NATIONAL ADMINISTRATIVE REGISTER · MARCH 4, 2005

IMPLEMENTING RULES AND REGULATIONS OF EXECUTIVE ORDER NO. 253, PROVIDING FOR THE EXPANSION OF AIR SERVICES TO THE DIOSDADO MACAPAGAL INTERNATIONAL AIRPORT (DMIA) AND SUBIC BAY I...

CAB RULES AND REGULATIONS OF EXECUTIVE ORDER NO. 253, March 04, 2005

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Pursuant to Section 4 of Executive Order No. 253 dated 03 December 2003, the following rules and regulations are hereby adopted:

RULE 1
GENERAL PROVISIONS

1.0 THE FOLLOWING RULES AND REGULATIONS SHALL BE KNOWN AND CITED AS THE "IMPLEMENTING RULES AND REGULATIONS OF EXECUTIVE ORDER NO. 253."

1.1 Executive Order No. 253 seeks to further liberalize civil aviation in the Philippines specifically through the grant or enhancement of certain air cargo traffic rights to and from the Diosdado Macapagal International Airport (DMIA) and Subic Bay International Airport (SBIA).

Its provisions are intended to promote the expansion of air cargo services to DMIA AND SBIA. Hence, these Implementing Rules and Regulations ("IRR") are designed to facilitate access to the aforementioned airports and shall not be interpreted, in the case of ambiguity, to restrict such access.

1.2 For purposes of application and construction of these rules, the following terms shall have the meanings and definitions specified hereunder. Moreover, the following definitions shall control the application and construction of these Implementing Rules and Regulations.

1.2.1 "Air Carrier" means a person who undertakes directly or by lease or any other arrangements, to engage in air transportation or air commerce;

1.2.2 "Board" shall refer to the Civil Aeronautics Board;

1.2.3 "International air cargo transportation" means the transportation of cargo and/or mail by air between the Philippines and any place outside it by pure cargo carriers;

1.2.4 "Development route" means a route, destination or gateway which must be fully promoted and supported to enhance its potential as centers of economic growth and activity;

1.2.5 "Capacity" refers to the quantitative measurement of the supply of air transportation service expressed whether in (a) number of flight frequencies, (b) units of weight or space for cargo operations, (c) aircraft types, or (d) a combination of any of the above;

1.2.6 "Non-cabotage traffic rules" cover any right to carry traffic to and from DMIA and SBIA in international air cargo transportation as defined herein except the right to carry traffic from one point in the territory of the Philippines to another point therein;

1.2.7 "Point" is a destination, specified or unspecified, on a route;

1.3 Any other term (not specifically defined hereunder) used in these Implementing Rules and Regulations that is defined in Republic Act No. 776 as amended or the Implementing Rules and Regulations of Executive Order Nos. 219 (series of 1995) and 32 (series of 2001) establishing the domestic and international civil aviation liberalization policy shall be interpreted in accordance with such definition;

RULE II
AUTHORITY TO OPERATE

2.0 PETITION TO ENGAGE IN INTERNATIONAL AIR CARGO TRANSPORTATION TO AND FROM DMIA AND/OR SBIA UNDER EO 253 AND FOR WAIVER OF RESTRICTIONS OR LIMITATIONS ON CAPACITY, TYPE OF AIRCRAFT OR NON-CABOTAGE TRAFFIC RIGHTS

2.1 Foreign cargo carriers with or without authority to operate to and from DMIA and/or SBIA, or with or without existing Air Service Agreements (ASA) shall file a verified petition with the Board for an authority to engage in international air cargo transportation and for waiver of restrictions or limitations on capacity, type of aircraft or non-cabotage traffic rights with respect to its operation to and from DMIA and/or SBIA under the provisions of EO 253, after furnishing all Philippine carriers engaged in international air cargo transportation with copies thereof.

2.2 The petition shall specify the routes to be operated with DMIA and/or SBIA as gateway points, the capacity to be offered on such routes on a weekly basis, the types of aircraft to be operated thereon and start-up dates of such operations. Provided, those with existing, ASA shall include a verified certification that the applicant air cargo carriers opts to operate to and from DMIA and/or SBIA under EO 253 in lieu of the rights granted under pertinent ASA and that it shall not mix its rights to operate to other Philippine points as may be granted under ASA with its rights to be granted under EO 253, Provided further, that if the Board decides to grant the petition, the decision shall expressly state, among others, that the applicant air cargo carrier shall not operate air services to and from DMIA and SBIA in accordance with any rights granted to it under pertinent ASA during the period of validity of the authority granted pursuant to EO 253 and that it shall not mix its rights to operate to other Philippine points as may be granted under the ASA with its rights to be granted under EO 253;

2.3 In determining the merits of a petition, the Board shall consider that air access to DMIA and SBIA is declared as a development route. Hence, the authority to operate such route may be granted without any restrictions on frequency or capacity, aircraft configuration and non-cabotage traffic rights, except as may otherwise be demanded by the operational, commercial, security and safety requirements for the operation of air cargo services to and from DMIA and SBIA;

2.4 The Board shall review and assess the request of the applicant against the current operational, commercial, security and safety requirements of operating air cargo services to and from DMIA and SBIA taking into consideration comments that may have been filed by interested parties within seven (7) days from receipt of notice;

2.5 If the Board finds that the petition is sufficient in form and substance and allowable on the basis of technical, operational and commercial requirements of operating to and from DMIA and/or SBIA, the same shall be favorably granted. Otherwise, the Board shall conduct a hearing on the petition to be completed and resolved within thirty (30) days from the date of the first hearing. During the interim, the Board may issue provisional orders for the protection of the rights of the parties.

3.0 PETITIONS FILED BY FOREIGN AIR CARRIERS FOR AUTHORITY TO OPERATE INTERNATIONAL CARGO CHARTER (NON-SCHEDULED) FLIGHTS TO AND FROM DMIA AND SBIA SHALL BE GOVERNED BY CHAPTER III OF ECONOMIC REGULATION NO. 2 ENTITLED

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"ECONOMIC REGULATION ON CHARTER FLIGHTS" APPROVED BY THE BOARD ON 15 SEPTEMBER 1969.

RULE III
TARIFF AND RATES

The Board shall ensure that consumers are not subjected to discriminatory prices or practices that are unreasonably high or restrictive due to abuse of dominant position. Likewise, no air carrier shall engage in predatory pricing resulting in artificially low or uneconomic prices.

It is the duty of the Board to investigate and initiate actions against any practice or violation of the above pricing mechanisms.

RULE IV
VALIDITY

4.0 THE RIGHT TO OPERATE TO AND FROM DMIA AND SBIA GRANTED HEREIN SHALL BE EFFECTIVE FOR A PERIOD OF FIVE (5) YEARS, RENEWABLE UPON PETITION OF THE GRANTEE AND COTERMINOUS WITH THE FOREIGN AIR CARRIER'S PERMIT ISSUED BY THE BOARD UNDER REPUBLIC ACT 776. THE PETITION FOR RENEWAL MUST BE FILED THIRTY (30) DAYS PRIOR TO THE DATE OF THE EXPIRATION OF THE PERMIT.

4.1 The waiver of restrictions to operate air cargo services to and from DMIA and SBIA shall be effective for a period of one (1) year renewable upon petition of grantee. The petition for renewal must be filed within thirty (30) days prior to the date of the expiration of the permit. The waiver shall be coterminous with the permit granted under 4.1 and the FACP issued by the Board under R.A. 776.

RULE V
FEES

5.0 FILING FEES

a. Application/Renewal of right to operate: PHP 75,000.00

b. Application/Renewal of waiver of restrictions: PHP 15,000.00

5.1 The Board may amend the schedule of filing fees as the need arises.

RULE VI
INSPECTION

Pursuant to its mandated powers under R.A. 776, the Board may inspect the premises and operations of international air cargo carriers operating within the DMIA and SBIA to ensure the proper implementation of Executive Order No. 253.

RULE VII
VIOLATION AND PENALTIES

Any violation of the provision of Executive Order No. 253 and of this IRR shall be penalized in accordance with the pertinent provisions of R.A. 776.

RULE VIII
RESERVATION CLAUSE

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The Board reserves the right to amend, repeal or modify this IRR as warranted by circumstance or events to which the objectives of Executive Order 253 and consistent with the provisions of R.A. 776, may be served.

RULE IX
SEPARABILITY CLAUSE

If any section or any part of this IRR shall be declared unconstitutional by a competent authority, the remaining section or parts thereof shall not thereby be affected.

RULE X
REPEALING CLAUSE

All other resolutions, economic regulations and other issuance by the Board which are inconsistent with the herein provisions are hereby amended, repealed or modified accordingly.

RULE XI
EFFECTIVITY

These rules shall take effect (15) days after its publication in a newspaper of general circulation. A copy of these rules shall be deposited with the University of the Philippine Law Center in compliance with the Revised Administrative Code of 1987.

Adopted: 04 March 2005

(SGD.) USEC. EDWARD HARUN V. PAGUNSAN
Alternate Chairman

(SGD.) ASST. SEC. NILO C. JATICO
Vice Chairman

(SGD.) ATTY. FLORENTINO M. HERRERA III
Member

Attested by:

(SGD.) CARMELO L. ARCILLA
Deputy Executive Director
(Acting Board Secretary)

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