



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on October 24, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-16213

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 Application of United Air Lines, Inc. and Air China International Corp. filed 9/22/03 for:

XX Exemption for United under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail, in combination or separately, between any point or points in the United States, and any point or points in the People's Republic of China. United intends to operate this service pursuant to a reciprocal code-share arrangement with Air China International Corp.

XX Statement of authorization for United under CFR Part 212 to:

Permit United to display the "CA" code of Air China on flights operated by United between (1) any points or points in the United States, and any point or points in China, and (2) Air China's coterminal gateways, as well as between each of those gateways, and 30 additional points in the United States selected by China.¹

XX Exemption for Air China under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail, in combination or separately, between any point or points in the People's Republic of China, and any point or points in the United States, pursuant to its code-share arrangement with United.

XX Statement of authorization for Air China under 14 CFR Part 212 to:

Permit Air China to display the "UA" code of United on flights operated by Air China between (1) any point or points in the People's Republic of China, and China's U.S. coterminal gateways, and (2) United's coterminal Chinese gateways, as well as between each of those gateways, and 20 additional points in China selected by the United States.²

Applicant reps: Jeffrey A. Manley (202) 663-6162 (UA) DOT Analyst: Sylvia Moore (202) 366-6519
George N. Tompkins, Jr. (212) 973-8040 (Air China)

¹ China has already selected Boston, Dallas/Ft. Worth, Detroit, Houston, Las Vegas, Miami, Minneapolis/St. Paul, Philadelphia, Phoenix, and Washington, DC as some of the 30 additional U.S. points to be served on a code-share only basis beyond the designated gateways (Anchorage, Atlanta, Chicago, Fairbanks, Honolulu, Los Angeles, New York, Portland, San Francisco, and Seattle). (See Attachment A for the routes United and Air China initially propose to serve.)

² The United States has selected Chengdu, Nanjing, Qingdao, Shenyang, Xiamen, Xian, Wuhan, Fuzhou, Guilin, Kunming, Changsha, Dalian, Chongqing, Shenzhen, Nanning, Harbin, Changchun, Zhengzhou, Nanchang, and Lanzhou as those 20 additional China points to be served on a code-share only basis beyond the Chinese gateways (Beijing, Guangzhou, and Shanghai). (See Attachment A for the routes United and Air China initially propose to serve.)

DISPOSITION

XX Granted (subject to conditions, see below)

The above action with respect to United's exemption authority was effective when taken: **October 24, 2003**, through **October 24, 2005**

The above action with respect to Air China's exemption authority was effective when taken: **October 24, 2003**, through **October 24, 2004**

The statements of authorization granted were effective when taken: **October 24, 2003**, and will remain in effect indefinitely, subject to the conditions listed 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 the People's Republic of China.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX United's certificates of public convenience and necessity**

XX Air China's foreign air carrier permit

XX Standard exemption conditions (Attachments B & C)

Remarks: To afford the carriers maximum flexibility to adjust code-share operations as market conditions warrant and to enhance administrative efficiency, we have decided to grant the broad statements of authorization requested by United and Air China, subject to a 30-day notice requirement to identify specific points prior to the commencement of new services, and to grant the related exemption authority needed to support such operations. (See conditions below.) The authority we are awarding is expressly conditioned so as to be limited by the terms of the aviation agreement between the United States and the People's Republic of China.

The statements of authorization granted are subject to the following conditions:

- (a) The statements of authorization will remain in effect only as long as (i) United and Air China 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) United and/or Air China must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services. Such notices should be filed in Docket OST-2003-15805.³
- (c) United and/or Air China must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. (Such notice should be filed in this Docket.)
- (d) The code-sharing conducted under this authority must comply with Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted.

³ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

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 the 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. Further, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flights that enter, depart, or transit the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(e) The authority granted here is specifically conditioned so that neither United nor Air China shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.⁴

(f) The authority for Air China to display its code on flights operated by United, and the authority for United to display its code on flights operated by Air China, shall be limited to those code-share points which may be served under the aviation agreement between the United States and the People's Republic of China.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the carriers qualified to provide the exemption 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 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 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

⁴ We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently amend their code-share agreement or any other agreement affecting the code-share services to include a provision relating to an exclusive arrangement between the parties, that amended language must first be submitted for consideration by the Department.

United’s “UA” Code on Air China’s Trans-pacific Flights

Beijing – New York (JFK)
Beijing – Shanghai - Los Angeles
Beijing – San Francisco

United’s “UA” Code on Air China’s Intra-China Flights

Beijing – Guangzhou
Beijing – Shanghai
Beijing – Shenzhen
Beijing – Shenyang
Beijing – Fuzhou
Beijing – Xian
Beijing – Chengdu
Beijing – Chongqing

Air China’s “CA” Code on United’s Trans-pacific Flights

Chicago – Beijing
Chicago – San Francisco – Shanghai

Air China’s “CA” Code on United’s Intra-U.S. Flights

Chicago – Atlanta
Chicago – Honolulu
Chicago – Miami
Chicago – Phoenix
Chicago – Seattle

Chicago – Boston
Chicago – Houston
Chicago – Minneapolis/St. Paul
Chicago – Portland

Chicago – Dallas/Ft. Worth
Chicago – Las Vegas
Chicago – Philadelphia
Chicago – Washington, DC

Los Angeles – Atlanta
Los Angeles – Honolulu
Los Angeles – Miami
Los Angeles – Phoenix
Los Angeles – Seattle

Los Angeles – Boston
Los Angeles – Houston
Los Angeles – Minneapolis/St. Paul
Los Angeles – Portland

Los Angeles – Dallas/Ft. Worth
Los Angeles – Las Vegas
Los Angeles – Philadelphia
Los Angeles – Washington, DC

New York – Atlanta
New York – Honolulu
New York – Miami
New York – Phoenix
New York – Seattle

New York – Boston
New York – Houston
New York – Minneapolis/St. Paul
New York – Portland

New York – Dallas/Ft. Worth
New York – Las Vegas
New York – Philadelphia
New York – Washington, DC

San Francisco – Atlanta
San Francisco – Honolulu
San Francisco – Miami
San Francisco – Phoenix
San Francisco - Seattle

San Francisco – Boston
San Francisco – Houston
San Francisco – Minneapolis/St. Paul
San Francisco – Portland

San Francisco-Dallas/Ft. Worth
San Francisco – Las Vegas
San Francisco – Philadelphia
San Francisco – Washington, DC

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.

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.

