

Served: March 26, 1997



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

Issued by the Department of Transportation
on the 20th 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-97-2082

OST-97-2062

OST-97-2041

OST-96-1673

OST-96-1667*

UNDOCKETED*

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.

*/ The referenced Notices contain minor editorial or technical changes from the Notices originally issued. Any changes that we may have made are non-substantive in nature and do not affect the authority described in the original Notice in question. To the extent that, following the issuance of a confirmation order, parties or other persons have need to rely on the content of a Notice of Action Taken, they should regard the language in the Notice attached to the order, rather than the language of the original Notice, as the language that the Department is in fact confirming.

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
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2062

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: AEROVIAS de MEXICO, S.A. de C.V.

Date filed: January 13, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to continue to conduct scheduled, combination service between Cozumel, Mexico, and Miami, Florida.

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

Applicant representative(s): William C. Evans, 202-371-6030

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: January 29, 1997

Effective date of authority granted: January 29, 1997, through January 29, 1998.

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: 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.)



**U.S. Department of
Transportation**
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NOTICE OF ACTION TAKEN

DOCKET OST-97-2041

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: AERODIN, S.A. de C.V.

Date Filed: January 2, 1997

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): Julio Gonzalez Santos, 011-52-83-45-67-92

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: February 11, 1997

Effective date of authority granted: February 11, 1997, through February 11, 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 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.)



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-96-1673

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: SERVICIOS AEREOS del CENTRO, S.A. de C.V. Date Filed: August 30, 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 11, 1997

Effective date of authority granted: February 11, 1997, through February 11, 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 385). (Petitions for review may be filed 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.)



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-96-1667

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: FAST AIR CARRIER, S.A. Date filed: August 23, 1996, as amended August 29, 1996

Relief requested: Exemption from 49 USC section 41301 to permit Fast Air Carrier to serve (conducting all-cargo operations) Buenos Aires, Argentina, as an additional intermediate point on its scheduled services between Chile and the U.S. coterminal points Miami, Florida, and New York, New York, for a period of one year.

If renewal, date of last action(s): November 27, 1996 (confirmed by Order 96-12-38).

Applicant representative(s): Ana Marie Escagedo, 305-373-6600

Responsive pleadings: Same as set forth in our Notice of Action Taken of September 19, 1996. Specifically, on September 10, 1996, Fine Air filed an answer to Fast Air's request. Fine stated that it did not oppose Fast Air's request. It did, however, urge the Department, in acting on future requests of foreign carriers for Fifth Freedom authority, to curtail Latin American carriers' Fifth Freedom authorities in markets where Third and Fourth Freedom opportunities for U.S. carriers are limited. (We addressed Fine's comments in our September 19 Notice.)

On September 13, 1996, Continental filed an answer to the request. Continental stated that it did not object to grant of Fast Air's request through November 30, 1996, but urged us not to grant this authority beyond that date unless the Government of Chile (GOC) authorizes it to conduct nonstop Newark-Chile scheduled, combination services. Continental stated that the provisions of the U.S.-Chile 1993 Exchange of Notes, which preclude the United States from designating an additional carrier and limit frequencies available to U.S. carriers, expires December 1, 1996; that it has been designated by the United States to conduct its proposed services to Chile and is applying to the GOC for that authority; and that the GOC has indicated that it will seek continuing restrictions on U.S. designations and frequencies beyond November 30, 1996. On September 17, 1996, Fast Air submitted a reply to the answer of Continental.

DISPOSITION

Action: Extended for 45 days and deferred on the remainder. Action date: January 8, 1997

Effective dates of authority granted: January 8, 1997, through February 28, 1997.

Basis for approval: United States-Chile 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: In reaching our decision to extend Fast Air's authority, we found that the subject all-cargo authority is bilaterally agreed, and that the United States continues to be engaged in negotiations with Chile on the aviation relationship between our countries. The Governments of the United States and Chile recently had agreed to extend the current bilateral regime (i.e., the regime governed by, inter alia, the U.S.-Chile 1994 Exchange of Notes) while these negotiations continue. In light of these circumstances, we found that the public interest warranted extension of the subject authority for 45 days, and deferral on Fast Air's request to serve Buenos Aires beyond February 28, 1997 (that is, through September 19, 1997).

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.)



**U.S. Department of
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of Transportation

NOTICE OF ACTION TAKEN

UNDOCKETED

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.

Joint Applicants: AEROVIAS de MEXICO, S.A. de C.V. (AEROMEXICO) and UNITED AIR LINES, INC.

Date filed: January 6, 1997

Relief requested: Statement of Authorization under 14 CFR Part 212 to permit Aeromexico and United to implement their codeshare/blocked-space arrangement, under which Aeromexico proposes to carry United's code on its scheduled, combination services between Mexico City, Mexico, and Miami, Florida, for a period of one year.

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

Applicants' representatives: William C. Evans (for Aeromexico), 202-371-6030 and
Joel Stephen Burton (for United), 202-637-9057

Responsive pleadings: On January 15, 1997, American Airlines filed an answer to the joint application, asking that the Department not act on the Aeromexico/United request until it has conducted a thorough examination of various code-share arrangements for U.S.-Mexico services, including the instant one. In support of its position, American asserted that: the Department should not approve the subject application for authority in this limited-entry market, while it has imposed burdensome evidentiary requirements on it and the TACA Group concerning their request to conduct codeshare operations in open-entry Central American markets; Aeromexico and Mexicana, the two Mexican designees in the Mexico City-Miami market, are, in effect, one carrier, because they both are owned by the same holding company (the Cintra Group); Aeromexico and Mexicana engage in mutual code sharing, which is another indication of their close relationship; and implementation of codeshare arrangements involving Delta and United with Aeromexico/Mexicana will tend to preclude other U.S. carriers from establishing competitive codeshare arrangements with other Mexican carriers. On January 17, 1997, Aeromexico and United each filed an additional pleading in this case, both in response to American's answer.

DISPOSITION

Action: Approved

Action date: January 29, 1997

Effective date of authority granted: January 29, 1997, through January 29, 1998.

Basis for approval: Reciprocity with Mexico.

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

XX Certificate of public convenience and necessity (for United)

XX Foreign air carrier permit conditions (for Aeromexico)

Special conditions/Partial grant/Denial basis/Remarks: In orally approving the requested Mexico City-Miami services, we noted that American Airlines had set forth substantially similar arguments in its petition for review (filed December 11, 1996) of the staff's action approving the Delta/Aeromexico reciprocal codeshare services in various U.S.-Mexico markets (undocketed), which action had been affirmed by the Department in Order 97-1-15 (issued January 21, 1997). American has not raised any new issues for consideration since that Order was issued that would warrant unfavorable action on the instant application. Also, in this connection, we continue to find that there is adequate reciprocity with Mexico supporting the subject application. Moreover, the codesharing operations must comply with 14 CFR 399.88 of the Department's regulations, and any amendments to the Department's regulations concerning codeshare arrangements that may be adopted, and the condition that this foreign air transportation be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (that is, the ticket). Further, the operator shall not permit the code of its U.S. air carrier codesharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

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.)