



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

Order -2020-7-7

Issued by the Department of Transportation
on the 10th day of July, 2020

Served: July 10, 2020

Application of

ZIPAIR TOKYO INC.

for an exemption under 49 U.S.C. §40109 and foreign air
carrier permit under 49 U.S.C. §41301

Docket DOT-OST-2020-0045

ORDER GRANTING EXEMPTION AND TO SHOW CAUSE

Summary

By this order we (1) grant the application of the referenced foreign air carrier for an exemption under 49 U.S.C. §40109, subject to conditions;¹ and (2) tentatively find that it is in the public interest to grant the applicant a foreign air carrier permit attached as Appendix B to this order.

Background

On August 23, 2005, the Department issued a Notice, in Docket DOT-OST-2005-22228, announcing several steps designed to streamline our regulatory procedures for licensing U.S. and foreign air carriers. Among other things, the Notice stated that:

Assuming, based on the record and on the public interest/public convenience and necessity elements germane to our licensing decisions, that we were in a position to act favorably, we would proceed to issue a single order (1) granting the exemption request for whatever duration we would normally have imposed, or until certificate/permit authority becomes effective, whichever is shorter, and (2) tentatively deciding (*i.e.*, show-cause) to award a corresponding certificate (or permit), again for the standard duration we would normally have imposed (such as, in the case of certificates, five years for limited-entry markets, indefinite for open-entry markets, and in the case of permits, five years for comity and reciprocity regimes, indefinite for agreement regimes).

¹ The conditions are attached as Appendix A.

Our action in this Order serves to implement these streamlined regulatory procedures for the application involved in this proceeding.

Application

By application filed January April 20, 2020 (as supplemented April 23, 2020), ZIPAIR Tokyo Inc. (ZIPAIR), a foreign air carrier of Japan, requests an exemption under 49 U.S.C. §40109 and a foreign air carrier permit under 49 U.S.C. §41301, to engage in: 1) scheduled foreign air transportation of persons, property, and mail between any point or points in Asia behind Japan, via any point or points in Japan, and a point or points in the United States; and 2) charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

The applicant provided evidentiary materials required by 14 CFR Part 211 of our regulations to support its requests for authority.

No answers were filed to the application.

Decision

We have decided, under assigned authority and consistent with our August 23, 2005 Notice referenced above, to grant the applicant's request for exemption authority,² subject to conditions, and tentatively to grant, subject to show-cause procedures, its request for a foreign air carrier permit, also subject to conditions.

With respect to the applicant's request for exemption authority, we find that grant of this authority is consistent with the public interest; that the applicant has demonstrated, based on the record, that it is financially and operationally qualified to perform the services authorized,³ and that it is substantially owned and effectively controlled by citizens of its claimed homeland.⁴

The authority sought by the applicant is consistent with 2010 MOU. We therefore find that grant of the requested exemption authority, for a two-year term, or until the requested permit authority becomes effective, whichever occurs earlier, is warranted.

We also note that the applicant is properly licensed by its homeland to perform the proposed services. In addition, the Federal Aviation Administration has advised us that it knew of no

² We are granting the applicant the full scope of authority available to it as provided for in the 2010 Memorandum of Understanding between the United States and Japan (2010 MOU).

³ The applicant has requested confidential treatment of: 1) the domiciles of its directors and senior officers; and 2) its financial information and traffic/ financial forecasts, under the provisions of 14 CFR §302.12. Good cause having been shown, we will grant this request.

⁴ The record indicates that ZIPAIR is a wholly owned subsidiary of Japan Air Lines Co. Ltd. (JAL), a foreign air carrier of Japan that is substantially owned and effectively controlled by citizens of Japan. *See* Order 1998-4-17. The record here also indicates that JAL's major shareholders are Japanese entities; the only entities that own more than 5% of JAL's stock are The Master Trust Bank of Japan, Ltd. (trust account) and, if its trust accounts are aggregated, Japan Trustee Services Bank, Ltd. (trust accounts). The record further indicates that ZIPAIR's President, Directors, and other key management personnel are all citizens of Japan.

reason why we should act unfavorably on the applicant's requests. We have verified the applicant's compliance with 14 CFR Parts 203 (Warsaw liability waiver), and 205 (insurance requirements).

With respect to the charter authority we are granting the applicant, we note that the 2010 MOU no longer places numerical limitations on the number of charter flights that may be operated by carriers of both countries between the United States and Japan, except for charters to and from Tokyo's Haneda Airport (Haneda). Accordingly, pursuant to 14 CFR §212.9(d), ZIPAIR shall not perform any charter flights between Tokyo's Haneda airport and the United States unless the Department has granted a statement of authorization for such operations. In the event that the numerical limitation for charter flights between Haneda and the United States is eliminated, ZIPAIR will no longer be subject to this prior approval requirement, without further action by the Department. Finally, in the conduct of the services authorized and tentatively authorized herein, ZIPAIR must adhere to the provisions of the 2010 MOU.

Tentative Findings and Conclusions—Foreign Air Carrier Permit Application

We tentatively find and conclude that the public interest warrants granting the applicant a foreign air carrier permit, in the form attached as Appendix B, subject to the conditions attached. In particular, we tentatively find and conclude that the factors which support our grant of exemption authority to the applicant also warrant granting the applicant the foreign air carrier permit it seeks.

In view of the foregoing and all facts of record, we tentatively find and conclude that:

1. It is in the public interest to issue the applicant a foreign air carrier permit in the form attached;
2. The applicant is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of Title 49 of the U.S. Code, and to our rules, regulations, and requirements;
3. The applicant is substantially owned and effectively controlled by citizens of its claimed homeland;
4. 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;
5. 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 14 CFR §313.4(a)(1) of our regulations;⁵

⁵ 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.

6. The public interest does not require an oral evidentiary hearing on the application; and
7. Our action with respect to this foreign air carrier permit should, unless disapproved by the President of the United States under §41307 of Title 49 of the U.S. Code, 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 this portion of the Department's decision under that section, whichever occurs earlier.

In view of the above, and acting under authority assigned by the Department in its regulations, 14 CFR Part 385, we find that (1) our actions are consistent with Department policy; and (2) with respect to the exemption authority we are conferring on the applicant, the applicant is qualified to perform those operations.

ACCORDINGLY,

1. We grant the request of ZIPAIR Tokyo Inc. for an exemption under 49 U.S.C. §40109 to permit it to engage in 1) scheduled foreign air transportation of persons, property, and mail from points behind Japan, via Japan and intermediate points, to a point or points in the United States and beyond; 2) charter foreign air transportation of persons, property, and mail between any point or points in Japan and any point or points in the United States, and between any point or points in the United States and any point or points in any third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to or from Japan for the purpose of carrying local traffic to or from Japan; and 3) other charters pursuant to Part 212 of the Department's regulations;
2. The exercise of the privileges granted in paragraph one above is subject to compliance by ZIPAIR Tokyo Inc. with the conditions listed in Appendix A, and subject to the additional conditions that (1) in the conduct of the services authorized herein, ZIPAIR Tokyo Inc. must adhere to the provisions of the 2010 U.S.-Japan Memorandum of Understanding; and (2) while Haneda-U.S. charters remain numerically limited under the 2010 U.S.-Japan Memorandum of Understanding, ZIPAIR Tokyo Inc., in accordance with 14 CFR §212.9(d), shall not perform any charter flights between Tokyo's Haneda airport and the United States unless specific authority in the form of a statement of authorization for such charter(s) has been granted by the Department;
3. We grant the request of ZIPAIR Tokyo Inc. for confidential treatment of 1) the domiciles of its directors and senior officers; and 2) its financial information and traffic/ financial forecasts, consistent with the provisions of 14 CFR §302.12;
4. Our action granting the exemption authority described herein is effective immediately, for a period of two years from the issue date of this order, or until the attached permit becomes effective, whichever is earlier;
5. We may amend, modify, or revoke the exemption authority set forth herein at our discretion at any time and without hearing;

6. To the extent not acted upon above, we dismiss the applicant's request for exemption authority in Docket DOT-OST-2020-0045;
7. With respect to the applicant's request for a foreign air carrier permit in this proceeding, we direct all interested persons to show cause why our tentative decision on that application, set forth above, should not be made final;
8. Any interested person objecting to the issuance of an order making final our tentative findings and conclusions with respect to the applicant's request for a foreign air carrier permit shall, no later than twenty-one (21) calendar days after the date of service of this order, file with the Department and serve on the parties to this proceeding, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence to be relied upon in support of the objections; if objections are filed, answers to objections are due no later than seven (7) calendar days thereafter;
9. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action;
10. In the event no objections are filed, all further procedural steps shall be deemed waived, and the Department will enter an order which will (subject to Presidential review under §41307 of Title 49 of the U.S. Code) make final our tentative findings and conclusions set forth in this order; and
11. We will serve a copy of this order on ZIPAIR Tokyo Inc., the Embassy of Japan in Washington, D.C., the Federal Aviation Administration, and the U.S. Department of State.

Persons entitled to petition the Department for review of this order under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this order. Our action with respect to the applicant's request for exemption authority under 49 U.S.C. §40109 is effective immediately, and the filing of a petition for review will not alter such effectiveness.

By:

ESTA M. ROSENBERG
Acting Director
Office of International Aviation

(SEAL)

Appendices

An electronic version of this document is available on the World Wide Web at:
<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 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);
- (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.



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

PERMIT TO FOREIGN AIR CARRIER

ZIPAIR Tokyo Inc.

A Foreign Air Carrier of Japan

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 Japan, via Japan and intermediate points, to a point or points in the United States and beyond; and

Charter foreign air transportation of persons, property, and mail between any point or points in Japan and any point or points in the United States, and 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, with or without a change in aircraft, that includes service to or from Japan for the purpose of carrying local traffic to or from Japan.

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 the holder's homeland are or shall become parties.

This permit shall be effective on July 10, 2020. 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 Japan (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 Japan in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and Japan. 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 Japan become parties.

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

By:

ESTA M. ROSENBERG
Acting Director
Office of International Aviation

(SEAL)

Foreign Air Carrier Permit 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, 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.