

Served: June 10, 2004



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

Issued by the Department of Transportation
on the 7th day of June, 2004

Application of

WESTWARD AIRWAYS, INC.

Docket OST-02-14071

for a certificate of public convenience and necessity under
49 U.S.C. 41102 to engage in interstate scheduled air
transportation of persons, property, and mail

**ORDER CONFIRMING ORAL ACTION AND
ISSUING EFFECTIVE CERTIFICATE**

Summary

By this order, we reissue Westward Airways, Inc.'s ("Westward") section 41102 interstate scheduled passenger certificate to reflect its effective date.

Background

By Order 2003-4-4, served April 7, 2003, the Department found Westward to be fit, willing and able to conduct interstate scheduled passenger air transportation under section 41102 of Title 49 of the United States Code ("the Transportation Code") and issued a certificate authorizing it to engage in such operations.

The certificate contained the usual condition that it would not become effective until the sixth (business) day after we had received certain documents, unless a stay was issued prior to that date. These included (1) a copy of Westward's Air Carrier Certificate and Operations Specifications issued by the Federal Aviation Administration authorizing such operations, (2) a certificate of insurance evidencing liability insurance coverage meeting the requirements of Part 205 of our rules, and (3) updated fitness information, including evidence that the carrier continued to have funding sufficient to meet our financial fitness criteria.

Changes Since Fitness Review

On April 29, 2004, the carrier provided information on certain personnel changes made since its fitness was last reviewed. We have examined the background and compliance information for the new personnel and conclude that they have the necessary skills to perform their

respective duties for Westward.¹ Moreover, the FAA has confirmed that the new key technical personnel meet the qualifications for their positions as set forth in the Federal Aviation Regulations.

Westward provided an update on the private placement it completed on September 15, 2003. Subsequent to the company's completion of this private placement, only two shareholders own or control 10 percent or more of Westward's voting stock: Kristi A. Feusner, Westward's President and Chairman (31.4 percent) and John J. Warden, Westward's Executive Vice President and Vice Chairman (31.4 percent). Additionally, as a result of the completion of the private placement, the board of directors elected to increase the number of members from three to four.²

Westward has provided updated financial statements indicating that it has approximately \$1,114,417.92 in total available resources, made up of cash reserves and grant funding under the Department's Small Community Air Service Development Pilot Program.³

Westward provided information showing that it will incur a total of \$1,048,961 in pre-operational start-up costs, \$814,431 of which has already been paid, leaving \$234,530 to be paid. In addition, it will require a three-month working capital reserve requirement of approximately \$607,125, or a total of \$841,655 to meet the Department's financial fitness test. The company's banks have verified that, as of May 20, 2004, Westward has more than is required to meet our financial fitness criteria.

Issuance of Effective Certificate

On May 6, 2004, we received a copy of Westward's FAA Air Carrier Certificate and Operations Specifications authorizing it to engage in scheduled passenger air service.⁴ After reviewing these documents, we find them to be satisfactory and in consonance with the economic authority granted Westward in Order 2003-4-4.

With the submission of its FAA documents, Westward completed all of the steps necessary for its certificate to be made effective, and it requested that the Department waive the usual six (business) day waiting period and make its authority effective immediately.

¹ Dr. Todd E. Hlavaty has been selected to serve on Westward's board of directors. Dr. Hlavaty is a citizen of the United States and has served as President and Chief Executive Officer of Sandhills Oncology, PC since 1996.

Mr. Lyle E. Holbo joined the carrier on a full time basis on January 12, 2004, as Westward's Director of Flight Operations, and will perform the duties of Director of Operations. Mr. Holbo is a citizen of the United States and is an Airline Transport Pilot with 10,000 total flight hours. He has been involved in the aviation industry for 16 years.

Mr. Ryan E. Roberts joined Westward on a full-time basis on April 1, 2004, and will serve as Westward's Chief Pilot. Mr. Roberts is a citizen of the United States and is an Airline Transport Pilot with 4,000 total flight hours. He has been involved in the aviation industry since 1994.

² Each original board member – Mr. Craig L. Carlson, Ms. Kristi A. Feusner, and Mr. John J. Warden – was reelected to the board of directors at the meeting of shareholders on December 19, 2003, to serve one-year terms.

³ On May 20, Westward reported that it had received additional financing in the form of a \$425,000 loan from Western Way, LLC, a Wyoming limited liability company. Western Way has two members, Chuck Weinreis and Paul Reed. Both Mr. Weinreis and Mr. Reed are Westward shareholders, neither of whom own more than 6 percent of Westward's voting stock.

⁴ The Company also filed the required certificate of insurance.

Inasmuch as the carrier has satisfied the requirements for effective authority enumerated in the terms, conditions, and limitations attached to its certificate, and since no new issues regarding its fitness have arisen, we found that it was in the public interest to make Westward's authority effective immediately and orally granted Westward's request and allowed its certificate authority to become effective on May 21, 2004. We confirm that action here and reissue Westward's certificate and attached terms, conditions and limitations, to reflect the effective date of that authority.

ACCORDINGLY, acting under authority assigned by the Department in its regulations, 14 CFR 385.12(a)(5)(i):

1. We reissue to Westward Airways, Inc., the certificate of public convenience and necessity issued to it by Order 2003-4-4, in the attached form to reflect its effective date.
2. We confirm our oral action of May 21, 2004, granting Westward Airways, Inc., a waiver of the six-day waiting period stipulated in Order 2003-4-4, and making its certificate effective on May 21, 2004.
3. We direct Westward Airways, Inc., to submit to the Air Carrier Fitness Division a first-year progress report within 45 days following the end of its first year of actual flight operations.⁵
4. We will serve a copy of this order on the persons listed in Attachment A.

By:

RANDALL D. BENNETT
Director
Office of Aviation Analysis

An electronic version of this document is available on the World Wide Web at:

<http://dms.dot.gov>

⁵ The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements, and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.



**Certificate of Public Convenience and Necessity
for
Interstate Air Transportation**

This Certifies That

WESTWARD AIRWAYS, INC.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the
Secretary

Issued by Order 2004-6-5
On June 7, 2004
Effective on May 21, 2004
Analysis

Randall D. Bennett
Director
Office of Aviation

Attachment

*As reissued by
Order 2004-6-5



Terms, Conditions, and
Limitations

WESTWARD AIRWAYS, INC.

is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

(1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(2) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all U.S. Government requirements concerning security.**

* This certificate is being reissued to reflect its effective date.

** To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI 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) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(4) The holder's authority is limited to operations conducted with aircraft having 9 passenger seats or less. In the event that the holder wishes to initiate operations with aircraft having 10 or more passenger seats, it must first be determined fit for such operations.

(5) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(6) The holder is authorized to conduct charter flights in interstate and/or foreign air transportation in accordance with the provisions of 14 CFR 212.

(7) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

(8) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(9) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.

(10) In the event that the holder commences but subsequently ceases all operations for which is was found "fit, willing and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

ATTACHMENT A

SERVICE LIST FOR WESTWARD AIRWAYS, INC.

MS KRISTI A FEUSNER
PRESIDENT & CHAIRMAN

REGIONAL COUNSEL
FAA ACE-7
CENTRAL REGION HDQ

MR DON BRIGHT K-14
OFFICE OF AIRLINE INFO
DEPT OF TRANSPORTATION

WESTWARD AIRWAYS INC
250027 AIRPORT TERM ST
SCOTTSBLUFF NE 69361

MR STEVEN M KUPKA
BLACKWELL SANDERS
PEPER MARTIN LLP
1737 H STREET NW
WASHINGTON DC 20006

MR DANIEL A MORRIS
MR HAROLD J DAUB
BLACKWELL SANDERS
PEPER MARTIN LLP
1620 DODGE STREET
SUITE 2100
OMAHA NE 68102

901 LOCUST
KANSAS CITY MO 64106-2641

MGR FLIGHT STANDARDS DIV
FAA ACE 200
CENTRAL REGION HDQ
901 LOCUST
KANSAS CITY MO 64106-2641

MR ROBERT JOHNSON
POI FOR WESTWARD AIRWAYS
FAA FSDO LNK
3431 AVIATION RD
SUITE 120
LINCOLN NE 68524-1879

400 7TH STREET SW
WASHINGTON DC 20590

MS LORI AQUILINO
ASST MANAGER CSET
SAN FRANCISCO IFO
831 MITTEN ROAD
SUITE 105
BURLINGAME CA 94010

MR PETER LYNCH AGC-300
ASST CHIEF COUNSEL FOR
ENFORCEMENT
FEDERAL AVIATION ADMIN
800 INDEPENDENCE AVE SW
WASHINGTON DC 20591