



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

Issued by the Department of Transportation on October 4, 2004

**NOTICE OF ACTION TAKEN – DOCKET OST 2004-19263**

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: WESTERN EXPRESS AIR LINES INC.

Date Filed: Orally filed on September 29, 2004, and confirmed by written application filed September 30, 2004.

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct, using small equipment (see below), passenger and cargo charter operations between Canada and the United States, and other charters in accordance with 14 C.F.R. Part 212.

Date and citation of last action: The applicant most recently held this authority by Notice of Action Taken on July 28, 2003. (See Docket OST-2001-9521.)

Applicant representative: Robert E. Cohn, 202-663-8060      DOT analyst: Allen F. Brown, 202-366-2405

Responsive pleadings: None.

**DISPOSITION**

Action: Approved (as conditioned and limited in duration, see below).

Action dates: September 29, 2004, and October 4, 2004.

Basis for approval: The United States-Canada Air Transport Agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Standard exemption conditions (attached).

Special conditions/Remarks: On September 29, 2004, we orally granted (effective immediately, as conditioned and limited in duration) the request of Western Express (filed orally on September 29, 2004) to conduct the above-described operations through October 4, 2004, and deferred action on the applicant's request to continue to conduct such operations beyond October 4, 2004. We confirm our oral action of grant here. In addition, we grant Western Express the authority to continue to conduct the subject operations through March 26, 2005 (that is, for a duration of 179 days). This authority, effective during the period of September 29, 2004, through March 26, 2005, is not a license with reference to an activity of a continuing nature, within the meaning of 5 U.S.C. 558(c).

In taking our actions of September 29 and October 4, 2004, we found and find that the applicant is properly licensed by its homeland government, operationally and financially qualified to undertake its proposed operations (as conditioned and limited in duration), and is substantially owned and effectively controlled by citizens of Canada.

In the conduct of the operations described above, Western Express may only use aircraft designed to have a maximum passenger capacity of not more than 60 seats and a maximum payload capacity of not more than 18,000 pounds. The authority issued authorizes Western Express to conduct certain Third and Fourth Freedom charter operations. Other charters to/from the United States under this authority, however, are subject to prior approval under 14 C.F.R. Part 212.

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

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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.

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[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

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, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. 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 International Principal Security Inspector (IPSI) to advise the IPSI 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.