



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

Issued by the Department of Transportation on December 4, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-16568

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Applicants: TRANSPORTES AEROMAR, S.A. de C.V. and MEXICANA AIRLINES

Date Filed: November 25, 2003.

Relief requested: Statement of Authorization under 14 CFR Part 212 to permit Transportes Aeromar (using small equipment, see below) to carry Mexicana's designator code on Transportes Aeromar's scheduled services operated between the Mexican coterminal points Mexico City/San Luis Potosi and San Antonio, Texas, for an indefinite duration.

Applicant reprs: Herbert A. Rosenthal (Aeromar), 202-785-9773 and Charles F. Donley (Mexicana), 202-626-6600

DOT analyst: Allen F. Brown, 202-366-2405

If renewal, date and citation of last action: New authority.

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: December 4, 2003

Effective dates of authority granted: The authority is effective December 4, 2003, for an indefinite duration.

Basis for approval: United States-Mexico Air Transport Services Agreement.

Remarks/Conditions: In the conduct of these operations, Aeromar 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 codeshare operations are subject to the following conditions – a) The Statement of Authorization will remain in effect only as long as (i) Aeromar and Mexicana continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect. b) The subject foreign air carriers (Aeromar and Mexicana) must promptly notify the Department (Office of International Aviation) if the code-share agreement under which these code-share services are operated is no longer in effect, or if the carriers decide to cease operating all or any portion of the approved code-share services. (We expect this notification to be received within ten days of such non-effectiveness or of such decision. This notice should be filed in Docket OST-2003-16568.) c) The code-sharing operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the subject air carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere; that the carrier selling such transportation (that is, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. d) The authority granted here is specifically conditioned so that the subject foreign air carriers shall not give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

Action taken by: Paul L. Gretch, Director, Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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