

Served: March 17, 1997



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

Issued by the Department of Transportation  
on the 12<sup>th</sup> day of March, 1997

Applications of

VARIOUS FOREIGN AIR CARRIERS

for exemptions or authorities under 49 U.S.C.  
section 40109 and the orders and regulations  
of the Department of Transportation

Dockets

OST-96-2038

OST-96-1997

OST-96-1864

OST-96-1842

OST-95-825

ORDER

The foreign air carriers referenced in the attached Notices of Action Taken have applied for various forms of authority or relief from Title 49 of the U.S. Code or regulations or orders of the Department in order to perform the air transportation activities shown in the attached Notices of Action Taken. Except as noted, no answers were filed to these requests. Because of the imminence of these operations, we approved them by telephone, subject to adherence, by each applicant, to the conditions set forth in its foreign air carrier permit, and/or conditions attached.

We carefully considered the information set forth in each application described in the attached Notices of Action Taken, and we found that each of the proposed operations was consistent with the public interest and was consistent with an applicable bilateral aviation agreement and/or our aviation relationship with the applicant's homeland, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

For applicant carriers seeking initial operating authority, we determined, based on the record in those proceedings, that those carriers were financially and operationally qualified to conduct the services they proposed, and, unless otherwise noted, that they were substantially owned and effectively controlled by citizens of their respective homelands.

Under authority assigned by the Department in its Regulations, 14 CFR Part 385, we found that for each operation (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption or authority was consistent with the public interest; and (3) grant of this authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced foreign air carriers (1) exemptions from the provisions of sections 41301, and where necessary 41504, and/or other sections of Title 49 of the U.S. Code; and/or (2) relief or authorizations provided for under regulations or orders of the Department, to the applicants to perform the operations described in the attached Notices of Action Taken;
2. In the conduct of the service, each applicant was to adhere to the conditions set forth in Appendix A, and to any other conditions as noted in the attached Notices of Action Taken;
3. To the extent not granted, or explicitly deferred as noted in the attached Notices of Action Taken, these applications are denied; and
4. We may amend, modify, or revoke this order at any time without hearing.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within ten (10) days after the date of service of this order. The filing of a petition for review of a particular action shall affect this order only as it concerns that action.

These actions were effective when taken, and the filing of a petition for review will not alter their effectiveness.

By:

PAUL L. GRETCH  
Director  
Office of International Aviation

(SEAL)

*An electronic version of this document is available on the World Wide Web at:  
<http://www.dot.gov/general/orders/aviation.html>*

## CONDITIONS OF AUTHORITY

## APPENDIX A

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) 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 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).



**U.S. Department of  
Transportation**  
Office of the Secretary  
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## **NOTICE OF ACTION TAKEN**

### **DOCKET OST-96-2038**

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: AVIONES ARE, S.A. de C.V.

Date Filed: December 31, 1996

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct passenger charter operations between Mexico and the United States, and other passenger charters operations in accordance with 14 CFR Part 212, using small equipment.

If renewal, date of last action(s): New authority.

Applicant representative(s): Lee A. Bauer, 202-822-9070

Responsive pleadings: None.

### **DISPOSITION**

Action: Approved.

Action date: February 10, 1997

Effective date of authority granted: February 10, 1997, through February 10, 1998

Basis for approval: United States-Mexico Air Transport Services Agreement of August 15, 1960, as amended and extended (Agreement).

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of Appendix A.

Special conditions/Partial grant/Denial basis/Remarks: We find that the carrier is operationally and financially qualified to conduct the operations it proposes and that it is substantially owned and effectively controlled by citizens of Mexico. In the conduct of these operations, the carrier must adhere to all applicable provisions of the U.S.-Mexico Agreement. In the conduct of these operations, the carrier may only use aircraft capable of carrying no more than 60 passengers and having a maximum payload capacity of no more than 18,000 pounds. The above grant includes authority to operate Third and Fourth Freedom charter operations. While we have subjected Mexican carriers conducting charters with large aircraft to prior approval of their Third and Fourth Freedom charters, consistent with the provisions of the Agreement, (see Order 92-2-7 at 5), we determined that a Third/Fourth Freedom prior approval requirement was not necessary on public interest grounds in the case of this carrier, since it will be conducting these operations solely with small aircraft. (Other charter operations to/from the United States under this authority, however, are subject to prior approval under 14 CFR Part 212.)

Action taken by Paul L. Gretch, Director, Office of International Aviation under assigned authority (14 CFR Part 385). (Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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## NOTICE OF ACTION TAKEN

### DOCKET OST-96-1997

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: AEROLINEAS ARGENTINAS S.A. de C.V.

Date filed: December 2, 1996

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct scheduled, combination service between Buenos Aires, Argentina, and Orlando, Florida, and beyond Orlando to Cancun, Mexico, and Punta Cana, Dominican Republic, and to coterminalize these operations with the applicant's existing authority to serve Miami, Florida, for a period of one year. If renewal, date of last action(s): New authority.

Applicant representative(s): Robert D. Papkin, 202-626-6601

Responsive pleadings: On December 17, 1996, United Air Lines and Federal Express jointly filed an answer, urging the Department to approve the application, but only for a maximum period of 179 days, during which time certain carriers serving Argentina would attempt to get the Government of Argentina to rescind an Argentinean resolution greatly increasing rates to be paid by carriers in Argentina for warehousing and related services. On December 26, 1996, Aerolineas Argentinas filed a reply to the answer, stating that since the answer had been filed, the Argentine Government had suspended the resolution. Aerolineas Argentinas thus asked the Department promptly to approve its application. (On December 31, 1996, pending the anticipated filing of additional pleadings by United Air Lines and Federal Express, we granted the applicant authority to conduct its proposed operations through January 30, 1997, and deferred action on its request to conduct the services beyond that date.) On January 6, 1997, United Air Lines and Federal Express filed an additional pleading, withdrawing their December 17 answer, in light of the suspension of the rate resolution by the Government of Argentina. In their January 6 pleading, however, United Air Lines and Federal Express stated that they reserve the right to urge the Department to place appropriate restrictions on the applicant's U.S. operating authority, in the event -- which the two carriers state that they believe would be unlikely -- that exorbitant cargo handling charges, or other unjust commercial barriers, are imposed on their Argentina cargo services by Argentine authorities in the future.

### DISPOSITION

Action: Approved through January 30, 1997, on December 31, 1996; and through December 31, 1997, on January 8, 1997.

Effective date of authority granted: December 31, 1996, through December 31, 1997.

Basis for approval: United States-Argentina Air Transport Services Agreement

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Foreign air carrier permit conditions.

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by Paul L. Gretch, Director, Office of Int'l Aviation, under assigned authority (14 CFR 385).

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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## NOTICE OF ACTION TAKEN

### DOCKET OST-96-1864

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: PACIFIC INTERNATIONAL AIRLINES, S.A.                      Date filed: October 11, 1996

Relief requested: Exemption from 49 USC section 41301 and Statement of Authorization under 14 CFR Part 212 to permit Pacific International Airlines to wet lease B727-100 freighter equipment to Cayman Airways for all-cargo operations between the Cayman Islands and Miami, Florida, through October 11, 1997.

If renewal, date of last action(s): December 4, 1996 (confirmed by Order 96-12-38).

Applicant representative(s): Robert D. Papkin and Charles F. Donley II, 202-626-6601

Responsive pleadings: None.

### DISPOSITION

Action: Extended for 60 days and deferred action on remainder.    Action date: February 3, 1997

Effective date of authority granted: February 3, 1997, through April 9, 1997

Basis for approval: Reciprocity with Panama.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Same as previous grants to applicant in this Docket.

Special conditions/Partial grant/Denial basis/Remarks: The applicant requested an exemption (as well as authority under Part 212) to wet lease equipment to the other carrier, because it did not have underlying authority to conduct charter operations to/from the United States.

Action taken by:

Paul L. Gretch, Director  
Office of International Aviation  
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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## NOTICE OF ACTION TAKEN

### DOCKET OST-96-1842

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: AIR PACIFIC LIMITED

Date filed: October 4, 1996

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to continue to engage in scheduled, combination service between Nadi, Fiji, and Los Angeles, California, via the optional intermediate point Honolulu, Hawaii.

If renewal, date of last action(s): October 11, 1995 (confirmed by Order 95-11-24).

Applicant representative(s): Thomas Whalen and Evelyn Sahr, 202-289-0500

Responsive pleadings: None.

### DISPOSITION

Action: Approved.

Action date: December 12, 1996

Effective date of authority granted: December 12, 1996, through December 12, 1997.

Basis for approval: United States-Fiji Air Transport Agreement

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

Standard exemption conditions  
 Foreign air carrier permit conditions

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by:

Paul L. Gretch, Director  
Office of International Aviation  
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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## NOTICE OF ACTION TAKEN

### DOCKET OST-95-825

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: MEXICARGO, S.A. de C.V.

Date filed: November 8, 1996

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to continue to conduct all-cargo charter operations between Mexico and the United States, and other all-cargo charter operations in accordance with 14 CFR Part 212.

If renewal, date of last action(s): December 1, 1995 (confirmed by Order 96-1-45).

Applicant representative(s): William H. Callaway, Jr., and Lonnie Anne Pera, 202-298-8660

Responsive pleadings: None.

### DISPOSITION

Action: Approved.

Action date: December 10, 1996

Effective date of authority granted: December 10, 1996, through December 10, 1997.

Basis for approval: United States-Mexico Air Transport Services Agreement of August 15, 1960, as amended and extended.

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

- XX Standard exemption conditions
- \_\_\_ Foreign air carrier permit conditions

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by:

Paul L. Gretch, Director  
Office of International Aviation  
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)