

Served: April 21, 1998



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

Issued by the Department of Transportation  
on the 2<sup>nd</sup> day of April, 1998

Applications of

**ALL NIPPON AIRWAYS CO., LTD.**  
**JAPAN AIRLINES COMPANY, LTD.**  
**NIPPON CARGO AIRLINES CO., LTD.**

Dockets     OST-98-3464  
                  OST-98-3484  
                  OST-98-3475

for foreign air carrier permits under 49 U.S.C. § 41301

**ORDER ISSUING FOREIGN AIR CARRIER PERMITS**

The captioned applicants seek foreign air carrier permits under § 41301 of Title 49 of the U.S. Code in the indicated dockets. The applications are fully described in attachments to this order. Because the public interest bases for granting these applications are clear, the applicants' fitness is established by evidence of record and unchallenged, and there are no significant ownership and control questions, it is appropriate to use this simplified, Subpart Q procedure to grant the requested authority.<sup>1</sup>

Each applicant has filed and perfected its application as required by 14 CFR Part 211 and served it as required by 14 CFR 302.1705. Each application was summarized in the Federal Register, as cited in its descriptive attachment, and in the Department's published weekly list of applications filed. These notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority.

**1998 Memorandum of Consultations**

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<sup>1</sup> 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

On January 30, 1998, the United States and Japan agreed to authorize new services in the U.S.-Japan market.<sup>2</sup> The MOC provides that for combination services, the two Japanese “incumbent airlines”--All Nippon and Japan Airlines--may immediately operate services from points behind Japan via Japan and intermediate points to a point or points in the United States and beyond, without limitation to the number of flights that may be operated. Similarly, for all-cargo services, the MOC provides that the two Japanese “incumbent airlines”--Nippon Cargo Airlines and Japan Airlines-- may immediately operate services from points behind Japan via Japan and intermediate points to a point or points in the United States and beyond, without limitation on frequency, capacity, or traffic composition.

### **Applications**

On February 10, 12 and 13, 1998, All Nippon Airways Co. Ltd. (ANA); Nippon Cargo Airlines Co., Ltd. (NCA); and Japan Airlines Company, Ltd., respectively, filed applications under the statute seeking amended foreign air carrier permits consistent with recent bilateral aviation undertakings of the United States and Japan.<sup>3</sup>

### **Answers and Replies**

On February 20, 1998, Northwest Airlines, Inc. filed a consolidated answer to the subject permit applications stating that while we should “expeditiously grant” the incumbent carriers authority to which they are entitled under the 1998 MOC, grant of such authority should include a statement “clarifying that the holder must conduct its operations in accordance with all relevant bilateral agreements between the U.S. or Japan and a third country.”<sup>4</sup>

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<sup>2</sup> On that date, delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understandings regarding the elements to be included in a Memorandum of Understanding (MOU). The delegations also agreed that the provisions of those understandings would be provisionally in effect upon signing of the MOC, pending conclusion of an interim agreement. The MOU was signed March 14, 1998, by Secretary Slater and Japanese Transport Minister Fujii, which also reiterated its provisional effectiveness.

<sup>3</sup> All Nippon Airways and Nippon Cargo Airlines furthermore each requested that we terminate the requirement that it obtain prior Department approval before operating any Third or Fourth Freedom charter flights.

<sup>4</sup> In addition to the three docketed applications at issue here, Northwest’s consolidated answer was filed in response to various other requests by U.S. and Japanese carriers for authority under the 1998 MOC. See Dockets OST-98-3435 & 3436 (Federal Express Corporation), OST-98-3449 (Japan Airlines), and OST-96-1131 (United Air Lines, Inc.).

No additional responsive pleadings were filed.

### **Ownership and Control**

Each applicant has submitted evidence to establish that it is substantially owned and effectively controlled by nationals of its claimed homeland.

### **Decision**

We have decided to issue each of the named foreign air carriers of Japan amended foreign air carrier permits consistent with the bilateral aviation undertakings of the United States and Japan. We find and conclude that it is in the public interest to issue an amended foreign air carrier permit to each applicant.

### **Operational and Financial Fitness**

Each carrier has demonstrated that it is financially, managerially, and operationally fit to perform the foreign air transportation proposed. The applicants already have operated successfully to this country under previously issued authority. They have furnished financial information which indicates that they can operate without jeopardizing passenger or shipper funds.

We have reviewed each applicant's evidence of managerial/operational fitness, and have consulted the Federal Aviation Administration with respect to each. Each applicant has shown by its evidence, its history of operations to this country, and other officially noticeable information, that it has competent management and can operate safely. Each holds effective authority from the Government of Japan for the operations proposed and states that it has had no safety or tariff violations in the preceding five years. The FAA has advised us that each applicant conducts its operations to this country in accordance with Part 129 of the Federal Aviation Regulations.<sup>5</sup>

### **Remaining Issues**

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<sup>5</sup> A copy of the FAA's February 13, 1998, memorandum has been placed in Dockets OST-98-3464, OST-98-3484 and OST-98-3475.

With respect to the matter raised by Northwest, we have routinely conditioned grants of foreign air carrier authority of the type involved here so as to make the awarded authority expressly subject to the bilateral agreement between the United States and the foreign carrier's homeland. We are following that approach here. We found no convincing reason in Northwest's answer to go beyond our standard condition in this instance.

All Nippon Airways and Nippon Cargo Airlines requested that we remove the requirement that each obtain Department approval before operating any Third and Fourth Freedom charter flights. Each made the request in a footnote, and neither included any supporting argument for the proposed change. Furthermore, certain U.S. carriers with a history of U.S.-Japan charter operations were not included in the applicants' service list. Against this background, we have determined that this is not the appropriate forum to address the Third/Fourth Freedom prior approval issue.<sup>6</sup> There are currently seven foreign air carriers of Japan which hold effective Department authority to serve the United States, and we have imposed the charter prior approval requirement on each in separate orders.<sup>7</sup> We believe that the request to remove the charter prior approval condition would more properly be considered in a forum open to all the affected Japanese carriers and to all the various interested U.S. carriers. We would be prepared to entertain such a request from any of the Japanese carriers. In order to give all interested parties an opportunity to comment, the request should be served on all U.S. and Japanese carriers authorized to conduct charter services in the U.S.-Japan market.

### **Terms, Conditions and Limitations**

Each foreign air carrier permit is subject to the attached terms, conditions and limitations.

### **Findings and Conclusions**

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

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<sup>6</sup> Fifth Freedom charter flights are subject to prior approval under 14 CFR Part 212.

<sup>7</sup> See, for example, Order 87-11-10 (All Nippon Airways) and Order 81-5-44, as amended by Order 81-7-128 (Japan Airlines). Those orders remain in effect. In the case of Nippon Cargo Airlines, the charter prior approval requirement for Third and Fourth Freedom all-cargo charters is contained in NCA's current foreign air carrier permit (Order 90-4-4). We shall not include the requirement in NCA's reissued permit but shall instead reimpose it by this order, thereby putting NCA on the same formal regulatory footing as the other Japanese carriers and facilitating our subsequent review of this issue.

1. It is in the public interest to issue a foreign air carrier permit to each applicant in the form attached;
2. Each applicant is qualified and designated by its government under the applicable agreement;
3. Each applicant is fit, willing and able to perform properly the foreign air transportation described in its attached permit, and to conform to the provisions of the Act and to the Department's rules, regulations, and requirements;
4. The public interest requires that the exercise of the privileges granted by the attached permits be subject to the terms, conditions and limitations contained in and attached to those permits and to such others required by the public interest as the Department may prescribe;
5. Each applicant is substantially owned and effectively controlled by nationals of Japan;
6. The issuance of these permits does not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in subsection 313.4(a)(1) of the Department's Regulations;<sup>8</sup> and
7. The public interest does not require an oral evidentiary hearing on any of these applications.

**ACCORDINGLY,**

1. We issue, in the form attached, a foreign air carrier permit to each applicant;
2. We dismiss, without prejudice, the requests of All Nippon Airways and Nippon Cargo Airlines that we remove the requirement that each carrier obtain our prior approval before operating any Third or Fourth Freedom charter flight(s);
3. Nippon Cargo Airlines shall not perform any Third or Fourth Freedom charters unless specific authority in the form of a statement of authorization for such charter(s) has been granted by the Department;

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<sup>8</sup> Our finding is based on the fact that each permit issued will not result in a near-term increase in annual fuel consumption by the applicant in excess of 10 million gallons.

4. Nippon Cargo Airlines shall file applications for such statements of authorization required by ordering paragraph 3 at least 10 calendar days (or fewer subject to the provisions of section 212.5(d) (1) of our regulations) before the charters involved (under section 212.6(c), we need not submit denials of late-filed applications for Presidential review);

5. To the extent not granted, or dismissed, the applications and all motions and other requests in these dockets are denied;

6. Unless disapproved by the President of the United States under § 41307 of Title 49 of the U.S. Code, this order and the attached permits shall become effective on the 61st day after their 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 the Department's order under that section, whichever occurs earlier;<sup>9</sup> and

7. We will serve this order on All Nippon Airways Co., Ltd.; Japan Airlines Company, Ltd.; Nippon Cargo Airlines Co., Ltd.; Northwest Airlines, Inc.; the Ambassador of Japan in Washington, D.C.; the Department of States (Office of Aviation Negotiations) and the Federal Aviation Administration (San Francisco IFO).

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

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<sup>9</sup> This order was submitted for § 41307 review on April 2, 1998. On April 15, 1998, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

(SEAL)

*An electronic version of this document is available on the World Wide Web at  
<http://www.dms/general/orders/aviation.html>*

## SUMMARY

### FOREIGN AIR CARRIER PERMIT APPLICATION Docket OST-98-3464

#### **All Nippon Airways Co., Ltd.**

**Flag:** Japan

**Federal Register Notice:** 63 FR (9624), February 25, 1998

**Filing Date:** February 10, 1998

**Authority Sought:** Amend and reissue existing foreign air carrier permit, issued by Order 87-11-27, to engage in scheduled foreign air transportation of persons, property and mail consistent with the bilateral aviation undertakings of the United States and Japan.

**Pleadings:** Northwest Airlines, Inc. filed a consolidated answer, discussed in the body of the order. No further pleadings were filed.

**Public Interest:** On January 30, 1998, the United States and Japan signed a Memorandum of Consultations, with provisional effectiveness, providing for new services in the U.S.-Japan market.<sup>1/</sup> Among other things, the MOC provides that for combination services, the two Japanese "incumbent airlines"--All Nippon and Japan Airlines--may immediately operate services from points behind Japan via Japan and intermediate points to a point or points in the United States and beyond, without limitation to the number of flights that may be operated.

**Fitness:** All Nippon Airways (ANA) was founded in 1952 and is incorporated under the laws of Japan. Its most recent permit was issued by Order 87-11-27, which authorized ANA to conduct scheduled combination services between Tokyo and specified points in the United States; and charters subject to the Department's charter rules. ANA also holds exemption authority to conduct a number of Japan-U.S. services. By separate order we required ANA to obtain our prior approval for all Third and Fourth Freedom charter flights (see Order 87-11-10). Order 87-11-10 continues in effect.

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<sup>1/</sup> Delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understandings regarding the elements to be included in a Memorandum of Understanding. The provisions of those understandings were made provisionally effective upon signing of the MOC, pending conclusion of an interim agreement. The MOU was signed March 14, 1998, by Secretary Slater and Japanese Transport Minister Fujii, also with provisional effectiveness.



ANA holds appropriate licenses from its government and has had no safety violations or fatal accidents in the last five years. By Memorandum dated February 13, 1998, the FAA advised us that ANA conducts its operations to this country in accordance with Part 129 of the Federal Aviation Regulations.

ANA has experienced management and appears financially sound:

**Financial Indicators**

(\$ thousands)	<u>1997</u>	<u>1996</u>
year ending March 31		
Total Assets	8,641,822	10,975,551
Total Liabilities	7,104,567	9,177,897
Owner's Equity	1,537,255	1,797,654
Operating Profit or (Loss)	31,547	29,078

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

**Ownership and Control:** ANA is a publicly owned company wholly owned by citizens of Japan. As of 1997, ANA had over one hundred and thirty thousand stockholders with the largest two being Nagoya Railroad Co., Ltd. (6.68%) and Nippon Life Insurance Company (3.03%). All of ANA's directors and key management personnel are citizens of Japan.

Issued by:

Order 98-4-17

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

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**PERMIT TO FOREIGN AIR CARRIER**  
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**All Nippon Airways Co., Ltd.**

A Flag 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 as follows:

**Between any point or points behind Japan, via any point or points in Japan, and any intermediate point or points, and any point or points in the United States, and any point or points beyond.**

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

The holder shall not engage in scheduled or charter all-cargo services under the authority authorized above.

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 April 15, 1998. 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 April 15, 1998.

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder 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, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (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) 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, operate all flights to/from the United States via 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, 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 (formerly the Federal Aviation Act of 1958, as amended).(41301/40109) 12/96

## SUMMARY

### FOREIGN AIR CARRIER PERMIT APPLICATION Docket OST-98-3484

#### **Japan Airlines Company, Ltd.**

**Flag:** Japan

**Federal Register Notice:** 63 FR (9624), February 25, 1998

**Filing Date:** February 13, 1998

**Authority Sought:** Amend and reissue existing foreign air carrier permit, issued by Order 70-8-66, to engage in scheduled foreign air transportation of persons, property and mail, including all-cargo services, consistent with the bilateral aviation undertakings of the United States and Japan.

**Pleadings:** Northwest Airlines, Inc. filed a consolidated answer, discussed in the body of the order. No further pleadings were filed.

**Public Interest:** On January 30, 1998, the United States and Japan signed a Memorandum of Consultations, with provisional effectiveness, providing for new services in the U.S.-Japan market.<sup>1/</sup> The MOC provides that for combination services, Japan Airlines may immediately operate services from points behind Japan via Japan and intermediate points to a point or points in the United States and beyond, without limitation to the number of flights that may be operated. In addition, for all-cargo services, the MOC provides that the two Japanese “incumbent airlines”--Japan Airlines and Nippon Cargo Airlines--may immediately operate services from points behind Japan via Japan and intermediate points to a point or points in the United States and beyond, without limitation on frequency, capacity, or traffic composition.

**Fitness:** Japan Airlines (JAL) commenced U.S. operations in 1954 and has served the United States on a continuous basis for over forty years. Its most recent permit was issued by Order 70-8-66, which authorized JAL to conduct scheduled combination services between Japan and specified points in the United States; and charters subject to

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<sup>1/</sup> Delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understandings regarding the elements to be included in a Memorandum of Understanding. The provisions of those understandings were made provisionally effective upon signing of the MOC, pending conclusion of an interim agreement. The MOU was signed March 14, 1998, by Secretary Slater and Japanese Transport Minister Fujii, also with provisional effectiveness.

our charter rules. By Order 81-5-44, as amended by Order 81-7-128, the former Civil Aeronautics Board (CAB) required JAL to obtain prior approval for all Third and Fourth Freedom charter flights. Orders 81-5-44 and 81-7-128 remain in effect. JAL also holds exemption authority to conduct a number of Japan-U.S. services. On February 25, 1998, we granted JAL exemption authority to conduct services identical to those at issue here. See Notice of Action Taken, dated March 6, 1998, Docket OST-98-3449.

JAL holds appropriate licenses from its government and has had no safety violations or fatal accidents in the last five years. By Memorandum dated February 13, 1998, the FAA advised us that JAL conducts its operations to this country in accordance with Part 129 of the Federal Aviation Regulations.

JAL has experienced management and appears financially sound:

#### **Financial Indicators**

(\$ thousands)

year ending March 31	<b>1997</b>	<b>1996</b>
Total Assets	16,537,282	19,915,594
Total Liabilities	14,548,629	17,384,321
Owner's Equity	1,988,653	2, 531,273
Operating Profit or (Loss)	(116,758)	(112,815)

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

**Ownership and Control:** JAL is substantially owned and effectively controlled by citizens of Japan. JAL is a publicly held corporation with approximately 170,000 shareholders, none of whom hold more than 5% of JAL's capital stock. As of March 31, 1995, JAL's principal stockholders were The Tokio Marine and Fire Insurance Co., Ltd. (2.87%); The Industrial Bank of Japan, Limited (2.80%) and Fukoku Mutual Life Insurance Company (2.79%). All of JAL's directors and key management personnel are citizens of Japan.

Issued by:

Order 98-4-17

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

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**PERMIT TO FOREIGN AIR CARRIER**  
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**Japan Airlines Company, Ltd.**

A Flag 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 as follows:

**Between any point or points behind Japan, via any point or points in Japan, and any intermediate point or points, and any point or points in the United States, and any point or points beyond.**

The holder shall also be authorized to engage in 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 April 15, 1998. 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 April 15, 1998.

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)



CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder 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, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (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) 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, operate all flights to/from the United States via 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, 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 (formerly the Federal Aviation Act of 1958, as amended).(41301/40109) 12/96

## SUMMARY

### FOREIGN AIR CARRIER PERMIT APPLICATION Docket OST-98-3475

#### **Nippon Cargo Airlines, Co., Ltd.**

**Flag:** Japan

**Federal Register Notice:** 63 FR (9624), February 25, 1998

**Filing Date:** February 12, 1998

**Authority Sought:** Amend and reissue existing foreign air carrier permit, issued by Order 90-4-4, to engage in scheduled foreign air transportation of property and mail consistent with the bilateral aviation undertakings of the United States and Japan.

**Pleadings:** Northwest Airlines, Inc. filed a consolidated answer, discussed in the body of the order. No further pleadings were filed.

**Public Interest:** On January 30, 1998, the United States and Japan signed a Memorandum of Consultations, with provisional effectiveness, providing for new services in the U.S.-Japan market.<sup>1/</sup> Among other things, the MOC provides that for all-cargo services, the two Japanese "incumbent airlines"--Nippon Cargo Airlines and Japan Airlines--may immediately operate services from points behind Japan via Japan and intermediate points to a point or points in the United States and beyond, without limitation on frequency, capacity, or traffic composition.

**Fitness:** NCA has been conducting all-cargo services between Japan and the United States for over ten years. By Order 86-3-42, we issued NCA an initial foreign air carrier permit to conduct scheduled all-cargo services between specified points in Japan and the United States. By Order 90-4-4, we amended and reissued NCA's permit granting NCA, among other things, cargo charter authority. NCA also holds Department authority to conduct a number of Japan-U.S. services by exemption authority.

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<sup>1/</sup> Delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understandings regarding the elements to be included in a Memorandum of Understanding. The provisions of those understandings were made provisionally effective upon signing of the MOC, pending conclusion of an interim agreement. The MOU was signed March 14, 1998, by Secretary Slater and Japanese Transport Minister Fujii, also with provisional effectiveness.

NCA holds appropriate licenses from its government and has had no safety violations or fatal accidents in the last five years. By Memorandum dated February 13, 1998, the FAA advised us that NCA conducts its operations to this country in accordance with Part 129 of the Federal Aviation Regulations.

NCA has experienced management and appears financially sound:

	<b>Financial Indicators</b>	
(\$ thousands)		
year ending March 31	<b>1997</b>	<b>1996</b>
Total Assets	415,992	483,736
Total Liabilities	276,455	368,740
Owner's Equity	139,537	114,996
Operating Profit or (Loss)	40,989	40,877

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

**Ownership and Control:** NCA is a publicly owned stock company, wholly owned by citizens of Japan. As of March 31, 1997, the four principal shareholders of NCA were Nippon Yusen K.K. (14.07%); All Nippon Airways Co., Ltd. (14.07%); Kawasaki Kisen Kaisha, Ltd. (13.19%) and Mitsui O.S.K Lines, Ltd. (13.19%). All of NCA's directors and key management personnel are citizens of Japan.

Issued by:

Order 98-4-17

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

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**PERMIT TO FOREIGN AIR CARRIER**  
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**Nippon Cargo Airlines Co., Ltd.**

A Flag 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 property and mail, as follows:

**Between any point or points behind Japan, via any point or points in Japan, and any intermediate point or points, and any point or points in the United States, and any point or points beyond.**

The holder shall also be authorized to engage in 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 April 15, 1998. 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 April 15, 1998.

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder 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, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (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) 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, operate all flights to/from the United States via 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, 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 (formerly the Federal Aviation Act of 1958, as amended).(41301/40109) 12/96

