



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

Issued by the Department of Transportation on June 17, 2020

NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2018-0059

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **CHALLENGE AIRLINES (BE) S.A.**¹

Date Filed: June 12, 2020, as supplemented June 16, 2020

Relief requested: 1) Issuance of foreign air carrier permit under 49 USC § 41301, and 2) reissuance and amendment of exemption authority under 49 USC § 40109, to the next necessary to permit the applicant to engage in, in its new name of Challenge Airlines (BE) S.A., the foreign air transportation previously granted to ACE Belgium Freighters S.A. by Order 2019-5-4,² as specified immediately below:

- Foreign scheduled and charter air transportation of 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 property and mail between any point or points in the United States and any point or points in any member of the European Common Area;
- Foreign scheduled and charter air transportation of cargo between the United States and any point or points;
- Other charters pursuant to the prior approval requirements set forth in Part 212 of the Department's Economic Regulations; and
- Transportation authorized by any additional route rights made available to European Union carriers in the future.

Applicant representatives: Evelyn D. Sahr, Drew M. Derco & Alexander T. Marriott, 202-659-6600

DOT analyst: Robert J. Finamore, 202-366-2405

Responsive pleadings: None.

DISPOSITION

Action: Approved request for amendment and reissuance of exemption authority; request for issuance of permit authority deferred.³

Action date: June 17, 2020⁴

¹ The applicant, formerly known as ACE Belgium Freighters S.A., states that its instant application pertains solely to a change of corporate name to Challenge Airlines (BE) S.A. and does not comprise a substantial change in ownership, as it will not have any impact on the airline's operations, ownership or management. The applicant further states that, pursuant to 14 CFR §215.3, Challenge Airlines (BE) S.A. may use "minor variations in the use of this name" to market its services, which would include "Challenge" and "Challenge Airlines."

² Order 2019-5-4 was issued in the instant Docket on May 2, 2019. See list of rights previously granted to ACE Belgium Freighters S.A. as specified immediately below in text.

³ We will act separately on the applicant's request for issuance of its permit.

⁴ The Department is acting on the exemption amendment and reissuance request of the applicant prior to the expiration of the 15-day answer period with the consent of all parties served.

Effective dates of authority granted: June 17, 2020, through June 17, 2022.

Basis for approval: U.S.-EU Air Transport Agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of our standard exemption conditions (attached).

Special conditions/Remarks: With regard to the authority granted here to conduct transportation authorized by any additional route rights made available to European Union carriers in the future, we are requiring Challenge Airlines (BE) S.A., before it commences any new service under this authority, to provide us, in Docket DOT-OST-2018-0059, with evidence that it holds a homeland license for that new service, unless it has already provided such evidence.

Action taken by: Benjamin J. Taylor, Acting Director, Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Dockets. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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<http://www.regulations.gov>

Foreign Air Carrier Exemption 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);
- (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; and
- (12) 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 exemption remains in effect, to which the United States and the holder's homeland are or shall become parties.

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.