted by the applicant, the applicant shall provide answers to these questions asked by the Regional Administration. The time required to answer these questions by the Regional Administration shall not be counted as part of the 30 work day application periods
- (b) After completing the review of the application contents, including on-site inspection of the applicant's facilities, the Regional Administration will issue foreign transportation air carrier operations specifications to the applicant and approve the operations applied for, when the Administration considers the applicant meets the following criterion:
 - (1) The operations applied for are approved in the air operator certificate or equivalent document issued by the applicant's State of the Operator Civil Aviation Authority;
 - (2) The applicant is familiar with the documents requirements in 129.7(b) and promises to conduct operations according to these requirements;
 - (3) For the transport of dangerous goods, the approval issued by the Civil Aviation Authority of the State of the Operator shall be made available by the applicant for review by the Regional Administration.
- (c) The Regional Administration may refuse to issue foreign air transportation carrier operations specifications to the applicant or may approve and issue only certain parts of operations specifications, when the Regional Administration considers the applicant has not met all of the requirements of paragraph (b) above. When making this decision, the Regional Administration shall notify the applicant of his right to a hearing. The applicant may request a hearing within 5 days after the notification. The Regional Administration shall arrange the hearing within 20 days.

129.27 Contents of Foreign Air Transportation Carrier Operations Specifications

Foreign Air Transportation Carrier Operations specifications shall include:

- (a) The operations specifications holder's name;
- (b) The name and mailing address of the operations specifications holder's

agent who serves as the primary point of contact between the Regional Administration of CAAC and the operations specifications holder;

- (c) The foreign air transportation carrier operations specifications number and effective date;
- (d) The name of the Regional Administration of CAAC who has jurisdiction over the operations specifications holder;
- (e) Kinds of operations authorized, including scheduled passenger operation, non-scheduled passenger operation and all-cargo operation;
- (f) A statement that certifies that the operations specifications holder meets the appropriate requirements of this regulation and is authorized to conduct its operations according to the foreign air transportation carrier operations specifications.
- (g) The authorizations, limitations and certain procedures under which each kind of operation, if applicable, is to be conducted;
- (h) Any special authorizations, limitations, or other procedures under which each class and type of aircraft is to be operated;
- (i) Type of aircraft, serial number, nationality and registration markings of each aircraft authorized for use, each regular and alternate airports to be used in operation, and each provisional and refueling airport. Except in an emergency when a diversion would be necessary, the certificate holder may not conduct any operation using any aircraft or airport not listed in the operations specifications;
- (j) Authorization and limitations for routes and areas of operations;
- (k) Airport limitations;
- (l) Any authorized exemption granted by the CAAC and deviation granted by the CAAC Regional Administration;
- (m) Qualification of dangerous goods transport authorized by the CAAC Regional Administration;
- (n) Any other item the CAAC Regional Administration determines is necessary.

129.29 Duration of foreign air transportation carrier operations specifications

- (a) Foreign air transportation carrier operations specifications issued under this regulation are effective until:

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- (1) The operations specifications holder surrenders it to the Regional Administrator;
 - (2) The Regional Administrator suspends or revokes the operations specifications;
 - (3) The air operator certificate or equivalent document issued by Civil Aviation Authority of the State of the Operator of the operations specifications holder becomes ineffective.
 - (4) The operations specifications holder does not conduct operations within China for more than 12 consecutive months.
- (b) If the foreign air transportation carrier operations specifications are suspended, revoked or become ineffective for any reason, the operations specifications holder shall return the operations specifications to the Regional Administrator within 5 days.

129.31 Preservation and Availability of foreign air transportation carrier operations specifications

The foreign air transportation carrier operations specifications holder shall keep a copy of its current foreign air transportation carrier operations specifications in its branch office that is set up in China and related to their aircraft operations, and make them available for inspection by CAAC and the Regional Administration of CAAC.

129.33 Amending an foreign air transportation carrier operations specifications

- (a) The Regional Administration of CAAC may amend any foreign air transportation carrier operations specifications issued under this regulation if:
- (1) The Regional Administration of CAAC determines that safety and public interest requires that amendment;
 - (2) The operations specifications holder applies for the amendment and the Regional Administration of CAAC determines that safety and public interest allows the amendment.
 - (3) The air operator certificate or equivalent document issued by the Civil Aviation Authority of the State of the operations specifications holder changes and it is necessary to amend the operations specifications according to the requirements in 129.7(c).
- (b) Except as provided in paragraph (d) of this section, when the Regional

Administration of CAAC initiates an amendment to the foreign air transportation carrier operations specifications, the following procedure applies:

- (1) The Regional Administration notifies the operations specifications holder in writing of the proposed amendment;
 - (2) The operations specifications holder may submit written comments on the amendment within 7 days after the notification is received;
 - (3) After considering the comments of operations specifications holder, the Regional Administration makes the decisions and notifies the operations specifications holder of the decision(s). The operations specifications holder may petition to the Regional Administration for reconsideration of that decision within 5 days of the date that the holder receives the notification.
 - (4) After considering the petition filed by the operations specifications holder, the Regional Administrator shall make a decision and issue the amendment to the operations specifications.
- (c) When the operations specifications holder applies for an amendment to its foreign air transportation carrier operations specifications, it shall follow the provisions in 129.21, 129.23 and 129.25, however, the Regional Administration shall make a decision on the approval within 20 work days after accepting the application.
- (d) If the Regional Administration finds that an emergency exists requiring immediate action with respect to safety that makes the procedures set out in paragraph (b) and (c) impracticable, the following procedure applies:
- (1) The Regional Administration may make its own decision to amend the foreign air transportation carrier operations specifications and makes the amendment effective on the day the operations specifications holder receives notice of it.
 - (2) In the notice to the operations specifications holder, it shall indicate that an emergency exists requiring immediate action with respect to safety, or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment.

Chapter C General Rules of Surveillance and Inspections

129.41 Conducting checks and inspections

- (a) At any time, the CAAC and the Regional Administration of CAAC may inspect the operations specifications holder's branch and agent related to aircraft operations set up within China when the aircraft of the operations specifications holder lands within China. CAAC inspectors and the Regional Administration of CAAC may board the aircraft to inspect without any advance notification. The operations specifications holder shall be cooperative during inspection.
- (b) CAAC inspectors and the Regional Administration of CAAC may comprehensively inspect the operation of the operations specifications holder's branch or agent, including manual and documents check. When the inspection is conducted onboard the aircraft, it may inspect the aircraft airworthiness status; all documents required by ICAO Annex 6 and CCAR 129.43 to be carried on board; and all airman certificates.
- (c) The CAAC and the Regional Administration of CAAC shall implement the inspection according to the requirements in 129.7(b).

129.43 Documents to be carried

- (a) An Operations Specifications holder shall ensure at least the following documents are carried on each flight to China:
 - (1) The current aircraft airworthiness certificate, aircraft registration certificate and radio station license;
 - (2) The current parts of the Operations Manual relevant to the duties of the crew. Those parts of the Operations Manual which are required for the conduct of a flight are easily accessible to the crew;
 - (3) The current approved Aircraft Flight Manual or equivalent data; and
 - (4) Aircraft technical log containing information on the maintenance status and all outstanding deferral items that affect the airworthiness of the aircraft
- (b) The holder shall ensure that, in addition to the documents and manuals prescribed in (a), the following information and forms, relevant to the type and area of operation, are carried on each flight:
 - (1) Manifest;
 - (2) Flight plan or dispatch/release form containing the flight plan;

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- (3) Appropriate NOTAM, AIS briefing documentation and meteorological information;
 - (4) Notification of special loads including any dangerous goods;
 - (5) Current maps and charts for the area of operation.
- (c) The flight crew shall carry the airman license and medical certificate appropriate to the flight.

129.45 Preservation of flight recorder recordings

Following an accident or incident, within China which is to be investigated by the CAAC, the operations specifications holder shall preserve the flight recorder's original recorded data as required by the CAAC.

Chapter D Legal Liability

129.61 General

- (a) This subpart is applicable to those certificate holders who have been issued the foreign air transportation carrier operations specifications and those foreign air transportation carriers who have obtained the deviation according to 129.9, except for conditions in paragraph (b).
- (b) If an foreign air transportation carrier operations specifications applicant, during the period of operational certification approval process, resorts to deception, the CAAC Regional Administration may terminate its operational certification approval process; if the case is serious, the CAAC Regional Administration may decide not to accept any relevant application of the applicant within the period of one year up to three years.

129.63 Warning and penalty

- (a) The CAAC Regional Administration may order the operations specifications holder to stop any action that is in violation and punish it by a warning or fine of not more than 30,000 RMB, if the holder commits one of the following acts:
 - (1) Obtain these or their own State of the Operator's Operations Specifications by deception during operation certification process;
 - (2) Conduct operations which would violate its Operations Specifications, without approval by the CAAC Regional Administration;
 - (3) Refuse to allow the surveillance and inspection by the CAAC Regional Administration, or refuse to present its airman certificates, manuals and other related documents during the surveillance and inspection;
 - (4) Violate the standards in 129.7(b) and the actions, determined by the CAAC Regional Administration, which adversely impact the safety of operations or have resulted in serious consequences.
- (b) If airmen of the operations specifications holder and other individuals who directly join in operations do not conduct operations according to the operations manual of the certificate holder, which results in violating this regulation, the Administrator may punish him by warning or by imposing a fine of not more than 1000 RMB.

129.65 Suspension and withdrawal of foreign air transportation carrier operations specifications

- (a) The CAAC Regional Administration may suspend the operations

specifications holder's foreign air transportation carrier operations specifications for 1-6 months or revoke its operations specifications if the holder has the actions described in 129.63(a) and the cases are serious;

- (b) During suspension of the foreign air transportation carrier operations specifications or after withdrawal of foreign air transportation carrier operations specifications, the concerned holder shall submit the foreign air transportation carrier operations specifications to the relevant CAAC Regional Administration.

Chapter E Supplementary Articles

129.71 Administration of Air Transportation Carriers of Hong Kong and Macao Special Administrative Region

For the air transportation carrier who holds the air operator certificate or equivalent document issued by Hong Kong and Macao Special Administrative Region and uses or intends to use airplane or helicopter to conduct air transportation within China, the CAAC and the CAAC Regional Administration shall certificate and inspect the carrier according to this regulation.

129.73 Implementation

- (a) This regulation shall become effective on Jan. 1, 2005.
- (b) No foreign air transportation carrier who has been approved by the CAAC for operations within China before Jan. 1, 2005 may operate within China after Jan. 1, 2007 unless the foreign air carrier makes application to the jurisdictional Regional Administration of the CAAC for issuing operations specifications and obtains the operations specifications before Jan. 1, 2007.

Appendix A Application for Foreign Air Transportation Carrier Operations Specifications

(a) *General.* Each application must be submitted by an authorized person of the applicant having knowledge of the matter set forth therein, and must have attached a copy(ies) of the appropriate written authority issued to that person by the applicant, to the Regional Administration of CAAC.

(b) *Contents of Application.* The application shall at least include the following:

The statement: In accordance with the CCAR part 129, application is hereby made for the issuance of Foreign Air Transportation Carrier Operations Specifications.

Give exact name, phone number, fax number, and full post office address of applicant.

Give the name, company, title, phone number, fax number, e-mail address and post office address of the person to whom correspondence in regard to the application is to be addressed.

Unless otherwise specified, the applicant must submit the following information only with respect to the operations that will be conducted within China (excluding Hong Kong, Macao, Taiwan):

Section I. *Operations.* State whether the operation proposed is day or night, visual flight rules, instrument flight rules, or a particular combination thereof.

Section II. *Operational plans.* State the route by which entry will be made into China, and the route to be flown therein.

Section III.

Airports. Submit the following information with regard to each regular terminal and alternate to be used in the conduct of the proposed operation:

1. Name of airport or landing area.
2. Location.

Section IV. *Aircraft.* Submit the following information in regard to each type and model aircraft to be used.

A. *Aircraft.*

1. Manufacturer, model number, and series.

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2. State of origin.
 3. Single-engine or multiengine. If multiengine, indicate number of engines.
 4. What is the maximum takeoff and landing weight to be used for each type of aircraft?
- B. Licensing. State the name of the country by whom the aircraft are certificated.
1. Registration number.
 2. Serial number.

Section V. *Airmen*. List the following information with respect to airmen to be employed in the proposed operation within China.

- A. State the type and class of certificate held by each flight crewmember.
- B. State whether or not pilot personnel have received training in the use of navigational facilities necessary for en route operation and instrument letdowns along or adjacent to the route to be flown within China.
- C. State whether or not personnel are familiar with those parts of the CCAR pertaining to the conduct of foreign air carrier operations within China, including the requirements in 129.7(b).
- D. State whether pilot personnel are able to speak and understand the English language to a degree necessary to enable them to properly communicate with air traffic controller within China using radiotelephone communications.

Section VI. *Dispatchers*.

- A. Describe briefly the dispatch organization which you propose to set up for air carrier operations within China.
- B. State whether or not the dispatching personnel are familiar with the provisions in section VI paragraph C.
- C. Have dispatching personnel the capability necessary to properly dispatch flights within China?
- D. Are dispatching personnel certificated by the operations specifications holder's State of the Operator Civil Aviation Authority?

Section VII. *Additional Data*.

A. Furnish such additional information and substantiating data as may serve to expedite the issuance of the operations specifications.

B. Each application shall be concluded with a statement as follows:

I promise, that the operations within China comply with CCAR Part 129, conditions and limitations in the operations specifications, and CCAR Part 276 when dangerous goods transport is involved.

I certify that the above statements are true.

_____ (Name of Applicant)

_____ By (Name of person duly authorized to execute this application on behalf of the applicant.)

Signed this ____ day of ____ 20____

Explanations about “Operations Certification: Foreign Air Transportation Carrier”

As China's Entry into WTO and development of China's civil aviation market, more and more foreign airlines operate within China, which becomes one important factor to influence the flight safety and the safety of ground personnel and property within China. The issuance and implementation of “Operations Certification: Foreign Air Transportation Carrier” (hereafter referred to as Rule) intends to standardize the foreign airlines’ operations within China and ensure the operation safety.

The safety management level of civil aviation authority and airlines in different countries is varied and uneven. ICAO requires that the States meet ICAO minimum safety standards and requires the airlines comply with the regulations and standards of the State in which the airlines conduct operations. COSCAP-NA has a draft of recommended regulations on safety review and approval of foreign airlines for four Asia countries, including China; the United States and other great aviation powers have or are developing the regulations on safety approval and surveillance of foreign airlines. Therefore, the safety approval and surveillance of foreign airlines have become an international common practice. The Rule fills the blank of CCAR governing the operation safety of foreign airlines.

Here are some explanations about major items related to the Rule:

1 The Rule establishes an administrative license system for operations certification of foreign airlines.

The Rule prescribes that, no foreign airlines may conduct air transportation within China unless it has obtained a Foreign Air Transportation Carrier Operations Specifications after the operation certification implemented by the jurisdictional Regional Administration designated by CAAC. The administrative license system for foreign airlines complies with the scope of administrative license in Article 12 (1) of Administration License Law, and also complies with the need to ensure the safety of foreign airlines operations. The Rule also prescribes the application conditions, procedures and time limit of operations specifications, which are required by Administration License Law for establishing an administrative license item.

The operations specifications issued by the Regional Administration is the approval for the operations of foreign airlines conducted within China, which prescribe the scope and types of approved operations in detail and the limitations need to be complied with. When conducting operations within

China, the foreign airlines must comply with the standards in applicable regulations, and at the same time, must conduct operations according to the approved scope of the operations specifications.

2 Applicability.

FAR Part 129 is applicable to foreign air carrier operated within United States and U.S.-registered aircraft operated by a foreign air carrier; the recommended draft of COSCAP-NA is only applicable to foreign air carrier operated into the State. To facilitate the management, we adopt the suggestion of COSCAP-NA and limit the application to the foreign airlines flying to and taking off/landing within China.

Some airlines may conduct operations within China not according to the operations specifications but special approval issued by CAAC. In United States, an operations specifications is not required for the foreign airlines with less than 6 flights conducted within United States each year; ICAO recommends that it is unnecessary to certificate the airlines having equivalent safety level and conducting non-scheduled air transportations. Now, in the Rule, there are two conditions for the foreign airlines to conduct operations without making application for operations specifications: one is when flight cycles are less than 10 each year or operations are only conducted within special period for special task (e.g. Olympic Games, World's Fair); another is equivalent safety level.

3 Contents on Certification and Surveillance

We agree with the basic thought of ICAO on the management of foreign airlines, that is, the basic approach to ensure global aviation safety is each State should carry out good management of its own airlines and comply with the standards of Convention Annexes. On the base of that, each State may implement surveillance and inspection of foreign airlines flying into the State, however, it does not recommend to add too much technical requirements more stringent than the requirements of ICAO Annex; in addition, it shall try to simplify the certification and surveillance procedures to ensure the certification normally is to review the written material and the surveillance normally does not affect foreign airlines' routine operations (e.g. resulting in flight delay).

The certification process for foreign airlines is not the same as the 5-phases certification process for domestic airlines but divided into 3 phases: combining Preapplication and Formal Application into "Application and acceptance" phase, combining Document Compliance and Demonstration and Inspection into "Review" phase, and "decision and issuance of operations specifications" phase. In the review phase, it shall give priority to written

material review, and if applicable, implement on-site inspection of foreign airlines' organization and facilities located into China.

The Rule refers 5 regulatory documents for the technical standards of certification: CCAR Part 91, applicable regulations on air traffic control, ICAO annex 6 and CCAR Part 276 on dangerous goods transport. For surveillance and inspection, the Rule refers 6 regulatory documents, that is 5 documents described above and the operations specifications issued to the airlines.