



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

Issued by the Department of Transportation on **February 15, 2007**

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 filed January 18, 2007:¹

Joint Application of **AMERICAN AIRLINES, INC. (American) (and its affiliates AMERICAN EAGLE AIRLINES, INC. and EXECUTIVE AIRLINES, INC. d/b/a AMERICAN EAGLE), and COMPANIA MEXICANA de AVIACION, S.A., de C.V. (Mexicana)** for:

XX Exemption for Mexicana under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail in the New York/Newark (JFK)-San Jose del Cabo and St. Louis-Puerto Vallarta markets. The applicants state that they will use the authority pursuant to a code-share arrangement, whereby Mexicana's "MX" designator code will be placed on flights operated by American/American Eagle in these markets, beginning February 28, 2007.

XX Amended statement of authorization for American/American Eagle, for indefinite duration, under 14 CFR Part 212 to:

Display Mexicana's "MX" designator code on flights operated by American/American Eagle in the New York/Newark (JFK)-San Jose del Cabo, St. Louis-Puerto Vallarta, and Miami-Cozumel markets.^{2 3}

Application filed April 14, 2005:

Application of **COMPANIA MEXICANA de AVIACION, S.A., de C.V. (Mexicana)**⁴ for:

XX Renewal of exemption for Mexicana under 49 U.S.C. 40109 to provide the following service:

(1) Scheduled foreign air transportation of persons, property, and mail in the Boston-Cancun, Dallas/Ft. Worth-Aguascalientes, Dallas/Ft. Worth-Leon, and St. Louis-Cancun markets;⁵ the

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¹ See also clarification letter filed by Mexicana on February 6, 2007, in the captioned docket.

² Mexicana currently holds permit authority to serve the Miami-Cozumel route (see Order 1978-6-127, in Docket 32296). This authority is not limited to services on a code-share basis only, and nothing in our present action is intended to impose such a limitation.

³ We note here that American currently holds exemption authority to serve the New York/Newark-San Jose del Cabo and St. Louis-Puerto Vallarta markets (see Notices of Action Taken dated December 12, 2005, in Docket OST-2005-22331 and October 4, 2005, in Docket OST-2005-22230, respectively), and American Eagle currently holds exemption authority to serve the Miami-Cozumel market (see Notice of Action Taken dated July 27, 2006, in Docket OST-2006-25380).

⁴ Mexicana's application as filed also requests authority for Mexicana's affiliate Aerovias Caribe de C.V. d/b/a Aerocaribe. However, Mexicana has orally advised the Department that it does not seek authority for Aerocaribe here.

⁵ This authority (originally granted by Notice of Action Taken dated April 29, 2004, in the captioned docket), was set to expire on April 29, 2005. It has been kept in force, however, pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 558(c), pending action on the applicant's timely filed renewal application dated April 14, 2005.

Dallas/Ft. Worth-Torreon market;⁶ and the Dallas/Ft. Worth-San Luis Potosi market.^{7 8} The applicants state that this authority is used pursuant to a code-share arrangement, whereby Mexicana's "MX" designator code is placed on flights operated by American/American Eagle in the subject markets.

(2) Scheduled foreign air transportation of persons, property, and mail between points in Mexico and points in the United States beyond Mexicana's authorized U.S. gateway points for transborder services, for the purpose of blind-sector code-sharing services operated between the U.S. gateway points and other points within the United States on services operated by American or its affiliates.⁹

XX Renewal of special authorization to Mexicana under Part 216 of the Department's regulations:

To the extent necessary to permit Mexicana to provide the blind-sector service proposed between Mexicana's authorized U.S. gateways and beyond to points in third countries (either nonstop or via intermediate points in third countries for the carriage of Mexicana's authorized Mexico-U.S. traffic in combination with Mexico-third country traffic (no local traffic rights between the United States and third countries)).¹⁰

Applicant reps: Charles F. Donlev (Mexicana) (202) 626-6840 and Carl B. Nelson, Jr. (American) (202) 496-5647
DOT Analyst: Linda L. Lundell (202) 366-2336

DISPOSITION

- XX** Granted new one-year exemption authority and renewal of exemption authority to Mexicana for the above described U.S.-Mexico transborder services; granted renewal of exemption authority to Mexicana for the above described intra-U.S. blind-sector services; and granted renewal of Part 216 authority to Mexicana for the above described blind-sector third-country code-share services (subject to conditions, see below)
- XX** Granted amended statement of authorization to American/American Eagle as described above (subject to conditions, see below)
- XX** Dismissed, as moot, duplicate application dated December 20, 2005, to serve the Dallas/Ft. Worth-San Luis Potosi market (see footnote 8)

The above action granting new/renewed exemption/Part 216 authority to Mexicana was effective when taken: **February 15, 2007**, through **February 15, 2008**.

The above action granting an amended statement of authorization to American/American Eagle was effective when taken: **February 15, 2007**, and will remain in effect indefinitely, subject to the conditions below.

The above action dismissing the application filed on December 20, 2005, was effective when taken: **February 15, 2007**.

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⁶ This authority (originally granted by Notice of Action Taken dated July 26, 2004, in the captioned docket), was set to expire on April 29, 2005. It has been kept in force, however, pursuant to the provisions of the APA, pending action on the applicant's timely filed renewal application dated April 14, 2005.

⁷ This authority (originally granted by Notice of Action Taken dated December 23, 2004, in the captioned docket), was set to expire on December 23, 2005. It has been kept in force, however, pursuant to the provisions of the APA, pending action on the applicant's timely filed renewal application dated April 14, 2005.

⁸ We note here that on December 20, 2005, Mexicana filed a duplicate request in the captioned docket to renew the Dallas/Ft. Worth-San Luis Potosi exemption authority. We will dismiss that request as moot.

⁹ This authority (originally granted by Notice of Action Taken dated April 29, 2004, in the captioned docket), was set to expire on April 29, 2005. It has been kept in force, however, pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 558(c), pending action on the applicant's timely filed renewal application dated April 14, 2005.

¹⁰ Id.

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

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 (Order 78-6-127)

XX Standard exemption conditions (attached)

Conditions: Except as noted in footnote 2, above, the exemption/Part 216 authority granted to and/or renewed for Mexicana in this Notice is limited to operations conducted on a code-share basis only.

The code-share operations authorized here are subject to the following conditions:

(a) The statement of authorization will remain in effect only as long as American/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/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.¹¹ (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 amendments 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/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 Mexicana 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 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

¹¹ 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, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 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.

11/2006