



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

SERVED July 2, 1997

Issued by the Department of Transportation  
on the 2nd day of July, 1997

In the matter of

SPECIALTY AIR SERVICE OPERATORS OF CANADA AND  
MEXICO

authority to conduct agricultural and industrial operations in the  
United States under 14 CFR Part 375 and the North American Free  
Trade Agreement

Docket OST-96-1021

ORDER

**Summary**

In this order we are finalizing our tentative findings and conclusions in Order 96-1-28, and granting Canadian and Mexican “specialty air service” operators a blanket foreign aircraft permit under 14 CFR Part 375 to conduct agricultural and industrial operations (so-called “specialty air services”) in U.S. markets, to the extent that they are covered by the North American Free Trade Agreement (NAFTA), subject to certain conditions proposed in that order.

**Background**

As discussed in detail in Order 96-1-28, NAFTA is a multilateral agreement entered into by the Governments of Canada, Mexico, and the United States, which, among other things, provides for the operation of a range of specialty air services by operators of the signatory countries.<sup>1</sup> NAFTA delays coverage for certain services, and contains a so-

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<sup>1</sup> The services involved are aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying.

called “Phase-Out” schedule for the removal of these limitations on coverage. Under this schedule, the right of Canadian and Mexican operators to conduct specialty air services within the United States becomes effective as follows:

January 1, 1994: Aerial advertising, mapping, surveying, and photography, fire fighting, forest fire management, glider towing, and parachute jumping

January 1, 1996: Aerial construction and heli-logging

January 1, 1997: Aerial sightseeing, aerial inspection and surveillance, and flight training

January 1, 2000: Aerial spraying

14 CFR Part 375 of our rules requires that operators of foreign civil aircraft conducting commercial air operations in the United States (including the types of operations defined as specialty air services), must obtain our prior approval, in the form of a foreign aircraft permit, before commencing such operations. Currently, a Canadian or Mexican operator that wishes to conduct specialty air services in the United States under NAFTA must file an application for a foreign aircraft permit on a flight-by-flight or contract-by-contract basis, under the provisions of §375.43, and obtain such authority before commencing its operations.

## **Discussion**

By Order 96-1-28, served January 24, 1996, we directed interested persons to show cause why we should not grant Canadian and Mexican operators of specialty air service a blanket foreign aircraft permit to conduct those specialty air services that are encompassed by NAFTA and for which coverage has become effective under the “Phase-Out” schedule shown above.<sup>2</sup> We proposed to make this blanket foreign aircraft permit subject to each operator’s compliance with applicable safety requirements of the Federal Aviation Administration (FAA), and to make the authority effective until further order of the Department.

In that order, we noted that the operation in the United States of those specialty air services encompassed by and for which coverage has become effective under NAFTA is a right available to Canadian and Mexican operators; and that applications we have received to conduct specialty air service operations since the implementation of NAFTA have raised no regulatory issues and have routinely been approved by us. Therefore, we tentatively concluded that requiring prior approval for these operations was no longer

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<sup>2</sup> Under our proposed action, a Canadian or Mexican operator seeking to conduct a service for which coverage is not yet effective under the “Phase-Out” schedule, or which is outside the scope of NAFTA, would need to file an application for an individual foreign aircraft permit under the normal Part 375 procedures.

warranted in the public interest, and that instead we should issue the blanket foreign aircraft permit at issue here.

The order directed persons objecting to the Department's tentative findings and conclusions set forth in that order to file their objections within fourteen calendar days after the date of service of that order. We served Order 96-1-28 on those persons shown in the Attachment to this order. We also published a notice of our tentative decision in the Federal Register (FR 61-3071, January 30, 1996).

On February 7, 1996, The Management Association for Private Photogrammetric Surveyors (MAPPS), a national trade association of firms engaged in certain types of specialty air services, filed a comment to Order 96-1-28. MAPPS stated that we should grant the proposed blanket foreign aircraft permit only after we assure that U.S. specialty air service operators have access to Canadian and Mexican markets. MAPPS stated that if U.S. firms are being denied such opportunities, we should likewise withhold access to our market from these countries' operators. MAPPS stated that it knew of no instances where U.S. operators had been permitted by Canadian authorities to conduct specialty air services in that country, and questioned whether Mexican authorities would allow U.S. operators to conduct such operations. Finally, MAPPS expressed concern that operations in the United States by what it called "substandard Mexican operators" would cause harm to U.S. operators unless those operations were subject to U.S. safety standards.

No other comments or objections to Order 96-1-28 have been filed.

## **Decision**

We have decided to finalize our tentative findings and conclusions in Order 96-1-28, and to issue Canadian and Mexican specialty air service operators a blanket foreign aircraft permit under Part 375, as described in that order.<sup>3</sup>

The only commenter in this proceeding, MAPPS, has questioned whether Canadian and Mexican authorities would allow U.S. operators to conduct specialty air service operations in their respective countries under NAFTA, and also questioned the safety

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<sup>3</sup> As we noted in Order 96-1-28, some specialty air service activities do not belong clearly to one of the categories described in Article 1213 and Annex I of NAFTA, and we will require that Canadian and Mexican operators file ad hoc applications for foreign aircraft permits under Part 375 in order to conduct these non-conforming services. In the event that an operator desires our view in advance as to whether a particular specialty air service activity is encompassed by Article 1213 and Annex I, and thus by the blanket foreign aircraft permit we are granting here, it should contact the Department's Foreign Air Carrier Licensing Division, Office of International Aviation, for such a determination.

standards under which such services are conducted by Mexican operators in the United States.

We have carefully considered the issues raised by MAPPS, and have concluded that they do not form a basis for withholding or modifying the blanket foreign aircraft permit we proposed in Order 96-1-28.

Significantly, MAPPS has not presented any evidence that either Canada or Mexico has failed to meet its obligations under NAFTA, and we have received no complaints from U.S. specialty air service operators concerning their access to these countries in the period since implementation of NAFTA.

With respect to Canada, we have been advised by Transport Canada that, as of June 15, 1997, eleven U.S. operators had requested authority from that agency to conduct specialty air services in Canada since the entry into force of NAFTA, and that Transport Canada had approved all of these requests.<sup>4</sup>

While we are aware of no U.S. operators seeking authority to conduct specialty air services in Mexico, it is significant that Mexico, as well as Canada and the United States, is a member of a NAFTA Trilateral Specialty Air Services Working Group, whose mission is to facilitate the conduct of cross-border services under NAFTA. All three countries have demonstrated their commitment to the successful implementation of the specialty air service provisions of NAFTA by their active participation in this Working Group.<sup>5</sup>

Moreover, as we noted in Order 96-1-28, our action here will remove an unnecessary burden on Canadian and Mexican specialty air service operators, and is consistent with the Administration's goal, set forth in the National Performance Review Report, of creating a government that works better and costs less.<sup>6</sup>

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<sup>4</sup> These Transport Canada authorities are safety authorizations. As we noted in Order 96-1-28, Canada and Mexico do not require U.S. operators to seek separate, prior economic operating authority, comparable to our foreign aircraft permit under 14 CFR Part 375, in order to conduct specialty air services in their territories.

<sup>5</sup> Indeed, our action here removing the prior approval requirement for these operations is consistent with the goals of the Trilateral Working Group.

<sup>6</sup> As we also noted in Order 96-1-28, we do not believe that this authority will materially lessen our ability to intervene with respect to these operations if required. Under the terms of 14 CFR §375.19, we may revoke, suspend, or cancel this or any other foreign aircraft permit issued under Part 375 in whole or in part for a particular operator or operators, without notice or hearing, if we find such action to be in the public interest.

Finally, with respect to the safety concerns raised by MAPPS, we note that, as we discussed in Order 96-1-28, each operator conducting services under the blanket foreign aircraft permit must comply with applicable FAA requirements. Since these requirements and the form of FAA review may change from time to time, we will condition the blanket foreign aircraft permit on compliance, by each operator conducting services under it, with applicable FAA requirements, rather than with specific terms.

ACCORDINGLY,

1. We make final our tentative findings and conclusions set forth in Order 96-1-28;
2. We grant a blanket foreign aircraft permit under 14 CFR Part 375 to all operators of Canadian and Mexican foreign civil aircraft to the extent necessary to permit them to conduct specialty air service operations in the United States that are provided for in Chapter 12 of the North American Free Trade Agreement; provided, that this blanket foreign aircraft permit does not authorize the operation of those specialty air services which are subject to the “Phase-Out” provisions of Annex I, I-U-16-17 of NAFTA until the effective date of coverage for those services; and provided further, that this blanket foreign aircraft permit is subject to revocation in whole or in part for a particular operator or operators when in the public interest;
3. Our action is subject to the condition that each Canadian and Mexican operator conducting operations under this authority (1) comply with all applicable requirements of 14 CFR Part 375; (2) comply with all applicable FAA requirements contained in the Federal Aviation Regulations and applicable Orders of the FAA; and (3) carry on board each aircraft operated under this authority a copy of this order, and a copy of any document required by the Federal Aviation Regulations;
4. This authority is effective immediately, and shall remain in effect until further order of the Department;
5. This authority is subject to amendment or modification, at our discretion and without hearing, should such action be necessary in the public interest;
6. Our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975; and
7. We will serve a copy of this order on the persons named in the Attachment to this order.

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

Attachment

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

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