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

Issued by the Department of Transportation on May 9, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-2001-10457 - 5

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).

Application of **DELTA AIR LINES, INC., and AEROVIAS DE MEXICO, S.A. DE C.V. (AEROMEXICO),** filed **8/20/01,** for:

XX Exemption for Aerovias de Mexico, S.A. de C.V., for one year under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Cincinnati, Ohio, and Cancun, Mexico. Aeromexico intends to operate this service under a code-share arrangement with Delta on flights operated by Delta.

XX Statement of Authorization for Delta Air Lines, Inc., for indefinite duration under Part 212 of the Department's Regulations to:

Display Aeromexico's "AM" designator code on flights operated by Delta between Cincinnati, Ohio, and Cancun, Mexico.

Applicant reps: **Robert E. Cohn (Delta) (202) 663-8060** DOT Analyst: **Linda Lundell (202) 366-2336**
William C. Evans (Aeromexico) (202) 371-6030

DISPOSITION

XX Granted exemption request of Aeromexico and statement of authorization request of Delta for authority in the Cincinnati-Cancun market (subject to conditions and remarks, see below)

The above action, granting new exemption authority to Aeromexico was effective when taken: **May 9, 2002,** through **May 9, 2003**.

The above action, granting a statement of authorization to Delta was effective when taken: **May 9, 2002,** and will remain in effect indefinitely, subject to the conditions below.

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

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XX The authority granted is consistent with the aviation agreement between the United States and Mexico.

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

XX Delta's certificates of public convenience and necessity
XX Aeromexico's foreign air carrier permit

Conditions: The exemption authority granted Aeromexico to serve the Cincinnati-Cancun market is limited to operations conducted on a code-share basis only.

The Statement of Authorization granted Delta is subject to the following conditions:

(a) The statement of authorization will remain in effect only as long as Delta and Aeromexico 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) Delta and/or Aeromexico 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 of a portion of the approved code-share services.[1] (Such notice should be filed in Docket OST-2001-10457.)
(c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment 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 Delta nor Aeromexico shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

Remarks: By Notice of Action Taken dated September 6, 2001, the Department granted exemption authority to Delta for Cincinnati-Cancun service, and deferred action on the exemption request of Aeromexico and statement of authorization request of Delta for authority in the Cincinnati-Cancun market until the Government of Mexico provided notification of Aeromexico's authorization to serve the Cincinnati-Cancun market. That notification has now been received. With this action, there are no outstanding requests in the captioned docket.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the application was consistent with the public interest; and (3) 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, 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.

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[1] We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

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 seven (7) 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/reports_aviation.asp

Attachment

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

(1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;

(2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;

(3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);

(4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;

(5) Conform to the airworthiness and airman competency requirements of its Government for international air services;

(6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;

(7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

(a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

(8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;

(9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;

(10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

(11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).