

SERVED JUL 16 1996



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

Issued by the Department of Transportation  
on the 16th day of July, 1996

In the matter of the foreign air carrier permit of:

**JAPAN AIR LINES COMPANY, LTD.**

**Docket OST 96-1551**

**ORDER**

**Summary**

By this order we tentatively find that the foreign air carrier permits held by Japan Air Lines Company, Ltd. (JAL) should be amended to impose a condition that would, until further Order of the Department, preclude them from carrying on any of their scheduled all-cargo services from Japan to the United States, any cargo which is carried to Japan on any service of any Japanese air carrier from Cebu and Manila, the Philippines; Jakarta, Indonesia; and Beijing and Shanghai, China.

This proposed action is taken in response to the refusal of the Japanese aeronautical authorities to authorize Federal Express, a designated U.S. all-cargo air carrier, to perform certain services authorized in the Air Transport Services Agreement, as amended, between the United States and Japan.

**Background**

Federal Express has long been designated by the United States to provide scheduled all-cargo services under the

U.S.-Japan Air Transport Services Agreement <sup>1</sup> (Agreement), including designation for services on the following route:

"(1) From the United States via the North Pacific to Tokyo, Osaka and Naha and beyond."

In May 1996, in accordance with procedures set forth in an "Agreed Minute" between the aeronautical authorities of the United States and Japan, dated January 14, 1959, the United States Government filed with the Japanese Ministry of Foreign Affairs certain revisions to Federal Express' summer schedules that had previously been approved by the Japanese Ministry of Transport. These revised schedules were simultaneously filed by Federal Express directly with the Japanese Ministry of Transport. <sup>2</sup> Federal Express proposed to commence service in accordance with its revised summer schedules on July 1, 1996.

Despite the clear obligation of the Government of Japan under the Agreement, and the provisions of the 1959 Agreed Minute, to approve all of the schedules filed on behalf of and by Federal Express, the Japanese aeronautical authorities have notified the U.S. of Japan's refusal to approve several of the proposed revisions to Federal Express' summer schedules. <sup>3</sup>

The United States Government has repeatedly advised the Japanese Government that failure to approve the Federal Express schedules would constitute a serious violation of the Agreement, and that continued refusals to approve Federal Express' revised summer schedules would leave the United States Government with little choice but to take appropriate countermeasures. <sup>4</sup> Despite these

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<sup>1</sup> Air Transport Services Agreement between the United States and Japan, signed at Tokyo August 11., 1952, as amended.

<sup>2</sup> The filings with the Ministry of Transport were expressly made without prejudice to the U.S. position regarding the applicability of the 1959 Agreed Minute.

<sup>3</sup> Specifically Japan has refused to approve Federal Express' proposed services beyond Tokyo to Manila, Cebu, and Jakarta; and beyond Osaka to Manila, Shanghai, and Beijing. (In accordance with the provisions of the U.S.-China aviation agreement, the proposed service beyond Osaka to Shanghai and Beijing would be without the exercise of traffic rights between Japan and Shanghai and Beijing.)

<sup>4</sup> The United States delegation advised the Japanese delegation in negotiations leading to the Memorandum of Understanding on all-cargo services signed April 16, 1996, that failure of the Japanese MOT to approve future revisions to US carrier schedules with respect to beyond Japan services would be considered a serious violation of the

representations by the United States, the Government of Japan, and its aeronautical authorities, continue to refuse to approve several of Federal Express' proposed services included in its revised summer schedules.

### **Tentative Decision**

Under these circumstances, the United States Government has no alternative but to respond with appropriate countermeasures. We therefore tentatively find that the public interest requires that we amend the foreign air carrier permits held by JAL,<sup>5</sup> pursuant to 49 U.S.C. 41304, to include the following condition:

"Until further order of the Department, Japan Air Lines Company, Ltd. shall not carry on any scheduled all-cargo flight operating from Japan to the United States any cargo traffic that is carried to Japan on any service of any Japanese air carrier from Cebu and Manila, the Philippines; Jakarta, Indonesia; and Beijing and Shanghai, China."<sup>6</sup>

The failure of Japan to approve several of Federal Express' proposed services constitutes a significant disruption in its operations between the United States and points beyond Japan. We tentatively find that our proposed limitations are an appropriate first step as a countermeasure in response to the Japanese refusal to permit Federal Express

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Agreement, and would leave the US Government with little choice but to take counter measures against Japanese carriers. This position was reiterated in a Demarche by the US Embassy, Tokyo on June 21, 1996, following a letter from the Japanese MOT to Federal Express indicating that certain of the schedules might not be approved.

<sup>5</sup> JAL holds a foreign air carrier permit issued by the Department (Order 70-8-66), as well as various exemption authorities, to perform services under the U.S.-Japan Air Transport Services Agreement, as amended.

<sup>6</sup> Our proposed condition will apply only to the carriage of the specified Asian traffic on JAL's all-cargo flights. Such traffic can continue to be carried between Japan and the United States on combination services of any Japanese carrier. The restriction will only apply to Eastbound cargo traffic from the specified Asian places. There will be no limitation on Westbound, U.S. originating, cargo traffic destined for the specified Asian places. In addition, the only cargo affected is that embarked in the specified Asian places and carried from those places to Japan by a Japanese carrier.

to conduct its proposed operations. We will consider, as appropriate, what further actions may be necessary.<sup>7</sup>

In view of the foregoing, we tentatively find that, by failing and refusing to approve the duly filed schedules of Federal Express, the Government of Japan has not complied with the provisions of the Air Transport Services Agreement in effect between the United States and Japan and the 1959 Agreed Minute; that despite repeated objections and warnings by the United States Government, the Government of Japan continues to fail and refuse to comply with its bilateral obligations, and to deny Federal Express operating rights to which it is entitled under the Agreement; and that the public interest therefore requires that the foreign air carrier permits of JAL and NCA be amended to include the above described condition precluding the carriage of certain Asian-U.S. cargo on scheduled all-cargo flights operated from Japan to the United States.

Given the circumstances, we will require that objections and or comments to this show cause order be filed by July 26, 1996, with answers due July 31, 1996. The Department anticipates issuing a final decision shortly after the due date for answers to this order.

**ACCORDINGLY:**

1. Japan Air Lines Company, Ltd., Nippon Cargo Airlines Company, Ltd., and all other interested persons are directed to show cause why we should not issue an order making final our tentative findings and conclusions;
2. We direct Japan Air Lines Company, Ltd. and all other interested persons wishing to comment on our tentative findings and conclusions, or objecting to the issuance of the order described in paragraph 1, to file in Docket OST-96-1551, and serve on all persons on the service list in that docket, a statement of such objections or comments, together with any supporting evidence the objector wishes the Department to notice, not later than July 26, 1996; answers to these submissions will be due July 31, 1996;
3. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action. If no objections are filed, we will deem all further

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<sup>7</sup> Enforcement of our proposed condition will be effected under the enforcement provisions of the Aviation Act and/or the U.S. Customs Service Act.

procedural steps to have been waived, and proceed to enter a final order subject to Presidential review under 49 U.S.C. 41304 and 41307;<sup>8</sup>

4. We will serve this order on Japan Air Lines Company, Ltd., Nippon Cargo Airlines Company, Ltd., All Nippon Airways Company, Ltd., Japan Air System Company, Ltd., Japan Asia Airways Company, Ltd., Japan Air Charter Company, Ltd., Japan Universal System Transport Company, Ltd., World Air Network Company, Ltd., Federal Express, Inc., Northwest Airlines, Inc., United Air Lines, Inc., American Airlines, Inc., Delta Air Lines, Inc., Continental Micronesia, Inc., the Ambassador of Japan in Washington, D.C., the Department of State, the Federal Aviation Administration, and the U.S. Customs Service.

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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

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<sup>8</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.