

Order 2002-12-14



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

Issued by the Department of Transportation
on the 17th day of December, 2002

In the matter of the revocation of the certificate
authority issued to

EMERY WORLDWIDE AIRLINES, INC.

in accordance with section 204.7 of the
Department's Regulations

Served: December 20, 2002

**Dockets 46443, 46858,
OST-98-4046 and
OST-02-12547**

ORDER REVOKING CERTIFICATE AUTHORITY

Summary

By this order, we are revoking the certificate authority issued to Emery Worldwide Airlines, Inc., for reason of dormancy.

Background

By Order 89-12-45, issued December 22, 1989, the Department reissued to Emery Worldwide Airlines, Inc., the Domestic All-Cargo Air Service Certificate and the foreign charter all-cargo certificate issued previously to Air Train, Inc.¹ By Order 91-1-44, issued January 15, 1991, the Department issued Emery a certificate for foreign scheduled all-cargo authority to serve 52 foreign points. By Order 99-12-7, issued October 13, 1999, the Department reissued Emery's 1991 certificate to include an additional 64 foreign points.

Emery operated under these certificates until August 13, 2001, when it voluntarily suspended its operations as part of an interim agreement with the Federal Aviation Administration (FAA). Section 204.7 of the Department's aviation economic regulations (14 CFR 204.7) provides that, if a carrier ceases conducting the operations for which it was found fit, willing and able, its DOT authority to conduct those operations is automatically suspended as of the date that those operations ceased. Moreover, it cannot resume operations unless the Department determines that it is fit to do so.

¹ Air Train's certificates were issued originally by Orders 85-12-23 (as reissued and made effective by Order 87-6-46) and 88-3-59. On May 30, 1989, Air Train was acquired by Consolidated Freightways, Inc. As a result of this acquisition, Air Train's name was changed to Emery Worldwide Airlines.

By letter dated August 14, 2001, the Department notified Emery that, as a result of its cessation of operations, and pursuant to section 204.7, its certificate authority was suspended and that it could not resume air transportation operations until the Department had redetermined its fitness to do so. We further stated that, if Emery did not resume flying operations by August 13, 2002, its certificate authority would be revoked for reason of dormancy in accordance with section 204.7.

On June 21, 2002, Emery filed an application in Docket OST-2002-12547 for a waiver of the section 204.7 one-year revocation date. In that application, the carrier stated that, while it did not wish to resume commercial air carrier flight operations, it did wish to retain its certificates until December 4, 2002. Emery explained that this delay was necessary to allow for the orderly disposition of the carrier's aircraft and that the revocation of the company's authority on the August 13 deadline might be viewed as an "event of default" by its aircraft lessors. Emery further indicated that the FAA had agreed to take no action to suspend or revoke its Part 121 certificate until December 4, and requested that we waive revocation of Emery's fitness certificate to run concurrently with the FAA agreement. After review of these circumstances, we found that granting Emery a waiver of the revocation deadline, as requested, was in the public interest. Therefore, on June 24, we extended the section 204.7 deadline until December 4, 2002.

That date has now passed and Emery has not requested any further extension.

Given the foregoing, and in accordance with section 204.7 of our rules, we will revoke the certificates issued to Emery by Orders 89-12-45 and 99-12-7.¹ This action is without prejudice to the company's filing for new certificate authority in the future.

ACCORDINGLY, Acting under authority assigned by the Department in its regulations, 14 CFR 385.12:

1. We revoke the certificate issued to Emery Worldwide Airlines, Inc., by Order 89-12-45 authorizing it to conduct domestic all-cargo air transportation operations.
2. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

This order shall be effective and become the final action of the Department of Transportation upon the expiration of the above period unless, within such period, a petition for review is filed or the Department gives notice that it will review this order on its own motion.

¹ By this order, we revoke only the Domestic All-Cargo Air Service Certificate issued to Emery by Order 89-12-45. Revocation of Emery's charter and scheduled foreign all-cargo certificate authority contained, respectively, in Orders 89-12-45 and 99-12-7 is subject to Presidential review under 49 U.S.C. 41307 and will be handled in a separate order.

By:

RANDALL D. BENNETT
Director
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(SEAL)

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