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

Order 2002-1-11

Issued by the Department of Transportation
on the 19th day of November, 2001

Served: January 24, 2002

In the matter of

CERTAIN FOREIGN AIR CARRIERS

foreign air carrier permits and exemptions under
49 U.S.C. §41301 and §40109

Docket OST-2001-10416 - 3

Applications of

CERTAIN FOREIGN AIR CARRIERS

for renewal and/or amendment of foreign air carrier
permits and exemptions under 49 U.S.C. §41301 and
§40109

FINAL ORDER

Summary

By this order we are finalizing our tentative findings and conclusions in Order 2001-8-15 with respect to the foreign air carriers listed in the Appendix to this order, and terminating the indicated foreign air carrier permits and exemptions held by these carriers. We are taking this action because these carriers have not met the statutory requirements of the Foreign Air Carrier Family Support Act of 1997, 49 U.S.C. 41313, as amended. Information available to the Department indicates that all of these foreign carriers are either out of business or no longer conduct any U.S. operations.

Background

As discussed in detail in Order 2001-8-15, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) (P.L. 106-181; 114 Stat. 61; April 5, 2000), amended the Foreign Air Carrier Family Support Act of 1997 (49 U.S.C. 41313), to require, among other things, that foreign air carriers submit to the Department and the National

Transportation Safety Board, by October 2, 2000, additional assurances for their respective plans to address the needs of families of passengers involved in aircraft accidents.¹ The additional assurances that foreign carriers were to file are described in section 403(a)(1) of AIR-21.

By Notice dated June 8, 2000, the Department's Assistant General Counsel for Aviation Enforcement and Proceedings formally advised foreign carriers of the need for them to file revised Family Support Plans by the October 2, 2000, deadline set forth in AIR-21.

Order to Show Cause

By Order 2001-8-15, served August 15, 2001, we directed interested persons to show cause why we should not terminate the foreign air carrier permit and exemption authority held by eleven foreign air carriers that had, up to that date, failed to file the required revised family support plans. In that order, we noted our commitment to the continued successful implementation of the Foreign Air Carrier Family Support Act, in view of the significant benefits it accords the families of victims of aviation disasters. We noted that we had, to that end, made every effort to advise foreign air carriers of their obligations under the Act, and to assist them in meeting those obligations. Specifically, in addition to the June 8, 2000, Notice sent to all foreign air carriers, the Department's staff contacted by telephone the listed U.S. counsel or representative of each non-filing foreign carrier, to ascertain why the carrier had not filed its revised plan, and to offer assistance if the carrier had questions concerning its obligations under the amended Act.

Further, we noted that on November 30, 2000, the Department's Assistant General Counsel for Aviation Enforcement and Proceedings sent letters to the remaining foreign air carriers that had not filed plans, notifying them that they were in violation of the amended Act and therefore subject to significant enforcement action. In the interest of obtaining voluntary compliance, the Assistant General Counsel stated that if the carriers submitted their plans within 15 days of the letter's date, his office would close the matter without further enforcement action, but that failure to file within that period could result in immediate enforcement action, and that "continued failure to file the required plan could result in the revocation of your airline's authority to operate." In closing, the Assistant General Counsel again offered the carriers assistance in meeting their obligations under the amended Act.

We also noted that after the 15-day period noted in the Assistant General Counsel's letter had passed, Department staff notified the listed U.S. counsel or representative of the remaining nonfiling foreign carriers, again offering assistance to those carriers.

¹ AIR-21 required U.S. carriers to submit to the Department and NTSB the same additional assurances that foreign carriers must file.

In Order 2001-8-15, we tentatively found that the continued failure of the eleven non-filing foreign carriers to provide the required revised family support plans, particularly in the face of repeated advisories from the Department, constituted grounds for termination of those carriers' authority to serve the United States. We also noted that it was our understanding that all of the nonfiling foreign air carriers were either no longer in business, or no longer conducted any U.S. operations. We also stressed that our tentative action was without prejudice to the affected foreign carriers refiling for Department authority, at such time as they were prepared to comply with all aspects of U.S. law, including the provisions of the Foreign Air Carrier Family Support Act, as amended.

Responsive Pleading

The only comment to Order 2001-8-15 was filed by Sociedad Ecuatoriana de Transportes Aereos, S.A. (SAETA), a foreign air carrier of Ecuador, on September 5, 2001.² SAETA, while acknowledging that it has not filed a revised plan, stated that adverse business conditions caused it to cease its U.S. operations in 1999 and to close its business offices in the United States in February 2000. It stated that it is involved in negotiations with a potential partner that would enable it to resume operations. As a result, SAETA asked that we take into consideration its present circumstances, and not revoke its U.S. operating authority, since such action could harm its ability to obtain the assistance necessary to resume operations. Finally, SAETA stated that it received no previous notice from the Department concerning the revised Family Support requirements.

Decision

We have decided to finalize our tentative findings and conclusions in Order 2001-8-15 with respect to the foreign air carriers listed in the Appendix to this order, and terminate the indicated foreign air carrier permits and exemptions held by those carriers. A listing of the authority we are terminating is shown in the Appendix to this order.

As discussed above, we have gone to extraordinary lengths to assist foreign air carriers in filing the required family support plans. While we find that we must now act to remove the authority held by the remaining non-filers, it is significant that, with the exception of SAETA (discussed below), none of these foreign carriers opposed our termination of their permits or exemptions.

² As noted in the Appendix to this order, SAETA holds a foreign air carrier permit issued by Order 88-5-34 (Docket 45220), and exemptions issued by Notices of Action Taken dated June 29, 1995 (Docket OST 96-1443) and December 23, 1996 (Docket OST 95-786). The exemption authorities have remained in effect under the automatic extension provisions of the Administrative Procedure Act (5 U.S.C. 558(c), as implemented by 14 CFR Part 377) by virtue of the carrier's filing of timely applications for renewal in Dockets OST 96-1443 and 95-786.

As we proposed in Order 2001-8-15, we are terminating the authority held by these foreign air carriers by terminating their currently-effective foreign air carrier permits and exemption authorities. In some cases, these permits and/or exemptions have expired by their terms, but remain in effect because the carriers have filed timely renewal applications, and have invoked the automatic extension provisions of 5 U.S.C. 558(c), as implemented by 14 CFR Part 377, to keep these permits and/or exemptions in effect. In those instances, we are denying those requests for renewal, which will have the effect of terminating the carriers' permit and/or exemption authorities.

As we stated in Order 2001-8-15, information available to the Department indicates that all of the foreign carriers involved in this proceeding are either out of business or no longer conduct any U.S. operations. However, we wish again to stress that our action in this proceeding is without prejudice to the affected foreign air carriers refile for Department authority to conduct U.S. operations, at such time as they are prepared to comply with requirements related to that authority, including the provisions of the Foreign Air Carrier Family Support Act.

With respect to the issues raised by SAETA, we have carefully considered the carrier's arguments, and find that they do not warrant our leaving in place the carrier's Department authority. While we recognize that SAETA may not currently be conducting U.S. operations, and may be in the process of reorganization with the intention of resuming U.S. services in the future, that situation does not mitigate the undisputed fact that the carrier has not filed a revised Family Support plan and is thus not currently in compliance with U.S. law. Importantly, as to SAETA's assertion that it received no previous notice from the Department concerning the revised Family Support requirements, we would note that SAETA designated to the Department, on September 1, 1995, its official agent for service of Department documents (*see* listing for SAETA in the Department's listing of foreign air carrier agents at <http:dms.dot.gov/reports>).³ We mailed a copy of our June 8, 2000, Notice, described above, to that agent, thus putting SAETA on formal notice of its obligation under 49 U.S.C. 41313, as amended, to file a revised Family Support plan. Moreover, the Department's Assistant General Counsel for Aviation Enforcement and Proceedings sent a copy of his November 30, 2000, letter, discussed above, to SAETA's designated agent. Under these circumstances, given the notice that SAETA has received of its obligations, and its continued failure to file a revised Family Support plan, we cannot find that it would be in the public interest for SAETA to continue to hold economic authority from the Department. However, as we stated above with respect generally to the foreign air carriers involved here, SAETA is free to reapply for Department authority when it is in a position to comply with the provisions of the Foreign Air Carrier Family Support Act, as amended, and our action here will in no way adversely affect our consideration of such a request.

³ All U.S. and foreign air carriers are required to designate to the Department an official agent for notice and process in Department proceedings. *See* 49 U.S.C. 46103.

ACCORDINGLY,

1. We make final our tentative findings and conclusions set forth in Order 2001-8-15;⁴
2. We terminate the foreign air carrier permits and exemption authority referred to in the Appendix to this order;
3. We deny the applications for renewal of foreign air carrier permits and exemption authority referred to in the Appendix to this order;
4. Our action with respect to exemption authority and applications for renewal of exemption authority shall be effective on the service date of this order;
5. Our action with respect to foreign air carrier permits and applications for renewal of foreign air carrier permits shall, unless disapproved by the President of the United States under §41307 of Title 49 of the U.S. Code, become effective on the 61st day after its submission for §41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove this portion of the Department's decision under that section, whichever occurs earlier; and ⁵
6. We will serve a copy of this order on the foreign air carriers listed in the Appendix to this order; the Embassies of the homelands of these carriers in Washington, D.C.; the National Transportation Safety Board; the Federal Aviation Administration; and the Department of State.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Appendix

⁴ Since all interested parties have had the opportunity to file comments in this proceeding, we will not entertain petitions for reconsideration.

⁵ This order was submitted for §41307 review on November 19, 2001. On January 23, 2002, we received notification that the President's designee under Executive Order 12597 and its implementing regulations did not intend to disapprove the Department's order.

*An electronic version of this document is available on the World Wide Web
at: http://dms.dot.gov/reports/reports_aviation.asp*

Foreign Air Carrier Permits and Exemptions Being Terminated in this Proceeding

Aeronautica de Cancun, S.A. (Mexico), exemption issued by Order 98-4-13 (Docket OST 95-132). The exemption authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing a timely application for renewal in Docket OST 95-132.

AeroPeru (Peru), foreign air carrier permit issued by Order 89-9-17 (Docket 44689).

Air Alliance, Inc. (Canada), foreign air carrier permit issued by Order 98-5-11 (Docket 50393).

Empresa Ecuatoriana de Aviacion (Ecuador), foreign air carrier permit issued by Order 84-5-32 (Docket 41457). Exemption issued by Notice of Action Taken dated March 22, 1993 (Docket 46708). The exemption authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing a timely application for renewal in Docket 46708.

Inter-Canadien (1991)/Inter-Canadian (1991) (Canada), exemption issued by Notice of Action Taken dated September 17, 1997 (Docket OST 96-1150). The exemption authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing a timely application for renewal in Docket OST 96-1150.

Lineas Aereas Mayas, S.A. (Guatemala), foreign air carrier permit issued by Order 89-4-24 (Docket 45001). Exemption issued by Order 95-2-29 (Docket 47631). The permit and exemption authorities have remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing timely applications for renewal in Dockets 45001 and 47631.

Pacific International Airlines, S.A. (Panama), exemption issued by Order 97-4-9 (Docket OST 97-2232). The exemption authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing a timely application for renewal in Docket OST 97-2232.

Seagreen Air Transport Limited (Antigua and Barbuda), foreign air carrier permit issued by Order 79-1-125 (Dockets 31006 and 25608). The permit authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing a timely application for renewal in Docket 41937.

Sobelair N.V./S.A. (Belgium), foreign air carrier permit issued by Order 97-1-8 (Docket OST 96-1261).

Sociedad Ecuatoriana de Transportes Aereos, S.A. (Ecuador), foreign air carrier permit issued by Order 88-5-34 (Docket 45220). Exemptions issued by Notices of Action Taken dated June 29, 1995 (Docket OST 96-1443) and December 23, 1996 (Docket OST 95-786). The exemption authorities have remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing timely applications for renewal in Dockets OST 96-1443 and 95-786.

Transportes Aereos Ejecutivos, S.A. de C.V. (Mexico), foreign air carrier permit issued by Order 95-3-11. Exemptions issued by Notices of Action Taken dated September 30, 1998 (Docket OST 96-1659) and November 13, 1998 (Docket OST 98-4704). The exemption authorities have remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing timely applications for renewal in Dockets OST 96-1659 and 98-4704.