



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

Issued by the Department of Transportation
on the 14th day of July, 2017

Served: July 14, 2017

Application of

NORWEGIAN AIR UK LIMITED

for an exemption under 49 U.S.C. § 40109 and a foreign air
carrier permit under 49 U.S.C. § 41301

Docket DOT-OST-2015-0261

ORDER TO SHOW CAUSE

Summary

By this order the Department tentatively finds under 49 U.S.C. §41301 that Norwegian Air UK Limited (Norwegian UK) should be issued the foreign air carrier permit attached as Appendix A to this order.

Application

By application filed December 11, 2015, Norwegian UK, a foreign air carrier of the United Kingdom, requests a foreign air carrier permit under 49 U.S.C. § 41301, to enable it to conduct foreign scheduled and charter air transportation of persons, property, and mail to the full extent permitted under the U.S.-EU-Iceland-Norway Air Transport Agreement of June 21, 2011, as amended (the U.S.-EU Agreement).¹

Specifically, Norwegian UK requests authority to engage in:

- a. Foreign scheduled and charter air transportation of persons, property, and mail from any point or points behind any Member State(s) of the European Union, via any point or points in any Member State and via intermediate points, to any point or points in the United States and beyond;
- b. Foreign scheduled and charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area;

¹ In its application Norwegian UK also requested exemption authority to conduct its proposed services. On June 30, 2015, by Order 2016-6-22 issued in the instant Docket, the Department dismissed the exemption portion of Norwegian UK's application.

- c. Foreign scheduled and charter all-cargo air transportation between any point or points in the United States and any other point or points;
- d. Other charters pursuant to the prior approval requirements set forth in 14 CFR Part 212 of the Department's Regulations; and
- e. Scheduled and charter transportation consistent with any future, additional rights that may be granted to European Union carriers under the U.S.-EU Agreement.

Pleadings Filed in Response to Norwegian UK Application²

The Air Line Pilots Association (ALPA), the Transportation Trades Department AFL-CIO (TTD), the Association of Flight Attendants-CWA (AFA), the Transport Workers Union of America, AFL-CIO (TWU), the International Association of Machinists and Aerospace Workers (IAM), and the European Cockpit Association (ECA), (collectively, the Labor Parties), submitted a joint answer stating their opposition to the Norwegian UK application.³

The Southwest Airlines Pilots' Association (SWAPA) filed an objection and the Allied Pilots Association (APA) filed an answer, both taking a position similar to that of the Labor Parties and requesting that the Department take no further action until Norwegian UK provides additional information regarding its business plan and hiring practices for review and comment.⁴ The European air carriers KLM Royal Dutch Airlines (KLM), Scandinavian Airlines System (SAS) and Air France KLM (Air France) filed replies in which they all expressed support for the position taken by the Labor Parties. No U.S. carrier opposition was filed.

Norwegian UK filed a reply to the comments of the opposing parties, and the U.S. cargo carriers Atlas Air, Inc. (Atlas) and Federal Express Corporation (FedEx) filed in support of the Norwegian UK application. The Labor Parties filed a Consolidated Reply to Submissions in Support of Norwegian UK's application.

Position of the Opposing Parties

The Labor Parties assert that Norwegian UK has failed to disclose its plans for employment of pilots and flight attendants.⁵ For example, the Labor Parties contend that on the existing record there is no way to know whether Norwegian UK plans to hire pilots and flight attendants directly; contract them from a UK hiring agency; or contract them from non-EU hiring companies that employ the pilots and flight attendants on extra-European contracts, as is currently done by Norwegian Air Shuttle (NAS) and NAI. The Labor

² In the interest of attaining a complete record in this proceeding, we grant all motions for leave to file and also accept all other late-filed pleadings.

³ The December 28, 2015, Joint Answer of the Labor Parties filed in response to Norwegian UK's exemption and permit application consisted of the following parties: ALPA, TTD, TWU, and the ECA. The Labor Parties state that the January 4, 2016, Joint Answer they filed in response to Norwegian UK's permit application is identical in substance to their December 28 Joint Answer, but now includes the AFA and the IAM as additional parties also in opposition to the exemption.

⁴ APA incorporates by reference all arguments made in its filings in response to the NAI Application in Docket DOT-OST-2013-0204.

⁵ The Labor Parties state that Norwegian UK's application raises issues similar to those that the Labor Parties have challenged in the licensing proceeding in Docket DOT-OST-2013-0204 concerning Norwegian Air International Limited (NAI). (We note that subsequent to the filing of the Labor Parties' answer to Norwegian UK's application, the Department reached a final decision to grant the NAI permit application. Order 2016-11-22, issued December 2, 2016, in Docket DOT-OST-2013-0204.)

Parties claim that, if Norwegian UK intends to use the same third-party crew contracting model as NAI proposes, possibly in order to lower the wages and working conditions of its air crew, Norwegian UK's application would not comply with Article 17 *bis* of the U.S.-EU Agreement, which discusses labor standards. They also contend that Norwegian UK's application raises serious questions about whether its business plan is consistent with the public interest. The Labor Parties urge the Department to reach no decision in the case until Norwegian UK provides the requisite employment information and interested parties have had an opportunity to comment on it.⁶ They also include a sample information request that they believe should be put to Norwegian UK by the Department to obtain answers regarding the applicant's labor practices.⁷

The APA contends that Norwegian UK does not provide information in its application regarding the method by which it intends to employ pilots and flight attendants for its long-haul flights. Given Norwegian UK's affiliation with NAS and NAS's employment practices, the APA asserts that Norwegian UK's application warrants greater scrutiny by the Department, not less, on these critical issues.

The APA argues that the Department must ensure that Norwegian UK does not undercut labor standards, and states that the Department is charged with "encouraging fair wages and working conditions" and "strengthening the competitive position of [U.S.] air carriers to at least insure equality with foreign air carriers."⁸ The APA asserts that when granting a foreign air carrier permit, 49 U.S.C. § 41302 requires the Department to consider such public interest factors, as well as whether or not the grant of authority is consistent with the letter and spirit of the U.S.-EU Agreement.⁹ The APA contends that the Department cannot properly evaluate Norwegian UK's Application until that carrier provides the Department with critical, as-yet unavailable information about how it plans to secure and maintain its long-haul flight crews.

SWAPA states that a review of Norwegian UK's application shows that it is fashioned after that of NAI, devoid of any details regarding how the flight deck and cabin crews will be hired and managed, information that it argues is not only relevant but key to the Department's mandate on supporting "fair wages and working conditions." As is the case with the Labor Parties and APA, SWAPA asserts that Norwegian UK's application raises the same concerns as that of NAI with regard to third-party hiring and labor practices, and would circumvent the "high labor standards" of Article 17 *bis*.¹⁰

Position of the Supporting Parties

Norwegian UK asserts that approval of its application will serve the public interest by increasing travel choices, offering more service options, and providing enhanced competition, thereby benefiting consumers in the United States and Europe through innovative low-fare service aboard its brand new Boeing 787 Dreamliner aircraft. Norwegian UK further asserts that approval of its application is fully consistent with, and indeed mandated by, the U.S.-EU Agreement. With respect to the opposing parties' requests for more information, Norwegian UK maintains that it has "complied with all requirements of the [U.S.-EU Agreement] and provided all necessary documentation set forth by the Department in its 'Application Procedures for Foreign Air Carriers of the European Union'."¹¹

⁶ Joint Answer of the Labor Parties, at 2.

⁷ Attachment to Joint Answer of the Labor Parties.

⁸ 49 U.S.C. § 40101(a)(15) and (e)(1).

⁹ Answer of APA, at 3.

¹⁰ Objection of SWAPA, at 2.

¹¹ Consolidated Reply of Norwegian UK, at 4 (footnote omitted).

Atlas states that there is no valid reason to delay granting Norwegian UK the authority the applicant has requested, and it urges the Department to expeditiously grant at least the exemption portion of the application in order to promote aviation liberalization and the expansion of air services that the U.S.-EU Agreement was designed to achieve. Atlas contends that, as stated by the applicant, the UK Civil Aviation Authority (CAA) has determined that Norwegian UK meets applicable standards and has issued the carrier the requisite operating authority. Atlas states that Article 6 *bis* of the U.S.-EU Agreement requires the Department to recognize the CAA's findings with respect to Norwegian UK's fitness and citizenship.¹² Atlas further states that the route rights sought by Norwegian UK are consistent in all respects with those afforded by the U.S.-EU Agreement to airlines of EU Member States.

FedEx states that the Department should act quickly to grant Norwegian UK's request for operating authority. FedEx asserts that the Article 6 *bis* procedures for reciprocal recognition of regulatory fitness and citizenship determinations alleviate the need of U.S. and EU airlines to file extensive documentation because the decision of the certifying authorities deserves mutual respect. FedEx argues that the U.S.-EU Agreement is one of the most important documents among the long list of air services agreements successfully negotiated jointly by the Department of Transportation, the State Department, and the Commerce Department on behalf of all U.S. stakeholders.¹³ Finally, FedEx notes that it is intervening in this matter not in defense of the subject carrier, but in support of the basic principle that the U.S. should honor its agreements.

Additional Submissions on the Record¹⁴

UK Department of Transport Letter and Answer of Labor Parties

On February 11, 2016, the UK Department for Transport formally submitted a letter to the Department setting forth its support for the Norwegian UK application.¹⁵ The letter includes as attachments (1) a diplomatic note sent to the Department via the U.S. Department of State that provides the views of the UK Government in support of the application, and (2) additional information provided by the UK Civil Aviation Authority regarding its understanding of Norwegian UK's business model and employment practices.

The Labor Parties filed comments in response, pointing to a number of questions and issues they maintain are left unresolved by the UK Government's submission. The Labor Parties claim that the discrepancies between the assertions made in the UK Department for Transport letter and what appear to be the actual circumstances applicable to the employment of Norwegian UK aircrew show why it must be the applicant and/or its parent NAS that states on the record what the employment structure will be for the pilots and flight attendants who will work on board the aircraft that Norwegian UK uses in any U.S. services.¹⁶ The

¹² Answer of Atlas, at 1-2.

¹³ Answer of FedEx, at 2-3.

¹⁴ In addition to the submissions specified immediately below, on November 3, 2016, the Department posted in Docket DOT-OST-2015-0261 a Notice of the summary of a special meeting of the U.S.-EU Joint Committee that took place via teleconference on September 14, 2016. The Department also served that Notice on all parties to the proceeding. *See* Docket DOT-OST-2015-0261-0030.

¹⁵ *See* Docket DOT-OST-2015-0261-0020.

¹⁶ Comments of Labor Parties on UK Government Documents, at 7.

Labor Parties also maintain that the Department should have NAS/Norwegian UK's commitment that the assertions are accurate.

Motions of the Labor Parties for Leave to File Newly-Available Information/Defer Action on the Application of Norwegian UK and the Answer of Norwegian UK

On June 28, 2016, the Labor Parties filed two motions in connection with the Norwegian UK application. The first motion of the Labor Parties is a request to file newly-available information in the form of an article by former Deputy Secretary of Transportation John Porcari.¹⁷ The second motion of the Labor Parties requests the Department to defer action on the Norwegian UK application as a result of the UK Brexit vote and the resulting uncertainty of the aviation relationship between the UK and the United States.

Norwegian UK filed an answer in response to the Labor Parties' motion requesting the Department to defer action on the Norwegian UK application. Norwegian UK notes that the recent Brexit vote only initiated a lengthy process for the UK's exit from the European Union, and in the meantime, the current U.S.-EU Agreement continues to apply. Further, Norwegian UK contends that it would be wholly inappropriate for the Labor Parties – or the Department – to speculate on the outcome of aviation negotiations, which may or may not result in changes to the terms of the U.S.-EU Agreement.

Motion of Norwegian UK for Leave to File and Expedited Treatment/Contingent Application for Exemption and Associated Responsive Pleadings

On December 21, 2016, Norwegian UK filed a motion for expedited treatment of its pending permit application as well as a contingent application for exemption authority.¹⁸ Norwegian UK notes that it has been more than one year since it submitted its application for a foreign air carrier permit, and nearly six months since the Department dismissed its application for exemption authority. Norwegian UK points out that in dismissing its exemption request, the Department noted specifically that the Opponents' positions were based on matters to be decided in the NAI case. Norwegian UK states that the Department issued a Final Order granting NAI's permit request on November 30, 2016, and in taking that action the Department concluded that it had no basis to deny NAI's permit under the law.¹⁹ Norwegian UK takes the position that all issues outstanding in the NAI case have now been resolved, and the Department should issue Norwegian UK the authority to operate to the United States without delay, in accordance with the U.S.-EU Agreement.²⁰

Position of the Labor Parties in Response to Norwegian UK Motion/Contingent Exemption Application

The Labor Parties filed separate answers to Norwegian UK's motion for expedited processing and its contingent exemption request. With respect to the applicant's motion for expedited processing, the Labor

¹⁷ Attachment to Motion of the Labor Parties for Leave to File Newly-Available Information.

¹⁸ Norwegian UK stated that if the Department was not prepared to proceed immediately to issue a show-cause order proposing to grant Norwegian UK's permit, then the Department should issue Norwegian UK a two-year exemption. We received comments in opposition from the Labor Parties and support from FedEx, Atlas, the U.S. Travel Association, the Business Travel Coalition, the Greater Orlando Aviation Authority, Gatwick Airport Limited, Denver International Airport, the Travel Technology Association, and the European Region of the Airports Council International. In light of the show-cause order we are issuing here, we are dismissing Norwegian UK's contingent exemption application.

¹⁹ Motion of Norwegian UK, at 2.

²⁰ Motion of Norwegian UK, at 2.

Parties state that they do not oppose the request of Norwegian UK but, for the reasons the Labor Parties have previously stated in this and the NAI dockets, the Department should propose to deny Norwegian UK's application unless Norwegian UK commits to ensure that the pilots and flight attendants who will operate its transatlantic flights will be based in the United Kingdom or the United States and will be employed by UK or U.S. employers on contracts governed by UK or U.S. law.²¹

With regard to Norwegian UK's contingent exemption application, the Labor Parties disagree with Norwegian UK's assertion that the Department's final order granting a foreign air carrier permit to Norwegian UK's sister carrier NAI "fully and finally resolved" the issues posed by Norwegian UK's application. The Labor Parties assert that the Department must review Norwegian UK's exemption application for consistency with the public interest and, in addition, should assess whether a grant of an exemption would be consistent with the intent of the parties to the U.S.-EU Agreement, as expressed in the Agreement's preamble and in Article 17 *bis*.

Position of Parties Supporting Norwegian UK Motion/Contingent Exemption Application

Norwegian UK contends that the Department's dismissal of the prior Norwegian UK exemption application was on procedural grounds due solely to the overlap of issues pending in the NAI proceeding, which the Department resolved when it issued the Final Order, and argues that there is no justification for deciding the identical issues in this proceeding differently. It points out that the State Department has also concluded that grant of Norwegian UK's application is "in the foreign policy interests of the United States."

FedEx states that it supports Norwegian UK's request for an expedited final decision, or in the alternative, its renewed request for exemption authority. FedEx asserts that the Department's recent approval of the foreign air carrier permit for NAI was most welcome, as well as appropriate and lawful under U.S. law and under the U.S.-EU Agreement. It argues that a similar action to swiftly approve the pending application of Norwegian UK for a permit would similarly be appropriate and lawful.

Atlas states that it previously answered in support of Norwegian UK's then-pending exemption application, and that the only thing that has changed is that the Department has issued Order 2016-11-22, definitively rejecting the assertion that Article 17 *bis* of the U.S.-EU agreement controls the matters at hand.²²

In addition, filings in support of Norwegian UK's requests were filed by various civic parties, specifically the U.S. Travel Association, the Business Travel Coalition, the Greater Orlando Aviation Authority, Gatwick Airport Limited, Denver International Airport, the Travel Technology Association, and the European Region of the Airports Council International. Generally, the civic parties highlight the need for and the importance to the traveling public of the competitive benefits of Norwegian UK's proposed service. They also state their support for Open Skies policy and the benefits it provides to various stakeholders.

²¹ Answer of Labor Parties to Norwegian UK's request for expedited processing, at 1-2

²² Answer of Atlas to Norwegian UK Motion and Contingent Exemption Application, at 1.

Tentative Findings and Conclusions

The Department has tentatively decided to grant the applicant a foreign air carrier permit, in the form attached as Appendix A to this order.^{23 24} In reaching our tentative decision, the Department finds that the applicant has demonstrated, based on the record, that it is financially and operationally fit to perform the services authorized; and that the applicant is substantially owned and effectively controlled by citizens of Member States of the European Union, consistent with the provisions of the U.S.-EU Agreement.^{25 26} We also tentatively find that the authority sought by the applicant is encompassed by the U.S.-EU Agreement.

With respect to the opposition raised against Norwegian UK's permit request, the parties opposing the application rely on two fundamental arguments. First, they assert that for the Department to approve the application, it must be able to find that grant of the application is consistent with the U.S.-EU Agreement. To make such a finding here, they contend that the Department must find that Norwegian UK's labor practices comply with Article 17 *bis* of the U.S.-EU Agreement. The opponents claim that, absent the additional information that they have sought from Norwegian UK, and which Norwegian UK has not provided, the Department lacks an adequate basis to address the Article 17 *bis* issue, and thus cannot make an affirmative finding of consistency with the U.S.-EU Agreement. Second, the opponents assert that, for the Department to approve the application, it must be able to find that grant of the application is consistent with the public interest, specifically with the public interest elements of "encouraging fair wages and working conditions" and "strengthening the competitive position of [U.S.] air carriers to at least insure equality with foreign air carriers," set forth in 49 U.S.C. §40101. They say that, absent the additional information they have sought from Norwegian UK, and that Norwegian UK has not provided, the Department lacks a sufficient record to make an adequate public interest determination, and thus cannot approve the permit request.

These two arguments echo the two primary assertions made by essentially the same opposing parties in the context of their objections in the aforementioned NAI licensing proceeding.²⁷ The Department has already thoroughly considered, and rejected, these arguments.²⁸ We tentatively see no persuasive basis on the record of the present proceeding to reach a different conclusion here. We further tentatively find that, in light of the applicable decisional parameters, we have an adequate record for decision without the need for the applicant to provide any additional information regarding its business plan and labor practices.

²³ The applicant's request for a foreign air carrier permit was summarized in the Department's published weekly list of applications filed. This notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of this foreign air carrier permit authority. The attached permit includes the standard conditions normally applied to such permits.

²⁴ Given our tentative decision here, we will dismiss Norwegian's motion for expedited treatment and its contingent exemption application as moot.

²⁵ The Department makes this fitness and citizenship finding based on Article 2 (Reciprocal Recognition of Regulatory Determinations with Regard to Airline Fitness and Citizenship) of the Protocol to amend the U.S.-EU Air Transport Agreement, signed June 24, 2010.

²⁶ The Department notes that the applicant is properly licensed by its homeland to perform the proposed services. In addition, the United Kingdom Civil Aviation Authority holds a Category 1 rating under the FAA's International Aviation Safety Assessment (IASA) Program, and the FAA has advised the Department that it knows of no reason why we should act unfavorably on the applicant's request. The Department has verified the applicant's compliance with 14 CFR Parts 203 (Warsaw liability waiver), and 205 (insurance requirements).

²⁷ Docket DOT-OST-2013-0204.

²⁸ Orders 2016-11-22 and 2016-4-12.

With respect to the assertions of the Labor Parties that the UK Brexit vote should be dispositive, we note first that the U.S.-EU Agreement remains in force and continues to govern aviation relations between the United States and the United Kingdom. Second, the United States and the United Kingdom have informally expressed the need for a seamless transfer of liberal, bilateral air transportation rights so as to avoid any disruption of services in the important U.S.-UK market. Therefore, we tentatively do not see Brexit as an impediment to Department action on the Norwegian UK application. Against this background and in the circumstances presented, we have tentatively decided to grant the request of Norwegian UK for a foreign air carrier permit.

In reaching this tentative decision to grant Norwegian UK's permit, we have taken into account the commitments made in the NAI docket by Mr. Bjorn Kjos, CEO of Norwegian Air Shuttle (parent company of both NAI and Norwegian UK) with respect to hiring and employment practices offered as a direct result of issues raised in that proceeding.²⁹ Similar issues have been raised in this proceeding.³⁰ In the event that we finalize our present tentative grant of permit authority, we anticipate that those previous commitments will be implemented as to Norwegian UK, consistently with applicable law.

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

1. The applicant is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of Title 49 of the U.S. Code, and to our rules, regulations, and requirements;³¹
2. The applicant is substantially owned and effectively controlled in a manner consistent with the provisions of the U.S.-EU Agreement;
3. 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 14 CFR §313.4(a)(1) of our regulations;³²
4. The Department's action with respect to this foreign air carrier permit should, unless disapproved by the President of the United States under §41307 of Title 49 of the U.S. Code, become effective on the 61st day after its submission for §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 this portion of the Department's decision under that section, whichever occurs earlier.

In view of the above, we tentatively find that our actions would be consistent with the law and Department policy.

²⁹ Docket DOT-OST-2013-0204. *See, e.g.*, Order 2016-4-12, at 4-5, in that docket. *See also* Order 2016-11-22, at 4-5.

³⁰ *See* note 5, *supra*. *See also* Order 2016-6-22, at 2.

³¹ The attached permit reflects the standard scope of route rights available to EU carriers under the U.S.-EU Agreement.

³² This finding is based on the fact that the grant of this permit will not result in a near-term net annual change in aircraft fuel consumption of 10 million gallons or more.

ACCORDINGLY,

1. With respect to the applicant's request for a foreign air carrier permit in this proceeding, we direct all interested persons to show cause why our tentative decision granting that application, as set forth above, should not be made final;
2. Any interested person objecting to the issuance of an order making final our tentative findings and conclusions with respect to the applicant's request for a foreign air carrier permit shall, no later than twenty-one (21) calendar days after the date of service of this order, file with the Department and serve on the parties to this proceeding, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence to be relied upon in support of the objections; if objections are filed, answers to objections are due no later than seven (7) calendar days thereafter;
3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action;³³
4. In the event no objections are filed, all further procedural steps shall be deemed waived, and the Department will enter an order which will (subject to Presidential review under §41307 of Title 49 of the U.S. Code) make final our tentative findings and conclusions set forth in this order;
5. We dismiss Norwegian Air UK Limited's Motion for Expedited Treatment and Contingent Application for Exemption;
6. We grant all motions for leave to file; and
7. We will serve a copy of this order on Norwegian Air UK Limited; all other parties to this proceeding; the Embassy of the United Kingdom in Washington, D.C.; the Department of State; and the Federal Aviation Administration.

By:

**SUSAN 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://www.regulations.gov>

³³ As we are providing for the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order.

Issued by
Order



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

PERMIT TO FOREIGN AIR CARRIER

NORWEGIAN AIR UK LIMITED

A Foreign Air Carrier of the United Kingdom

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:

Foreign scheduled and charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Union, via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond;

Foreign scheduled and charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area;

Foreign scheduled and charter air transportation of cargo between any point or points in the United States and any other point or points;

Other charters pursuant to the prior approval requirements set forth in 14 CFR Part 212 of the Department's regulations; and

Transportation authorized by any additional route rights made available to European Union carriers in the future; *provided*, that the holder shall, before it commences any new service under such additional route rights, provide the Department with evidence that it holds a homeland license for that new service (unless it has already provided such evidence to the Department). Such evidence shall be filed in Docket DOT-OST-2015-0261.

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 _____. 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 right for the service authorized by this permit from the service which may be operated by airlines of the European Union and its Member States (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); or (3) upon the termination or expiration of the applicable air services agreement between the United States and the European Union and its Member States. However, clause (3) 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 European Union and its Member States become parties.

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

By:

(SEAL)

Foreign Air Carrier Permit Conditions

In the conduct of the operations authorized, the foreign carrier applicant 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, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (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 purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in a Member State of the European Union;
- (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, except as otherwise provided in the applicable aviation agreement, 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.

EU carrier 01/2008