



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

Issued by the Department of Transportation on December 23, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-16945

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 **AMERICAN AIRLINES, INC. (AMERICAN) and its affiliate AMERICAN EAGLE AIRLINES, INC. (AMERICAN EAGLE)** filed **11/23/04** for:

XX Amended statement of authorization under CFR Part 212 to:

Engage in additional transborder codesharing services with Compania Mexicana de Aviacion, S.A. Under the amendment, the Mexicana "MX" designator code will be displayed on flights operated by American or American Eagle between Dallas/Ft. Worth, Texas and San Luis Potosi, Mexico, beginning January 5, 2005.¹ American requests that the amended authorization be granted for an indefinite period.

Application of **COMPANIA MEXICANA DE AVIACION, S.A. DE C.V. (MEXICANA)²** filed **11/23/04** for:

XX Amended exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between San Luis Potosi, Mexico, and Dallas/Ft. Worth, Texas. Mexicana proposes to operate this service only by a code-share arrangement with American Airlines and its affiliate American Eagle. Mexicana intends to place its "MX" designator code on flights operated by American Eagle beginning January 5, 2005. Mexicana requests that this exemption be granted for at least a one-year period.

Applicant reps: **Carl B. Nelson, Jr. (AA) (202) 496-5647** and **Charles F. Donley II (MX) (202) 626-6840**
DOT Analyst: **Thuy H. Cooper (202) 366-5423**

DISPOSITION

XX **Granted in part (subject to conditions, see below)**

XX **Deferred in part (specifically, the portion of Mexicana's application involving Aerocaribe, see footnote 2)**

The above action granting statements of authorizations to American and American Eagle was effective when taken: **December 23, 2004**, and will remain in effect indefinitely, subject to the conditions below.

The above action granting new exemption authority to Mexicana was effective when taken: **December 23, 2004**, through **December 23, 2005**.

The above action deferring on Aerocaribe was effective when taken: **December 23, 2004**.

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

¹ American and American Eagle already hold the underlying authority to serve the Dallas/Ft. Worth-San Luis Potosi market (see Department action dated September 29, 2004, (undocketed), for American and Notice of Action Taken on September 24, 2004, Docket OST-2004-19024, for American Eagle).

² Mexicana's application as filed also requested authority for Mexicana's affiliate Aerovias Caribe de C.V. d/b/a Aerocaribe. However, Mexicana has since advised us, via email on December 23, 2004, that Aerocaribe does not currently intend to operate or market seats between San Luis Potosi and Dallas/Ft. Worth. Mexicana indicates that Aerocaribe will advise us when it is ready to engage in San Luis Potosi - Dallas/Ft. Worth service. Under these circumstances, we are deferring the Aerocaribe portion of

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 Mexicana's foreign air carrier permit

XX Foreign Carrier Exemption Conditions (attached)

Conditions: The exemption authority granted to Mexicana to serve the Dallas/Ft. Worth-San Luis Potosi market is limited to operations conducted on a code-share basis only.

The Statement of Authorization granted to American and American Eagle is subject to the following conditions:

(a) The statement of authorization will remain in effect only as long as American or American Eagle and Mexicana 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) American or American Eagle and/or Mexicana 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.³ (Such notice should be filed in Docket OST-2004-16945.)

(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 American or American Eagle nor Mexicana shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the exemption 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 authority 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 or deferred, 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 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

³ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

Foreign Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) 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, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI 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) 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, except as otherwise provided in the applicable aviation agreement, comply 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.