



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

Issued by the Department of Transportation on October 3, 2000

**NOTICE OF ACTION TAKEN -- DOCKETS OST-98-4541 & OST-99-6278**

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).

Applicants: **Air Nippon Co., Ltd. & All Nippon Airways Co., Ltd.** Date Filed: September 29, 1999

Relief requested:

**Air Nippon Co., Ltd.** (Docket OST-98-4541)--Exemption from 49 U.S.C. § 41301 to engage in scheduled 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 to perform charters subject to Part 212 of our rules.

**All Nippon Airways Co., Ltd.** (Docket OST-99-6278)--Statement of Authorization under 14 CFR Part 212 to display Air Nippon's designator code ("EL") on flights operated by All Nippon Airways between Tokyo, Japan, and Honolulu, Hawaii.

If renewal, date and citation of last action: October 23, 1998, in Docket OST-98-4541 for Air Nippon<sup>1</sup>

Applicant representative: James L. Devall (202) 298-8660

Responsive pleadings: None filed

**DISPOSITION**

Action: Approved

Action date: October 3, 2000

The exemption authority granted Air Nippon Co., Ltd. was effective when taken: October 3, 2000-October 3, 2001

The statement of authorization granted All Nippon Airways was effective when taken: October 3, 2000, and will remain in effect indefinitely, subject to the conditions listed below.

Basis for approval (bilateral agreement/reciprocity): 1998 Memorandum of Understanding between the United States and Japan (1998 MOU).

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

Air Nippon Co., Ltd.--~~X~~ Standard exemption conditions & Notice of Action Taken, dated October 23, 1998, in Docket OST-98-4541.

All Nippon Airways--~~X~~ Permit (Order 98-4-17) and the 1998 MOU

Special conditions/Partial grant/Denial basis/Remarks:

The exemption authority granted to Air Nippon Co., Ltd., in addition to the conditions described above, is limited to services conducted on a code-share basis only on flights operated by All Nippon Airways Co., Ltd.

The statement of authorization granted to All Nippon Airways is subject to the following conditions:

(a) The number of weekly round-trip frequencies conducted under the codeshare authority authorized above shall not exceed the limitations on same country airline codeshare frequencies available for such services under Section IV.E of the 1998 MOU.

<sup>1</sup> All Nippon's statement of authorization, also approved on October 23, 1998, was, at the time, undocketed. The Department has since amended its regulations to require that code-share applications be docketed. See 64 FR 3212, January 21, 1999.

(b) All Nippon Airways and/or Air Nippon must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. We expect this notification to be received within 10 days of such non-effectiveness or of such decision. Such notices should be filed in Docket OST-99-6278.

(c) The code-sharing operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected.

(d) The authority granted here is specifically conditioned so that neither Air Nippon nor All Nippon shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

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Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) immediate action was required and was consistent with Department policy; (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 Docket. 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 ten (10) 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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