



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

Issued by the Department of Transportation on April 5, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST 01-8921- 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).

Joint Applicants: VARIG, S.A. and UNITED AIR LINES, INC.

Date Filed: February 14, 2001

Relief requested: VARIG requests an exemption from 49 USC section 41301 to permit it to provide scheduled, combination service between its homeland and San Jose, California, serving San Jose only by codeshare with United and as a coterminal point with its other authorized U.S. points. United Air Lines requests a Statement of Authorization, under 14 CFR Part 212, to display VARIG's designator code, for an indefinite period, on flights operated by United, between Los Angeles, California, and San Jose, California, as an extension of VARIG's authorized Brazil-U.S. scheduled services. (For VARIG, the Los Angeles-San Jose operation under the code-share arrangement would be on a blind-sector basis only.)

If renewal, date and citation of last action: New authority.

Applicants' representatives: Constance O'Keefe (for VARIG), 202-775-0680 and Jeffrey A. Manley and Cathleen P. Peterson (for United), 202-663-6670.

Responsive pleadings: None.

DISPOSITION

Approved: April 5, 2001

Effective dates of authority granted: VARIG's exemption authority was effective on April 5, 2001, and shall be effective through April 5, 2002. United's Statement of Authorization is of indefinite duration.

Basis for approval: The authority granted is consistent with the U.S.-Brazil Air Transport Services Agreement.

Except to the extent exempted/waived, VARIG's exemption authority is subject to VARIG's foreign air carrier's permit conditions. The code-share authority is subject to the following conditions: 1) This Statement of Authorization (of indefinite duration) will remain in effect only as long as VARIG and United continue to hold the necessary underlying authority to operate the blocked-space/code-share services at issue and their blocked-space/code-share agreement providing for these operations remains in effect; 2) The subject carriers must promptly notify the Department (Office of International Aviation) if the subject agreement providing for these operations is no longer effective or the carriers decide to cease operating any or all of the approved services. (We expect this notice to be received within ten days of such noneffectiveness or of such decision.); 3) The code-share operations conducted under this authority must comply with 14 CFR Part 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 subject foreign air 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 the service in computer reservation systems and elsewhere; that the carrier selling such transportation (that is, 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. Moreover; 4) The code-share authority granted here is specifically conditioned so that neither carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

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

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 joint applicants were qualified to perform their 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 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.

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