



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

Issued by the Department of Transportation  
on the 3<sup>rd</sup> day of September, 2020

Served: September 3, 2020

In the Matter of

**GROUND HANDING OPERATIONS OF FOREIGN  
AIR CARRIERS OF INDIA; AND**

**NATIONAL AVIATION COMPANY OF INDIA  
LIMITED, D/B/A AIR INDIA AND JET AIRWAYS  
(INDIA) LTD.: AMENDED FOREIGN AIR CARRIER  
PERMITS UNDER 49 U.S.C. §§ 41304(a) AND 41305(b)**

Docket DOT-OST-2019-0066  
DOT-OST-2007-0125  
DOT-OST-2005-21135

**ORDER TO SHOW CAUSE**

**Summary**

By this Order, the U.S. Department of Transportation (the Department) tentatively proposes to remove a condition the Department had imposed on the foreign air carrier permit of the National Aviation Company of India Limited d/b/a Air India (Air India) by Order 2017-7-9. That condition suspended the right of the carrier to self-handle at U.S. airports.<sup>1</sup>

**Background**

By Order 2019-4-16, issued in Docket DOT-OST-2019-0066 on April 19, 2019, the Department took certain actions to address the failure of the Indian Government to permit U.S. carriers to exercise their bilateral right to perform their own ground handling

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<sup>1</sup> We note that Order 2019-7-9 also amended the foreign air carrier permit of the Indian carrier Jet Airways (India) Ltd. (Jet Airways). Subsequent to the issuance of Order 2019-7-9, Jet Airways ceased all operations and entered bankruptcy proceedings. Accordingly, the effectiveness of its permit terminated pursuant to the terms under which it was issued. Should Jet Airways or a successor carrier be licensed by the Government of India to conduct U.S. operations, it may apply to the Department for authority at that time.

(to “self-handle”) at Indian airports. For the reasons set forth in that Order, the Department (1) imposed a requirement pursuant to 49 U.S.C. § 41708(b) that Indian carriers report all arrangements for ground-handling at each U.S. airport they served,<sup>2</sup> and (2) tentatively decided pursuant to 49 U.S.C. § 41304(a) and 49 U.S.C. § 41305(b) to amend the operating authority of Indian carriers to suspend rights to self-handle at U.S. airports.<sup>3</sup>

By Order 2019-7-9, issued July 30, 2019 in the three above-captioned Dockets, the Department finalized its tentative decision and amended the foreign air carrier permit held by Air India to suspend the rights of the carrier to self-handle at U.S. airports.

### **Subsequent Developments and Tentative Decision**

The Department and other U.S. Government agencies have continued to work with the Government of India towards satisfactory resolution of this matter. In that connection, recent positive developments have led the Department to tentatively determine that the public interest now calls for removal of the permit condition we had imposed in Order 2019-7-9. We therefore have tentatively decided to amend Air India’s permit to remove that condition. We have attached the proposed amended permit as the Appendix to this Order.<sup>4</sup>

### **ACCORDINGLY,**

1. We direct all interested persons to show cause why our tentative decision to amend the foreign air carrier permit held by the National Aviation Company of India Limited d/b/a Air India, set forth above, should not be made final;
2. Comments in response to this Order shall be filed with the Department of Transportation in Dockets DOT-OST-2019-0066 and DOT-OST-2007-0125 no later than twenty-one (21) calendar days after the date of service of this Order, and any replies thereto shall be filed no later than seven (7) calendar days thereafter. All comments and replies shall be served on all parties named in ordering paragraph 4 below;
3. In the event no comments are filed, all further procedural steps shall be deemed waived, and the Department will enter an order, subject to the disapproval of the President pursuant

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<sup>2</sup> To the extent necessary, by this Order the Department also relieves Air India of any further reporting requirement under 49 U.S.C. § 41708(b).

<sup>3</sup> Section 41304(a) provides, in pertinent part, that “[a]fter notice and an opportunity for a hearing, the Secretary may amend, modify, suspend, or revoke the permit if the Secretary finds that action to be in the public interest.” Section 41305(b) provides that “[t]he Secretary may impose terms for providing foreign air transportation under the permit that the Secretary finds may be required in the public interest.”

<sup>4</sup> On the same date that the Department issued Order 2019-4-16 proposing to amend Air India’s permit, the Department separately issued Order 2019-4-15 in Docket DOT-OST-2019-0066, imposing schedule filing requirements on Indian carriers pursuant to 14 CFR Part 213. We intend to address the matter of the Part 213 Order in a separate Order.

to 49 U.S.C. § 41307, that will make final our tentative findings and conclusions set forth in this Order,<sup>5</sup>

4. To the extent necessary, the Department also relieves the National Aviation Company of India Limited d/b/a Air India of any further reporting requirement under 49 U.S.C. § 41708(b) regarding its ground handling arrangements; and

5. We will serve this Order on the National Aviation Company of India Limited d/b/a Air India Air; Jet Airways (India) Ltd.; the Embassy of India in Washington, D.C.; the Indian Ministry of Civil Aviation; the Department of State; and the Federal Aviation Administration.

By:

**JOEL SZABAT**  
Assistant Secretary  
Aviation and International Affairs

(SEAL)

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<http://www.regulations.gov>*

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<sup>5</sup> Since provision is made for the filing of comments on the tentative decision in this Order, petitions for reconsideration of that portion of the Order will not be entertained.

## Appendix

Issued by  
Order



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

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**PERMIT TO FOREIGN AIR CARRIER**  
(as amended)  
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**NATIONAL AVIATION COMPANY OF INDIA LIMITED, D/B/A AIR INDIA**

A Foreign Air Carrier of India

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 India, via India and intermediate points,  
to a point or points in the United States and beyond**

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

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 India 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 bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Government of India (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 India in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United

States and India. 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 India become parties.

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

By:

**JOEL SZABAT**  
Assistant Secretary  
Aviation and International Affairs

(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 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.

12/2007