

3. UNITED STATES - MARKET ACCESS

a) Operating Requirements

(i) Part 375 Permit

Operation of specialty air services in the United States by operators of foreign civil aircraft is governed by the Federal Aviation Act of 1958, as implemented by 14 CFR Part 375. The Part 375 permit requires that an operator of a foreign civil aircraft obtain approval from the U.S. Department of Transportation before engaging in commercial operations in the United States. Prior to the NAFTA, Canadian companies applying for a Part 375 permit were often rejected based on a determination that Canada did not provide "reciprocal treatment" to U.S. companies wishing to operate in this country. Canadian applicants were required to survey U.S. industry concerning the prospective project to determine whether a U.S. business was available to perform the contract ("right of first refusal").

As a result of the NAFTA, Canada is deemed to have satisfied the test of "reciprocity". Canadian applicants will no longer be required to undertake a survey of U.S. industry. However, once a Part 375 permit is issued, the operator must comply with all applicable operating regulations imposed by the Federal Aviation Administration (for further information please contact the FAA - see attachment "G").

(ii) Application Form

An example of a Part 375 Permit application form may be found in Attachment "F" and to obtain a Part 375 Permit turn to Attachment "G". The U.S. Department of Transport indicates that a Part 375 permit may be granted "prospectively (ie. prior to having been awarded a contract) provided the application includes information on the type of service to be performed and the general location of operation (for example, the northwestern United States). This allows the U.S. Department of Transport to notify the relevant Federal Aviation Administration field office in the event that physical inspections or operational assistance might be needed. Further, a permit may be issued for a certain time period rather than for the length of a contract, unless questions arise about the safety of the operations.

(iii) Establishment of Operational Bases

As discussed above, a Canadian that operates an aircraft in the U.S. must obtain a Part 375 permit. A Part 375 permit must also be obtained should the Canadian own, control, or operate an aircraft of U.S. registry. This is the case even if the U.S. registered aircraft is owned by a U.S. corporation which has less than 75% voting interest owned or controlled by U.S. citizens (and where the president - or more than one-third of the board of directors and other managing officers - are foreigners). As