

4233  
QA

01-15-11-1

BEFORE THE  
**DEPARTMENT OF TRANSPORTATION**  
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION  
1993 APR 27 PM 2:40  
DOCKET SECTION

087-95-595-1

-----  
Application of

COMPAGNIE NATIONALE AIR FRANCE

Docket

under Section 416 of the Federal Aviation  
Act of 1958, as amended, for an exemption  
-----

**48778**

APPLICATION OF AIR FRANCE FOR EXEMPTION

**Communications** in response to this document should be sent to:

Bernard Morel  
Vice President and  
General Manager, USA  
Air France  
888 Seventh Avenue  
New York, NY 10106

V. Michael **Straus**  
Suite 335  
1001 Connecticut Ave., N.W.  
Washington, D.C. 20036-5544  
  
Telephone: (202) 785-2242  
Counsel for Air France

April 27, 1993

7pp

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

-----  
Application of

**COMPAGNIE NATIONALE AIR FRANCE**

Docket

under Section 416 of the Federal Aviation  
Act of 1958, as amended, for an exemption  
-----

APPLICATION OF AIR FRANCE FOR EXEMPTION

**Compagnie** Nationale Air France hereby respectfully applies for an exemption, pursuant to section 416 of the Federal Aviation Act of 1958, as amended ("**Act**"), and Department regulations thereunder, to permit it to continue to operate under all existing scheduled and charter permits, exemptions, special authorizations, special authorities, interpretations and any and all other license or similar authorities or permissions which are outstanding, pending renewal or in effect prior to the expiration of the Air Transport Services Agreement ("**bilateral**") between the governments of France and the United **States**.<sup>1/</sup>

---

1/ Air France has several pending applications for renewal of authorities (including exemptions), upon which the Department has yet to act. Each of those applications contains the statement required, that Air France intends to continue operating under the Administrative Procedure Act ("**APA**"), pending action by the Department (also see footnote 6 herein). It is the position of Air France that **those** applications and **APA** statements are sufficient to continue its operations under the expiring/expired authorities, subsequent to the expiration of the bilateral. Nevertheless, in an effort to make the burden on the Department somewhat less, Air France is hereby re-applying, in omnibus fashion, for renewal. It should be noted, however, that such re-application does not waive the position of Air France that its applications are on file and pending. Air France, thereby, wishes to preserve its timely filing of those applications.

In support hereof, Air France alleges as follows:

The phrases in the Air **France** authorities which raise the apparent necessity for this exemption application **and its companion** permit application **are:**

This permit shall be effective on . . . . Unless otherwise terminated at an earlier date pursuant to the terms of **any** applicable treaty.... this permit shall terminate . . . . (3) upon the termination or expiration of the Air Transport Services Agreement between the Government of the United States and the Government of France.... Provided, however, That clause (3) of this **paragraph** shall not apply if, prior to the occurrence of the event specified in clause **(3)**, the operation of the foreign air transportation herein **becomes** the subject of **any** treaty...to which the United States and France are or shall become parties...."

**and** in other, later documents which grant various forms of authority,

Except to the extent exempted or waived, this authority is subject to the terms, conditions and limitations indicated:  
...**Holder's** foreign air carrier **permit.**<sup>3/</sup>

As the Department recognizes, the bilateral is about to expire. This will occur, despite the diligent efforts on **each** side, seeking to reach **a** resolution between the governments involved. At parting at the end of the last round of consultations held in Paris on April 14, 1993, the representatives of each government recognized that the gap between **each side's** position **was** such that it could not be overcome in the remaining time before expiration of the bilateral. Nevertheless, the French Government has already made provision for the smooth operation of U.S.-flag carriers' existing services.

---

**2/** Order 76-2-25, which is the basic Air France foreign air carrier permit, dated January 7, 1976, finalized on reconsideration on October 21, 1976 by Order 76-10-95.

**3/** This language is found in all Notices of Action Taken and when those notices are codified by Department orders, those orders (e.g., Order 93-3-3, dated March 2, 1993) have the following or similar language: "**The** authority is subject to the conditions of Air France's foreign air carrier permit (Order 76-2-25)."

Reciprocally, Air France wishes to have its current authorities, both scheduled and charter as well as wet lease, in place, when the bilateral expires. Rather than await an emergency situation, Air France is applying herein, and in a foreign air carrier permit application, for continuation of its already-granted authorities, pending action and pending renewal by the Department.

Air France envisions this **as a relatively simple process** and is ready to cooperate with the Department, to make the process efficient. In order to facilitate the process, Air France has listed in Appendix A hereto the authorities of various form, which it believes are in question. If the Department has knowledge of any others, **Air France** hereby requests that the Department include them in this application by this reference thereto.!

Air France believes that this method will have minimal impact on the Department's crowded docket and will provide notice, in one document, of exactly what **Air France seeks.**<sup>5/</sup> It will, furthermore, be in the public interest, since it will provide for the smooth continuation of the Air France services already established and in operation. No U.S.-flag carrier will be harmed by the grant of this application, since it will simply continue the status **quo**. This application is, furthermore, supported by reciprocity and comity, in that the French Government has already made provision **for** the smooth continuation of existing U.S.-flag services.

Air France requests that this exemption be granted **for** the maximum term under the Department's policy and requests that the period of exemption **be** five years. This will provide for minimal processing by the Department, whose docket is crowded, **as** evidenced **by** the periods between Notices of Action Taken and final orders, as well **as** all **of** the pending Air France applications listed in Appendix A hereto.

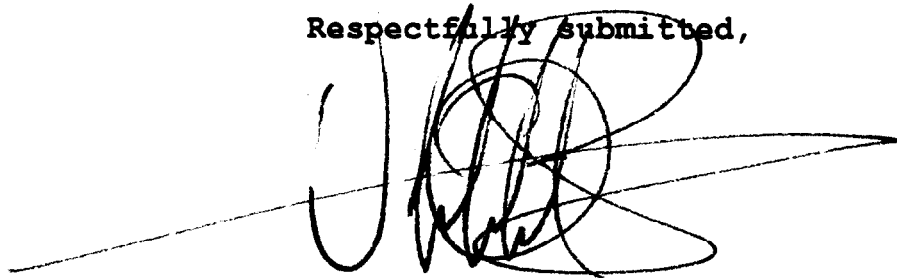
---

**4/** Over the years, there have been certain interpretations of the Air France passenger and cargo authorities and flexibility which Air France also wishes to continue. While they are not numerous, Air France has no ongoing record of them and simply wishes to operate each authority as it has been interpreted and operated.

**5/** Air France, on behalf of the Air France Group, seeks herein also the continuing effectiveness of the authorities of its subsidiaries. At this time, it believes that the sole license which is concerned is the pending basic Air Charter (SAFA) charter foreign air carrier permit application and the current exemption.

WHEREFORE, Air France respectfully applies for an exemption of five years duration, to continue to operate the authorities listed in Appendix A hereto, inclusive of scheduled, charter, wet lease and special authorities, for itself and Air Charter (**SAFA**) and for whatever other, similar relief the Department deems necessary under the circumstances, consistent **herewith.**<sup>6/</sup>

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

---

V. Michael Straus  
Counsel for Air France

Washington, D.C.  
April 27, 1993

---

<sup>6/</sup> Air France intends to continue operations of all authorities in question, as permitted by the Administrative Procedure Act, 5 U.S.C. Sec. 558 (c), as implemented by Part 377 of the Department's regulations, pending action on this application.

CERTIFICATE OF SERVICE

I hereby certify that I have this 27TH day of April 1993, served the foregoing application on the following parties, by mail, postage prepaid and properly addressed:

Donald L. Flexner  
Crowell & Moring  
1001 Pennsylvania Av. N.W.  
Washington, DC 20004

John E. Gillick  
Winthrop, Stimson, Putnam  
& Roberts  
Suite 1200  
1133 Connecticut Av., N.W.  
Washington, DC 20036

Elliott M. Seiden  
Vice President, Law and  
Government Affairs  
Northwest Airlines  
901 15th St., N.W.  
Suite 500  
Washington, DC 20005

Raymond J. Rasenberger  
Zuckert, Scoutt &  
Rasenberger  
888 17th St., N.W.  
Washington, DC 20006

R. Bruce Keiner  
Crowell 6 Moring  
1001 Pennsylvania Av. N.W.  
Washington, DC 20004

Paul C. Jasinski  
Associate General Counsel  
Trans World Airlines, Inc.  
100 South Bedford Road  
Mt. Kisco, NY 10549

Michael J. Roberts  
Verner, Liipfert,  
Bernhard,  
McPherson and Hand,  
Chartered  
901 15th St., N.W.  
Suite 700  
Washington, DC 20005

Robert E. Cohn  
Shaw, Pittman, Potts &  
Trowbridge  
2300 N St., N.W.  
Washington, DC 20037

Frank Cotter  
Assistant General Counsel  
USAir  
2345 Crystal Drive  
8th Floor  
Arlington, VA 22227

John Spiegel  
Office of Aviation  
Negotiations  
State Department  
2201 C St., N.W.  
Room 5531  
Washington, DC 20520

Carl B. Nelson, Jr.  
Associate General Counsel  
American Airlines, Inc.  
1101 17th St., N.W. #600  
Washington, DC 20036

  
James J. Morse

LIST OF AIR FRANCE GROUP AUTHORITIES GRANTED BY DOT

<u>ORDER/DOCUMENT</u>	<u>BRIEF DESCRIPTION</u>
Order 93-3-3	Renewal of Memorandum of Consultations authority (renewal application pending)
Notice of Action Taken <b>1/28/93</b>	Exemption granting Air France authority to operate UTA authorities (expires <b>12/31/93</b> )
Order 92-9-2	Fairbanks stopover exemption (renewal application pending)
Statement of Authorization <b>8/7/92</b>	Air Canada blocked space (expires <b>8/20/93</b> )
Statement of Authorization <b>2/21/91</b>	Air France supplies aircraft and crews (wet lease) to Air Charter (SAFA) (expires <b>2/21/94</b> )
Order 90-12-S	San Juan-Paris exemption (renewal application pending)
<b>Order</b> 90-12-S	Comingle all-cargo traffic France/Canada/United States (renewal application pending)
Statement of Authorization <b>7/22/85</b>	Intermodal cargo authority
Orders 82-2-92 81-8-135	Alaskan stopover authority which also permits emergency transfer of <b>cargo</b> and passengers (renewal application pending)
Order 76-2-25	Basic foreign air carrier permit
<u>Air Charter (SAFA)</u>	
Order 91-7-33	Air Charter's exemption for charter operations between France and the United States (both <b>an</b> exemption renewal application and a permit application pending)