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

Served: December 8, 2003

Issued by the Department of Transportation  
on the 8<sup>th</sup> day of October, 2003

Application of

**SWISS INTERNATIONAL AIR LINES LTD.**

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

Docket OST-2002-11535-4

**ORDER ISSUING FOREIGN AIR CARRIER PERMIT**

**Summary**

In this order we are issuing Swiss International Air Lines Ltd. (Swiss) an initial foreign air carrier permit, authorizing it to engage in scheduled foreign air transportation of persons, property and mail between Switzerland and the United States pursuant to the bilateral aviation agreement between the United States and Switzerland.<sup>1</sup>

**Application**

By application filed February 8, 2002, as amended, Swiss requests that we issue it an initial foreign air carrier permit to conduct scheduled foreign air transportation of persons, property and mail between Switzerland and the United States consistent with the provisions of the open-skies aviation agreement between the United States and Switzerland.<sup>2</sup>

In support of its request, Swiss states that it has been licensed and designated by the Government of Switzerland to perform the proposed services, that it is substantially

<sup>1</sup> The applicant filed its original application in this docket under the name Crossair Ltd. d/b/a Swiss. By letter dated June 11, 2002, Crossair submitted a request under 14 CFR Part 215 of the Department's rules to change its name to Swiss International Air Lines Ltd. d/b/a Swiss. By letter dated July 1, 2002, the Department acknowledged the applicant's change of name to Swiss International Air Lines Ltd. d/b/a Swiss.

<sup>2</sup> On February 22, 2002, we granted Swiss (then Crossair) initial exemption authority, for a two year period, to engage in scheduled foreign air transportation of persons, property and mail between Zurich and Geneva, Switzerland, and specified points in the United States; and authority to conduct charters in accordance with Part 212 of our rules. See Notice of Action Taken, dated February 22, 2002, in Docket OST-2002-11534.

owned and effectively controlled by citizens of Switzerland, and that it is operationally and financially fit to perform the proposed services.

No answers were filed in response to Swiss' application for a foreign air carrier permit.

### **Decision**

We have reviewed the record in this case and have decided to grant the application using simplified Subpart B procedures.<sup>3</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>4</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 Swiss is qualified to conduct the proposed operations.

### **Public Interest Considerations**

On June 15, 1995, the United States and Switzerland signed an open-skies bilateral aviation agreement (the Agreement). The Agreement provides broad rights and other opportunities for the designated carriers of each side, including the rights sought by Swiss here.

### **Operational and Financial Fitness**

We find that Swiss is operationally and financially fit to conduct the operations at issue here. Swiss is a publicly traded Swiss company, formed in 1974 as an air taxi operation based in Basel, Switzerland. In 1995, the applicant, then an affiliate of Swissair, took over all of Swissair's routes operated with aircraft of 100 seats or less. Swiss currently offers scheduled service to more than 60 destinations throughout Europe, North Africa and the Near East. Following the demise of Swissair, Swiss became Switzerland's flag carrier. Swiss received initial Department authority in 2002 (Docket OST-2002-11534). Swiss' services to the United States will be operated with Swiss-registered A-330 and MD-11 aircraft. Swiss' aircraft will be maintained in Switzerland under contract with SR Technics, Ltd. Swiss has been designated by its government and holds effective authority to conduct the proposed operations.<sup>5</sup> Swiss has experienced management and has had no safety or tariff

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<sup>3</sup> 14 CFR 302.210 (a)(2) and 302.213.

<sup>4</sup> 67 FR 9018, February 27, 2002.

<sup>5</sup> By Diplomatic note (Ref # 573.40-WEM/BCR) dated January 17, 2002, the Government of Switzerland designated the applicant to engage in scheduled international air transportation under the routes specified in Annex 1, Paragraph B of the Agreement. Swiss holds an Air Operator's Certificate (No. 1006) issued by the Federal Office for Civil Aviation (FOCA) on July 9, 1998, and

violations in the last five years. By memorandum dated June 27, 2003, the Federal Aviation Administration advised us that it knows of no reason why Swiss' request for a foreign air carrier permit should not be approved. Finally, we have verified Swiss' compliance with 14 CFR Parts 203 (Waiver of Warsaw Convention Liability Limits and Defenses), 205 (Aircraft Accident Liability Insurance) and 129 (Foreign Carrier Operations Specifications).<sup>6</sup>

Swiss has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds. Specifically, for the calendar year ending December 31, 2002, Swiss reported total assets of \$2.9 billion; total liabilities of 1.9 billion; and owners' equity of \$1.0 billion. For calendar year 2002, Swiss reported a loss of approximately \$648 million. For the calendar year ending December 31, 2001, Swiss reported total assets of approximately \$2.2 billion; total liabilities of \$935 million; and owners' equity of \$1.3 billion. For calendar year 2001, Swiss reported a loss of approximately \$194 million.

### **Ownership and Control**

We find that Swiss is substantially owned and effectively controlled by the citizens of Switzerland. Swiss is owned by the Government Switzerland and various Swiss corporations.<sup>7</sup> In addition, six of Swiss' eight directors are Swiss citizens, and nine of Swiss' key management positions are held by citizens of Switzerland.<sup>8</sup>

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 Swiss an initial foreign air carrier permit in the form attached;
2. Swiss 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;

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an operating license dated February 27, 2001, authorizing worldwide commercial air transport operations.

<sup>6</sup> The applicant states that prior to its reorganization from a regional carrier (Crossair Ltd.) to an intercontinental carrier, its former European operations were involved in two fatal accidents (January 10, 2000 and November 24, 2001) in the past five years. The applicant further states that as of September 2003, the Swiss Government has not yet officially issued accident reports on the incidents nor brought any charge of violation of law or regulation against Swiss as a result of the two accidents. Both accidents occurred prior to the FAA's memorandum that it knew of no reason why we should act unfavorably on the Swiss request at issue here.

<sup>7</sup> The Government of Switzerland, the largest stockholder, owns 23.07% of Swiss' stock.

<sup>8</sup> Swiss' Chairman is a citizen of the Netherlands. The First and Second Deputy Chairman are Swiss citizens.

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 § 313.4(a)(1) of our Regulations;<sup>9</sup> and
5. The public interest does not require an oral evidentiary hearing on the application.

ACCORDINGLY,

1. We issue, in the form attached, a foreign air carrier permit to Swiss 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. Swiss 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 Swiss' compliance with the conditions listed in Attachment A;
4. To the extent not granted, we deny all requests for relief in Docket OST-2002-11535;
5. Unless disapproved by the President of the United States under § 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 § 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

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<sup>9</sup> 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.

<sup>10</sup> This order was submitted for § 41307 review on October 8, 2003. On December 8, 2003, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

6. We will serve a copy of this order on Swiss, the Ambassador of Switzerland in the United States, the Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration (New York IFO).

By:

MICHAEL W. REYNOLDS  
Acting Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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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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**Swiss International Air Lines 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:

**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 **December 8, 2003**. 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 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 October 8, 2003.

By:

MICHAEL W. REYNOLDS  
Acting Assistant Secretary for Aviation  
and International Affairs

(SEAL)

## Foreign Carrier Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) 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, and with all applicable U.S. Government requirements concerning security. 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 Principal Security Inspector (PSI) to advise the PSI 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 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, 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.