



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

Issued by the Department of Transportation on May 4, 2018

**NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2016-0021**

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) and REPUBLIC AIRLINE, INC. (Republic) filed 4/16/18 for:

**XX** Exemption for Republic for two years under 49 U.S.C. 40109 to provide the following service:

**Scheduled foreign air transportation of persons, property, and mail between Newark, New Jersey, and Havana, Cuba.**

**XX** Flexibility for United to use either its aircraft or Republic's aircraft on the Newark-Havana frequencies allocated to United by Order 2016-8-38.<sup>1</sup>

Applicant reps: Thomas Newton Bolling (202) 639-6073 (United) and Patrick R. Rizzi (202) 637-4999 (Republic)

DOT Analyst: Darren Jaffe (202) 366-2512

**DISPOSITION**

**XX** **Granted, exemption authority to Republic** (subject to conditions, see below)

**XX** **Granted, flexibility to United** (subject to conditions, see below)<sup>2</sup>

The above action granting exemption authority to Republic was effective when taken: May 4, 2018, through May 4, 2020.

The above action granting flexibility to United was effective when taken: May 4, 2018.

**Action taken by: Brian J. Hedberg, Director**  
**Office of International Aviation**

**XX** **The authority granted is consistent with the Memorandum of Understanding between the United States and Cuba, signed on February 16, 2016.**

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)**

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**Conditions:** The code-share operations conducted under this authorization are subject to the following conditions:

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<sup>1</sup> United states that it will use either its own Boeing 737 or Republic's Embraer E175 aircraft under the "United Express" brand name, as market conditions warrant to maximize flexibility and ensure that supply is tailored to meet demand in the Havana market.

<sup>2</sup> We recently granted comparable flexibility to United for its Houston-Havana operations. *See* Order 2018-4-17.

- (a) The code-share operations conducted under this authority must comply with 14 C.F.R. 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; and that the passenger liability of the operating carrier be unaffected; and
- (b) The authority granted here is specifically conditioned so that neither United nor Republic shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

**Remarks:** We remind the Joint Applicants that a number of significant limitations and requirements remain in place concerning air transportation between Cuba and the United States. Nothing in the Department's award of authority here relieves the Joint Applicants from complying with all applicable regulations and requirements of other U.S. agencies and with all applicable laws of the United States.

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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 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://www.regulations.gov>

**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.