

## VOLUME 12 INTERNATIONAL AVIATION

### CHAPTER 4 PART 129 OPERATIONS

#### Section 12 Compliance and Enforcement

##### Source Basis:

- **Section 129.5, Operations Specifications.**
- **Section 129.7, Application, Issuance, or Denial of Operations Specifications.**
- **Section 129.9, Contents of Operations Specifications.**
- **Section 129.11, Amendment, Suspension and Termination of Operations Specifications.**
- **Administrative.**

#### 12.1 GENERAL.

**12.1.1 Purpose.** This section establishes the Federal Aviation Administration (FAA) Flight Standards Service (FS) policy and requirements for conducting compliance and enforcement activities within the United States or its territories on Title 14 of the Code of Federal Regulations (14 CFR) part 129 foreign air carriers.

**12.1.2 Scope.** This section is applicable to all FAA FS personnel who execute oversight responsibilities on part 129 foreign air carriers.

##### 12.1.3 Safety Assurance System (SAS) Activity Recording (AR) Codes.

- a) Operations: 1731, 1733, 1734, and 1735.
- b) Maintenance: 3731, 3732, 3733, and 3734.
- c) Avionics: 5731, 5732, 5733, and 5734.

**12.1.4 Regulatory References.** All regulatory references in this section are found in 14 CFR unless otherwise indicated.

**12.2 DEFINITIONS.** See Volume 12, Chapter 1, Section 1, Definitions, Abbreviations, and Acronyms, for information associated with this section.

**12.3 COMPLIANCE AND ENFORCEMENT.** The FAA's compliance and enforcement program is designed to promote compliance with statutory and regulatory requirements. The ultimate goal of the FAA's compliance and enforcement program is to prevent incidents, accidents, and the occurrence of regulatory violations. With respect to part 129 foreign air carriers, this goal is primarily achieved through foreign air carrier surveillance and technical assistance and consultations with the foreign air carrier's Civil Aviation Authority (CAA).

**Note:** As with U.S. air carriers, the FAA encourages voluntary compliance by foreign air carriers.

**12.3.1 Suspension or Revocation of Operations Specifications (OpSpecs).** The compliance and enforcement program provides a wide range of options for addressing noncompliance. In addition to referring apparent violations to foreign governments for appropriate handling, options include administrative action in the form of a warning notice or letter of correction, the suspension or revocation of OpSpecs, civil penalties, injunctions, and referrals for criminal prosecution.

a) When the option of suspending the foreign air carrier's OpSpecs is selected, the suspension may be for a fixed period or an indefinite period, pending compliance or a demonstration of qualifications.

b) Enforcement actions against crewmember certificates (Special Purpose Pilot Authorizations (SPPA)) may also be available if the foreign air carrier uses a U.S.-registered aircraft in their operations.

**Note:** For additional guidance on amendment of OpSpecs, see Volume 12, Chapter 4, Section 1. For the regulatory reference for amendment, suspension, or termination of OpSpecs, refer to part 129, § 129.11.

**12.3.2 FAA Actions When Violations Occur.** When violations occur, FAA personnel must take the action that best promotes safety and compliance with the regulations. The action taken is determined by evaluating the seriousness and safety risk imposed by the noncompliance. FAA Order 2150.3, FAA Compliance and Enforcement Program, provides a description of the authority, responsibilities, policies, guidelines, procedures, objectives, and legal aspects of the FAA compliance and enforcement program.

**12.3.3 CAA Consultations.** The amendment, suspension, or termination of foreign air carrier OpSpecs are actions that can be affected by the procedural requirements of a bilateral air transport agreement. Before taking such actions, the standard language in most bilateral air transport agreements may require the FAA to consult with the CAA of the foreign air carrier.

a) During such consultations, the FAA advises the CAA of how the foreign air carrier is not complying with the applicable safety standards and requirements, and provides an opportunity for corrective actions to be taken within a reasonable time.

b) The FAA also should provide this information to the foreign air carrier involved. However, the standard agreement language also provides for exceptions to the general consultation requirement.

c) Consultations are not required when the amendment, suspension, or termination of the OpSpecs is essential to prevent further noncompliance with U.S. law, FAA regulations, or the minimum international standards applicable to the operations of the foreign air carrier.

d) Earlier versions of bilateral air transport agreements between the United States and foreign governments may not contain these same provisions. In some cases, the process to revoke, suspend, or limit the operating authorizations or technical permissions of a foreign air carrier is not discussed. However, it is FAA policy that the same process be used for all foreign air carriers.

**12.3.4 International Field Office (IFO) Responsibilities.** Because consultations may be required, the amendment, suspension, or revocation of a foreign air carrier's OpSpecs may be considered a significant action under Order 2150.3.

a) IFOs must coordinate these cases with the International Field Office Management Branch (AFS-54) before initiating any action to amend, suspend, or revoke a foreign air carrier's OpSpecs.

b) For emergency cases requiring immediate action, the IFO must provide information on the amendment, suspension, or revocation to AFS-54 at the same time the action is being taken. This coordination process will also allow for a more effective response to the broad public attention that such actions may draw.

**12.4 FAA-INITIATED OPSPEC AMENDMENT—NON-IMMEDIATE.** If the FAA determines that an amendment to a foreign air carrier or operator's OpSpecs is justified but not of an immediate nature, the FAA should amend the OpSpecs in accordance with the procedures contained in Volume 12, Chapter 4, Section 1. These situations include a change in circumstances of a foreign air carrier's operations or when the FAA has specific safety concerns not of an immediate nature.

**12.4.1 Change in the Foreign Air Carrier's Operating Environment or Operating Certificate.** In some cases, the FAA may decide to amend a foreign air carrier's OpSpecs due to a change in the operational environment or Operating Certificate. For example, the FAA may create a new OpSpec paragraph to ensure uniform compliance with a certain aspect of the regulations. In such cases, the appropriate principal inspector (PI) may initiate and amend a foreign air carrier's OpSpecs due to the change, without the foreign air carrier having to apply for the change. Once the foreign air carrier has demonstrated or provided documentation, as applicable, to show compliance with all appropriate parts of the regulations and operational and airworthiness requirements, the OpSpecs may be issued in accordance with the procedures discussed in Volume 12, Chapter 4, Section 1.

**12.4.2 FAA Authority and Foreign Air Carrier Appeal Rights.** The FAA has the authority to unilaterally amend a foreign air carrier's OpSpecs (revoke, suspend, or limit the operating authorizations or technical permissions of an airline) when the FAA has determined that safety in air transportation and the public interest necessitates such an amendment.

a) When amending a foreign air carrier's OpSpecs under these circumstances, if immediate action is not essential, the FAA shall notify the foreign air carrier in writing and then allow a minimum of 7 business-days for comments regarding the proposal. The 7 business-day period provides the foreign air carrier with an opportunity to submit written information, views, and arguments on the proposal.

b) After reviewing the comments and their merit, the IFO shall then either rescind or adopt the amendment.

c) If the IFO decides that the amendment is necessary, every attempt should be made to obtain voluntary acceptance of the amendment by the foreign air carrier, and the final amended OpSpecs should have an effective date of no less than 30 calendar-days after issuance. This will

provide the foreign air carrier with appeal rights, as provided in part 129. The following are examples of FAA-initiated, non-immediate amendments:

1) The FAA proposes to amend a foreign air carrier's OpSpecs when it determines that the operating environment or capability is no longer consistent with the operating authorizations, conditions, and limitations contained in its FAA-issued OpSpecs. Examples of such cases are when the foreign air carrier:

- Terminates operations to the United States with a specific make, model, and series (M/M/S) of aircraft that is authorized in its OpSpecs.
- Has a series of occurrences involving a particular type of operation (e.g., conducting domestic Reduced Vertical Separation Minimum (RVSM) operations when it is determined that the foreign air carrier may not be adhering to all provisions of their FAA-issued RVSM OpSpec).
- Terminates a particular type or kind of operation or area of operation (e.g., a foreign air carrier no longer conducting Category (CAT) II or III approach operations in the United States).

2) The FAA amends a foreign air carrier's OpSpecs when the standard automated OpSpecs have been revised on a national basis and the International Program Division (AFS-50) has requested that PIs amend all or part of their operator's OpSpecs.

**12.5 PROCEDURES FOR FAA-INITIATED PART 129 OPSPEC AMENDMENT, SUSPENSION, OR TERMINATION.** When the FAA cannot reach agreement with the foreign air carrier/person regarding an FAA-initiated OpSpec amendment, suspension, or termination, the FAA will amend their OpSpecs using the following procedures. These procedures ensure that the FAA meets its bilateral obligations that affect amendment of a foreign air carrier/person's OpSpecs.

**12.5.1 Responsible IFO.** The IFO responsible for administration of a foreign air carrier/person's FAA-issued OpSpecs will prepare a Notice of Intent clearly explaining the proposed OpSpec amendment, suspension, or termination, and the reasons for it.

**Note:** If the proposed amendment, suspension, or revocation is associated with a proposed enforcement action, this may be the Letter of Investigation in accordance with Order 2150.3.

**12.5.1.1 Notice of Intent.** The Notice of Intent is a written notice (letter) to the foreign air carrier/person and contains specific information regarding the FAA's intent to amend, suspend, or terminate one or more of their FAA-issued OpSpecs. The Notice of Intent must include the following specific information and be sent in a certain manner:

a) **Basis for Proposed Action.** Describe the proposed action (amendment, suspension, or termination) and the basis for it.

b) Timeframe for Response. Provide a reasonable timeframe (minimum 30 calendar-days from receipt of the notice) for the foreign air carrier/person to submit written information, views, and arguments on the proposed action(s).

c) Send the notice by certified mail to both of the following:

- 1) The foreign air carrier/person specifying the Administrator's intent; and
- 2) The foreign air carrier/person's agent for service in the United States.

**Note:** Once the foreign air carrier/person's agent for service in the United States has been served, as provided in § 129.11, they cannot claim (legally) that they did not receive proper notification (see Volume 12, Chapter 4, Sections 1 and 2 for additional information).

d) When the responsible IFO issues the above actions, they become effective no less than 30 calendar-days after the foreign air carrier or foreign person receives notice of them, unless the responsible office determines that:

- 1) There is an emergency requiring immediate action with respect to safety of the air commerce; or
- 2) The foreign air carrier/person petitions for reconsideration.

**Note:** The responsible IFO may make the amendment, suspension, or termination effective the day the foreign air carrier/person receives notice of it. The IFO must articulate the reasons in respect to air transportation safety.

e) Petition for Reconsideration. If reconsideration is desired, the foreign air carrier/person must submit the petition for reconsideration to the Executive Director, Flight Standards Service (AFX-1). If a petition for reconsideration is submitted, the responsible IFO will not take any other action on the suspension, amendment, or termination until the petition for reconsideration is reviewed and AFX-1 issues a decision.

**12.5.2 AFS-54 Notification and Action.** The responsible IFO shall prepare a briefing paper using the general FAA memo template that may be found on <https://my.faa.gov/>.

a) The briefing paper must include, at a minimum, a section on the issue(s), background, and recommendation/conclusion. The briefing paper may also include, but is not limited to, discussion of major points, relevant attachments, and political considerations and implications.

b) The responsible IFO shall forward the briefing paper and the draft letter described in paragraph 12.5.1 (hereinafter referred to as "the package") to AFS-54.

c) If the AFS-54 manager concurs with the proposed action after coordination with the FAA Office of the Chief Counsel (AGC) and the IFO, the AFS-54 manager will forward the package to the AFS-50 manager for concurrence:

1) If the AFS-50 manager concurs, copies will be forwarded to AFX-1, the Deputy Executive Director, Flight Standards Service (AFX-2), the International Affairs Division (AGC-700), and the Enforcement Division (AGC-300); or

2) If the AFS-50 manager nonconcurs, the package is returned to the initiating IFO for other action.

d) For uncontroversial amendments, suspensions, or revocations where the foreign air carrier/person accepts the amendment, suspension, or revocation, the responsible IFO must send an email notification to AFS-54. (A briefing paper is not needed unless requested.)

**12.5.3 AFS-50 Actions.** When the package is received, AFS-50 will ensure the following actions are taken:

a) Coordinate the package internally and with AFX-1 and AGC-700. The coordination will result in a concurrence or nonconcurrence to the action:

1) Concur. Provided all concur with the proposed action and the need for consultations, AFS-50 will initiate the consultation process as set forth in paragraph 12.3.

2) Nonconcur. In the event of nonconcurrence with the proposed action, AFS-50 will return the package to the originating IFO through AFS-54 after discussion. The package must be retained in accordance with recordkeeping requirements in FAA Order 1350.14, Records Management. For additional guidance, see Volume 12, Chapter 4, Section 14.

b) Notify the Assistant Administrator for the Office of International Affairs (API); the Department of Transportation (DOT); and the Department of State (DOS) of the proposal to request consultations and request comments. After comments are received and considered, either AFS-50 will proceed with consultations or the package will be returned to the originating IFO through AFS-54 after discussion.

**Note:** Packages will be returned for the following reasons: more information is required from the originating IFO, lack of clarity, additional information has been received which may change the IFO's recommendation, or a decision was made not to proceed with consultations.

c) Prepare a cable (sensitive message) requesting consultations and forward it to the foreign government through the DOS if the final decision is made to proceed with consultations.

d) Lead a team to conduct the consultations and brief post staff on the results (assuming the foreign government agrees to the consultations).

1) Prepare a decision paper regarding the proposed OpSpec amendment based on the results of the consultations.

2) Make a final decision regarding the amendment and coordinate with AGC-700 and AGC-300. The decision may proceed with OpSpec(s) amendment as proposed, modify the amendment(s), or return the package to the IFO for no action.

e) Once the decision on the amendment is made, AFS-50 shall prepare a decision cable for transmission through the DOS Post to the foreign government notifying it of the decision regarding its foreign air carrier/person's OpSpec amendment.

**Note:** DOS Post refers to the diplomatic mission which is either the embassy or consulate. It is the official means of transmitting sensitive communications between governments.

f) After the foreign government is notified of the decision to proceed with the OpSpec amendment, the IFO will be directed by AFS-50 through AFS-54 to issue the OpSpec amendment without further discussion, effective upon receipt by the foreign air carrier/person.

## **12.6 EMERGENCY AMENDMENT, SUSPENSION, OR TERMINATION.**

**12.6.1 Emergency Actions.** If the responsible IFO determines that an emergency exists that requires immediate action with respect to the amendment, suspension, or termination:

a) The decision will become final on the day the foreign air carrier/person receives notice of the decision (Emergency Decision Notice).

b) The Emergency Decision Notice must state the basis for the determination that an emergency exists (refer to § 129.11(g)).

c) If the foreign air carrier/person files a petition for reconsideration after receiving an Emergency Decision Notice, the amendment, suspension, or termination action will continue in effect until AFX-1 issues a decision.

**12.6.2 After Legal Action.** The emergency amendment, suspension, or revocation of foreign air carrier/person's OpSpecs generally occurs after legal enforcement action. Order 2150.3 contains the information, policies, guidelines, and procedures to be followed by PIs when taking emergency enforcement action, including procedures for issuance of any emergency order.

**12.6.3 Safety or Security Situations.** The FAA may amend a foreign air carrier/operator's OpSpecs without consultations with the foreign government if the safety or security situation requires immediate action. In such cases, the amendment would become effective immediately and upon receipt by the foreign air carrier. This process applies only when:

a) An emergency exists that requires immediate action with respect to safety and when the other procedures to amend OpSpecs are impractical or contrary to the public interest; or

b) When the FAA has reasonable grounds to believe that the foreign carrier or the State of the Operator does not comply with the aviation security provisions of the bilateral air transport agreement. In the case of aviation security issues, the FAA may request immediate consultations with the CAA of the foreign air carrier. Failure to reach a satisfactory agreement within 15 calendar-days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization and technical permissions (OpSpecs) of a foreign air carrier. In this case, as well, when required by an emergency, the FAA may take interim action within 15 calendar-days after the OpSpecs are issued.

1) Example 1. An emergency amendment to a foreign air carrier's OpSpecs would be justified if the foreign air carrier is knowingly operating an unairworthy aircraft or using unqualified crewmembers in the operation.

2) Example 2. An emergency amendment to a foreign air carrier's OpSpecs would be justified if the foreign air carrier is operating flights into the United States in violation of U.S. security requirements, including the requirements of its Transportation Security Administration (TSA) foreign air carrier security program.

**12.6.4 FAA Coordination.** An emergency amendment to a foreign air carrier's OpSpecs requires close coordination between the IFO and AFS-54. An effort will be made to first comply with the procedures in this order unless the gravity of the safety or security situation precludes prior notification. When the gravity of the safety or security situation precludes prior notification in the interest of safety, the amendment should be made using the above procedures as soon as possible. After being notified of the emergency action, AFS-50 may coordinate with the foreign government which may include the following actions:

a) Prepare a cable describing the action taken and coordinate it with API, DOT, and DOS; and

b) Send the cable to DOS Post for delivery to the foreign government.

#### **12.6.5 Presidential Authority.**

**12.6.5.1 Suspension.** Under Title 49 of the United States Code (49 U.S.C.) § 40106(b), when the U.S. President decides that the government of a foreign country is acting inconsistently with the Convention for the Suppression of Unlawful Seizure of Aircraft, or that the government of a foreign country allows territory under its jurisdiction to be used as a base of operations for training of, or as a sanctuary for, or arms, aids, or abets, for terrorist organizations that knowingly uses the unlawful seizure, or the threat of an unlawful seizure, of an aircraft as an instrument of policy, the President may suspend the authority of:

a) A U.S air carrier or foreign air carrier to provide foreign air transportation to and from that foreign country;

b) A person to operate aircraft in foreign air commerce to and from that foreign country;

c) A foreign air carrier to provide foreign air transportation between the United States and another country that maintains air service with the foreign country; and

d) A foreign person to operate aircraft in foreign air commerce between the United States and another country that maintains air service with the foreign country.

**12.6.5.2 Duration of Suspension.** The President may act under this subsection without notice or a hearing. The suspension remains in effect for as long as the President decides it is necessary to ensure the security of aircraft against unlawful seizure. In this case, the IFO shall, in coordination with FAA headquarters, immediately notify the foreign carrier that their OpSpecs are suspended or revoked until further notice.