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Order 2001-11-4
Served: November 13, 2001



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

Issued by the Department of Transportation
on the 10th Day of September, 2001

Application of

CHINA SOUTHERN AIRLINES CO., LTD.

for a foreign air carrier permit under 49 U.S.C. 40301

Docket OST-96-2008-5

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

Summary

This order issues China Southern Airlines Company, Limited, an initial foreign air carrier permit to conduct scheduled and charter services between the People's Republic of China (China) and the United States, as described below.

Application

By application filed December 9, 1996, as last supplemented and amended December 19, 2000, and February 27, 2001, China Southern requests a foreign air carrier permit which would authorize it to engage in scheduled foreign air transportation of persons, property and mail between Guangzhou, China, and Los Angeles, California; scheduled foreign air transportation of property and mail between Shenzhen, China, and the coterminal points Anchorage, Alaska, and Chicago, Illinois; ¹ and charters pursuant to 14 CFR 212 of the Department's regulations.

In support of its application, China Southern states that the requested authority is provided for in the United States-China Air Transport Agreement of September 17, 1980, as amended, and that it has been designated by China under the Agreement to provide this service. It also states that it is substantially owned and effectively controlled by citizens of

¹ China Southern holds currently effective exemption authority to conduct these services. (See Notices of Action Taken dated March 20 and May 26, 2000, in Dockets OST-2000-7000 and OST-1996-1680.)

China, properly licensed by its homeland, and financially and operationally qualified to conduct these operations.

We received no answers to China Southern's application.

Decision

We have reviewed the record in this case and have decided to grant the application using simplified Subpart B procedures.² The public was informed of the carrier's application by notices in the Federal Register and in the Department's Weekly List of Applications filed.³ The notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. These announcements provided the required notice and filing opportunities. 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 China Southern is qualified to conduct the proposed operations.

Public Interest Considerations

The authority is provided for in the U.S.-China Air Transport Agreement of September 17, 1980, as amended (U.S.-China Agreement), and China Southern has been designated under that agreement to conduct the proposed operations.

Operational and Financial Fitness

We also find that China Southern is operationally and financially fit to conduct the proposed services. China Southern (the former Guangzhou Regional Administration CAAC which was founded in 1958) was established in 1991, and has held authority to serve the United States since 1997. As noted above, it currently holds exemption authority to conduct the requested services. The carrier is properly licensed by its homeland, has experienced management, and has had no safety violations during the past five years. The record indicates that in 1997 China Southern was involved in an accident which resulted in fatalities. We understand that this accident is still under investigation by the Chinese authorities. By memorandum dated November 7, 2000, the Federal Aviation Administration advised us that it knows of no reason why the Department should act unfavorably on China Southern's application. Finally, we have verified China Southern's

² Under 14 CFR 302.210(a)(2), we may, in our discretion, omit a tentative decision in proceedings under Subpart B and proceed directly to a final decision (*see also* 14 CFR 302.213).

³ 61 FR 67373, December 20, 1996, and 66 FR 14978, March 14, 2001.

compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (insurance requirement), and 129 (FAA operations specifications).

China Southern has also demonstrated that it is financially fit to perform the foreign air transportation proposed, and has furnished financial information which indicates that it can operate without jeopardizing passenger or shipper funds. Specifically, during the twelve months ending December 1998, the carrier reports total assets of \$3,549 million and an operating profit of \$71 million. For the year ending December 31, 1999, the carrier reports total assets of \$4,921 million and an operating profit of \$223 million.

Ownership and Control

We find that China Southern is substantially owned and effectively controlled by citizens of China. The record indicates that holders of five percent or more of the carrier's shares are held by two Chinese companies, Southern Airlines Group (65.20%) and HKSCC Nominees Limited (32.15%). All of the carrier's directors and key management personnel are citizens of China.

Conditions and Limitations

We are making China Southern's permit subject to the frequency limitations set forth in the U.S-China Agreement, and will require it to obtain our prior authorization in order to perform extra section flights and to make non-traffic stops in the United States.⁴ In addition, in keeping with the Department's policy in granting Chinese carriers charter authority, we will require China Southern to obtain prior Department approval, in the form of a statement of authorization, before operating any charter trips to the United States, as provided for in section 212.9(e).⁵

Findings and Conclusions

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 a foreign air carrier permit to the applicant in the form attached;
2. To the extent the authority conferred is the subject of a bilateral agreement, the applicant is qualified and designated by its government under the applicable agreement;

⁴ China Southern is already subject to these prior approval requirements under the exemption authority it currently holds from the Department (see Order 97-8-12).

⁵ See Order 92-11-7.

3. The applicant is fit, willing and able to perform properly the foreign air transportation described in the attached permit, and to conform to the provisions of the U.S. Code and to the Department's rules, regulations, and requirements;
4. The public interest requires that the exercise of the privileges granted by the attached permit be subject to the terms, conditions and limitations contained in and attached to this permit and to such others required by the public interest as the Department may prescribe;
5. The applicant appears to be substantially owned and effectively controlled by nationals of its homeland;
6. The issuance of this permit does not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in subsection 313.4(a)(1) of the Department's Regulations;⁶ and
7. The public interest does not require an oral evidentiary hearing on this application.

ACCORDINGLY,

1. We issue, in the form attached, a foreign air carrier permit to China Southern Airlines Company, Limited;
2. China Southern is required, in accordance with 14 CFR Part 212.9(e) of our regulations, to obtain prior approval in the form of statements of authorization before operating any charter trips to or from the United States;
3. China Southern shall apply for permission to perform extra section flights or to make non-traffic stops in the United States at least three (3) days in advance of the flights/stops by filing with the Director, Office of International Aviation, an original and two copies of a letter requesting the authorization;
4. To the extent not granted, we deny all requests for relief in this docket;
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 their submission for section 41307 review, or upon the date of receipt of advice

⁶ Our finding is based on the fact that the permit issued will not result in a near-term increase in annual fuel consumption by the applicant in excess of 10 million gallons.

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;⁷ and

6. We will serve this order on the applicant and other parties in this docket.

By:

SUSAN E. McDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

⁷ This order was submitted for review under section 41307 of Title 49 of the U.S. Code on September 10, 2001. On November 7, 2001, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

Issued By
Order 2001-11-4

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

PERMIT TO FOREIGN AIR CARRIER

CHINA SOUTHERN AIRLINES COMPANY, LIMITED

A Flag Carrier of
The People's Republic of China

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 as follows:

- A. Of persons, property and mail, between Guangzhou, the People's Republic of China, and the terminal point Los Angeles, CA.**
- B. Of property and mail, between Shenzhen, the People's Republic of China, and the coterminal points Anchorage, AK, and Chicago, IL.**

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.¹

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 the following:

1. The holder shall comply with the frequency limitations set forth in Annex V of the United States-China Air Transport Agreement of September 17, 1980, as amended.

¹ In the conduct of charters, the holder is subject to the prior approval requirements described in ordering paragraph 2 of the attached order.

2. The holder shall not perform extra sections over the route unless advance permission has been granted by the Department.²
3. The holder, except as otherwise authorized, shall not make non-traffic stops at the U.S. point(s) specified on the route, unless advance permission has been granted by the Department.³
4. This permit shall be subject 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 November 7, 2001 . 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 the People's Republic of China (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 the People's Republic of China in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and the People's Republic of China. 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 the People's Republic of China become parties.

The Department of Transportation has executed this permit and affixed its seal on September 10, 2001.

By:

SUSAN E. McDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

² To apply for such permission, the holder shall follow the procedures described in ordering paragraph 3 of the attached order.

³ To apply for such permission, the holder shall follow the procedures described in ordering paragraph 3 of the attached order.

FOREIGN AIR CARRIER 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) Except as specifically exempted or otherwise provided for in a Department Order, 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 purposes 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 (except as otherwise provided in the applicable bilateral agreement) 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).