



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

Issued by the Department of Transportation on January 23, 2004

NOTICE OF ACTION TAKEN -- DOCKETS OST-2000-7490 & 2000-7495

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).

Applicant: Emirates

Background: On July 1, 2003, we granted Emirates exemption authority to engage in scheduled foreign air transportation of persons, property and mail from points behind the United Arab Emirates (U.A.E.), via the U.A.E. and intermediate points, to a point or points in the United States and beyond; and authority to conduct charters in accordance with Part 212 of the Department's rules. On the same date, we granted a joint request of Emirates and Continental Airlines, Inc. for blanket statements of authorization to conduct reciprocal code share services between the United Arab Emirates and the United States. We granted the authorities subject to an interim condition requested by Emirates in the referenced Dockets, that Emirates only exercise the authorities as part of a Department-authorized code-share or wet lease arrangement with a duly authorized and properly supervised carrier or carriers. In its submission in these Dockets, Emirates stated that it would advise the Department when it was prepared to conduct these operations using its own aircraft and crews.

By letter dated January 23, 2004, Emirates advised us that it was ready to conduct the authorized operations with its own aircraft, and asked that the code-share/wet lease condition be removed.

Applicant representative: Shelia C. Cheston & David Heffernan (202) 663-6000
DOT Analyst: Gordon H. Bingham (202) 366-2404

Disposition: We have decided to remove the code-share or wet lease condition from the authorities we granted Emirates on July 1, 2003, in the above referenced dockets. In the circumstances presented, including the notification received from Emirates on January 23, and the fact that we have been advised that the FAA and the TSA are prepared to allow Emirates to serve the United States with its own aircraft, we find that it is in the public interest to remove the code-share or wet lease condition imposed on Emirates' in Dockets OST-2000-7490 & 2000-7495. This means that Emirates may conduct its authorized services to and from the United States with its own aircraft and crews.¹

**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) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (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

¹ We have also amended Emirates' exemption to substitute our current standard exemption conditions (attached) for those which had been in effect at the time of our July 1, 2003 authorization.

Foreign Carrier Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) 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, and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (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) Except as specifically exempted or otherwise provided for in a Department Order, 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, except as otherwise provided in the applicable aviation agreement, 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.