

Order 2024-9-13
Served: September 17, 2024



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

Issued by the Department of Transportation
on the 17th day of September, 2024

Joint Application of

**ALASKA AIRLINES, INC.
and
HAWAIIAN AIRLINES, INC.**

Docket DOT-OST-2024-0084

for an exemption from the provisions of 49 U.S.C.
§ 41105 pursuant to 49 U.S.C. § 40109

ORDER GRANTING REQUEST FOR AN EXEMPTION

By this Order, the U.S. Department of Transportation (the “Department” or “DOT”) grants the joint request for an exemption filed by Alaska Airlines, Inc. (“Alaska”) and Hawaiian Airlines, Inc. (“Hawaiian”) (together, the “Joint Applicants”) from the provisions of section 41105 of Title 49 of the United States Code (the “Statute”), to the extent necessary to allow the Joint Applicants to operate under the common ownership of Alaska pending the Department’s action on a contemporaneously filed *de facto* transfer application, subject to certain conditions.

Background

On December 3, 2023, in accordance with the provisions of section 204.5 (14 CFR § 204.5) requiring carriers to notify the Department of substantial changes affecting their ownership and operations, Alaska and Hawaiian notified the Department that Alaska Air Group, Inc. (“AAG”), the parent company of Alaska and Horizon Air Industries, Inc. (“Horizon Air”), had entered into an Agreement and Plan of Merger to acquire all of the capital stock of Hawaiian Holdings, Inc. (“Hawaiian Holdings”), the parent company of Hawaiian.

On July 15, 2024, Alaska and Hawaiian filed the subject application requesting an exemption from section 41105. The Department has determined that a stock acquisition resulting in common ownership and control of two or more air carriers having international route authority constitutes a *de facto* certificate transfer subject to the Statute.¹ The exemption requested here pursuant to 49

¹ See Order 2017-6-13, Docket DOT-OST-2016-0099; Order 2014-11-13, Docket DOT-OST-2013-0082.

U.S.C. § 40109 would allow the Joint Applicants to operate under common ownership pending the Department's action on a contemporaneously filed *de facto* transfer application.²

In support of this request, the Joint Applicants state that, upon consummation of the transaction, Alaska and Hawaiian will remain separate entities and will operate as separate brands. They further contend that the grant of the exemption request would be consistent with the past practice of the Department.³ The Joint Applicants further maintain that, not only has each air carrier been found fit repeatedly by the Department, but that approval of the exemption “will enable continuity of Hawaiian's international operations for its customers and employees upon the Transaction's closing and pending the Department's subsequent decision on the Route Transfer Application.”⁴

Alaska, headquartered in Seattle, Washington, is incorporated under the laws of the State of Alaska, and is a wholly owned subsidiary of AAG, a Delaware corporation. Alaska holds certificates of public convenience and necessity authorizing interstate and foreign scheduled air transportation of persons, property, and mail, as well as various certificates, exemptions, and other economic authorities from the Department authorizing foreign scheduled air transportation.⁵ The air carrier provides passenger air transportation in the United States and to six countries, operating an all-Boeing 737 fleet with 124-178 passenger seats.

AAG also maintains a wholly-owned subsidiary in Horizon Air, which is incorporated in Alaska and headquartered in Seattle, Washington. Horizon Air holds certificate authority authorizing it to engage in both interstate⁶ and foreign scheduled air transportation of persons, property, and mail, as well as exemption authority authorizing the air carrier to engage in foreign air transportation.⁷

Hawaiian, headquartered in Honolulu, Hawaii, is incorporated under the laws of the State of Delaware, and is a wholly-owned subsidiary of Hawaiian Holdings, a Delaware corporation. Hawaiian holds certificates of public convenience and necessity authorizing interstate and foreign scheduled air transportation of persons, property, and mail, as well as various certificates, exemptions, and other economic authorities from the Department authorizing foreign scheduled air transportation.⁸ The air carrier provides passenger air transportation in the United States and

² On July 15, 2024, concurrent with their exemption application in Docket DOT-OST-2024-0084, the Joint Applicants filed an application in Docket DOT-OST-2024-0085 for the Department's approval under 49 U.S.C. § 41105 of the *de facto* transfer of the economic authorities held by Hawaiian to Hawaiian under the ownership of Alaska. No answers were filed.

³ See Order 2016-12-6, Docket DOT-OST-2016-0100; Order 2013-11-8, Docket DOT-OST-2013-0081; and Order 2011-4-22, Docket DOT-OST-2011-0052.

⁴ See Joint Application of Alaska Airlines, Inc. and Hawaiian Airlines, Inc. for an Exemption, at 7.

⁵ See Joint Application of Alaska Airlines, Inc. and Hawaiian Airlines, Inc. for Approval of the Transfer of International Route Authorities, in Docket DOT-OST-2024-0085, Exhibit AS/HA-2.

⁶ See Order 98-7-6, issued July 9, 1998 (Docket DOT-OST-1998-4024).

⁷ See Order 96-9-17 (Route 693), issued September 6, 1996 (Docket DOT-OST-1995-634); see also NOAT dated August 10, 2016, in Docket DOT-OST-2016-0150.

⁸ See Joint Application of Alaska Airlines, Inc. and Hawaiian Airlines, Inc. for Approval of the Transfer of International Route Authorities, in Docket DOT-OST-2024-0085, Exhibit AS/HA-1.

to six countries, operating a fleet of Boeing 717, Boeing 787, Airbus A330, and Airbus A321neo aircraft with 123-300 passenger seats.

No answers opposing the Joint Applicants' exemption request were filed.⁹

Decision

Pending final action on the Joint Applicants' *de facto* transfer application, the Department will grant the Joint Applicants' request for an exemption from the provisions of section 41105. The Joint Applicants correctly note that our grant of exemptions in cases such as this is contingent upon the air carriers involved, in this case Alaska, inclusive of its subsidiary, Horizon Air, and Hawaiian, remaining separate and independently operated corporations until a ruling has been made in the underlying *de facto* transfer case. As long as Alaska and Hawaiian remain separate and independently operated entities, should we disapprove the proposed transfer either in whole or in part, AAG could divest itself of Hawaiian Holdings. In addition, AAG and Hawaiian Holdings have committed to take certain actions in the event that DOT approves the requested exemption.¹⁰ On the basis of the record before it, DOT determines that the requested exemption is consistent with the public interest as required by 49 U.S.C. § 40109. The Joint Applicants should not construe our grant of this exemption as a decision to approve the related *de facto* transfer application or any aspect of that application.

This Order is issued under authority redelegated by the Under Secretary of Transportation for Policy in 49 CFR § 1.25a(b)(6)(ii)(A) to the Assistant Secretary for Aviation and International Affairs.

ACCORDINGLY,

1. The Department exempts Alaska Airlines, Inc. and Hawaiian Airlines, Inc. from the provisions of 49 U.S.C. § 41105, to the extent necessary to allow the Joint Applicants to operate under the common ownership of Alaska Air Group, Inc., subject to the condition that Alaska Airlines, Inc., Horizon Air Industries, Inc., and Hawaiian Airlines, Inc. continue to be maintained and operated as separate entities while the Department's final action on the *de facto* transfer application in Docket DOT-OST-2024-0085 is pending.
2. We will serve a copy of this Order on the persons listed in Attachment A.

By:

Carol A. (Annie) Petsonk
Assistant Secretary
for Aviation and International Affairs

⁹ Several letters of support were filed in Docket DOT-OST-2024-0085 by various parties, including the Air Line Pilots Association, the Association of Flight Attendants, the Aircraft Mechanics Fraternal Organization, the International Association of Machinists, and the Governors of Hawaii, Oregon, and Washington.

¹⁰ See Agreement Regarding Merger Between Alaska Air Group, Inc. and Hawaiian Holdings, Inc. (Sept. 15, 2024), Docket DOT-OST-2024-0084.

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