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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No.: FAA-2024-0176; Notice No. 24-21]

RIN 2120-AL93

Foreign Air Operator Certificates issued by a Regional Safety Oversight

Organization

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Current FAA regulations require that foreign applicants for operating specifications must hold a valid air operator certificate issued by the State of the Operator. Some International Civil Aviation Organization Contracting States have joined together to form Regional Safety Oversight Organizations. These organizations may provide a uniform regulatory structure for safety oversight and provide technical assistance and the execution of safety oversight functions on behalf of their member States. Regional Safety Oversight Organizations have been established in many parts of the world. These organizations may be formed based on a variety of differing arrangements among member States. The institutional structures of these organizations range from highly formalized intergovernmental organizations established on the basis of formal legal agreements, to less formalized organizations established under the International Civil Aviation Organization Cooperative Development of Operational Safety and Continuing Airworthiness Program. States participating in Regional Safety Oversight Organizations may delegate various functions or tasks to these organizations based on the extent of delegated legal authority stipulated in the Regional Safety

Oversight Organization's formation documentation. One of the functions member States may delegate to some of the highly formalized and more fully resourced Regional Safety Oversight Organizations is the issuance of air operator certificates on behalf of the State of the Operator. This regulation change would allow the FAA to review and, if acceptable to the Administrator, recognize as valid air operator certificates issued by the Regional Safety Oversight Organization to foreign air carriers on behalf of the State of the Operator for purposes of evaluating foreign applicants for operating specifications.

DATES: Send comments on or before *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: Send comments identified by docket number FAA-2024-0176 using any of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov and follow the online instructions for sending your comments electronically.
- **Mail:** Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- **Fax:** Fax comments to Docket Operations at (202) 493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Shaver, International Program Division/International Operations Branch, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC, 20591; telephone (202) 267-1704; email tim.shaver@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Overview of the Proposed Rule

This proposed rule would amend the regulations for applications by foreign air carriers and foreign persons for operations specifications under 14 CFR part 129 and amend regulations for the denial of applications for operations specifications. The proposed rule would also apply to the operation of foreign carriers within the United States, as well as foreign persons or carriers operating U.S.-registered aircraft in common carriage solely outside the United States.¹ This proposal would amend three sections in subpart A of part 129: § 129.1, Applicability and definitions; § 129.7, Application, issuance, or denial of operations specifications; and § 129.9, Contents of operations specifications.

Section 129.1 would be amended to include definitions for “Regional Safety Oversight Organization” and “State of the Operator.”

¹ 14 CFR 129.1, Applicability and definitions.

Section 129.7 would be amended to accommodate the recognition as valid by the FAA of air operator certificates (AOCs) issued by a Regional Safety Oversight Organization (RSOO) on behalf of the State of the Operator² in the process of reviewing applications for operations specifications. Additional amendment of this section would align the conditions for the FAA’s denial of an application for operations specifications with the conditions for eligibility for issuance of operations specifications.

Section 129.9 would be amended to reflect the possible acceptance and recognition as valid by the FAA of AOCs issued by an RSOO on behalf of the State of the Operator for purposes of the contents of operations specifications issued under part 129.

B. Background

Title 49 of the United States Code contains the basic authority for promoting safe flight of civil aircraft in air commerce and for regulating the global operations of U.S.-registered aircraft. For foreign air carriers serving the United States, the basic operating requirements are found in 14 CFR parts 91 and 129. The International Civil Aviation Organization (ICAO) Annexes to the Convention on International Civil Aviation (the Chicago Convention) apply to the international operations of air carriers.³ The applicable ICAO Annexes are: Annex 1—Personnel Licensing; Annex 6—Part I, Operation of Aircraft— International Commercial Air Transport—Aeroplanes; Annex 6—Part III, Operation of Aircraft— International Operations—Helicopters; and Annex 8— Airworthiness of Aircraft.

ICAO Annexes contain the international standards for safety, regulation, and efficiency of air navigation. These international standards define the minimum level of

² The term “State of the Operator” is explained later in this document.

³ Convention on International Civil Aviation is available at www.icao.int/publications/documents/7300_orig.pdf.

safety necessary for the recognition by Contracting States⁴ of certificates of airworthiness, certificates of competency, and licenses that allow for the flight of aircraft of other States into or over their territories. They also provide for the protection of other aircraft, third parties, and property. As with all Contracting States to the Chicago Convention, the United States is obligated to recognize only those certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by another Contracting State, provided that the requirements under which these certificates or licenses are issued or rendered valid meet or exceed the minimum standards established by the Chicago Convention.

Under 14 CFR part 129 the FAA issues operations specifications to foreign air carriers conducting operations within the United States and foreign air carriers or foreign persons operating U.S.-registered aircraft in common carriage solely outside the United States. These operations specifications ensure a common understanding between the foreign air carrier or foreign person and the FAA. The FAA-issued operations specifications describe the scope of a foreign air carrier's authorized operations within the United States and currently must include: contact information for the operator in the State of the Operator; the certificate number and validity of the foreign air carrier's AOC issued by the State of the Operator; each regular and alternate airport to be used in scheduled operations; the type of aircraft and registration markings of each aircraft; the approved maintenance program and minimum equipment list for United States registered aircraft authorized for use; the designation of an agent for service within the United States, including the agent's full name and office address or usual place of residence; and any other item the Administrator determines is necessary. See § 129.9(a). For foreign air carriers or foreign persons operating U.S.-registered aircraft in common carriage solely

⁴ The term "Contracting States" refer to States which have ratified or adhered to the Chicago Convention. There are currently 193 Contracting States.

outside the United States, the FAA-issued operations specifications currently must include: contact information for the operator in the State of the Operator; in the case of a foreign air carrier, the certificate number and validity of the foreign air carrier's AOC issued by the State of the Operator; any other business names under which the foreign air carrier or foreign person may operate; the type, registration markings, and serial number of each United States registered aircraft authorized for use; the approved maintenance program and minimum equipment list for United States registered aircraft authorized for use; the designation of an agent for service within the United States, including the agent's full name and office address or usual place of residence; and any other item the Administrator determines is necessary. See § 129.9(b).

The FAA-issued operations specifications do not, however, affect or interfere with the responsibilities of the relevant State authority of the State of the Operator, such as the foreign Civil Aviation Authority (CAA),⁵ that issued an AOC to the foreign air carrier. A CAA is the national aviation authority empowered by the State of the Operator to govern and regulate that State's civil aviation. The foreign CAA maintains primary responsibility for the certification of the foreign air carrier and the continuing oversight of the air carrier or foreign person's operations in accordance with applicable ICAO standards.⁶

In accordance with the standard in Annex 6,⁷ a foreign air carrier applying for operations within the United States or applying to operate U.S.-registered aircraft solely

⁵ A CAA is defined as, "The governmental entity or entities, however titled, that are directly responsible for the regulation of all aspects of civil air transport, technical (i.e. air navigation and aviation safety) and economic (i.e. the commercial aspects of air transport)." See ICAO Document 9734, "Safety Oversight Manual, Part B - The Establishment and Management of a Regional Safety Oversight Organization", pg. 1-3.

⁶ See 14 CFR 129.1, Applicability and definitions.

⁷ Annex 6—Part I, Operation of Aircraft—International Commercial Air Transport—Aeroplanes, standard 4.2.1.1 ("The operator shall not engage in commercial air transport operations unless in possession of a valid air operator certificate issued by the State of the Operator.").

outside of the United States must meet all the ICAO standards in Annexes 1, 6, and 8.

This includes the holding of a valid AOC issued by the State of the Operator. The FAA's regulations in part 129 do not provide for acceptance of an AOC issued by any entity other than the State of the Operator.

States develop RSOOs to combine the financial, technical, and other resources required to provide safety oversight that the States may not be able to provide individually. ICAO has issued guidance in ICAO Document 9734 to provide a level of consistency across all States that are members of an RSOO.⁸ Some RSOOs provide a uniform regulatory structure through common or harmonized regulations for safety oversight and provide technical assistance and the execution of safety oversight functions on behalf of RSOO members. One of these functions may be the issuance of AOCs on behalf of an RSOO member.

As of May 13, 2024, ICAO has identified 11 RSOOs⁹, with membership comprising dozens of States.¹⁰ States' use of RSOOs to issue AOCs on behalf of the State of the Operator may expand in the future. For example, since December 2021, the European Union Aviation Safety Agency (EASA), which is the RSOO in the European Union, has issued four AOCs on behalf of the following member States:¹¹ Hungary, Portugal, Malta, and Germany.¹² This rulemaking would allow the FAA to review and, if acceptable to the Administrator, recognize as valid AOCs issued by an RSOO on behalf of the State of the Operator, which, solely by virtue of them not being issued directly by

⁸ ICAO Document 9734, "Safety Oversight Manual, Part B - The Establishment and Management of a Regional Safety Oversight Organization."

⁹ The list of RSOOs can be found at www.icao.int/safety/Implementation/Pages/List-of-RSOOs.aspx.

¹⁰ www.icao.int/safety/Implementation/pages/coscaps-rsoos-raios.aspx.

¹¹ For purposes of this document, the term "member States" refers to States which are members of an RSOO.

¹² The list of EASA-issued AOCs can be found at www.easa.europa.eu/en/approved-air-transport-operators-aoc.

the State of the Operator, currently do not meet the eligibility requirement for issuance of part 129 operations specifications.

C. Statement of the Problem

Part 129 of title 14 CFR prescribes the rules governing foreign air carrier operations within the United States and the operations of U.S.-registered aircraft solely outside the United States in common carriage. The FAA authorizes these operations via the issuance of part 129 operations specifications, which require an applicant to hold a valid AOC issued by the State of the Operator. See § 129.7(c). The current regulations do not provide for acceptance of an AOC issued by any entity other than the State of the Operator. Allowing acceptance and recognition as valid of RSOO-issued AOCs on behalf of the State of the Operator would provide an additional pathway for the FAA's issuance of part 129 operations specifications to foreign air carriers as well as retention of the current means of obtaining part 129 operations specifications. These foreign air carriers provide service to and from the United States and provide transportation services for U.S. and foreign citizens. Without this rulemaking, foreign air carriers that are issued AOCs by an RSOO on behalf of the State of the Operator would not be eligible to be issued or retain the operation specifications necessary to operate to or from the United States with their own aircraft. As discussed further in this proposal, the FAA has determined that creating this pathway for FAA acceptance of RSOO-issued AOCs on behalf of the State of the Operator as valid would provide an equivalent level of safety to the current FAA regulations and process for acceptance of AOCs by the State of the Operator. Currently, a detailed evaluation of the State of the Operator's AOC issuance process is accomplished during the FAA International Aviation Safety Assessment (IASA) to ensure that it meets the required ICAO standards. This proposal would allow the FAA to issue authorization to foreign air carriers with an AOC issued by an RSOO on behalf of the State of the Operator, as acceptable to the Administrator. The determination of whether the RSOO-

issued AOC on behalf of the State of the Operator is acceptable to the Administrator would require an IASA-type detailed review of the State of the Operator functions and tasks to ensure the ICAO standards required for issuance of an AOC are maintained when delegated to the RSOO.¹³ FAA acceptance of RSOO-issued AOCs on behalf of the State of the Operator would follow the same general process, with additional consideration as to which functions or tasks are delegated, to allow foreign air carriers with RSOO-issued AOCs to operate to and from the United States, providing travel services to citizens of the United States and foreign countries, economic opportunities for U.S. airlines through code share agreements, and expanded route structures for code share partners.¹⁴ This proposal also would align the conditions for denial of an application for operations specifications with the conditions for issuance of operations specifications.

As of May 13, 2024, ICAO has identified 11 RSOOs. While States may delegate specific safety oversight tasks and functions to RSOOs, each individual State must still retain the minimum capability required to carry out its responsibilities under the Chicago Convention.¹⁵ That is, each State must maintain the ability to properly and effectively monitor the safety oversight functions it has delegated to the RSOO.¹⁶ Although ICAO Document 9734 part B acknowledges that some RSOO member States have delegated the issuance of AOCs to RSOOs, ICAO guidance specifically addresses the delegation of certain functions or tasks depending on the level of formalized international

¹³ The FAA process for review and acceptance of AOCs will be included in FAA order 8900.1, Volume 12, Chapter 2, Section 2. A draft of this guidance document has been placed in the docket for this rulemaking.

¹⁴ A detailed explanation of the DOT code share program can be found at: www.transportation.gov/policy/aviation-policy/licensing/code-sharing.

¹⁵ “Under the Chicago Convention, only the State has responsibility for safety oversight, and this responsibility may not be transferred to a regional body. Thus, although the State may delegate specific safety oversight tasks and functions to an RSOO, such as inspections for the certification of an operator, the State must still retain the minimum capability required to carry out its responsibilities under the Chicago Convention.” ICAO Document 9734, “Safety Oversight Manual, Part B - The Establishment and Management of a Regional Safety Oversight Organization,” Second Edition – 2011, Chapter 2, at 2.1.8.

¹⁶ ICAO Document 9734, “Safety Oversight Manual, Part B - The Establishment and Management of a Regional Safety Oversight Organization,” Second Edition – 2011, Chapter 2.

intergovernmental organizations, availability of resources, and whether the RSOO has established common or harmonized legislation and regulations.

Individual States may adopt and promulgate harmonized national legislation and regulations with the intent of standardizing regulations across all RSOO member States. When an RSOO has adopted common legislation and regulations, member States of that RSOO have gone beyond harmonization and have adopted common civil aviation requirements that are managed by the RSOO and are the same across all RSOO member States. RSOO member states may form a legal entity through an international agreement to comply with a set of common legislative and regulatory provisions and adopt them for application within their individual States, or they may establish less formal arrangements that reflect the understanding of the members.

Where a harmonized regulatory framework prevails in a region, the civil aviation authorities of member States will remain the sole authority for the issuance of licences and operator certificates, approval of aircraft maintenance organizations, approval of design and production organizations, and approval of training centres. The role of the RSOO is to carry out tasks, such as inspections, audits and surveys, necessary for supporting the issuance of certificates, licences and approvals by the State CAA.¹⁷

Where common legislation and regulations are adopted, RSOO member States may delegate authority to the RSOO for the conduct of licensing, certification, authorization, and approval activities, including the issuance of related documents. In practice, however, the degree of delegation may also depend on the resources available to the RSOO and political and legal considerations peculiar to the region.

¹⁷ ICAO Document 9734, "Safety Oversight Manual, Part B - The Establishment and Management of a Regional Safety Oversight Organization," Second Edition – 2011, Chapter 7, at 7.5.12.

The issuance of AOCs by a Contracting State must conform to the standards in ICAO Annex 6, Part I or Part III, guided by ICAO Document 8335, “Manual of Procedures for Operations Inspection, Certification and Continued Surveillance.” Current ICAO Annexes and most ICAO documents only refer to AOCs issued by the State of the Operator.

The current language in 14 CFR 129.7(c)(5) “Application, issuance, or denial of operations specifications” states that a foreign applicant may be issued operations specifications if, after review, the Administrator finds the applicant holds a valid AOC issued by the State of the Operator. The current text in 14 CFR 129.9 “Contents of operations specifications” states that the contents of the FAA operations specifications must include contact information for the applicant in the State of the Operator and the certificate number and validity of the AOC issued by the State of the Operator. See § 129.9(a)(1) and (3) and (b)(1) and (3). The FAA proposes to amend these regulations to allow acceptance as valid of an AOC issued by an RSOO, as well as an AOC issued by the State of the Operator.

The FAA also proposes to amend 14 CFR 129.7(d), as the current regulation states that an application for operations specifications may be denied only if the applicant is not properly or adequately equipped to conduct the operations described in the operations specifications. However, 14 CFR 129.7(c) provides five conditions that must be met before the Administrator may issue an applicant operations specifications. The conditions include that the applicant meets the applicable requirements of part 129; holds the economic or exemption authority required by the Department of Transportation, applicable to the operations to be conducted; complies with the applicable security requirements of 49 CFR chapter XII; is properly and adequately equipped to conduct the operations described in the operations specifications; and holds a valid AOC issued by the State of the Operator.

Currently, if an applicant for part 129 operations specifications is properly and adequately equipped to conduct the operations described in the operations specifications but does not meet one of the other conditions provided in 14 CFR 129.7(c), the application is held in abeyance until the applicant either satisfies the remaining requirements or withdraws their application. The amendment would codify the ability of the Administrator to deny operations specifications if the applicant does not meet any one of the same five conditions.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the FAA's authority.

This rulemaking is issued under the authority described in subtitle VII, part A, subpart III, section 44701(a)(5). Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary to ensure safety in air commerce. Amending the regulations for applications for operations specifications under part 129 submitted by foreign air carriers or foreign persons, and the related standards for denial of such an application for operations specifications authorizations, improves the FAA's ability to manage these authorizations. These operations specifications are issued to foreign air carriers operating within the United States and to foreign air carriers or foreign persons conducting operations of U.S.-registered aircraft solely outside the United States. This regulation is within the scope of that authority.

III. Discussion of the Proposal

This proposed rule would amend the regulations for applications by foreign air carriers and foreign persons for operations specifications under 14 CFR part 129 and the regulations for the denial of applications for operations specifications. The proposed rule would apply to the operations of foreign air carriers in the United States and to foreign persons or air carriers operating U.S.-registered aircraft in common carriage solely outside the United States. This proposal would amend three sections in subpart A of part 129: § 129.1, Applicability and definitions; § 129.7, Application, issuance, or denial of operations specifications; and § 129.9, Contents of operations specifications, as discussed further in this section.

A. Adding Definitions for RSOO and State of the Operator and Related Changes

The term “State of the Operator” was introduced into 14 CFR part 129 in 2011 with no accompanying definition. The FAA is proposing to add a definition to § 129.1 for “State of the Operator” by adopting the definition used by ICAO. The term “State of the Operator” is defined by ICAO as:

The State in which the operator’s principal place of business is located or, if there is no such place of business, the operator’s permanent residence.¹⁸

The term “Regional Safety Oversight Organization” has not been defined by ICAO. The FAA has developed a proposed definition for purposes of part 129 using the defining characteristics of RSOOs from ICAO Document 9734, “Safety Oversight Manual, Part B – The Establishment and Management of a Regional Safety Oversight Organization.” As proposed, the FAA would define “Regional Safety Oversight

¹⁸ ICAO Annex 6 to the Convention on International Civil Aviation, Part I – International Commercial Air Transport – Aeroplanes, Twelfth Edition, July 2022.

Organization” in § 129.1 as an association or organization that comprises a group of member States, which—

(A) has provided notification to ICAO of the scope of tasks and functions delegated to the RSOO by its member states, including but not limited to: sharing common or harmonized aviation regulations, licensing, certification, authorization, approval, and surveillance of civil aviation activities, and any legal authority delegated by a member State to the RSOO; and

(B) has stipulated the specific tasks, functions, and delegations by member States discussed in paragraph (A), and any other collective understandings of member States in RSOO formation documentation, such as an agreement, treaty, or informal record, that is available for review by the Administrator.

The FAA has determined that adding these terms to the list of definitions in part 129 is necessary to clarify the intent of existing requirements and the substantive amendments included in this proposal.

The functions of the RSOO, its objectives, and the level of authority to be delegated by member States generally determine the form and size of the RSOO. RSOOs established to date have taken a variety of forms, ranging from a relatively loose association of CAAs that have agreed to cooperate in the development and implementation of requirements and procedures to an intergovernmental organization with regulatory and enforcement authority, as delegated to it by each member State of the Operator. The RSOO structure and authority will be driven by:

The needs of its members, the level of available resources, the scope of activities, [and] the level of authority delegated by member States.¹⁹

¹⁹ ICAO Document 9734, “Safety Oversight Manual, Part B - The Establishment and Management of a Regional Safety Oversight Organization,” Second Edition – 2011, Chapter 2, Section 2.2.6.

ICAO Annex 6, Part I requires that:

The operator shall not engage in commercial air transport operations unless in possession of a valid air operator certificate issued by the State of the Operator.²⁰

The form and content of AOCs must meet the standards in ICAO Annex 6, Part I or Part III, and be issued under the guidance for certification procedures found in ICAO Document 8335. Issuance of an AOC depends on the operator's ability to demonstrate various areas to the issuing authority, such as: adequate organization, control of flight operations, training programs, and ground and maintenance programs consistent with the proposed operations.²¹ Each State establishes procedures for the issuance of an AOC and for the continuing safety oversight and inspection of the operator.²² The certification and oversight process guidelines that States use in establishing these procedures are found in ICAO Document 8335, "Manual of Procedures for Operations Inspection, Certification and Continued Surveillance." Current ICAO Annexes and most ICAO documents only refer to AOCs issued by the State of the Operator. However, ICAO Assembly Resolution A40-6 recognizes:

That Member States are responsible for implementing ICAO Standards and may, in this respect, decide on a voluntary basis to delegate certain functions to RSOOs, and that, when applicable, the word 'States' should be read to include RSOOs.²³

²⁰ ICAO Annex 6 to the Convention on International Civil Aviation, Part I – International Commercial Air Transport – Aeroplanes, Twelfth Edition, July 2022, Section 4.2.1.1.

²¹ ICAO Annex 6 to the Convention on International Civil Aviation, Part I – International Commercial Air Transport – Aeroplanes, Twelfth Edition, July 2022, Section 4.2.1.

²² ICAO Document 8335, "Manual of Procedures for Operations Inspection, Certification and Continued Surveillance", Sixth Edition, 2022, Part III.

²³ ICAO Document 10184, "Assembly Resolutions in Force (as of 7 October 2022)," Part I – Constitutional and General Policy Matters, pg. I-119.

This process is further discussed in ICAO Document 9734 Part B, which provides guidance for the establishment and management of RSOOs.²⁴

Whether the AOC is issued by the State of the Operator or an RSOO, the FAA would use the same criteria to determine the acceptability or validity of an AOC. Currently, upon application for part 129 operations specifications, the FAA examines the AOC to determine if the operator is from an ICAO Contracting State and if the AOC meets the content requirements listed in ICAO Annex 6, including the AOC number. The FAA verifies the validity of the AOC with the issuing authority.²⁵ Current practice for acceptance of an AOC issued by the State of the Operator also depends upon an FAA IASA program audit specific to the State that issued the AOC. The IASA determines a State's compliance with the international standards of ICAO's eight critical elements of effective aviation safety oversight as described in the ICAO Document 9734, "Safety Oversight Manual, Part A - The Establishment and Management of a State Safety Oversight System." The FAA's assessment may result in the State being issued an IASA category rating of 1 or 2. Foreign air carriers from a category 1 State are permitted by the FAA to operate into the United States, provided all other applicable Department of Transportation, FAA, and Transportation Security Administration (TSA) regulatory requirements are met. If applicable to the operation to be conducted, the applicant must present evidence of the approved security program or waiver issued by the TSA and evidence of approval of the operator's Hazardous Materials (HAZMAT)/Dangerous Goods Program from the State of the Operator.²⁶ Foreign air carriers from a category 2

²⁴ ICAO Document 9734, "Safety Oversight Manual, Part B - The Establishment and Management of a Regional Safety Oversight Organization."

²⁵ FAA Order 8900.1 Change 844, June 21, 2023, Volume 12, Chapter 4, Section 2, paragraph A001(a)&(a)(1).

²⁶ 14 CFR 129.7(c)(3) requires the applicant "Complies with the applicable security requirements of 49 CFR Chapter XII." The policy regarding TSA and HAZMAT application evidence requirements is provided in FAA order 8900.1, Volume 12, Chapter 4, Section 1. See www.ecfr.gov/current/title-49/subtitle-B/chapter-XII for TSA requirement details.

State are prohibited by the FAA from initiating service to the United States or have their Operations Specifications limited by the FAA if they are already operating services to the United States prior to the FAA's issuance of the category 2.²⁷

Under this proposal, FAA acceptance of an RSOO-issued AOC on behalf of the State of the Operator would continue to depend upon the outcome of an FAA IASA program audit on the RSOO member State of the Operator, as detailed previously. In addition, consistent with this proposal, the FAA would review the RSOO and its member State's alignment with the guidance in ICAO Document 9734 Part B. This FAA review would include, but is not limited to, a review of: the level of participation of a State's CAA in the activities of the RSOO; whether the RSOO conducts its activities following a set of regulations that are common to all the RSOO's member States; clarification of the role of national inspectors in the conduct of safety oversight activity by the RSOO; the role of the RSOO inspectors during the conduct of safety oversight activity in the member State; and the types of surveillance to be conducted by member States of the RSOO to ensure the fulfilment of each member State's obligation as a signatory to the Chicago Convention.

Before recognizing as valid an AOC issued by an RSOO, as proposed, the FAA would also review the RSOO formation documentation. The FAA notes that based on the proposed definition of RSOO in this rulemaking, an RSOO without such documentation available for FAA review would not be recognized by the FAA for purposes of part 129. Consistent with the FAA's established IASA program, the FAA's review will determine if additional audits of both the member State and the RSOO of the areas of delegated functions or tasks are required to validate compliance with ICAO requirements under this delegation prior to acceptance.

²⁷ FAA, IASA Program and Process, www.faa.gov/sites/faa.gov/files/about/initiatives/iasa/FAA_Initiatives_IASA.pdf.

Each RSOO has a unique structure and legal framework. Whether the FAA conducts an IASA on the RSOO directly, or the level of participation the RSOO will have in the State's IASA, will be based on the structure of the RSOO and what functions have been delegated by the State of the Operator.

Therefore, the FAA proposes the following amendments related to RSOOs:

- In § 129.1(c), insert definitions for “Regional Safety Oversight Organization” and “State of the Operator;”
- In § 129.7(c)(5), adding “or a Regional Safety Oversight Organization” so § 129.7(c)(5) reads as follows: Holds a valid air operator certificate issued by (i) the State of the Operator; or (ii) a Regional Safety Oversight Organization on behalf of the State of the Operator, as acceptable to the Administrator;
- In § 129.9(a)(3), adding “or a Regional Safety Oversight Organization” so § 129.9(a)(3) reads as follows: The certificate number and validity of the foreign air carrier's Air Operator Certificate issued by the State of the Operator or a Regional Safety Oversight Organization on behalf of the State of the Operator; and
- In § 129.9(b)(3), adding “or a Regional Safety Oversight Organization” so § 129.9(b)(3) reads as follows: In the case of a foreign air carrier, the certificate number and validity of the foreign air carrier's Air Operator Certificate issued by the State of the Operator or a Regional Safety Oversight Organization on behalf of the State of the Operator.

B. Denial of an Application for Operations Specifications

The FAA proposes to amend the conditions under which the FAA can deny an application for operations specifications in subpart A of part 129. Currently, § 129.7(c) specifies that an applicant must meet five conditions to be issued operations

specifications. These conditions include that the applicant: holds the economic or exemption authority required by the Department of Transportation, applicable to the operations to be conducted; complies with the applicable security requirements of 49 CFR chapter XII; is properly and adequately equipped to conduct the operations described in the operations specifications; and holds a valid AOC issued by the State of the Operator. However, § 129.7(d) states that the application may be denied if the Administrator finds that the applicant is not properly or adequately equipped to conduct the operations to be described in the operations specifications. As a result, if an applicant for part 129 operations specifications is properly and adequately equipped to conduct the operations described in the operations specifications but does not meet one of the other conditions provided in 14 CFR 129.7(c), the regulation does not provide for a formal denial of the application. The practical effect is that the application is held in abeyance by the FAA until the applicant either satisfies the remaining requirements or withdraws their application. Open matters impact the FAA's assignment of resources and business processes. The proposed change would align the bases for denial of an application to the five conditions that must be met for issuance of operations specifications listed in § 129.7(c). This change would allow the FAA to formally deny applications that do not meet the requirements of § 129.7(c). The FAA proposes to amend § 129.7(d), to read as follows: An application may be denied if the Administrator finds that the applicant does not meet one or more of the criteria listed in § 129.7(c).

IV. Regulatory Notices and Analyses

Federal agencies consider the impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (“Modernizing Regulatory Review”), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs.

Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$183 million using the most current (2023) Implicit Price Deflator for the Gross Domestic Product.

In conducting these analyses, the FAA has determined that this proposed rule: will result in benefits that justify costs; is not significant under section 3(f)(1) of Executive Order 12866, as amended; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector.

A. Regulatory Impact Analysis

This proposed rule would allow for the acceptance of AOCs issued by RSOOs on behalf of the State of the Operator, and it would update the regulatory basis for denial of applications for operations specifications.

Update the Process for Accepting AOCs Issued by RSOOs

Currently, a foreign air carrier applying for operations within the United States or applying to operate U.S.-registered aircraft solely outside of the United States must hold a valid AOC issued by the State of the Operator. The existing regulations do not provide for acceptance of an AOC issued by any other entity other than the State of the Operator.

This rulemaking would allow the FAA to recognize as valid AOCs issued by an RSOO on behalf of the State of the Operator, as acceptable to the Administrator. This allows foreign air carriers with an AOC issued by an RSOO on behalf of the State of the Operator to be issued authorization by the FAA, as acceptable to the Administrator, to operate to and from the United States, providing travel services to citizens of the United States and foreign countries, economic opportunities for U.S. airlines through code share agreements, and expanded route structures for code share partners.²⁸ This proposed rule would be consistent with ICAO resolutions and guidance, which address the development and use of RSOOs.

Under current practice for operations within the United States, before acceptance of the AOC, the FAA conducts an IASA on the State of the Operator.²⁹ These assessments involve pre-work and document review in the United States lasting several weeks, followed by an on-site assessment in the State of the Operator lasting five business days. When the State of the Operator is a member of an RSOO, and that State has delegated functions or tasks to the RSOO, this prework would include a review of functions or tasks that are delegated by the State to an RSOO, the scope and level of those delegations, and the need for RSOO participation in assessing the State's compliance with the ICAO standards. The assessments involve two to four inspectors and an attorney. An FAA IASA team incurs traveling costs, such as airfare, lodging, and per diem associated with the travel destination. However, these assessments, including the prework, are not expected to represent an additional cost of the rule because the FAA currently conducts them, and the FAA does not expect any increase in the number of assessments as a result of this rulemaking. Currently when accomplishing an IASA on a

²⁸ A detailed explanation of the DOT code share program can be found at: www.transportation.gov/policy/aviation-policy/licensing/code-sharing.

²⁹ 87 FR 58725 (Sept. 28, 2022).

State that has delegated functions or tasks to an RSOO, the FAA reviews that delegation to ensure that the State's and the RSOO's functions and tasks are in compliance with the ICAO requirements. In these cases, the RSOO's observes and may participate in the State's IASA. However, the State of the Operator is ultimately responsible for the IASA.

The FAA conducts, on average, five IASAs each year. This proposed rule change would not increase that number. If the FAA has previously assessed a State of the Operator and that State subsequently delegated functions or tasks, such as issuance of AOCs by the RSOO, the FAA will review the RSOO formation documentation to determine if further assessment to evaluate the continued compliance with ICAO standards is required. If the FAA determines it needs to do further assessment, it would be one of that year's IASAs.

Update the Regulatory Basis for Denial of Applications for Operations Specifications

The FAA proposes to further amend the conditions under which the FAA can deny the application for operations specifications in subpart A. Currently, § 129.7(c) specifies that an applicant must meet five conditions to be issued operations specifications. These conditions require that the applicant meets the applicable requirements of part 129; holds the economic or exemption authority required by the Department of Transportation, applicable to the operations to be conducted; complies with the applicable security requirements of 49 CFR chapter XII; is properly and adequately equipped to conduct the operations described in the operations specifications; and holds a valid AOC issued by the State of the Operator. However, § 129.7(d) states that the application may be denied if the applicant is not properly and adequately equipped to conduct the operations described in the operations specifications. The change would expand the basis for denial to any of the five conditions listed in § 129.7(c). The proposed updates to the regulatory basis for denial of applications for operations specifications would not result in any costs. The proposed change would align the bases

for denial of an application to the conditions that must be met for issuance of operations specifications. This would allow the FAA to formally deny applications that do not meet the requirements of § 129.7(c) instead of the FAA's current practice of holding the approval of ineligible applications in abeyance until the conditions are met or the applicant withdraws the application. There are no specific costs associated with holding an application in abeyance. The benefit of allowing denial of an application based on not meeting the regulatory criteria is reduction of applications in process and ensuring currency of information provided with an application.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

This proposed rule would update the regulations for applications by foreign air carriers and foreign persons for operations specifications under part 129. The proposed rule would apply to foreign air carrier operations within the United States and to U.S.-registered aircraft in common carriage solely outside the United States. Since this proposed rule only impacts foreign applicants, this proposal has no impact on U.S. small entities. Therefore, the FAA proposes to certify that the rule will not have a significant economic impact on a substantial number of small entities. The FAA welcomes comments on the basis for this certification.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it ensures the safety of the American public by allowing the acceptance of AOCs issued by an RSOO on behalf of the State of the Operator when reviewed and found acceptable to the Administrator. As a result, the FAA does not consider this rule as creating an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or Tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that the proposed rule will not result in the expenditure of \$183 million or more by State, local, or Tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on

the public. The information collections that are required by this rule are already approved in OMB control number 2120-0749. The applicant is only required to provide a copy of their AOC and is not required to provide any additional information if the AOC is issued by an RSOO. The burden of validating the AOC remains with the FAA in conjunction with the State of the Operator. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with these proposed regulations. ICAO Annex 6, Part 1 requires:

The operator shall not engage in commercial air transport operations unless in possession of a valid air operator certificate issued by the State of the Operator.³⁰

This regulatory change to allow RSOO-issued AOCs on behalf of the State of the Operator does not comply with this standard. However, the FAA has determined that the resulting action provides an equivalent level of safety to that of the standard. If this proposal is adopted, the FAA intends to file a difference with ICAO. However, this proposed rule would be consistent with ICAO resolutions and guidance that address the development and use of RSOOs.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the

³⁰ Annex 6—Part I, Operation of Aircraft— International Commercial Air Transport—Aeroplanes, standard 4.2.1.1.

National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6f for regulations and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order (EO) 13132, Federalism. The FAA has determined that this proposed action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

B. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,³¹ and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,³² the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this proposed rule.

³¹ 65 FR 67249 (Nov. 6, 2000).

³² FAA Order No. 1210.20 (Jan. 28, 2004), available at www.faa.gov/documentLibrary/media/1210.pdf.

C. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under EO 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this proposed action under the policies and agency responsibilities of EO 13609 and has determined that this action would require filing a difference with ICAO. However, the FAA has determined that this proposed rule is not a significant regulatory action and that no action is required under EO 13609. In addition, this proposed rule would be consistent with ICAO resolutions and guidance that address the development and use of RSOOs and with the principles of EO 13609.³³

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting

³³ ICAO Resolutions in Force or ICAO documents are guidance material and are not mandatory. The standard in ICAO Annex 6, Part 1 Para 4.2.1.1 requires an AOC to be “issued by the State of the Operator.” Therefore, even though the FAA is using ICAO guidance as a basis for this proposal, the FAA must file a difference to the specific standard.

the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at www.regulations.gov using the docket number listed previously. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours a day, every day. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at www.federalregister.gov and the Government Publishing Office's website at www.govinfo.gov. A copy may also be found at the FAA's Regulations and Policies website at www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit www.faa.gov/regulations_policies/rulemaking/sbre_act.

List of Subjects in 14 CFR Part 129

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures, Smoking.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR as follows:

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

1. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901-44904, 44906, 44912, 46105, Pub. L. 107-71 sec. 104.

2. Amend § 129.1 by revising paragraph (c)(2) and adding paragraphs (c)(3) and (4) to read as follows:

§ 129.1 Applicability and definitions.

* * * * *

(c) * * *

(2) *Regional Safety Oversight Organization* means an association or organization that comprises a group of member States, which—

(i) Has provided notification to the International Civil Aviation Organization of the scope of tasks and functions delegated to the Regional Safety Oversight Organization, including but not limited to: sharing common or harmonized aviation regulations, licensing, certification, authorization, approval, and surveillance of civil aviation activities, and any legal authority delegated by a member State to the Regional Safety Oversight Organization; and

(ii) Has stipulated the specific tasks, functions, and delegations by member States discussed in paragraph (c)(2)(i) of this section, and any other collective understandings of

member States in Regional Safety Oversight Organization formation documentation, such as an agreement, treaty, or informal record, that is available for review by the Administrator.

(3) *State of the Operator* means the State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence.

(4) *Years in service* means the calendar time elapsed since an aircraft was issued its first U.S. or first foreign airworthiness certificate.

3. Amend § 129.7 by revising paragraphs (c)(5) and (d) to read as follows:

§ 129.7 Application, issuance, or denial of operations specifications.

* * * * *

(c) * * *

(5) Holds a valid air operator certificate issued by

(i) the State of the Operator; or

(ii) a Regional Safety Oversight Organization on behalf of the State of the Operator, as acceptable to the Administrator.

(d) An application may be denied if the Administrator finds that the applicant does not meet one or more of the criteria listed in paragraph (c) of this section.

4. Amend § 129.9 by revising paragraphs (a)(3) and (b)(3) to read as follows:

§ 129.9 Contents of operations specifications.

(a) * * *

(3) The certificate number and validity of the foreign air carrier's air operator certificate issued by the State of the Operator or a Regional Safety Oversight Organization on behalf of the State of the Operator;

* * * * *

(b) * * *

(3) In the case of a foreign air carrier, the certificate number and validity of the foreign air carrier's Air Operator Certificate issued by the State of the Operator or a Regional Safety Oversight Organization on behalf of the State of the Operator;

* * * * *

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC.

Robert M. Ruiz
Deputy Executive Director, Flight Standards Service
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