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OST-97-2161-2

U.S. Department of  
Transportation

NEW

400 Seventh St., S.W.  
Washington, D.C. 20590

Office of the Secretary  
of Transportation

**NOTICE OF ACTION TAKEN April 22, 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 decision document will be issued as soon as possible.

Application of DELTA AIR LINES, INC. filed 2/27/97 in Docket OST-97-2161; Application of DELTA AIR LINES, INC., & AEROVIAS de MEXICO, S.A. de C.V., (AEROMEXICO) (Undocketed) filed 2/27/97; and Application of DELTA AIR LINES, INC., & AEROVIAS de MEXICO, S.A. de C.V., (AEROMEXICO) (Undocketed) filed 3/19/97 for:

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

Scheduled foreign air transportation of persons, property, and mail (1) between Los Angeles California, Leon, Mexico, (2) between Houston, Texas, and Mexico City, Mexico; (3) between Miami, Florida, and Merida, Mexico; (4) between Dallas/Ft. Worth, Texas, and Ixtapa/Zihuatanejo, Mexico; (5) between Miami, Florida, and Cancun, Mexico; (6) between New York (JFK), New York, and Cancun, Mexico. Delta states that these services will be provided under a code-share arrangement with Aeromexico on flights operated by Aeromexico. Delta also seeks exemption authority (1) to serve Acapulco, Cancun, Guadalajara, Monterrey, and Puerto Vallarta via Mexico City from its existing U.S.-Mexico City gateways--Atlanta, Dallas/Ft. Worth, Newark/New York, Los Angeles, Orlando, and Las Vegas; and (2) to serve Aguascalientes and Leon in conjunction with its existing Los Angeles-Puerto Vallarta service. Delta states that the services beyond Mexico City and Puerto Vallarta would be provided under a code-share arrangement with Aeromexico on flights operated by Aeromexico. Finally, Delta requests route integration authority to integrate this authority with all Delta's existing certificate and exemption authority, to the extent permitted by applicable international agreements.

XX Statement of Authorization for Aeromexico under Part 212 of the Department's regulations to:

Display Delta's airline designator code on flights operated by Aeromexico between Dallas/Ft. Worth-Ixtapa/Zihuatanejo, Houston-Mexico City, Miami-Cancun, Miami-Merida, Los Angeles-Leon, Los Angeles-Puerto Vallarta, New York (JFK)-Cancun. In addition, to display Delta's airline designator code on flights operated by Aeromexico between Mexico City, on the one hand, and Guadalajara, Cancun, and Puerto Vallarta, on the other; and between Puerto Vallarta, on the one hand, and Aguascalientes, and Leon, on the other for the carriage of Delta's traffic between the United States and Mexico.

XX Statement of Authorization for Delta under Part 207 of the Department's regulations to:

Display Aeromexico's airline designator code on the following flights operated by Delta: Atlanta-Detroit, Atlanta-Philadelphia, Dallas/Ft. Worth-Boston, Los Angeles-San Francisco, Dallas/Ft. Worth-New York (LGA), Atlanta-New York (LGA), and Atlanta-Newark. for the carriage of Aeromexico's traffic between Mexico City and the United States.

Applicant reps: Robert Cohn (Delta) (202)663-8060 DOT Analyst: Linda Lundell (202)366-2336  
William Evans (Aeromexico) (202) 371-6030

(See Reverse Side)

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## DISPOSITION

- XX Deferred on Exemption Request for Miami-Cancun, New York-Cancun,  
and DFW-Guadalajara (via Mexico City)
- XX Dismissed Request for Longer Term of Authority (code-share only)
- XX Granted Remainder (Subject to Conditions) (See Remarks)

The above actions were effective when taken: April 22, 1997. Delta's exemption authority will expire April 22, 1999, or 90 days after final Department action on a corresponding certificate application, whichever occurs earlier; Delta's and Aeromexico's statements of authorization will expire March 26, 1998, (Coextensive with the duration of the underlying authority granted Aeromexico by Notice of Action Taken dated March 26 and April 9, 1997, in Docket OST-97-2160).

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

XX 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 Holder's certificate of public convenience and necessity (Delta)

XX Holder's foreign air carrier permit (Aeromexico)

XX Standard Exemption Conditions (attached)

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**Special Conditions/Remarks:** The U.S.-Mexico exemption authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2.

The code-sharing operations authorized herein must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted and are 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, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (*i.e.*, the ticket), and that the operator shall not permit the code of its U.S. carrier code-sharing 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.

The route integration authority granted is subject to the condition that service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of route integration authority requested should be construed as conferring upon Delta additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Delta notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in Delta's authority by virtue of the route integration exemption granted here, but that are not then being used by Delta, the holding of such authority by route integration will

not be considered as providing any preference for Delta in a carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

**Requests Deferred:** Delta, in the instant application, and United, in Docket OST-96-1988, have each requested exemption authority to serve the New York/Newark-Cancun and Miami-Cancun markets, and there are insufficient designations available to accommodate the requests of both applicants. We have deferred action on Delta's request (United's request is still pending), while we explore expansion of services in these markets with the Mexican aviation authorities.

We have also deferred action on Delta's request to serve the DFW-Guadalajara (via Mexico City) market. Currently, the market is approved only for single-designation services, and American Airlines is designated and is providing service in that market. Should we obtain double-designation approval from the Mexican aviation authorities for this route, we will proceed to act on Delta's request.

In addition to the authorities discussed in this notice, Delta and Aeromexico had also requested authority to engage in codesharing services in the Atlanta-Frankfurt market for the carriage of Aeromexico's Mexico-Frankfurt traffic. Aeromexico sought authority under Part 216 of the Department's regulations to commingle its U.S.-Mexico and Mexico-Frankfurt traffic on its U.S.-Mexico flights, and Delta requested a statement of authorization to display Aeromexico's code on its Atlanta-Frankfurt flights. We granted that request on April 11, 1997.

## APPENDIX A

### U.S. Carrier Standard Exemption Conditions

In the conduct of the operations authorized by the attached order, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with the requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted or confirmed by the attached order shall be effective only during the period when the holder is in compliance with the conditions imposed above.