



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

Issued by the Department of Transportation on March 16, 2022

**NOTICE OF ACTION TAKEN -- DOCKETS DOT-OST-2022-0002 and DOT-OST-2004-19148**

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 Airlines, Inc. (United); Virgin Australia Airlines Pty Ltd. d/b/a Virgin Australia (Virgin Australia); and Virgin Australia International Airlines Pty Ltd. (Virgin Australia International) (together, the Joint Applicants)** filed 1/3/22 for:

**1. Docket DOT-OST-2004-19148**

**XX** Amendment of blanket exemption for two years under 49 U.S.C. 40109 to permit United to provide the following services:

**Scheduled foreign air transportation of persons, property and mail between a point or points in the United States and points worldwide on a third-country code-share basis pursuant to blanket code-sharing statements of authorization previously approved by the Department, under which United's "UA\*" designator code is displayed on flights operated by its foreign code-share partners, as well as flights operated by foreign carriers that are currently authorized, or that in the future become authorized, to operate flights on behalf of United's blanket code-share foreign partners.<sup>1 2</sup>**

**2. Docket DOT-OST-2022-0002**

**XX** Exemption for two years under 49 U.S.C. 40109 to permit Virgin Australia to provide the following services:

**Virgin Australia requests an exemption to display United's "UA\*" designator code on flights Virgin Australia currently operates, or may in the future operate, within Australia in connection with services operated by United between the United States and Australia.**

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<sup>1</sup> The authorized foreign carriers are: Deutsche Lufthansa AG (Lufthansa), and other authorized carriers that operate flights on its behalf; Aer Lingus Limited (Aer Lingus); Air Canada and other authorized carriers operating on its behalf; All Nippon Airways Co. Ltd. (ANA) and other authorized carriers operating on its behalf; Air New Zealand Limited (ANZ); Asiana Airlines, Inc. (Asiana); Austrian Airlines, Osterreichische Luftverkehrs AG (Austrian); Aerovias del Continente Americano S.A. (Avianca) and other authorized carriers operating on its behalf; Azul Linhas Aereas Brasileiras S.A. (Azul); Brussels Airlines N.V./S.A. (Brussels Airlines); Compania Panamena de Aviacion, S.A. (COPA); Croatia Airlines (Croatia); Ethiopian Airlines Enterprise (Ethiopian); Eurowings Luftverkehrs AG (Eurowings) and other authorized carriers operating on its behalf; EVA Airways Corporation (EVA); Polskie Linie Lotnicze LOT S.A. (LOT); Scandinavian Airlines System (SAS); Singapore Airlines Limited (Singapore); Swiss Air International Air Lines Ltd. d/b/a SWISS (SWISS) and other authorized carriers operating on its behalf; TAP Air Portugal (TAP) and other authorized carriers operating on its behalf; and Turkish Airlines Inc. (Turkish).

<sup>2</sup> United requests that its blanket exemption authority be amended to permit it to provide codeshare services on flights operated by Virgin Australia and Virgin Australia International to points within and beyond Australia for points neither in Open Skies countries nor listed in United's certificate or exemption authority upon 30 days' notification to the Department.

XX Blanket statement of authorization under 14 CFR Part 212 to permit Virgin Australia to engage in the following code-share services:

**Virgin Australia requests a statement of authorization to display United’s “UA\*” designator code on intra-Australia flights operated by Virgin Australia.**

XX Blanket statement of authorization under 14 C.F.R. Part 212 to permit Virgin Australia International to engage in the following code-share services:

**Virgin Australia International requests a statement of authorization to display United’s “UA\*” designator code on flights operated by Virgin Australia International between Australia and third country points.**

XX Blanket statement of authorization under 14 CFR Part 212 to permit United to engage in the following code-share services:

**United requests a statement of authorization to display Virgin Australia and Virgin Australia International’s “VA\*” designator code on flights operated by United between the United States and Australia, on intra-U.S. flights, and on flights between the United States and third country points.**

Applicant representatives: Amna Arshad (United) (202) 777-4500; and Anita Mosner (Virgin Australia and Virgin Australia International) (202) 419-2604

DOT Analyst: Darren Jaffe (202) 366-2512

#### DISPOSITION

XX **Granted, request for amendment to blanket exemption to United (subject to conditions, see below)**

XX **Granted, request for exemption to Virgin Australia (subject to conditions, see below)**

XX **Granted, request for blanket statement of authorization to Virgin Australia (subject to conditions, see below)**

XX **Granted, request for blanket statement of authorization to Virgin Australia International (subject to conditions, see below)**

XX **Granted request for blanket statement of authorization to United (subject to conditions, see below)**

The above action granting amendment of blanket exemption authority to United was effective when taken: March 16, 2022 through March 16, 2024.

The above action granting exemption authority to Virgin Australia was effective when taken: March 16, 2022 through March 16, 2024.

The above actions granting blanket statements of authorization were effective March 16, 2022 and will remain in effect indefinitely, subject to conditions.

**Action taken by: Benjamin J. Taylor, Director  
Office of International Aviation**

**XX The authority granted is consistent with the aviation agreements between the United States and Australia and the homelands of United's foreign code-share partners listed in this Notice.**

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** Relevant blanket statements of authorization and attached conditions<sup>3</sup>

**Remarks and Conditions:** The exemption authority granted here is for operations with the foreign code-share partners and affiliates identified above. Should United and any new code-share partner be granted statements of authorization, United will need to apply for exemption authority to the extent necessary to permit United to display its code on flights operated by the new code-share partners.<sup>4</sup>

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On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicants 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 federal action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced application. 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://www.regulations.gov>

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<sup>3</sup> See e.g., Order 98-4-8, issued April 9, 1998 (Undocketed, United-Lufthansa), and Department actions dated July 25, 2008 (Docket DOT-OST-2008-0176, United-Aer Lingus); May 6, 2009 (Docket DOT-OST-2009-0095, United-Air Canada); August 7, 1998 (Undocketed, United-ANA); August 6, 1999 (Docket DOT-OST-1999-6013, United-ANZ); December 19, 2002 (Docket DOT-OST-2002-13320, United-Asiana); March 13, 2000 (Docket DOT-OST-2000-6803, United-Austrian); October 28, 2011 (Docket DOT-OST-2011-0163, United-Avianca); October 7, 2015 (Docket DOT-OST-2015-0136, United-Azul); March 2, 2010 (Docket DOT-OST-2010-0024, United-Brussels); July 9, 1998 and June 15, 2012 (undocketed, United-COPA); November 4, 2013 (Docket DOT-OST-2007-28897, United-Croatia); June 13, 2014 (Docket DOT-OST-2014-0082, United-Ethiopian); June 8, 2009 (Docket DOT-OST-2009-0106, United-Eurowings); June 11, 2012 (Docket DOT-OST-2012-0088, United-EVA); April 19, 2004 (Docket DOT-OST-2004-17468, United-LOT); May 24, 1999 (Docket DOT-OST-1999-5251, United-SAS); June 9, 2016 (Docket DOT-OST-2016-0079, United-Singapore); October 19, 2005 (Docket DOT-OST-2005-22464, United-Swiss); August 11, 2005 (Docket DOT-OST-2005-21686, United-TAP); and April 17, 2008 (Docket DOT-OST-2008-0102, United-Turkish).

<sup>4</sup> United will need to have conducted code-share safety audits of its foreign partners prior to receipt of authority for such code-share services.

**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, the Transportation Security 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 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;
- (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 Exemption 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, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. 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 International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR 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.

The statements of authorization are subject to the following conditions:

(a) The statements of authorization will remain in effect only as long as (i) United, Virgin Australia, and Virgin Australia International 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, Virgin Australia and/or Virgin Australia International 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 notices should be filed in Docket DOT-OST-2022-0002;<sup>1</sup>

(c) United, Virgin Australia, and/or Virgin Australia International must notify the Department immediately if the code-share agreement under which these code-share services are operated is no longer in effect 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 DOT-OST-2022-0002;<sup>2</sup>

(d) The code-sharing 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 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; 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.

(e) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (i) nothing in the award of this blanket statement of authorization should be construed as conferring upon United rights (including code-share, fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless United notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (ii) should there be a request by any carrier to use the limited-entry route rights that are included in the authority of United by virtue of the blanket statements of authorization granted here, but that are not then being used by United, the holding of such authority will not be considered as providing any preference for United in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue;<sup>3</sup>

(f) The authority granted here is specifically conditioned so that neither United, Virgin Australia, nor Virgin Australia International shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions; and

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

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<sup>1</sup> Pursuant to the Department's Notice in the Matter of Blanket Notification of Codeshare Service to Open Skies Partners and Points, dated February 9, 2009, in their application United, Virgin Australia, and Virgin Australia International provide blanket notification of their intent to engage in codeshare services to open skies points. United, Virgin Australia, and Virgin Australia International state that they will provide notice to the Department no later than 30 days before commencing any codeshare service to non-open skies points.

<sup>2</sup> We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

<sup>3</sup> The notice in paragraph (b) above can be used for this notification.