

## Office of the Secretary, DOT

has operational control and safety responsibility is deemed to be the carrier, and is required to have appropriate operating authority.

[ER-716, 36 FR 23148, Dec. 4, 1971, as amended by ER-1250, 46 FR 47770, Sept. 30, 1981; DOT-OST-2014-0140, 84 FR 15929, Apr. 16, 2019]

### **§218.3 Prohibition against unauthorized operations employing aircraft leased with crew.**

(a) No foreign air carrier, or other person not a citizen of the United States, shall lease an aircraft with crew to a foreign air carrier for use by the latter in performing foreign air transportation unless either:

(1) The lessor holds a foreign air carrier permit issued under 49 U.S.C. 41301 or an approved registration issued under part 294 of this chapter, and any statement of authorization required by part 212 of this chapter; or

(2) The Department has issued an exemption under 49 U.S.C. 40109 specifically authorizing the lessor to engage in the foreign air transportation to be performed under the lease; or

(3) The Department has issued an order under §218.6 disclaiming jurisdiction over the matter.

(b) For purposes of this part, an aircraft shall be considered to be leased with crew if:

(1) The pilot in command or a majority of the crew of the aircraft, other than cabin attendants:

(i) Is to be furnished by the lessor;

(ii) Is employed by the lessor;

(iii) Continues in the employ of the lessor in the operation of services other than those provided for in the agreement between the parties; or

(iv) Has been employed by the lessor prior to the lease, and the employment of whom by the lessee is coextensive with the period or periods for which the aircraft is available to the lessee under the lease; or

(2) The aircraft is operated under operations specifications issued to the lessor by the Federal Aviation Administration.

[ER-716, 36 FR 23148, Dec. 4, 1971, as amended by ER-1250, 46 FR 47770, Sept. 30, 1981; ER-1260, 46 FR 52598, Oct. 27, 1981; DOT-OST-2014-0140, 84 FR 15929, Apr. 16, 2019]

## §218.6

### **§218.4 Condition upon authority of lessee.**

In any case where a foreign air carrier leases from another foreign air carrier or other person not a citizen of the United States an aircraft with crew for use in performing foreign air transportation, it shall be a condition upon the authority of the lessee to perform such foreign air transportation that compliance be achieved with the requirements of this part.

### **§218.5 Application for disclaimer of jurisdiction.**

The parties to a lease with crew as described in §218.3(b) may apply to the Department for an order disclaiming jurisdiction over the matter. The application shall be filed jointly by both parties to the lease, and shall generally conform to the procedural requirements of part 302, subpart A, of this chapter. It shall be served upon any air carrier providing services over all or any part of the route upon which air transportation services will be provided pursuant to the agreement. The application should set forth in detail all evidence and other factors relied upon to demonstrate that true operational control and safety responsibility for the air transportation services to be provided are in the hands of the lessee rather than the lessor. A copy of the agreement and all amendments thereof, as well as a summary interpretation of its pertinent provisions, shall be included with the applications. Any interested person may file an answer to the application within 7 days after service hereof. Until the Department has acted upon the application, no operations in foreign transportation shall be performed pursuant to the agreement.

[ER-716, 36 FR 23148, Dec. 4, 1971, as amended by DOT-OST-2014-0140, 84 FR 15929, Apr. 16, 2019]

### **§218.6 Issuance of order disclaiming jurisdiction.**

If the Department finds that true operational control and safety responsibility will be vested in the lessee and not in the lessor (*i.e.*, that the lease transaction is in substance a true lease