



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

Issued by the Department of Transportation on April 9, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2000-7287

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).

Application of MIDWEST AIRLINES, INC.,¹ filed 12/23/2003 to:

XX Renew for two years exemption under 49 U.S.C. §40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between any point or points in the United States and any point or points in Canada.²

Applicant rep: Robert P. Silverberg (202) 944-3300 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX **Granted (Subject to conditions, see below)**

The above action was effective when taken: April 9, 2004, through April 9, 2006, or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

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

XX **The authority granted is consistent with the aviation agreement between the United States and Canada.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX **Holder's certificates of public convenience and necessity**
XX **Standard Exemption Conditions (attached)**

Remarks: The authority for which Midwest Airlines requested renewal expired March 4, 2004, but had been kept in force pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 558(c), as implemented by 14 CFR Part 377, pending action on its timely-filed renewal application.

Conditions: The code-share operations conducted under this authorization are subject to the following conditions:

¹ Midwest Airlines was previously known as Midwest Express Airlines. The Department subsequently reissued its certificate in its new corporate name, Midwest Airlines. Order 2003-2-15, issued February 21, 2003.

² Midwest states that it is currently providing service only between Milwaukee and Toronto under a code-share arrangement with its affiliate Skyway Airlines. However, Midwest states that it wants the opportunity to provide service to Canada either directly or through a code-share arrangement.

- (a) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the 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 such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, 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; and
- (b) The authority granted here is specifically conditioned so that neither Midwest Airlines nor Skyway Airlines shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

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) grant of the exemption was consistent with the public interest; and (3) 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, 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 order is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier 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 requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration 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) to or from a foreign airport, 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; 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 shall be effective only during the period when the holder is in compliance with the conditions imposed above.