



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

Issued by the Department of Transportation on February 9, 2000

NOTICE OF ACTION TAKEN -- DOCKET OST 00-6816

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).

Joint Applicants: AEROVIAS de MEXICO, S.A. de C.V. and DELTA AIR LINES, INC.

Date Filed: January 21, 2000

Relief requested: Aeromexico requests an exemption from 49 USC section 41301 to permit it to provide scheduled foreign air transportation of persons, property and mail, for a period of one year, between: 1) Mexico City, Mexico, and Chicago, Illinois; and 2) Guaymas, Mexico, and Los Angeles, California. Also, Aeromexico requests a Statement of Authorization, under 14 CFR Part 212, to display Delta's designator code, for an indefinite period, on flights operated by Aeromexico in the Mexico City-Chicago and Guaymas-Los Angeles markets. Delta requests an exemption under 49 USC section 40109 to permit it to provide scheduled foreign air transportation of persons, property and mail, for a period of two years, in the Mexico City-Chicago and Guaymas-Los Angeles markets, only on flights operated by Aeromexico under the code-share agreement in effect between it and Aeromexico, and to combine this exemption authority with all of its existing certificate and exemption authority, consistent with applicable international agreements.

If renewal, date and citation of last action: New authority.

Applicant representatives: William C. Evans (for Aeromexico), 202-371-6030 and Robert E. Cohn (for Delta), 202-663-8060.

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: February 9, 2000

Effective dates of authority granted: Aeromexico's exemption authority shall be effective for a period of one year (through February 9, 2001); Delta's exemption authority shall be effective for two years (through February 9, 2002); and Aeromexico's Statement of Authorization shall be effective for an indefinite period. (See conditions below.)

Basis for approval: The authority granted is consistent with the aviation agreement between the United States and Mexico.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated (see special conditions below), to the foreign air carrier's permit conditions (for Aeromexico), to the U.S. carrier's certificate of public convenience and necessity (for Delta), and to our U.S. Carrier Standard Exemption Conditions (for Delta, see Appendix A of the NOAT, issued on November 24, 1999, in Docket OST-99-6520).

Special conditions: The U.S.-Mexico exemption authority granted to Delta is subject to the dormancy requirements set forth in condition 7 of Appendix A of Order 88-10-2. Consistent with our standard practice, the dormancy notice period will begin on March 3, 2000, for Mexico City-Chicago service, and on April 20, 2000, for Guaymas-Los Angeles service, which are Delta's proposed startup dates for those two services, respectively. In addition, the exemption authority granted to Delta is limited to services provided on a code-share basis only. Also, the route-integration authority granted to Delta is subject to the condition that any services provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, a) nothing in the award of the route integration authority requested should be considered as conferring upon Delta rights (including fifth-freedom intermediate and/or beyond rights), to serve markets where U.S. carrier entry is limited unless Delta notifies the Department of Delta's intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and b) should there be a request by any carrier to use the limited-entry route rights that are included in Delta's authority

by virtue of the route integration exemption granted here, but that are not then being used by Delta, the holding of such authority by route integration will not be considered as providing any preference for Delta in a competitive carrier-selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

The Statement of Authorization granted to Aeromexico for the operation encompassed by the subject Aeromexico/Delta code-share arrangement is subject to the following conditions: a) The Statement of Authorization will remain in effect only as long as Aeromexico and Delta continue to hold the underlying authority to operate the code-share services at issue, and the code-share agreement providing for the code-share operations remains in effect. b) Aeromexico and/or Delta must promptly notify the Department (Office of International Aviation) if the code-share agreement is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services. (We expect this notification to be received within 10 days of such non-effectiveness or of such decision. The notice should be filed in Docket OST 00-6816.) 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 Aeromexico and Delta, 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. Further, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition. d) The authority granted is specifically conditioned so that neither Aeromexico nor Delta 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**

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

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports_aviation.asp*