



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

Issued by the Department of Transportation on January 26, 2005

NOTICE OF ACTION TAKEN -- DOCKETS OST-2003-16219

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 Application of: **Spanair, S.A. & US Airways, Inc.**

Date Filed: December 22, 2004

Relief requested:

Spanair – Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail (a) between Barcelona and Madrid, Spain, on the one hand, and Philadelphia, Pennsylvania, on the other hand, and (b) beyond Philadelphia to Atlanta, Boston, Baltimore, Washington, D.C. (Reagan National), Denver, Dallas/Fort Worth, Houston, Las Vegas, Los Angeles, New York (LGA), Orlando, Miami, Minneapolis, New Orleans, Chicago, Phoenix, Pittsburgh, San Diego, Seattle, San Francisco and San Juan, Puerto Rico, pursuant to a code-share arrangement with US Airways, a U.S. certificated air carrier. ¹

Spanair – Amend existing statement of authorization under 14 CFR Part 212 to the extent necessary to permit Spanair to display the designator code of US Airways (US*) on flights operated by Spanair beyond Barcelona to Malaga and Palma de Mallorca, Spain. ²

US Airways – Amend existing statement of authorization under 14 CFR Part 212 to the extent necessary to permit US Airways to display the designator code of Spanair (JK*) on flights operated by US Airways between Philadelphia, Pennsylvania, and Barcelona, Spain.

If renewal, date and citation of last action: New exemption authority for Spanair. Amends the statements of authorization granted US Airways and Spanair on November 17, 2003, in this Docket.

Applicant representatives: Michael F. Goldman (202) 944-3305 for Spanair & Patrick R. Rizzi for US Airways (202) 383-5200

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: None filed

DISPOSITION

Action: Approved

Action date: January 26, 2005

Effective dates of exemption authority granted Spanair: January 26, 2005–January 26, 2006

The amended statements of authorization granted to Spanair and US Airways were effective when taken January 26, 2005, and will remain in effect indefinitely, subject to the conditions contained in a related Notice of Action Taken, dated November 17, 2003, in this docket.

Basis for approval (bilateral agreement/reciprocity): U.S.-Spain bilateral aviation agreement

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

X Standard exemption conditions (Spanair--Attachment A and US Airways Attachment B) X Spanair's Foreign Air Carrier Permit (Order 2000-5-28) and US Airways' Certificate of Public Convenience and Necessity (Order 2002-2-1).

¹ Spanair's services beyond Philadelphia to the twenty-one named U.S. points will be offered on a blind-sector basis without local traffic rights between U.S. points.

² US Airways' services beyond Barcelona to Malaga and Palma de Mallorca will be offered on a blind-sector basis

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) the applicants are qualified to perform the proposed operations; (2) our action was consistent with Department policy; (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 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 A

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.

Attachment B

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. 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 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; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.