



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

Issued by the Department of Transportation on March 15, 2006

**NOTICE OF ACTION TAKEN -- DOCKETS OST-96-1346  
OST-97-2358**

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 UNITED AIR LINES, INC. (UNITED) filed 11/4/05 for:

Docket OST-96-1346

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

**Scheduled foreign air transportation of persons, property, and mail between a point or points in the United States, via intermediate points, and Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador, Brazil, and beyond Brazil to Argentina, Uruguay, Paraguay, and Chile.<sup>1</sup>**

Docket OST-97-2358

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

**Scheduled foreign air transportation of persons, property, and mail on a code-share basis only between a point or points in the United States and a point or points in Brazil limited to the 30 points named by the U.S. for code-share services under the U.S.-Brazil air services agreement and to serve these points on a co-terminal basis with the other Brazilian points United is authorized to serve pursuant to its exemption authority in Docket OST-1996-1346.<sup>2</sup>**

Applicant rep: Jeffrey A. Manley (202) 663-6670 Analyst: Thuy H. Cooper 202-366-5423

**DISPOSITION**

**XX** **Granted (subject to conditions and remarks, see below)**

The above action was effective when taken: **March 15, 2006**, through **March 15, 2008**, or until 90 days after final Department action on United's corresponding application for a certificate of public convenience and necessity in Docket OST-1995-495, whichever occurs earlier.

<sup>1</sup> United's application here for exemption authority also references a pending United application for certificate authority. See Docket OST-1995-495. We will handle its certificate request separately.

<sup>2</sup> In the alternative, the application seeks renewal of United's existing exemption authority to provide codeshare service between a point or points in the United States and Campo Grande, Curitiba, Fortaleza, Florianopolis, Iguacu, Sao Luiz, Joao Pessoa, Natal, Maceio, and Cuiaba, Brazil, and to serve these Brazilian points on a co-terminal basis with the other Brazilian points United is authorized to serve on a code-share basis only. Pursuant to its exemption authority in Docket OST-1996-1346, United holds a statement of authorization to code share with Varig, S.A (see Notice of Action Taken, dated June 11, 1998, in Docket OST-97-2358). We note that the broader amended authority that the applicant seeks, and that we are granting in this Notice, subsumes current authority.

**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 Brazil, as amended.**

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)**

**XX Statement of authorization conditions (see below)<sup>3</sup>**

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**Conditions:** The authority granted to serve intermediate points is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority by virtue of either the present action or other action of the Department.

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

(a) The statement of authorization will remain in effect only as long as United and Varig continue to hold the underlying authority to operate the codeshare services at issue, and the codeshare agreement providing for the code-share operations remains in effect.

(b) United and/or Varig must promptly notify the Department (Office of International Aviation) if the codeshare agreement is no longer effective or if the carriers decide to cease operating all or a portion of the approved codeshare services.<sup>4</sup> (Such notice should be filed in Docket OST-1997-2358.)

(c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendments 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 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; that the passenger liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(d) The authority granted here is specifically conditioned so that United and Varig shall not give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

(e) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

**Responsive Pleadings:** On November 8, 2005, American Airlines, Inc. (American) filed an answer stating that it does not oppose United's request for an amendment in Docket OST-97-2358, provided that

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<sup>3</sup> The United and Varig statement of authorization conditions were granted in 1998 (*see* Notice of Action Taken, dated June 11, 1998, in Docket OST-97-2358). We have revised our standard statement of authorization conditions since then, and we are including the current standard statement of authorization conditions as part of this Notice.

<sup>4</sup> We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

American receives equal treatment for its application seeking renewal and amendment of its Brazil authority in Docket OST-1997-2419. We are granting, concurrently, both requests.

**Remarks:** Under the U.S.-Brazil aviation transport agreement, the U.S. Government may name 30 points for U.S. carriers to serve via code-share service. At this time, the U.S. has designated the following 22 codes-share points: Bauru, Campo Grande, Cascavel, Cuiaba, Curitiba, Florianopolis, Fortaleza, Goiania, Joao Pessoa, Iguacu, Joinville, Londrina Maceio, Maringa Parin, Natal, Navagantes, Porto Velho, Ribeirao Preto, Sao Luiz, Teresina, Vilhena, and Vitoria. The authority granted here permits United to serve all code-share points currently designated by the United States and those that may be designated in the future under the U.S.-Brazil agreement. This authority shall not be construed as to grant United authority to serve any point that is not properly designated, or to serve more than 30 points via code share.

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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 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](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, including, but not limited to, 49 CFR Part 1544. 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 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; 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.

05/2004