

Specialty Air Services Information Packet

for Canadian and Mexican operators seeking to
conduct agricultural and industrial operations in
the United States under the provisions of the
North American Free Trade Agreement



U.S. Department of Transportation
Office of International Aviation
Federal Aviation Administration
Flight Standards Service

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PROCEDURES FOR CANADIAN AND MEXICAN OPERATORS OF FOREIGN CIVIL AIRCRAFT TO CONDUCT SPECIALTY AIR SERVICES IN THE UNITED STATES UNDER NAFTA

Introduction

This packet describes U.S. economic and safety licensing requirements applicable to Canadian and Mexican operators of foreign civil aircraft seeking to conduct “specialty air services” in U.S. markets under the terms of the North American Free Trade Agreement.

Specialty Air Services under NAFTA

The North American Free Trade Agreement (NAFTA), which entered into force January 1, 1994, is a multilateral agreement between and among the United States, Canada, and Mexico. Among other things, it provides that each signatory country will authorize (subject to applicable safety rules) the operation of a range of “specialty air services” by operators of the other signatory countries.¹ Article 1213 of NAFTA defines “specialty air services” as “aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services.”

While the effective date of NAFTA coverage for some of these services was January 1, 1994 (the date of entry into force of NAFTA), Annex I delayed coverage for other types of services, and contains, for each signatory country, a “Phase-Out” schedule for the removal of restrictions on the remaining types of services.² The Annex provides, for operations in U.S. airspace, that the right of Canadian and Mexican operators to conduct

¹ North American Free Trade Agreement between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States, signed December 17, 1992, entered into force January 1, 1994. The operation of specialty air services is provided for in Chapter 12, Cross-Border Trade in Services, Article 1201, paragraph 2(b)(ii).

² See NAFTA Annex I, Reservations for Existing Measures and Liberalization Commitments, I-C-34-36, I-M-57-58, and I-U-15-17.

specialty air services within the United States would be phased in under the following schedule:³

- January 1, 1994: Aerial advertising, mapping, surveying, and photography, fire fighting, forest fire management, glider towing, and parachute jumping
- January 1, 1996: Aerial construction and heli-logging
- January 1, 1997: Aerial sightseeing, aerial inspection and surveillance, and flight training
- January 1, 2000: Aerial spraying

U.S. Regulatory Requirements Applicable to Canadian and Mexican Operators

I. DOT Economic Licensing Requirements

The operation of “specialty air services” in the United States by operators of foreign civil aircraft is governed by 49 U.S.C. 41703 of the U.S. Code, as implemented by 14 CFR Part 375 of the Department's regulations (included in this packet). Part 375 governs the navigation in the United States of “foreign civil aircraft,” that is, civil, non-military aircraft that either are foreign-registered or are U.S.-registered but owned, controlled or operated by non U.S.-citizens (as such citizens are defined in 49 U.S.C. 40102(a)(15)).⁴

Part 375 requires that an operator of a foreign civil aircraft must hold Department economic authority, in the form of a foreign aircraft permit, and comply with applicable requirements of the Federal Aviation Administration (FAA), before engaging in any commercial air operations in the United States. Commercial air operations as defined by Part 375 include the range of “specialty air services” encompassed by NAFTA.⁵ NAFTA coverage of specialty air services does not alter the basic requirement under Part 375 that Canadian or Mexican operators of foreign civil aircraft must hold a foreign aircraft permit before conducting such operations in U.S. airspace.⁶

³ See NAFTA Annex I, I-U-16-17.

⁴ 49 U.S.C. 40102(a)(15) defines “citizen of the United States” as “(A) an individual who is a citizen of the United States; (B) a partnership each of whose partners is an individual who is a citizen of the United States; or (C) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.”

⁵ They do not, however, include air operations in common carriage covered under 49 U.S.C. 41101 or 41301 et seq.

⁶ This would include operations where the operation involves the wet-lease (i.e., the lease of an aircraft and crew) of aircraft to a U.S. or foreign operator.

Note that nonrevenue flights, such as ferry flights and flights for the operator's own use, are authorized by regulation in Part 375 and do not require prior Department authorization. Nor is prior Department economic authorization under Part 375 required for an operator to dry-lease its foreign civil aircraft (that is, lease without crew) to a U.S. or foreign operator to be used in the United States, so long as the operator/lessor does not have operational control over the U.S. services conducted with the leased aircraft.⁷

Blanket foreign aircraft permit for NAFTA-covered services

By Order 97-7-3, the Department granted Canadian and Mexican specialty air service operators a blanket foreign aircraft permit under Part 375 to conduct those specialty air service operations that are encompassed by, and for which coverage has become effective under, NAFTA.⁸

Under the terms of this blanket foreign aircraft permit, which is of indefinite duration, Canadian and Mexican operators do not need to file applications with the Department under Part 375 in order to conduct specialty air services for which coverage has become effective under the “Phase-Out” provisions of Annex I to NAFTA. The blanket foreign aircraft permit contains a number of conditions, requiring that each Canadian and Mexican operator conducting specialty air services under this authority:

- Comply with all applicable requirements of Part 375;⁹
- Comply with all currently-applicable rules and orders of the Federal Aviation Administration (specific FAA procedures that operators must follow are detailed below); and
- Carry on board each aircraft operated under this authority a copy of Order 97-7-3, and a copy of any document required by the Federal Aviation Regulations.

Application procedures for services not covered by NAFTA

⁷ Although these operations do not require a foreign aircraft permit, the parties involved must comply with Part 375's “Rules Generally Applicable”, including airworthiness requirements and U.S. air traffic control rules.

⁸ Order 97-7-3 finalized show-cause Order 96-1-28, in which the Department invited public comment on our proposal to grant this blanket foreign aircraft permit. Copies of these orders are included as Appendix III to this packet.

⁹ These requirements include provisions in §375.20-21 concerning airworthiness, registration, and airmen’s certificates, in §375.24 concerning entry and clearance procedures, and in §375.26 concerning waiver of sovereign immunity.

A Canadian or Mexican operator seeking to conduct a specialty air service not yet covered by NAFTA's "Phase-Out" provisions (*i.e.*, aerial spraying operations prior to January 1, 2000), or an operation that does not fall into one of the NAFTA categories, must file an *ad hoc* application with the Department and obtain a foreign aircraft permit prior to commencing such operations (they must also follow the FAA procedures set forth below).¹⁰ The procedures involved in obtaining the necessary foreign aircraft permit under Part 375 are explained in Appendix I to this packet.

In the event that a Canadian or Mexican operator desires the Department's view in advance as to whether a particular specialty air service activity is encompassed by NAFTA (and thus by the blanket foreign aircraft permit issued by Order 97-7-3), or if an operator has a question concerning any other aspect of the Department's economic licensing procedures under Part 375, it should direct its inquiries to:

U.S. Department of Transportation
Foreign Air Carrier Licensing Division, X-45
400 Seventh Street, S.W.
Washington, D.C. 20590
Telephone: (202) 366-2399
Fax: (202) 366-3694

II. FAA Safety Requirements

NAFTA provides for the application of each country's safety rules to the operation of specialty air services. In addition, under the provisions of §375.22, operators of specialty air services must conduct those operations in accordance with the currently applicable rules and orders of the Federal Aviation Administration. These include, but are not limited to, 14 CFR Part 91, and in some instances 14 CFR Parts 133, 137, and 141 (depending on the specific operations involved).

Any Canadian or Mexican specialty air service operator seeking to conduct operations in the United States should, before conducting any operations under either the blanket

¹⁰ Once a particular type of specialty air service is covered by NAFTA, a Canadian or Mexican applicant no longer need file an application under Part 375 to conduct the service--it would then be covered by the blanket foreign aircraft permit issued by Order 97-7-3. In addition, should a Canadian or Mexican operator seek to conduct a specialty air service which does not clearly belong to one of the categories listed in that order, the Department will, if it is similar to a covered service, consider it to fall into that category and be covered (based on the expectation of similar treatment by Canada and Mexico for U.S. operators). If it is not analogous to one of the categories covered by NAFTA, the Department will treat the application on the basis of reciprocity, under the traditional (*i.e.*, non-NAFTA) procedures outlined above.

foreign aircraft permit issued by Order 97-7-3 or a separate foreign aircraft permit issued by the Department, contact the following FAA office:

Federal Aviation Administration
Flight Standards Service, AFS-800
800 Independence Avenue, S.W.
Washington, D.C. 20591
Telephone: (202) 267-8194

AFS-800 will assign a local Flight Standards District Office (FSDO) point of contact and will provide a detailed explanation of FAA requirements. It is the responsibility of the operator to contact the assigned Flight Standards District Office to obtain this information.

III. Other Applicable Requirements

In addition to the requirements set forth above, each Canadian or Mexican specialty air service operator is also responsible for complying with all applicable requirements of the U.S. Customs Service and the Immigration and Naturalization Service, as well as with all other applicable Federal, State and local requirements.

Appendices:

- I. Application Procedures For Services Not Covered By NAFTA
- II. 14 CFR Part 375 and OST Form 4509
- III. Orders 97-7-3 and 96-1-28

Application Procedures For Services Not Covered By NAFTA

A Canadian or Mexican operator seeking to conduct a specialty air service not yet covered by NAFTA's "Phase-Out" provisions (*i.e.*, aerial spraying operations prior to January 1, 2000), or an operation that does not fall into one of the NAFTA categories, must file an application with the Department and obtain a foreign aircraft permit prior to commencing such operations.

Application may be made either by using the OST Form 4509 (included in Appendix II to this packet), or by letter containing equivalent information. An original and two copies of the form or letter must be filed.

Applications must include the following information:

- the name, address, and nationality of the operator of the aircraft;
- the name, address, and telephone number of the party to which the Department should send the requested foreign aircraft permit;
- the make, model, registration (tail) number, and country of registry of the aircraft to be used in the proposed operations, and the name and address of the registered owner of the aircraft;
- the name and address of the contractor or charterer for whom the applicant proposes to conduct the operations;
- a description of the proposed operations, including the number, routing, and proposed dates of operation of the flights;
- a statement of whether reciprocity exists on the part of the applicant's homeland government--that is, whether that government would authorize U.S. operators to conduct comparable services in that country; and
- a certification by the applicant that the proposed operations conform to the Department's regulations and orders.

Applications may be made by mail or by fax, to:

U.S. Department of Transportation
Foreign Air Carrier Licensing Division, X-45
400 Seventh Street, S.W.
Washington, D.C. 20590
Telephone: (202) 366-2399
Fax: (202) 366-3694

There is normally a filing fee of \$25.00 US for applications for foreign aircraft permits, with an additional \$11.00 US due if the application is filed late. These fees apply to operators of Mexico. The Department has waived these filing fees for operators of Canada, because Canada does not charge U.S. operators for like applications.

Part 375 requires that applications be filed at least fifteen days before commencement of the proposed operations. However, the Department will accept later-filed applications upon a showing of good cause. The Department recognizes that, as a practical matter, some specialty air services operations may be arranged on short notice, and it makes every effort to handle late-filed applications expeditiously.

Part 375 also provides that any interested person may file an answer supporting or opposing an application, within seven days of the application's filing. This process allows U.S. operators to advise the Department of any reciprocity problems they may be experiencing in obtaining authority from the applicant's homeland to conduct similar operations. To that end, the Department requires that applicants serve copies of their applications, by mail or fax, on U.S. operators which conduct similar operations and may have an interest concerning the state of reciprocity. The Foreign Air Carrier Licensing Division (202-366-2399) can provide applicants with a list of the U.S. operators which must be served. Any party filing an answer must serve a copy on the applicant.

Where a proposed operation is imminent, the Department may shorten the seven-day period for answers. Alternatively (and more commonly), the applicant foreign operator may "poll" (i.e., contact, usually by telephone) the requisite U.S. operators, to ascertain whether they plan to file an answer (and if so, what that answer entails), and advise the Department of the results of the poll.

Should an answer be filed in opposition, the applicant may file a reply responding to the assertions made in the answer. The applicant must serve a copy of any reply on the party or parties filing answers.

Standards for Approval

Upon receipt of a complete application by a foreign operator, and receipt of any answers and replies that may be filed, the application is ripe for consideration. The Department will issue a Part 375 foreign aircraft permit if the proposed operations meet the regulatory and procedural requirements of that part and are in the public interest. The primary criterion the Department considers in assessing the public interest is the state of reciprocity on the part of the applicant's homeland. A Canadian or Mexican operator applying to conduct such services in the United States would need to confirm that reciprocity exists, either by providing with its application a statement from its government that it would authorize U.S. operators to conduct these services, or by providing other information demonstrating that reciprocity exists. While applicants must serve their applications on interested U.S. operators, the Department does not give U.S. operators so-called "first refusal" privileges. Thus, if the public interest test is otherwise satisfied, the Department will not disapprove a Canadian or Mexican operator's application if a U.S. operator merely stated that it could perform the proposed operation.

Issuance of a Foreign Aircraft Permit

If the Department determines that a particular application warrants approval under our procedures, we will issue a foreign aircraft permit authorizing the flights. The permit must be carried on board the operator's aircraft while it is operating in U.S. airspace. As with operations conducted under the foreign aircraft permit issued by Order 97-7-3, the operator must comply with all applicable regulations of the Federal Aviation Administration, and must follow the procedures set forth in Section II, "FAA Safety Requirements," on page 5 of this information packet.

PART 375 -- NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES

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APPENDIX A -- Form 4509

Authority: 49 U.S.C. 1324, 1372, 1502, 1508.
Source: OST Docket No. 42547, 51 FR 7254, Mar. 3, 1986, unless otherwise noted.

Subpart A -- General

§375.1 Definitions.

As used in this Part:

“Act” means the Federal Aviation Act of 1958, as amended;

“Air Transportation” means the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in interstate, overseas, or foreign commerce (see section 101(10 and (23) of the Federal Aviation Act, 49 U.S.C. 1301);

“Category” shall indicate a classification of aircraft such as airplane, helicopter, glider, etc.;

“Commercial air operations” shall mean operations by foreign civil aircraft engaged in flights for the purpose of crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, or similar agricultural and industrial operations performed in the United States, and any operations for remuneration or hire to, from or within the United States including air carriage involving the discharging or taking on of passengers or cargo at one or more points in the United States, including carriage of cargo for the operator’s own account 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, but excluding operations pursuant to foreign air carrier permits issued under section 402 of the Act, exemptions, and all other operations in air transportation.

“Exemption” means an exemption granted, under section 416(b) of the Act, authorizing air transportation by a foreign air carrier.

“Foreign air carrier permit” means a permit authorizing foreign air transportation by a foreign air carrier pursuant to section 402 of the Act;

“Foreign aircraft permit” means a permit authorizing navigation of foreign civil aircraft in the United States pursuant to section 1108(b) of the Act and this part;

“Foreign civil aircraft” means (a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States;

“Stop for non-traffic purposes” means a landing for any purpose other than taking on or discharging passengers, cargo or mail, and does not include landings for embarking or disembarking stopover passengers or transshipped cargo or mail, or for other than strictly operational purposes;

“Type” means all aircraft of the same basic design including all modifications thereto except those modifications that result in a change in handling or flight characteristics.

§375.2 Applicability.

The provisions of this part regulate the admission to, and navigation in, the United States of foreign civil aircraft other than aircraft operated under authority contained in a foreign air carrier permit or exemption. This part also contains provisions that specify the extent to which certain classes of flight operations by foreign civil aircraft may be conducted, and the terms and conditions applicable to such operations. Nothing in this part shall authorize any foreign civil aircraft to engage in air transportation nor be deemed to provide for such authorization by the Department.

Subpart B -- Authorization

§375.10 Certain foreign civil aircraft registered in ICAO member states.

Subject to the observance of the applicable rules, conditions, and limitations set forth in this part:

(a) Foreign civil aircraft manufactured in a State that at the time of manufacture was a member of the International Civil Aviation Organization (ICAO), and registered in a State that at the time of flight is a member of ICAO, may be navigated in the United States;

(b) Foreign civil aircraft manufactured in a State that at the time of manufacture was not a member of ICAO, and registered in a State that at the time of

flight is a member of ICAO, may be navigated in the United States,

(1) If the State of registry has notified ICAO that the requirements under which it issues or renders valid certificates of airworthiness are equal to or above the minimum standards established pursuant to the Chicago Convention, or

(2) If such notification has not been made to ICAO at the time of flight, there is on file with the Department a statement by the State of registry that, with regard to aircraft of the type that is proposed to be operated hereunder, the requirements under which certificates of airworthiness are issued or rendered valid are equal to or above the minimum standards established pursuant to the Chicago Convention.

§375.11 Other foreign civil aircraft.

A foreign civil aircraft other than those referred to in §375.10 may be navigated in the United States only when (a) the operations is authorized by the Department under the provisions of this part, and (b) the aircraft complies with any applicable airworthiness standards of the Federal Aviation Administration for its operation.

Subpart C -- Rules Generally Applicable

§375.19 Nature of privilege conferred.

The provisions of this part, and of any permit issued hereunder, together with section 1108(b) of the Act, are designed, among other purposes, to carry out the international undertakings of the United States in the Chicago Convention, in particular Article 5. That article gives foreign aircraft the privilege of “taking on or discharging passengers, cargo or mail” subject to the right of the State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable. The U.S. Congress by the 1953 amendment to section 6 of the Air Commerce Act of 1926, now designated as section 1108(b) of the Act, authorizes the Department to permit such operations only where conditions of reciprocity and the interest of the public in the United States are met. Thus, the operator of any foreign registered aircraft is not entitled as a matter of right to the issuance, renewal or freedom from modification or change in a permit issuable pursuant to this authority. Accordingly, any authority conferred by this part may be withheld, revoked, amended, modified, restricted, suspended, withdrawn, or canceled by the Department

in the interest of the public of the United States, without notice or hearing.

§375.20 Airworthiness and registration certificates.

Foreign civil aircraft shall carry currently effective certificates of registration and airworthiness issued or rendered valid by the country of registry and shall display the nationality and registration markings of that country. However, a foreign civil aircraft may carry, in lieu of such certificate of airworthiness, an effective special flight authorization issued by the Federal Aviation Administration for the operations being performed.

§375.21 Airmen.

Members of the flight crew of a foreign civil aircraft shall have in their personal possession valid airman certificates or licenses authorizing them to perform their assigned functions in the aircraft and for the operation involved issued or rendered valid by the country of registry of the aircraft or by the United States. No such flight crew members shall perform any flight duty within the United States that they are not currently authorized to perform in the country issuing or validating the certificate.

§375.22 Flight operations.

Flights of foreign civil aircraft in the United States shall be conducted in accordance with the currently applicable rules of the Federal Aviation Administration.

§375.23 Maximum allowable weights.

Foreign civil aircraft that are permitted to navigate in the United States on the basis of foreign airworthiness certificates must conform to the limitations on maximum certificated weights prescribed or authorized for the particular variation of the aircraft type, and for the particular category of use, by the country of manufacture of the aircraft type involved.

§375.24 Entry and clearance.

All U.S. entry and clearance requirements for aircraft, passengers, crews, baggage and cargo shall be followed.

§375.25 Unauthorized operations.

No foreign civil aircraft shall be navigated in the United States unless authorized by this part. Commercial air operations (other than those authorized by §375.36) shall not be undertaken without a permit issued by the Department.

§375.26 Waiver of sovereign immunity.

Owners and operators of aircraft operated under this part that are engaged in proprietary or commercial activities waive any defense of sovereign immunity from suit in any action or proceeding instituted against any of them in any court or other tribunal in the United States for any claim relating to that operation.

Subpart D -- Authorized Operations

§375.30 Operations other than commercial air operations.

Foreign civil aircraft that are not engaged in commercial air operations into, out of, or within the United States may be operated in the United States and may carry non-revenue traffic to, from or between points in the United States.

§375.31 Demonstration flights of foreign aircraft.

Flights of foreign civil aircraft within the United States may be made for the purpose of demonstration of the aircraft or any component thereof (including demonstrations at airshows), provided no persons, cargo or mail are carried for remuneration or hire.

§375.32 Flights incidental to agricultural and industrial operations outside the United States.

Foreign civil aircraft that are engaged in agricultural or industrial operations to be performed wholly outside the United States may be navigated into, out of, and within the United States in connection with those operations provided that the aircraft is not at the time engaged in the carriage of passengers, cargo, or mail for remuneration or hire.

§375.33 Transit flights, irregular operations.

Foreign civil aircraft carrying passengers, property or mail for remuneration or hire, but not engaged in scheduled international air services, are authorized to navigate nonstop across the territory of the United States and to make stops for non-traffic purposes. The

navigation of foreign civil aircraft in the United States is not authorized under this section when the elapsed time between landing and takeoff at a stop in the United States exceeds 24 hours and passengers are permitted to leave the airport or when passengers, property or mail are transferred to another aircraft. Flights involving stops under such circumstances may, however, be performed in the case of emergency relating to the safety of the aircraft, passengers, cargo or crew.

§375.34 Indoctrination training.

Foreign civil aircraft may be operated in the United States for the purpose of giving indoctrination training in the operation of the aircraft concerned to a buyer or a buyer's employees or designees. This section does not, however, authorize foreign civil aircraft to be used within the United States for the purpose of flight instruction for remuneration or hire.

§375.35 Free transportation.

(a) Foreign civil aircraft may be navigated in the United States by a foreign air carrier for the transportation of persons and property specified in paragraph (b) of this section over the following non-traffic segments provided such transportation is not for compensation or hire:

- (1) Between two or more points in the United States;
- (2) Between a point in the United States named in the carrier's section 402 permit or exemption, and a point outside the United States not so named, when authorized in accordance with the provisions of Part 216 of this chapter to carry blind sector traffic to or from such unnamed foreign point; and
- (3) Between a point in the United States and a point outside thereof when the carrier lands at the United States point for non-traffic purposes in exercise of the privilege granted under the International Air Services Transit Agreement.

(b) Free transportation may be provided under this section for the following categories of persons and property:

- (1) Directors, officers and employees, and their parents and immediate families, of the foreign air carrier operating the aircraft;
- (2) Directors, officers and employees, and their parents and immediate families, of an air carrier or another foreign air carrier traveling pursuant to a pass interchange arrangement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services, if the agents are under no obligation to sell the transporting carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which any such foreign air carrier is involved;

(5) Persons injured in aircraft accidents and physicians and nurses attending such persons;

(6) Any persons or property with the object of providing relief in cases of general epidemic, natural disaster or other catastrophe;

(7) Any person who has the duty of guarding foreign government officials traveling on official business; and

(8) Guests of a foreign air carrier (including members of the press) on delivery flights of newly-acquired or newly-renovated aircraft.

(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.

§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, 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 reason 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.

§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 flights 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 prior to flight a list of names and addresses of all passengers to be transported on each flight.

(d) Reports of unused authority. All foreign operators of occasional planeload charters for which authority is granted must notify the Department, in writing, not later than 15 days after the expiration of their permits, of their failure to use this authority. The unused authority shall otherwise be deemed to have been exercised.

Subpart F -- Transit Flights

§375.50 Transit flights; scheduled international air service operations.

(a) Requirement of notice. Scheduled international air services proposed to be operated pursuant to the International Air Services Transit Agreement in transit across the United States may not be undertaken by foreign civil aircraft unless the operator of such aircraft, and (if other than the operator) the carrier offering such service to the public, has, not less than 30 days prior to the date of commencement of such service, filed a Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement in accordance with the provisions of paragraphs (b) and (c) of this section.

(b) Filing of the notice. An original and two copies of the Notice shall be filed with the Chief, Discrete Operations Branch, Licensing Division, P-45, Office of Aviation Operations. Copies of the Notice shall be served upon the Department of State and the Administrator of the Federal Aviation Administration. The filing date shall be the date of actual receipt by the Department.

(c) Content of notice. A "Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement" shall be clearly labeled as such, and as a minimum shall set forth, with whatever detail may be necessary, the following information:

(1) The name, country or organization, and citizenship of the operator, and if other than the operator, of the carrier offering the services to the public. If any interest (direct or indirect) in the operator or offeror of services is held by nationals of a country other than the country of organization or citizenship, the nature and extent of such interest must be fully disclosed. If any officer or director of the operator or carrier offering the services is a national of a country other than the country of organization or citizenship, the position and duties of such officer and director's relevant position in relation to other officers and directors must similarly be fully disclosed. If the information required in this subsection has been previously supplied to the Department, the applicant may incorporate it by reference.

(2) The State of registration of the aircraft proposed to be operated.

(3) A full description of the proposed operations including the type of operations (passenger, property, mail, or combination), date of commencement, duration and frequency of flights, and routing (including each terminal and intermediate point to be served).

(4) A statement as to whether or not any advertisement or publication of the proposed operations has been made in the United States. If there has been any advertisement or publication of the

operations in the United States, copies of all such advertisements or publications shall be included.

(5) Any change with respect to these matters (minor changes in schedules or routing excepted) shall also be filed with the Department.

(d) Authorized operations. If the operator and the carrier offering services to the public (if different from the operator) have filed a "Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement," at least 30 days before the date of commencement of the proposed operations in accordance with paragraphs (a), (b), and (c) of this section, the described operations may be commenced and performed without further authorization from the Department, unless and until the Department issues an order notifying the operator and/or the carrier offering the services to the public that, considering the matters submitted in the Notice, the Department is of the view that a question may exist as to whether:

(1) The proposed services are authorized pursuant to the terms of the International Air Services Transit Agreement;

(2) Substantial ownership and effective control are vested in nationals of a State party to the International Air Services Transit Agreement;

(3) The proposed operations will be in compliance with the laws of the United States, the Department's rules, or the provisions of this section; or

(4) The operator or its government have performed their obligations under the International Air Services Transit Agreement.

(e) Prohibited operations. If the Department issues an order of notification as described in paragraph (d) of this section, neither the operator, nor the carrier offering the services to the public, shall commence the proposed operations, or, except as may be otherwise specified in the order, operate any flights subsequent to receipt of the order, unless and until the Department issues a foreign aircraft permit pursuant to the provisions of section 1108(b) of the Act and this part specifically authorizing such operations.

(f) Foreign aircraft permit -- application and procedures. If the Department issues an Order of Notification as described in paragraph (d) of this section, the carrier's Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement shall be treated as an application for the required foreign aircraft permit, and further procedures on such application shall be as directed by the Department.

(g) Short notice filing. Nothing in this section shall be construed as precluding the filing of an application for a foreign aircraft permit to perform transit

operations pursuant to the International Air Services Transit Agreement less than 30 days in advance of the proposed operation. No such flights shall be operated, however, unless or until a specific foreign aircraft permit has been issued by the Department.

(h) Nature of privilege conferred. Air transportation is not authorized under this section, and the burden rests upon each operator and carrier to show that the proposed operations will not constitute air transportation within the meaning of the Federal Aviation Act. In addition, each operator and carrier has the burden of demonstrating that the proposed operations are authorized by the International Air Services Transit Agreement, and that the appropriate authorization should not be withheld pursuant to Section 5 of Article I thereof. Stopovers for the convenience or pleasure of the passengers are not authorized under this section and stops other than for strictly operational reasons shall not be made. The consolidation on the same aircraft of an operations under this section with a service authorized under section 402 or 416(b) of the Act is not authorized by this section. Any authorization or permit granted under this section is nontransferable, and may be withheld, revoked, suspended, withdrawn, or canceled by the Department, without notice or hearing, if required by the public interest. Operators of aircraft registered in countries not parties to the International Air Services Transit Agreement shall make special application to the Department under §375.70.

Subpart G -- Penalties

§375.60 Penalties.

The operation of a foreign aircraft within the United States or over adjacent territorial waters in violation of the provisions of this part constitutes a violation of the Federal Aviation Act and of this chapter, and may, in addition, constitute a violation of the rules of the rules of the Federal Aviation Administration. Such operation makes the person or persons responsible for the violation or violations subject to a civil penalty as provided in section 901 of the Act, and to the alteration, amendment, modification, suspension or revocation of any permit issued under this part and of any U.S. certificate involved as provided in section 609 of the Act. Engaging in air transportation as defined in the Act by a foreign aircraft without a foreign air carrier permit issued pursuant to section 402 of the Act or an exemption, or in violation of the terms of such authority constitutes not only a violation of this part

but of Title IV of the Act as well, which entails a criminal penalty as set forth in section 902 of the Act.

Subpart H -- Special Authorization

§375.70 Special authorization.

Any person 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.



U.S. Department of
Transportation

**APPLICATION FOR FOREIGN AIRCRAFT PERMIT
OR SPECIAL AUTHORIZATION
UNDER PART 375**

(See Instructions on Reverse Side)

To: Department of Transportation
Foreign Air Carrier Licensing Division, X-45
Office of International Aviation
400 Seventh Street, S.W.
Washington, D.C. 20590

DO NOT WRITE--FOR OFFICIAL USE ONLY

Disposition of Application:

- Approved
- Approved, subject to condition(s) on reverse
- Disapproved/Dismissed for reason(s) cited on reverse.

Under assigned authority _____
Effective from _____ to _____

Director, Office of International Aviation

1. Name and address of applicant: (operator)

Nationality:

Operations pursuant to this authorization shall conform to Part 375 of the Department's regulations and Part 91 of the Federal Aviation Regulations. **THIS PERMIT MUST BE CARRIED ABOARD AIRCRAFT DURING FLIGHT OVER UNITED STATES TERRITORY.**

2. Send Authorization to:
a. Name and Address:

b. Telephone:

c. Fax:

3. Aircraft make, model, and registration or identification marks:

4. Country in which aircraft is registered:

5. Name and address of registered owner of aircraft:

6. Name and address of contractor/charterer:

7. Dates of flights:

8. Planned routing of flights (indicate non-traffic stops by asterisks):

9. Description of operations (see instructions) (Check one):

Passenger

Cargo

Agricultural or industrial operation

10. Does the nation which is the domicile of the applicant grant to United States carriers a privilege similar to that requested herein? _____; if so, has the fact of such reciprocity been established with the Department? _____ If the fact has not been established with the Department, provide documentation to establish such reciprocity.

11. If application is being filed late, state reason for lateness:

12. Other information requested by the Department:

CERTIFICATION

I hereby certify that the flights for which authority is sought herein conform to the requirements of the applicable regulations and orders of the Department of Transportation.

(Date)

(Signature and title of authorized officer)

INSTRUCTIONS

1. Prepare an original and one copy of this application according to Section 375.43 of the Department's Regulations. If extra space is required to complete an item, continue on a separate sheet of paper.
2. Under Item 9:
 - (a) For passenger flights, provide full identification or description of group contracting for charter, and name and address of travel agent, if any.
 - (b) For cargo flights, provide the names of all contractors, description of cargo, beneficial owner of cargo, and provide a full description of the proposed operation including nature of any service to be performed by any exporter, importer, or transportation agent.
 - (c) For agricultural or industrial operations, describe area involved and purpose of operations.
3. Send the application to: Department of Transportation, Foreign Air Carrier Licensing Division, X-45, Office of International Aviation, 400 Seventh Street, S.W., Washington, D.C. 20590.
4. See Part 91 of the Federal Aviation Regulations and 375 of the Department's Regulations (14 CFR 91 and 14 CFR 375) for a full statement of the rules respecting navigation of foreign civil aircraft within the United States.

DO NOT WRITE -- FOR OFFICIAL USE ONLY

Exercise of the authorization is subject to the following condition(s):

OR Application is disapproved/dismissed for the following reason(s):

Order 97-7-3



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

SERVED July 2, 1997

Issued by the Department of Transportation
on the 2nd day of July, 1997

In the matter of

SPECIALTY AIR SERVICE OPERATORS OF
CANADA AND MEXICO

authority to conduct agricultural and industrial operations
in the United States under 14 CFR Part 375 and the North
American Free Trade Agreement

Docket OST-96-1021

ORDER

Summary

In this order we are finalizing our tentative findings and conclusions in Order 96-1-28, and granting Canadian and Mexican “specialty air service” operators a blanket foreign aircraft permit under 14 CFR Part 375 to conduct agricultural and industrial operations (so-called “specialty air services”) in U.S. markets, to the extent that they are covered by the North American Free Trade Agreement (NAFTA), subject to certain conditions proposed in that order.

Background

As discussed in detail in Order 96-1-28, NAFTA is a multilateral agreement entered into by the Governments of Canada, Mexico, and the United States, which, among other things, provides for the operation of a range of specialty air services by operators of the signatory countries.¹ NAFTA delays coverage for certain services, and contains a so-

¹ The services involved are aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial

called “Phase-Out” schedule for the removal of these limitations on coverage. Under this schedule, the right of Canadian and Mexican operators to conduct specialty air services within the United States becomes effective as follows:

- January 1, 1994: Aerial advertising, mapping, surveying, and photography, fire fighting, forest fire management, glider towing, and parachute jumping
- January 1, 1996: Aerial construction and heli-logging
- January 1, 1997: Aerial sightseeing, aerial inspection and surveillance, and flight training
- January 1, 2000: Aerial spraying

14 CFR Part 375 of our rules requires that operators of foreign civil aircraft conducting commercial air operations in the United States (including the types of operations defined as specialty air services), must obtain our prior approval, in the form of a foreign aircraft permit, before commencing such operations. Currently, a Canadian or Mexican operator that wishes to conduct specialty air services in the United States under NAFTA must file an application for a foreign aircraft permit on a flight-by-flight or contract-by-contract basis, under the provisions of §375.43, and obtain such authority before commencing its operations.

Discussion

By Order 96-1-28, served January 24, 1996, we directed interested persons to show cause why we should not grant Canadian and Mexican operators of specialty air service a blanket foreign aircraft permit to conduct those specialty air services that are encompassed by NAFTA and for which coverage has become effective under the “Phase-Out” schedule shown above.² We proposed to make this blanket foreign aircraft permit subject to each operator’s compliance with applicable safety requirements of the Federal Aviation Administration (FAA), and to make the authority effective until further order of the Department.

In that order, we noted that the operation in the United States of those specialty air services encompassed by and for which coverage has become effective under NAFTA is a right available to Canadian and Mexican operators; and that applications we have received to conduct specialty air service operations since the implementation of NAFTA

construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying.

² Under our proposed action, a Canadian or Mexican operator seeking to conduct a service for which coverage is not yet effective under the “Phase-Out” schedule, or which is outside the scope of NAFTA, would need to file an application for an individual foreign aircraft permit under the normal Part 375 procedures.

have raised no regulatory issues and have routinely been approved by us. Therefore, we tentatively concluded that requiring prior approval for these operations was no longer warranted in the public interest, and that instead we should issue the blanket foreign aircraft permit at issue here.

The order directed persons objecting to the Department's tentative findings and conclusions set forth in that order to file their objections within fourteen calendar days after the date of service of that order. We served Order 96-1-28 on those persons shown in the Attachment to this order. We also published a notice of our tentative decision in the Federal Register (FR 61-3071, January 30, 1996).

On February 7, 1996, The Management Association for Private Photogrammetric Surveyors (MAPPS), a national trade association of firms engaged in certain types of specialty air services, filed a comment to Order 96-1-28. MAPPS stated that we should grant the proposed blanket foreign aircraft permit only after we assure that U.S. specialty air service operators have access to Canadian and Mexican markets. MAPPS stated that if U.S. firms are being denied such opportunities, we should likewise withhold access to our market from these countries' operators. MAPPS stated that it knew of no instances where U.S. operators had been permitted by Canadian authorities to conduct specialty air services in that country, and questioned whether Mexican authorities would allow U.S. operators to conduct such operations. Finally, MAPPS expressed concern that operations in the United States by what it called "substandard Mexican operators" would cause harm to U.S. operators unless those operations were subject to U.S. safety standards.

No other comments or objections to Order 96-1-28 have been filed.

Decision

We have decided to finalize our tentative findings and conclusions in Order 96-1-28, and to issue Canadian and Mexican specialty air service operators a blanket foreign aircraft permit under Part 375, as described in that order.³

The only commenter in this proceeding, MAPPS, has questioned whether Canadian and Mexican authorities would allow U.S. operators to conduct specialty air service

³ As we noted in Order 96-1-28, some specialty air service activities do not belong clearly to one of the categories described in Article 1213 and Annex I of NAFTA, and we will require that Canadian and Mexican operators file ad hoc applications for foreign aircraft permits under Part 375 in order to conduct these non-conforming services. In the event that an operator desires our view in advance as to whether a particular specialty air service activity is encompassed by Article 1213 and Annex I, and thus by the blanket foreign aircraft permit we are granting here, it should contact the Department's Foreign Air Carrier Licensing Division, Office of International Aviation, for such a determination.

operations in their respective countries under NAFTA, and also questioned the safety standards under which such services are conducted by Mexican operators in the United States.

We have carefully considered the issues raised by MAPPS, and have concluded that they do not form a basis for withholding or modifying the blanket foreign aircraft permit we proposed in Order 96-1-28.

Significantly, MAPPS has not presented any evidence that either Canada or Mexico has failed to meet its obligations under NAFTA, and we have received no complaints from U.S. specialty air service operators concerning their access to these countries in the period since implementation of NAFTA.

With respect to Canada, we have been advised by Transport Canada that, as of June 15, 1997, eleven U.S. operators had requested authority from that agency to conduct specialty air services in Canada since the entry into force of NAFTA, and that Transport Canada had approved all of these requests.⁴

While we are aware of no U.S. operators seeking authority to conduct specialty air services in Mexico, it is significant that Mexico, as well as Canada and the United States, is a member of a NAFTA Trilateral Specialty Air Services Working Group, whose mission is to facilitate the conduct of cross-border services under NAFTA. All three countries have demonstrated their commitment to the successful implementation of the specialty air service provisions of NAFTA by their active participation in this Working Group.⁵

Moreover, as we noted in Order 96-1-28, our action here will remove an unnecessary burden on Canadian and Mexican specialty air service operators, and is consistent with the Administration's goal, set forth in the National Performance Review Report, of creating a government that works better and costs less.⁶

⁴ These Transport Canada authorities are safety authorizations. As we noted in Order 96-1-28, Canada and Mexico do not require U.S. operators to seek separate, prior economic operating authority, comparable to our foreign aircraft permit under 14 CFR Part 375, in order to conduct specialty air services in their territories.

⁵ Indeed, our action here removing the prior approval requirement for these operations is consistent with the goals of the Trilateral Working Group.

⁶ As we also noted in Order 96-1-28, we do not believe that this authority will materially lessen our ability to intervene with respect to these operations if required. Under the terms of 14 CFR §375.19, we may revoke, suspend, or cancel this or any other foreign aircraft permit issued under Part 375 in whole or in part for a particular operator or operators, without notice or hearing, if we find such action to be in the public interest.

Finally, with respect to the safety concerns raised by MAPPS, we note that, as we discussed in Order 96-1-28, each operator conducting services under the blanket foreign aircraft permit must comply with applicable FAA requirements. Since these requirements and the form of FAA review may change from time to time, we will condition the blanket foreign aircraft permit on compliance, by each operator conducting services under it, with applicable FAA requirements, rather than with specific terms.

ACCORDINGLY,

1. We make final our tentative findings and conclusions set forth in Order 96-1-28;
2. We grant a blanket foreign aircraft permit under 14 CFR Part 375 to all operators of Canadian and Mexican foreign civil aircraft to the extent necessary to permit them to conduct specialty air service operations in the United States that are provided for in Chapter 12 of the North American Free Trade Agreement; provided, that this blanket foreign aircraft permit does not authorize the operation of those specialty air services which are subject to the “Phase-Out” provisions of Annex I, I-U-16-17 of NAFTA until the effective date of coverage for those services; and provided further, that this blanket foreign aircraft permit is subject to revocation in whole or in part for a particular operator or operators when in the public interest;
3. Our action is subject to the condition that each Canadian and Mexican operator conducting operations under this authority (1) comply with all applicable requirements of 14 CFR Part 375; (2) comply with all applicable FAA requirements contained in the Federal Aviation Regulations and applicable Orders of the FAA; and (3) carry on board each aircraft operated under this authority a copy of this order, and a copy of any document required by the Federal Aviation Regulations;
4. This authority is effective immediately, and shall remain in effect until further order of the Department;
5. This authority is subject to amendment or modification, at our discretion and without hearing, should such action be necessary in the public interest;
6. Our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975; and

7. We will serve a copy of this order on the persons named in the Attachment to this order.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Attachment

*An electronic version of this document is available on the World Wide Web at:
<http://www.dot.gov/general/orders/aviation.html>*

SERVICE LIST

Aquarius Flight 2833 16th Avenue Hanger Nine Markham, Ontario Canada L3R 0P8	Edmundston, New Brunswick Canada E3V 1S9	Les Helicopters 341 Route 111, Quest La Sarre, Quebec Canada J9Z 2X5
Brucelandair RR 2 Warton, Ontario Canada N0H 2T0	Frontier Helicopters P.O. Box 220 Abbotsford, British Columbia Canada V2S 4N9	Long Beach Helicopters 2363 Cienar Drive Nanaimo, British Columbia Canada V9T 3L6
Campbell Helicopters Box 2008 Clearbrook, British Columbia Canada V2T 3T8	Geonex Aerodat 3883 Nashua Drive Mississauga, Ontario Canada L4V 1R3	Ministry of Natural Resources 3767 Highway 69S, Suite 5 Sudbury, Ontario Canada P3G 1E7
Canadian Air Crane 500 1199 West Hastings Vancouver, British Columbia Canada V6E 2G7	Geoterrex 2060 Walkley Road Ottawa, Ontario Canada K1G 3P5	North West Geomatics 11941-121 Street, Bldg. 38 Edmonton, Alberta Canada T5L 4H7
Canadian Helicopters Western 12021-121st Street Edmonton, Alberta Canada T5L 4H7	Global Remote Sensing 203 10008 - 109th Street Edmonton, Alberta Canada T5J 1M4	Peace Helicopters 29 Airport Road Edmonton, Alberta Canada T5G 0W6
Cougar Helicopters Halifax International Airport Waverly, Nova Scotia Canada B0N 2S0	Go Island Helicopters 8189-A East Saanich Road RR-1 Saanichton, British Columbia Canada V8M 1T5	Quebec Government Air Service Quebec Airport St. Foy, Quebec Canada G2E 5W1
Coulson Aircrane 7500 Airport Rd. Port Alberni, British Columbia Canada V9Y 7L5	Goldak Exploration 306 Park Avenue Langham, Saskatchewan Canada S0K 2L0	Turbowest Helicopters 575 Palmer Road NE #10 Calgary, Alberta Canada T2E 7G4
Custom Helicopters P.O. Box 66130 Winnipeg, Manitoba Canada R3K 2E7	Helicraft Ltd. 6500 Chemin de la Savane Saint-Hubert, Quebec Canada J3Y 5K2	Vancouver Island Helicopters 1 9600 Canora Road Sidney, British Columbia Canada V8L 5V5
Four Seasons Aviation 170 Elmpine Trail King City, Ontario Canada L7B 1K4	Heli-Lift International P.O. Box 1971 Yorktown, Saskatchewan Canada S3N 3X3	Venture Helicopters 1060 McTavish Rd. NE Calgary, Alberta Canada T2E 7G6
Fraser Helicopters 27 Rice Street	Intera Technologies 2500 101 Sixth Avenue SW Calgary, Alberta Canada T2P 3P4	West Point Air Services

575 Palmer Rd. N.E.
Calgary, Alberta
Canada T2E 7G4

Air Flight Service
2220 Calle de Luna
Santa Clara, CA 95054

Cascade Helicopters
P.O. Box 596
407 North Division Street
Cashmere, WA 98815

Columbia Helicopters
P.O. Box 3500
Portland, OR 97208

Erickson Air Crane
P.O. Box 3247
Central Point, OR 07592

Evergreen Helicopters
3850 Three Mile Lane
McMinnville, OR 97128-9496

Helicopter Association Int'l
1635 Prince Street
Alexandria, VA 22314-2818

Horizons, Inc.
1635 Deadwood Avenue
P.O. Box 3134
Rapid City, SD 57709-3134

International Remote Sensing
Suite 5-232
2110 East Baseline Road
Mesa, AZ 85204

Keystone Aerial Surveys
Northeast Philadelphia Airport
P.O. Box 21059
Philadelphia, PA 19114

MARS Associates/
Simulation Systems
Suite 109
1422 North 44th Street
Phoenix, AZ 85008

MAPPS, Inc.
Suite 100
12020 Sunrise Valley Dr.
Reston, VA 22091

West Star Aviation
P.O. Box 4490
Grand Junction, CO 81502

Federal Aviation
Administration
AFS-50
800 Independence Avenue,
N.W.
Washington, D.C. 20591

Federal Aviation
Administration

AFS-800
800 Independence Avenue,
N.W.
Washington, D.C. 20591

Federal Aviation
Administration
ASW-200
Fort Worth, TX 76193-0200

Department of State
Office of Aviation Negotiations
EB/TRA/OA
2201 C Street, N.W.
Washington, D.C. 20520

Embassy of Canada
501 Pennsylvania Avenue,
N.W.
Washington, D.C. 20006

Transport Canada
200 Kent Street
Ottawa, Ontario
Canada K1A 0N8

Embassy of Mexico
1911 Pennsylvania Avenue,
N.W.
Washington, D.C. 20006

DGAC Mexico
Providencia 807
Mexico DF



Order 96-1-28

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 23rd day of January, 1996
Served January 24, 1996

In the matter of

SPECIALTY AIR SERVICE OPERATORS OF
CANADA AND MEXICO

authority to conduct agricultural and industrial operations
in the United States under 14 CFR Part 375 and the North
American Free Trade Agreement

Docket OST-96-1021

ORDER TO SHOW CAUSE

Summary

We have tentatively decided to grant Canadian and Mexican “specialty air service” operators a blanket foreign aircraft permit under 14 CFR Part 375 to conduct agricultural and industrial operations (so-called “specialty air services”) in U.S. markets, to the extent that they are covered by the North American Free Trade Agreement. This authority would be subject to each operator’s compliance with applicable regulations and procedures of the Federal Aviation Administration, and would be effective until further order of the Department.

Background

“Specialty air services” is a term commonly applied to various agricultural and industrial commercial air operations conducted for remuneration or hire. These services include, among other things, heli-logging and aerial fire-fighting, sightseeing, spraying, surveying, mapping, and photography. They do not include any activities involving air transportation, that is, the carriage by aircraft of persons or property for hire in interstate or foreign air commerce.

The operation of specialty air services in the United States by operators of foreign civil aircraft is governed by 49 U.S.C. 41703, as implemented by 14 CFR Part 375 of the Department's regulations.¹ 14 CFR Part 375 requires that an operator of a foreign civil aircraft obtain prior Department approval, in the form of a foreign aircraft permit, before engaging in any commercial air operations, including specialty air services, in the United States. These operators must apply to the Department's Office of the Secretary of Transportation (OST) for this authority on a flight-by-flight or contract-by-contract basis.

14 CFR Part 375 provides that we will issue a foreign aircraft permit if we find that the proposed operation meets the requirements of that Part and is in the public interest. The rule also provides that, in determining whether to grant such a permit, we will consider the extent to which the country of the applicant's nationality deals with U.S. operators on the basis of substantial reciprocity.

NAFTA provisions

The North American Free Trade Agreement (NAFTA), which entered into force January 1, 1994, provides for the operation of a range of specialty air services by operators of Canada, Mexico, and the United States.² Article 1213 of NAFTA defines "specialty air services" as "aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services." While the effective date of NAFTA coverage for some of these services was January 1, 1994 (the date of entry into force of NAFTA), Annex I delays coverage for other types of services, and contains, for each signatory country, a "Phase-Out" schedule for the removal of this limitation on coverage.³ The Annex provides, for operations in U.S. airspace, that the right of

¹ 14 CFR §375.1 defines a "foreign civil aircraft" as "(a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States."

² North American Free Trade Agreement between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States, signed December 17, 1992, entered into force January 1, 1994. The operation of specialty air services is provided for in Chapter 12, Cross-Border Trade in Services, Article 1201, paragraph 2(b)(ii).

³ See NAFTA Annex I, Reservations for Existing Measures and Liberalization Commitments, I-C-34-36, I-M-57-58, and I-U-15-17.

Canadian and Mexican operators to conduct specialty air services within the United States will be phased in under the following schedule:⁴

January 1, 1994: Aerial advertising, mapping, surveying, and photography, fire fighting, forest fire management, glider towing, and parachute jumping

January 1, 1996: Aerial construction and heli-logging

January 1, 1997: Aerial sightseeing, aerial inspection and surveillance, and flight training

January 1, 2000: Aerial spraying

Current Department Procedures

The entry into force of NAFTA did not alter the requirement that Canadian and Mexican operators obtain a foreign aircraft permit under 14 CFR Part 375 before conducting specialty air services in the United States. Thus, currently Canadian and Mexican operators of specialty air services must still file applications for foreign aircraft permits, under the procedures set forth in 14 CFR §375.43, and obtain such authority before conducting these services. In processing requests for authority to conduct specialty air service operations that are encompassed by NAFTA and for which coverage has become effective under Annex I's "Phase Out" provisions, we no longer need to look at the state of reciprocity with the country of the nationality of the applicant in determining whether grant of the request is in the public interest. Instead, we deem the public interest requirement of 14 CFR Part 375 to be satisfied by the rights and obligations contained in that multilateral undertaking.⁵ For applications involving services for which coverage has not yet become effective under Annex I, we must continue to weigh the state of reciprocity with the applicant's homeland in determining whether to grant the requested foreign aircraft permit.

Tentative Findings and Conclusions

We tentatively find that, in light of the implementation of NAFTA, the public interest no longer requires us to retain the individual prior approval requirement for those specialty air services that are encompassed by NAFTA and for which coverage has become effective under its Annex I, and that we should therefore remove this requirement. We propose to do so by granting Canadian and Mexican specialty air service operators a blanket foreign aircraft permit under 14 CFR Part 375 to permit them to conduct those specialty air service operations, subject to those operators meeting applicable FAA safety requirements. We propose to make this blanket foreign aircraft permit effective until further order of the Department.

⁴ See NAFTA Annex I, I-U-16-17.

⁵ Under 49 U.S.C. 40105(b), the Department must act consistent with obligations of the United States Government under international agreements.

Under the blanket foreign aircraft permit we propose to issue, Canadian and Mexican operators would not need to file applications with the Department under 14 CFR Part 375 in order to conduct specialty air services for which coverage has become effective under the “Phase-Out” provisions of Annex I to NAFTA (although, as noted, they would need to comply with the FAA requirements discussed below). The blanket foreign aircraft permit would not authorize the operation of specialty air services for which coverage has not yet become effective under the “Phase-Out” provisions of Annex I, and a Canadian or Mexican operator would still be required to file applications for, and obtain, individual foreign aircraft permits in order to conduct these operations (since, as noted above, grant of such authority is dependent upon reciprocity on the part of the applicant’s homeland).⁶ However, on the date that coverage for a particular service becomes effective under Annex I, the blanket foreign aircraft permit would, by its terms, authorize the operation of that service, removing the requirement that operators seek specific foreign aircraft permits under 14 CFR §375.43.

In reaching our tentative decision, we note, as discussed above, that the operation in the United States of those specialty air services that are encompassed by NAFTA, and for which coverage has become effective under its Annex I, is a right available to Canadian and Mexican operators. We have over a year’s experience with specialty air service operations under NAFTA, and the applications we have received have raised no regulatory issues and have routinely been approved by us.⁷ In light of this situation, we

⁶ Some specialty air service activities do not belong clearly to one of the categories described in Article 1213 and Annex I of NAFTA. Canadian and Mexican operators can expect that, should we finalize our proposal in this proceeding, we would require them to file ad hoc applications for foreign aircraft permits under Part 375 in order to conduct these non-conforming services. In the event that an operator desired our view in advance as to whether a particular specialty air service activity was encompassed by Article 1213 and Annex I, and thus by the proposed blanket foreign aircraft permit, it could contact the Department’s Foreign Air Carrier Licensing Division, Office of International Aviation, for such a determination.

⁷ Between January 1, 1994, and December 31, 1995, we received 76 applications from Canadian operators to conduct NAFTA-covered specialty air service operations. We received no objections to any of these applications, and we approved all of them. We have received no applications to date from Mexican operators to conduct NAFTA-covered services.

believe that requiring prior approval for these operations is no longer warranted in the public interest.⁸

Removal of the prior approval requirement for covered services will assist with the implementation of NAFTA, and will remove an unnecessary burden on Canadian and Mexican specialty air service operators.⁹ Removal of this requirement is also consistent with the Administration's goal, set forth in the National Performance Review Report, of creating a government that works better and costs less.¹⁰

FAA Requirements

While the action we are proposing in this proceeding would remove our prior approval requirements under 14 CFR Part 375 for NAFTA-covered services, Canadian and Mexican specialty air service operators must continue to comply with applicable safety regulations and procedures of the Federal Aviation Administration. In particular, these operators must obtain an operating certificate, a certificate of waiver, or a certificate of authorization from the FAA's Flight Standards Service (AFS-800, telephone 202-267-8194) before conducting any such service, and must also comply with the requirements of 14 CFR Part 91 in the conduct of all operations in U.S. airspace.¹¹ Should we finalize our tentative decision in this proceeding, we propose to condition the blanket foreign aircraft permit on compliance, by each operator conducting services under it, with applicable FAA requirements, and require that each operator carry a copy of its FAA certificate (as well as a copy of the final blanket foreign aircraft permit we would issue) on board each aircraft it operates under this authority.¹²

⁸ The removal of the prior approval requirement would in no way alter the obligation of specialty air service operators to comply with all other applicable provisions of 14 CFR Part 375, including requirements in §375.20-21 concerning airworthiness, registration, and airmen's certificates, in §375.24 concerning entry and clearance procedures, and in §375.26 concerning waiver of sovereign immunity.

⁹ Moreover, Canada and Mexico do not require U.S. operators to seek separate, prior economic operating authority, comparable to our foreign aircraft permit under 14 CFR Part 375, in order to conduct specialty air services in their territories (although they, like the FAA, require operators of such services to obtain safety authorization before commencing these services).

¹⁰ We do not believe that this authority will materially lessen our ability to intervene with respect to these operations if required. Under the terms of 14 CFR §375.19, we may revoke, suspend, or cancel this or any other foreign aircraft permit issued under Part 375 in whole or in part for a particular operator or operators, without notice or hearing, if we find such action to be in the public interest.

¹¹ NAFTA provides for the application of each Party's safety rules to the operation of specialty air services in Chapter 9, Standards-Related Measures, Article 904.

¹² We currently impose this condition on all individual foreign aircraft permits we issue to Canadian and Mexican operators under 14 CFR Part 375.

In light of the lack of any identifiable need to retain the prior approval requirement for NAFTA-covered specialty air services conducted by Canadian or Mexican operators, and the benefits to be derived from removal of this requirement, we believe that our tentative decision in this proceeding is warranted in the public interest.

In view of the foregoing and all facts of record, we tentatively find and conclude that:

1. It is consistent with the public interest to grant a blanket foreign aircraft permit under 14 CFR Part 375 to all operators of Canadian and Mexican foreign civil aircraft to the extent necessary to permit them to conduct specialty air service operations in the United States that are provided for in Chapter 12 of the North American Free Trade Agreement; provided, that this blanket foreign aircraft permit does not authorize the operation of those specialty air services which are subject to the “Phase-Out” provisions of Annex I, I-U-16-17 of NAFTA until the effective date of coverage for those services; and provided further, that this blanket foreign aircraft permit is subject to revocation in whole or in part for a particular operator or operators when in the public interest;
2. Our action should be subject to the condition that each Canadian and Mexican operator conducting operations under this authority (1) comply with all applicable requirements of 14 CFR Part 375; (2) obtain an operating certificate, a certificate of waiver, or a certificate of authorization, from the Federal Aviation Administration (AFS-800) before conducting any authorized services, and also comply with all applicable FAA requirements, including those contained in 14 CFR Part 91; and (3) carry on board each aircraft operated under this authority a copy of the final blanket foreign aircraft permit issued in this proceeding, and a copy of its FAA certificate described above;
3. Our action should be effective upon issuance of a final order in this proceeding, and should remain effective until further order of the Department;
4. Our action should be subject to amendment or modification, at our discretion and without hearing, should such action be necessary in the public interest; and
5. Our action would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We direct all interested persons to show cause why the tentative decision set forth above should not be made final;
2. Any interested person objecting to the issuance of an order making final our tentative findings and conclusions shall, no later than fourteen (14) calendar days after the date of service of this order, file with the Department and serve on the persons named in the

Attachment to this order, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence to be relied upon in support of the objections; if objections are filed, answers to objections are due no later than seven (7) calendar days thereafter;¹³

3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action;

4. In the event no objections are filed, all further procedural steps shall be deemed waived, and the Department may enter an order which will make final our tentative findings and conclusions set forth in this order;

5. We will serve a copy of this order on the persons named in the Attachment to this order; and

6. We will publish a summary of this order in the Federal Register.

By:

MARK L. GERCHICK
Acting Assistant Secretary for
Aviation and International Affairs

(SEAL)

Attachment

*An electronic version of this document is available on the World Wide Web at:
<http://www.dot.gov/dotinfo/general/orders/aviation.html>.*

¹³ Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

SERVICE LIST

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Cougar Helicopters Halifax International Airport Waverly, Nova Scotia Canada B0N 2S0	Go Island Helicopters 8189-A East Saanich Road RR-1 Saanichton, British Columbia Canada V8M 1T5	Quebec Government Air Service Quebec Airport St. Foy, Quebec Canada G2E 5W1
Coulson Aircrane 7500 Airport Rd. Port Alberni, British Columbia Canada V9Y 7L5	Goldak Exploration 306 Park Avenue Langham, Saskatchewan Canada S0K 2L0	Turbowest Helicopters 575 Palmer Road NE #10 Calgary, Alberta Canada T2E 7G4
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