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

Issued by the Department of Transportation on June 22, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5743 - 2

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 Parcel Service Co.** filed **5/28/99** for:

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

Scheduled foreign air transportation of property and mail between any point or points behind the United States, via any intermediate point or points, and any point or points in Japan, and any point or points beyond. UPS requests the right to integrate such authority with its other certificate and exemption authority to provide foreign transportation. UPS states that this authority will be used solely in conjunction with a code-share agreement between UPS and Nippon Cargo Airlines Co., Ltd. and further requests that the exemption authority be coterminous with that of the Statements of Authorization (*i.e.*, indefinite duration).

Applicant rep: **David L. Vaughan (202) 955-9600** DOT Analyst: **Linda Senese, 202-366-2367**

DISPOSITION

XX **Granted for two years** (subject to conditions, see below)
XX **Balance dismissed** (see Remarks below)

The above action was effective when taken: **June 22, 1999**, through **June 22, 2001**

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

XX **The authority granted is consistent with the 1998 Memorandum of Understanding between the United States and Japan.**

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

XX **Holder's certificate of public convenience and necessity**
XX **Standard exemption conditions (attached)**

Conditions:

(a)The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in award of the route integration authority requested should be construed as conferring upon United Parcel Service (UPS) rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless UPS notifies us of its intent to serve such a market and unless and until the Department has completed any necessary

(See Reverse Side)

carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in UPS's authority by virtue of the route integration exemption granted here, but that are not then being used by UPS, the holding of such authority by route integration will not be considered as providing any preference for UPS in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(b) The authority granted to operate via intermediate points and beyond Japan to third countries shall be limited to blind-sector operations only.

(c) The authority granted to operate to third countries is limited to countries to 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 by the Department.

(d) The authority granted is limited to code-share operations with Nippon Cargo Airlines on flights operated by Nippon Cargo Airlines.

Remarks: Consistent with our standard practice for this type of exemption, we granted UPS' exemption for a period of two years, and dismissed its request for longer-term authority. We also dismissed that portion of UPS' application with respect to operations from behind the United States. The authority to conduct operations from points behind the United States is inherent in the authority that we award U.S. carriers to perform foreign transportation. We note that such authority is provided for in the 1998 Memorandum of Understanding between the United States and Japan.

On the basis of data officially noticeable under Rule 24(n) 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) immediate action was required and 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 federal action" under the Energy, Policy and Conservation Act of 1975. To the extent not granted or 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 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/reports_aviation.asp

APPENDIX

U.S. Carrier
Standard Exemption Conditions

In the conduct of operations authorized by the attached notice, the 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 (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 the applicable requirements of the Federal Aviation Administration Regulations; 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.