

109338



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

Issued by the Department of Transportation on **September 13, 2000**

NOTICE OF ACTION TAKEN

DOCKET OST-2000-7708 - 5
DOCKET OST-97-3289 - 52

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 Applications of **DELTA AIR LINES, INC. (Delta), ATLANTIC SOUTHEAST AIRLINES, INC. (ASA), COMAIR, INC. (Comair), and AEROVIAS de MEXICO, S.A. de C.V. (Aeromexico)**, filed **7/27/2000, (Docket OST-2000-7708)** for:

XX Statement of Authorization under 14 CFR Part 212 as follows:

To display Aeromexico's "AM" designator code on flights operated by Delta in the Atlanta-San Jose del Cabo markets.

XX Exemption authority to Aeromexico under 49 U.S.C. 40109 to perform the following:

Scheduled foreign air transportation of persons, property, and mail between Atlanta, Georgia, and San Jose del Cabo, Mexico.

Applicant reps: **Robert Cohn (Delta) (202) 663-8060** DOT Analyst: **Linda L. Lundell (202) 366-2336**
William Evans (Aeromexico) (202) 371-6030

DISPOSITION

XX **Granted exemption request of Aeromexico and statement of authorization request of Delta for authority in the Atlanta-San Jose del Cabo market (subject to conditions, see below)**

The above action granting new exemption authority to Aeromexico in Docket OST-2000-7708 was effective when taken: **September 12, 2000**, through **September 12, 2001**.

The above action, granting a statement of authorization to Delta in Docket OST-2000-7708 was effective when taken: **September 12, 2000**, and will remain in effect indefinitely, subject to the conditions below.

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 Mexico.**

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 (Delta)**

XX **Holder's foreign air carrier permit (Aeromexico)**

(See next page)

Conditions:

The exemption authority granted Aeromexico to serve the Atlanta-San Jose del Cabo market is limited to operations conducted on a code-share basis only.

The Statement of Authorization granted Delta is subject to the following conditions:

- (a) The statement of authorization will remain in effect only as long as Delta and Aeromexico continue to hold the underlying authority to operate the code-share services at issue, and the code-share agreement providing for the code-share operations remains in effect.
- (b) Delta and/or Aeromexico must promptly notify the Department (Office of International Aviation) if the code-share agreement is no longer effective or if the carriers decide to cease operating all of a portion of the approved code-share services.¹ (Such notice should be filed in Docket OST-2000-7708.)
- (c) 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.
- (d) The authority granted here is specifically conditioned so that neither Delta nor Aeromexico shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

Remarks:

By Notice of Action Taken August 25, 2000, we granted various authorities to Delta/Delta Connection carriers and Aeromexico in the captioned dockets, and deferred action on the exemption request of Aeromexico and statement of authorization request of Delta for authority in the Atlanta-San Jose del Cabo market until the Government of Mexico provided notification of Aeromexico's authorization to serve the market. That notification has been received. With this action, there are no outstanding requests in the captioned dockets.

On the basis of data officially noticeable, we found the foreign air carrier applicant for exemption qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the authority 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 Dockets. 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 ten (10) 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/report_aviation.asp*

¹ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.