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Order 2001-2-1



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

Served: February 1, 2001

Issued by the Department of Transportation
on the 1st day of February, 2001

U.S.-Brazil All-Cargo Charters

Undocketed

ORDER TO SHOW CAUSE

SUMMARY

By this order we tentatively establish procedures for allocation of the U.S.-Brazil all-cargo charters available for the balance of the charter year (March through June 2001).

BACKGROUND

Under the U.S.-Brazil Air Transport Agreement both parties are entitled to operate 750 round-trip all-cargo charters per year (July through June). Under procedures established in Orders 98-4-19 and 98-6-14, and by Notice dated April 13, 2000, we allocated a portion of the available charters in advance to carriers based on their historic operations and reserved the balance in a charter pool for distribution on a first-come, first-served basis. Under the Department's procedures for allocation of U.S.-Brazil charters from the charter pool, U.S. carriers may request up to ten flights in any given month. Carriers may also seek a waiver of this limitation to the extent they seek to operate more than ten charters.

By January 2001, all carriers with advance allocations had either used their allocations or confirmed to the Department that the charters remaining in their allocations were committed for use over the course of the charter year, and only 105 charters remained in the charter pool for the operation of U.S.-Brazil charters for the balance of the charter year (February through June). Based on the pattern of service by carriers using the charter pool, these flights would not be sufficient to meet the demand for service for the five months remaining in the charter year. Therefore, it was necessary to take special measures to ensure that charters are available throughout the charter year and that the requests of all carriers interested in using the charters can be accommodated to the extent possible.

By Notice dated January 25, 2001, we made available 21 charters for use by U.S. carriers for the month of February, and invited all eligible carriers interested in using these charters to file applications and waiver requests with the Department no later than January 29, 2001. We also stated that we would issue a show-cause order in the near future regarding procedures for the allocation of charters for the balance of the charter year.

TENTATIVE DECISION

We propose to make available for each calendar month remaining in the charter year (March-June) a pro rata portion of the charters that were in the charter pool as of January 25, 2001, i.e., 21 charters each month.¹ All eligible carriers interested in using the charters would be able to apply as set forth below for the available charters. We propose to distribute the available flights each month by dividing the number of available flights equally by the number of eligible applicants to the extent that such allocations are equal to or fewer than requested, and to distribute the remaining flights using a round-robin procedure on a first-come, first-served basis.² Consistent with our current procedures, carriers allocated flights each month would be required to report the number of flights used no later than the tenth of the following month. We propose that any flights returned would be available for the charters that can be applied for in that month of the return. For example, reports for charters distributed for February operations would be due by March 10. Under our proposed procedures, applications for charters to be operated in April would be due by March 15. Thus, any charters distributed for February and returned in March, would be added to the number of charters available for distribution for April services.

Because of the limited number of charters available for the remainder of the charter year, we propose that a carrier with an advance charter allocation would not be eligible to apply for additional charters under the procedures tentatively set forth in this order until it had used all of the charters in its advance allocation. In addition, we propose to exclude those U.S. carriers that hold scheduled combination or all-cargo service authority to serve Brazil.

Consistent with the current application procedures, under our proposal eligible carriers could apply for up to ten charters each calendar month. Charter allocation applications would need to specify the number of flights requested; the points to be served; the type of aircraft to be used; the type of cargo; dates of the proposed flights; and would need to be accompanied by

¹ 105 charters were available as of January 25, 2001. We used 21 charters, a pro rata portion of the total number of charters remaining, to distribute flights for February, leaving 84 charters available for the remaining four months. A pro rata portion for each remaining month would be 21 charters.

² We have used these procedures previously in circumstances where we needed to allocate Brazil charters at the end of the charter year. See Orders 95-3-55 and 95-4-18. We also used them for allocation of February 2001 charters. See Notice dated January 25, 2001. With respect to February charters, in addition to the 21 pro rated for February charters, a total of 25 charters distributed for January charters were returned to the Department and added to the number available for February flights. Atlas, Gemini, and UPS applied for February charters, with Atlas seeking 40, Gemini, 20, and UPS, 3 charters. Pursuant to the procedures established in our January 25 Notice we distributed 23 to Atlas, 20 to Gemini, and 3 to UPS.

a copy of the signed charter contract for the flights proposed. Applications for charters above that number would need to be accompanied by a request for waiver of the ten-charter limit and served on all carriers that have operated charters in the U.S.-Brazil market this charter year. Charter applications could be filed no earlier than two weeks in advance of the beginning of each calendar month. To facilitate as prompt a distribution of these flights as possible, the cut-off date for such applications would be as follows:

February 15, 2001 ³	for March charters
March 15, 2001	for April charters
April 16, 2001	for May charters
May 15, 2001	for June charters

We propose to issue a Notice of Consistency each month to the eligible carriers receiving flights from the charter pool. As normally provided in those Notices, we would require each carrier granted charters to notify the U.S. Air Carrier Licensing Division (X-44), Office of International Aviation, no later than the tenth day of each month of the number of Brazil all-cargo charters operated during the preceding month, together with additional operational information related to these flights established in Order 98-6-14.⁴ We remind carriers of the importance of returning charters promptly at any time should the plans on which the flights were distributed not materialize. Where charter rights are limited, it is imperative that full, effective use be made of the available charter opportunities. These reports are especially important in a situation where the charters available are so limited, and the information is critical to carriers in preparing their applications under the application procedures proposed in this order.⁵ Therefore, we expect carriers to ensure that these reports are filed on a timely basis.

We tentatively believe that our proposed application/allocation procedures for the remaining four months of the charter year are the most equitable allocation method and best serve the public interest in this case. The situation affecting all-cargo charters services in the Brazil market for the balance of the charter year requires consideration of a number of factors, including the need for prompt distribution of charters so as to minimize any disruption of service in the market, and the need to ensure equal access to the charter pool by carriers that have no other access to the Brazil transportation market. Accordingly, our primary objective is to establish procedures that will ensure the availability of charters through the balance of the charter year and that will afford all carriers that have served and want to serve with an

³ Although we will not have reached a final decision on these procedures two weeks before the first cut-off date, we will accept applications from carriers for March charters consistent with the proposals in this show-cause order.

⁴ Order 98-6-14 at 5, ordering paragraph 7.

⁵ For example, reports for February charters would be due March 10. Any returned charters would be added to the number of charters available for April. Applications for April charters would be due March 15.

equitable opportunity to serve the market. We believe that the procedures we have proposed here meet that objective, enabling the carriers with an historic interest in the market to continue to serve, while giving any other eligible carriers that want to serve a fair opportunity to do so.

ACCORDINGLY, acting under authority assigned in Order 98-6-14,

1. We direct all interested persons to show cause why we should not issue an order making final our tentative findings and conclusions for establishing procedures for U.S.-Brazil all-cargo charters for the months of March through June 2001;
2. We direct all interested persons wishing to comment on our tentative findings and conclusions, or objecting to the issuance of the order described above, to file their comments or objections with the U.S. Air Carrier Licensing Division (X-44), Department of Transportation, 400 Seventh Street, SW, Room 6412, Washington, DC 20590, no later than February 6, 2001; answers thereto shall be filed no later than February 9, 2001;
3. If objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;⁶
4. If no objections are filed, we will deem all further procedural steps waived and will proceed to issue a final order;
5. We will serve this notice by facsimile on all U.S. certificated carriers operating large aircraft, the Air Transport Association, and the National Air Carrier Association.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.gov/reports/reports_aviation.asp*

⁶ As we are providing for the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order.