



Order 97-11-31

Served: November 24, 1997

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

Issued by the Department of Transportation
on the 31st day of October, 1997

Application of

**AUSTRIAN AIRLINES
ÖSTERREICHISCHE
LUFTVERKEHRS AG**

for an amended foreign air carrier permit
under section 41301 of Title 49 of the U.S.
Code

Docket **OST-97-2608**

ORDER ISSUING AMENDED FOREIGN AIR CARRIER PERMIT

Austrian Airlines, Österreichische Luftverkehrs AG (Austrian) seeks an amendment of its foreign air carrier permit, last issued by Order 89-12-42, under section 41301 of Title 49 of the U.S. Code (formerly section 402 of the Federal Aviation Act of 1958, as amended) in order to increase the scope of its permit authority to that level which carriers of Austria are entitled to under the 1995 U.S.-Austria "Open Skies" Agreement. The application is fully described in the attachments to this order. Because the public interest basis for granting the application is clear, the applicant's fitness is established by evidence of record and unchallenged, and there are no significant ownership and control questions, it is appropriate to use this simplified, Subpart Q procedure to grant the requested authority.¹

The applicant has filed and perfected its application as required by 14 CFR Part 211 and served it as required by 14 CFR 302.1705. The application was summarized in the Federal Register, as cited in the descriptive attachments, and in the Department's published weekly list of applications filed. These notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. No answers to the application were filed.

¹ 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.

Public Interest

We find, for the reasons set forth in the attachments, that grant of the request is in the public interest and that the applicant is qualified to conduct the proposed operations. Further, the applicant has been designated by its homeland government under the terms of the existing Air Services Agreement between the applicant's homeland and the Government of the United States.

Operational and Financial Fitness

The applicant has demonstrated that it is financially, managerially and operationally fit to perform the foreign air transportation proposed. Austrian has already operated successfully to this country under previously issued authorities.

We have reviewed the applicant's evidence of managerial/operational fitness, and have consulted the Federal Aviation Administration (FAA). Austrian has demonstrated that it has competent management. Further, the applicant holds effective authority from its homeland government for the operations proposed and stated that it has had no safety or tariff violations, or fatal accidents, in the preceding five years. The FAA's Air Transportation Division (AFS-200) has advised us that it knows of no reason why Austrian's request for an amended foreign air carrier permit should not be approved.²

Ownership and Control

The record indicates that Austrian is substantially owned and effectively controlled by nationals of its homeland.

Terms, Conditions and Limitations

The foreign air carrier permit is subject to the standard terms, conditions and limitations we consistently impose in the public interest. The duration of the permit is made coextensive with the existing Air Transport Agreement between the carrier's homeland and the United States.

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 an amended foreign air carrier permit to Austrian in the form attached;
2. Austrian is qualified and designated by its government under the U.S.-Austria Air Services Agreement;
3. Austrian is fit, willing and able to perform properly the foreign air transportation described in its attached permit and to conform to the provisions of the Act and to the Department's rules, regulations and requirements;

² A copy of the FAA's memorandum of July 14, 1997, has been placed in Docket 97-2608.

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 the permit and to such others required by the public interest as the Department may prescribe;
5. The record in this proceeding supports a finding that Austrian is 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;³ and
7. The public interest does not require an oral evidentiary hearing on this application.

ACCORDINGLY,

1. We issue, in the form attached, an amended foreign air carrier permit to Austrian Airlines;
2. To the extent not granted, the application in Docket OST 97-2608 is denied;
3. 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;⁴ and
4. We will serve this order on Austrian Airlines, Österreichische Luftverkehrs AG; the Ambassador of Austria in Washington, D.C.; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-50).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

³ Our finding is based on the fact that the permit will not result in a near-term increase in annual fuel consumption by the applicant in excess of 10 million gallons.

⁴ This order was submitted for section 41307 review on October 31, 1997. On November 18, 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.

Foreign Air Carrier Permit Application of

**AUSTRIAN AIRLINES,
ÖSTERREICHISCHE LUFTVERKEHRS AG
Docket OST 97-2608**

Flag: Austria

Filing Date: June 10, 1997

Federal Register Notice: 62 FR 33696, June 20, 1997

Authority Sought: Amendment to Austrian's existing foreign air carrier permit (Order 89-12-42) in order for the carrier to conduct: (1) scheduled foreign air transportation of persons, property and mail from points behind Austria, via Austria and intermediate points, to a point or points in the United States, and beyond; (2) charters between any point or points in Austria and any point or points in the United States; (3) charters between any point or points in the United States and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation that includes service to Austria; and (4) other charters, in accordance with the Department's regulations (14 CFR Part 212.)

Pleadings: None.

Public Interest: The authorities requested are encompassed by the Air Services Agreement between the Governments of Austria and the United States.

Fitness: Austrian has held Department authority to conduct U.S.-Austria operations since 1968, and has held an exemption to conduct the same authority requested in this Docket since January 30, 1996 (see Notice of Action Taken January 30, 1996, in Docket OST 96-997). Austrian is properly licensed and designated by its homeland to conduct the operations requested here and has experienced management. Austrian represented that it has had no safety or tariff violations, or fatal accidents, in the last five years.

Financial Indicators (\$ million U.S.) as of: 12/31/95 12/31/96

Total Assets	\$1,504	\$1,502
Total Liabilities	1,045	1,029
Owners' Equity	459	473
Net profit (loss)	(15)	2

DOT verifies compliance with 14 CFR 203 (Warsaw liability waiver), 205 (insurance requirements) and 129 (FAA operations specifications.)

Ownership and Control: The majority of the carrier's key management personnel are citizens of Austria. Austrian has represented that 51 percent of its ownership is held by the Government of Austria; 16 percent is held by Austrian institutional investors (Austrian banks and insurance companies); 10 percent is held by Swissair, Swiss Air Transport Company, Ltd.; 9 percent is held by All Nippon Airways Company, Ltd.; and that the remaining 14 percent is publicly traded on the Austrian stock exchange.

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

PERMIT TO A FOREIGN AIR CARRIER

**AUSTRIAN AIRLINES
ÖSTERREICHISCHE LUFTVERKEHRS AG**

A Flag Carrier of Austria

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 carrying persons, property and mail as follows:

From points behind Austria, via Austria 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 the 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 Austria for purposes of carrying traffic between the United States and Austria.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached. 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, to which the United States and Austria are or shall become parties.

This permit shall be effective on November 18, 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 liquidation or dissolution of the holder to which it was issued; (2) upon the effective date of any treaty, convention, agreement or amendment which shall have the effect of eliminating the bilateral right for the service authorized by this permit; (3) upon the effective date of any permit granted by the Department to any other carrier designated by Austria in lieu of the holder; or (4) upon the termination or expiration of the Air Services Agreement between the United States and Austria, as amended (or in the event of termination or expiration of any part of the Agreement, the authority granted by this permit shall cease to the extent of such termination or expiration.) 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 Austria become parties.

The Department of Transportation has executed this permit and affixed its seal on November 18, 1997.

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 (FAA), 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 FAA'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).

