

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

Issued by the Department of Transportation  
on the 1st day of April, 1997

Application of

**SWISSAIR, SWISS AIR TRANSPORT COMPANY, LTD.** Docket OST-96-2001

for a foreign air carrier permit under  
49 U.S.C. section 41301

**ORDER ISSUING AMENDED FOREIGN AIR CARRIER PERMIT**

**Summary**

This order issues an amended foreign air carrier permit to Swissair, Swiss Air Transport Company, Ltd., authorizing it to engage in scheduled and charter foreign air transportation of persons, property and mail between Switzerland and the United States pursuant to the bilateral aviation undertakings of the United States and Switzerland.

**Application**

By application filed December 4, 1996, Swissair requests that we issue it an amended foreign air carrier permit to conduct services between Switzerland and the United States consistent with the provisions of the open-skies aviation agreement between the United States and Switzerland.<sup>1</sup>

Swissair states that it has been designated by the Government of Switzerland to perform the proposed services; it is substantially owned and effectively controlled by citizens of Switzerland; and it is operationally and financially fit to perform the proposed services.

No answers were filed in response to Swissair's permit amendment application.

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<sup>1</sup> Swissair's existing foreign air carrier permit, issued by Order 71-5-21 (56 CAB 489), authorizes Swissair to serve the United States over five separate routes (a sixth route was terminated on April 1, 1972); and to perform charters subject to 14 CFR Part 212. Swissair also holds various exemptions and statements of authorization, including exemption authority granted May 31, 1996, and confirmed by Order 96-8-46, authorizing it to conduct scheduled combination services identical to those at issue here. See Order 96-6-14 and Notice of Action Taken, dated August 16, 1996 (Docket OST-96-1598).

## Decision

We have reviewed the record in this case, which is summarized in the attachment to this order, and have decided to grant the application using simplified Subpart Q procedures<sup>2</sup>. The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed<sup>3</sup>. The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case, because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Swissair is qualified to conduct the proposed operations.

## Public Interest Considerations

During 1995, the United States and Switzerland concluded an open-skies bilateral aviation agreement which replaced the August 3, 1945, Interim Air Transport Services Agreement between the United States and Switzerland. The new agreement provides broad rights and other opportunities for the designated carriers of each side<sup>4</sup>.

## Operational and Financial Fitness

We find that Swissair is operationally and financially fit to conduct the operations at issue here. Swissair was formed in 1931 and was issued an initial foreign air carrier permit by the former Civil Aeronautics Board in 1947, authorizing Swissair to engage in scheduled foreign air transportation of persons, property and mail between Geneva/Zurich, Switzerland, and the terminal point New York<sup>5</sup>. Swissair has held U.S. operating authority on a continuous basis since that time. Swissair currently serves seven U.S. gateways with its own B-747 and MD-11 aircraft<sup>6</sup>. Swissair has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five years. Swissair has been designated by its government and holds effective authority from its homeland to conduct the proposed operations. The FAA's Air Transportation Division (AFS-200) has advised us that it knows of no reason why Swissair's request for an amended foreign air carrier permit should not be approved.

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<sup>2</sup> 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

<sup>3</sup> 61 FR (66343), December 17, 1996.

<sup>4</sup> The new "open-skies" provisions of the Agreement entered into force on June 15, 1995.

<sup>5</sup> See Order E-291 (8 CAB 626), effective October 29, 1947.

<sup>6</sup> Swissair also serves certain gateways via code-share arrangements with other carriers including Delta and Austrian Airlines. Swissair is party to Alliance Agreements, approved by the Department in Order 96-6-33, with Delta Air Lines, Inc., Austrian Airlines and Sabena Belgian World Airlines.

Finally, Swissair has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds.

### **Ownership and Control**

Swissair is a publicly held corporation owned and controlled primarily by citizens of Switzerland. Slightly less than one-third of Swissair's voting shares are held by non-Swiss nationals.<sup>7</sup> No private shareholder owns more than three percent of Swissair's total share capital.<sup>8</sup> The majority of Swissair's officers, directors and key management personnel, are citizens of Switzerland. The record in this case does not permit us to make definitive findings that Swissair is substantially owned and effectively controlled by homeland citizens. Under the circumstances, we find that it is consistent with the public interest to use our discretion and to waive our ownership and control standard in this instance. There is no evidence that the ownership and control of Swissair would make grant of this authority inimical to U.S. aviation interests.

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

1. It is in the public interest to issue Swissair, Swiss Air Transport Company, Ltd. an amended foreign air carrier permit in the form attached;
2. Swissair, Swiss Air Transport Company, Ltd. is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a)(1) of our Regulations,<sup>9</sup> and

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<sup>7</sup> As of the end of 1995, approximately 68.6% of Swissair's share capital was held in Switzerland. while approximately 31.4% of Swissair's share capital was held outside of Switzerland.

<sup>8</sup> The only exception to the three percent cap imposed by Swissair's Articles of Association is the 4.5% share capital owned by Delta Air Lines Holding, Inc. Similarly, Swissair owns a corresponding amount of Delta's stock.

<sup>9</sup> This finding is based on the fact that the grant of this permit will not result in a near-term increase in fuel consumption in excess of 10 million gallons.

5. The public interest does not require an oral evidentiary hearing on the application.

**ACCORDINGLY,**

1. We issue, in the form attached, an amended foreign air carrier permit to Swissair, Swiss Air Transport Company, Ltd. authorizing it to engage in scheduled foreign air transportation of persons, property and mail from points behind Switzerland via Switzerland and intermediate points to a point or points in the United States and beyond;

2. Swissair, Swiss Air Transport Company, Ltd. is also authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters;

3. The exercise of the privileges granted above is subject to Swissair, Swiss Air Transport Company, Ltd.'s compliance with the conditions listed in Attachment A;

4. To the extent not granted, we deny all requests for relief in Docket OST-96-2001;

5. Unless disapproved by the President of the United States under section 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;<sup>10</sup> and

6. We will serve a copy of this order on Swissair, Swiss Air Transport Company, Ltd.; the Ambassador of Switzerland in the United States; the Department of State (Office

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<sup>10</sup> This order was submitted for section 41307 review on April 1, 1997. On April 25, 1997, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

of Aviation Negotiations) and the Federal Aviation Administration (New York IFO).

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)



## SUMMARY

### FOREIGN AIR CARRIER PERMIT APPLICATION Docket OST-96-2001

#### **Swissair, Swiss Air Transport Company, Ltd.**

**Flag:** Switzerland

**Federal Register Notice** 61FR (66343), December 17, 1996

**Filing Date** December 4, 1996

**Authority Sought** Amended foreign air carrier permit to engage in scheduled and charter foreign air transportation of persons, property and mail consistent with the provisions of the open- skies aviation agreement between the United States and Switzerland. [See Annex I, Section 1B (Scheduled Air Transportation) and Annex II Sections 1-3 (Charter Air Transportation).]

**Pleadings:** No answers were filed in response to Swissair's application.

**Public Interest** During 1995, the United States and Switzerland concluded an open-skies aviation agreement which replaced the August 3, 1945, Interim Air Transport Services Agreement between the United States and Switzerland. The new "open-skies" provisions of the Agreement, which entered into force on June 15, 1995, provide for broad route rights and other opportunities for the designated carriers of each side.

**Fitness:** Swissair was formed in 1931 and was issued an initial foreigner air carrier permit by the Civil Aeronautics Board in 1947 authorizing Swissair to engage in scheduled foreign air transportation of persons, property and mail between Geneva/Zurich, Switzerland, and the terminal point New York. See Order E-291 (8 CAB 626), effective October 29, 1947. Swissair has held U.S. operating authority on a continuous basis since that time. Swissair's existing foreign air carrier permit, issued by Order 71-5-21 (56 CAB 489), authorizes Swissair to serve the United States over five separate routes (a sixth route was terminated on April 1, 1972); and to perform charters subject to 14 CFR Part 212. Swissair also holds various exemptions and statements of authorization, including exemption authority granted May 31, 1996, and confirmed by Order 96-8-46, authorizing it to conduct scheduled combination services identical to

those at issue here. See Orders 96-6-14 and Notice of Action Taken, dated August 16, 1996 (Docket OST-96-1598). Swissair currently serves seven U.S. gateways with its own B-747 and MD-11 aircraft. Swissair is also party to Alliance Agreements with Delta Air Lines, Austrian Airlines and Sabena Belgian World Airlines. See Order 96-6-33, Docket OST-95-618.

Swissair holds appropriate licenses from its government and has had no safety violations or fatal accidents in the last five years. Swissair has experienced management and appears financially sound:

	<b><u>Financial Indicators</u></b>	
(\$billion)		
year ending December 31	<b>1995</b>	<b>1994</b>
Total Assets	8.0	8.3
Total Liabilities	5.6	5.7
Owner's Equity	2.4	2.6
Operating Profit or (Loss)	.1	.9

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

**Ownership and Control** Swissair is a publicly held corporation owned and controlled primarily by citizens of Switzerland. Slightly less than one-third of Swissair's voting shares are held by non-Swiss nationals. No private shareholder owns more than three percent of total share capital. The only exception to the three percent cap imposed by Swissair's Articles of Association is the 4.5% share capital owned by Delta Air Lines Holding, Inc. Similarly, Swissair owns a corresponding amount of Delta's stock. The record in this case does not permit us to make definitive findings that Swissair is substantially owned and effectively controlled by citizens of Switzerland. However, as discussed in the attached order, we find that waiver of our ownership and control standard is warranted in this instance.

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

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**PERMIT TO FOREIGN AIR CARRIER**  
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**SWISSAIR, SWISS AIR TRANSPORT COMPANY, LTD.**

A Flag Carrier of Switzerland

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of persons, property and mail, as follows:

**From points behind Switzerland via Switzerland and intermediate points to a point or points in the United States and beyond.**

The holder shall also be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

In the conduct of charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third country point, provided that such charter traffic is carried on a flight that serves Switzerland for purposes of carrying traffic between the United States and Switzerland.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

This permit shall be effective on April 25, 1997. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated

by the Government of and Switzerland (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of Switzerland in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and Switzerland. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and Switzerland become parties.

The Department of Transportation has executed this permit and affixed its seal on

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
  - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
  - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).(41301/40109) 12/96

