



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation
on the 26th day of September, 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-97-2863
 OST-97-2846
 OST-97-2801
 OST-97-2773
 OST-95-327
 48154
 47509
 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.

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

Memorandum

Subject: ACTION: Order confirming staff actions on
various Docketed applications

Date:

From: Paul L. Gretch, Director
Office of International Aviation, X-40

Reply to
Attn. of:

To: Paulette V. Twine, Chief
Documentary Services/TASC, SVC121.30

Please issue the attached order confirming actions taken under assigned authority.



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2863

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

Date filed: August 27, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct scheduled, all-cargo service between Manzanillo, Mexico, and Los Angeles, California, for a period of one year.

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

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

Responsive pleadings: None.

DISPOSITION

Action: Approved

Action date: September 16, 1997

Effective date of authority granted: September 16, 1997, through September 16, 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 of Appendix A.

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**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2846

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: August 22, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct scheduled, combination service between Monterrey, Mexico, and Dallas, Texas, for a period of one year.

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: September 11, 1997

Effective date of authority granted: September 11, 1997, through September 11, 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-97-2801

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: MEXICO TRANSPORTES AEREOS, S.A. de C.V. Date Filed: August 14, 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): Scott L. Johnston, 713-932-1540

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: September 18, 1997

Effective date of authority granted: September 18, 1997, through September 18, 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 (small equipment). 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.) Further, we are continuing to allow Mexican carriers conducting passenger charters using small equipment to make stopovers in the United States in the conduct of such operations.

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-97-2773

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

Date Filed: July 30, 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): Jorge Zuniga (business address: Aerogisa, S.A. de C.V., Chiapas #375, Col. Republica, Satillo, Coahuila, Mexico 25280)

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: September 3, 1997

Effective date of authority granted: September 3, 1997, through September 3, 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 (small equipment). 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.) Further, we are continuing to allow Mexican carriers conducting passenger charters using small equipment to make stopovers in the United States in the conduct of such operations.

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-95-327

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: August 15, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to continue to conduct scheduled, combination service between San Jose del Cabo, Mexico, and San Diego, California, for a period of one year.

If renewal, date of last action(s): August 30, 1996; confirmed by Order 96-9-45.

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

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: September 18, 1997

Effective date of authority granted: September 18, 1997, through September 18, 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**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET 48154

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: June 23, 1994

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to continue to conduct scheduled, combination service between Merida, Mexico, and New Orleans, Louisiana, for a period of one year.

If renewal, date of last action(s): July 16, 1993; confirmed by Order 94-4-13.

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

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: September 18, 1997

Effective date of authority granted: September 18, 1997, through September 18, 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**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET 47509

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: July 19, 1993

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to continue to conduct scheduled, combination service between the coterminal points Cancun and Mexico City (including Toluca), Mexico, and New Orleans, Louisiana, for a period of one year.

If renewal, date of last action(s): August 6, 1992; confirmed by Order 94-12-32.

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

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: September 18, 1997

Effective date of authority granted: September 18, 1997, through September 18, 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**
Office of the Secretary
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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: COMPANIA MEXICANA de AVIACION, S.A. de C.V. (MEXICANA) and EMPRESA de TRANSPORTE AERO del PERU (AEROPERU)

Date filed: February 27, 1997

Relief requested: Statement of Authorization under 14 CFR Part 212 to permit Mexicana to continue to engage in a code-share/blocked-space arrangement with Aeroperu for once-daily scheduled service over the routing Newark, New Jersey - Cancun, Mexico - Lima, Peru - Buenos Aires, Argentina, through March 10, 1998. Under the arrangement, Mexicana: 1) operates the aircraft on all segments of the route; 2) carries its own traffic between Newark and Cancun under one flight number, and operates beyond Cancun under different flight numbers; and 3) carries Aeroperu's code for traffic between Newark and Lima, and for traffic between Newark and Buenos Aires. These Aeroperu services are held out under one flight number between Newark and Lima, and a different flight number between Lima and Buenos Aires.

If renewal, date of last action(s): July 7, 1997; confirmed by Order 97-8-18.

Applicant representative(s): Robert D. Papkin (for Mexicana) 202-626-6601; and John L. Richardson (for Aeroperu) 202-496-1234.

Responsive pleadings: By letter dated March 5, 1997, Fine Airlines, filed a pleading in opposition to the application, stating that the Government of Peru continues to ban all of its Peruvian operations. Fine stated that perpetuation of this ban violates Peru's obligations under the U.S.-Peru Air Services Agreement, and that until the ban is lifted, it will continue to object to all applications for additional or extrabilateral authority and all requests for waivers of any Department rules, filed by any Peruvian carrier. By letter dated March 7, 1997, Aeroperu responded to Fine's March 5 pleading.

DISPOSITION

Action: Approved through November 6, 1997, and deferred action on remainder (that is, to continue the services beyond November 6, 1997, through March 10, 1998).

Action date: September 3, 1997

Effective date of authority granted: September 3, 1997, through November 6, 1997.

Basis for approval: Overall aviation relations with Mexico and Peru. We are aware, however, of Fine's continuing problems with Peruvian authorities and are continuing to attempt to resolve them. Further, in taking our action, we emphasized that we granted this authority in full reliance on our

expectation that the Governments of Mexico and Peru will approve U.S.-carrier requests to implement similar code-share operations to those countries involving third-country carriers. Should such approval not be forthcoming, we reserved the right to review and to amend, modify or revoke this authority at any time and without hearing. We limited the duration of the extension of authority to 60 days. We determined that the particular characteristics of this application warranted a more limited grant of authority than the duration requested.

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: These code-share 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 further conditions 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). Also, the Aeroperu services shall be held out under one flight number between Newark and Lima, and a different one between Lima and Buenos Aires; Mexicana shall carry its own traffic between Newark and Cancun under one flight number, and operate beyond Cancun under different flight numbers. Under this authority, Aeroperu is only authorized to conduct operations in the Newark-Lima and in the Newark-Buenos Aires markets.

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.)