



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

Issued by the Department of Transportation on April 24, 2020

**NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2020-0037**

On March 27, 2020, the President signed the Coronavirus Aid, Recovery, and Economic Security Act (CARES Act) into law. Sections 4005 and 4114(b) of the CARES Act authorize the Secretary of the U.S. Department of Transportation (Secretary) to require, “to the extent reasonable and practicable,” an air carrier receiving financial assistance under the act to maintain scheduled air transportation service as the Secretary deems necessary to ensure services to any point served by that air carrier before March 1, 2020 (Service Obligation). By Order 2020-4-2, the U.S. Department of Transportation established the parameters for implementation of the authority granted to the Secretary under the CARES Act, including an exemption process as described at pages 9-10 and in Appendix D of that order. This serves as notice to the public of an action taken by a Department official with regard to exemption(s) from Order 2020-4-2. No additional confirming order will be issued in this matter.

Applicant: **Hyannis Air Service d/b/a Cape Air**<sup>1</sup>

Date Filed: **April 15, 2020**

**XX** Service Level Exemption (a) - Hyannis Air Service d/b/a Cape Air (Cape Air) requests that the Department approve temporary suspension of service to the following covered point(s) from its Service Obligation under the provisions of Order 2020-4-2:

- (1) New York City, NY (Metropolitan Area); specifically, service at White Plains, NY
- (2) New York City, NY (Metropolitan Area); specifically, service at John F. Kennedy International Airport (JFK), NY

Cape Air states that it has conducted service between Lebanon, New Hampshire and White Plains, New York. The air carrier states that on March 27, 2020, the City Manager and Airport Manager of Lebanon requested it to switch the destination of these flights to Boston, Massachusetts, in lieu of White Plains, arguing that the Lebanon - White Plains market had experienced decreased demand due to the impact of the coronavirus disease 2019 (COVID-19) public health emergency. In response, Cape Air switched these flights to Boston and ceased operating to White Plains on March 30, 2020. The carrier states that it intends to resume service in the Lebanon - White Plains market as demand returns. Cape Air further states that it has conducted service between Martha’s Vineyard, Massachusetts and JFK; that demand in the market has greatly decreased; and that it suspended service in the market on March 27, 2020. Cape Air notes that it continues to operate daily Martha’s Vineyard – Boston, Massachusetts service, and, as in the case of White Plains, states that it intends to resume service in the Martha’s Vineyard – JFK market as demand returns.

**XX** Service Level Exemption (b) – Cape Air requests that the Department approve temporary suspension of service to the following covered points from its Service Obligation under the provisions of Order 2020-4-2:

- (3) Decatur, IL
- (4) Ogdensburg, NY
- (5) Albany, NY

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<sup>1</sup> A copy of Cape Air’s application and the basis for its exemption request can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0066>.

Cape Air requests the Department to remove Ogdensburg, Albany, and Decatur, from its Service Obligation. The air carrier states that on May 2, 2019, and March 5, 2020, respectively, the Department selected SkyWest Airlines, Inc. to replace Cape Air. For these reasons, Cape Air requests relief from these covered points.

Responsive pleadings: None<sup>2</sup>

## DISPOSITION

### **XX Granted in part, and dismissed in part (see below)**

Action date: **April 24, 2020**

Effective dates of authority granted:<sup>3</sup>

- (1) New York City, NY (Metropolitan Area); specifically, service at John F. Kennedy International Airport (JFK), NY: **April 24, 2020** through **September 30, 2020**

This authority is subject to the terms, conditions, and limitations indicated:

### **XX Holder's certificate(s) of public convenience and necessity**

### **XX Standard exemption conditions (attached)**

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Basis for approval: We find that a grant of Cape Air's request for exemption with respect to service to JFK is warranted. The Department has, since the issuance of Order 2020-4-2, continued to monitor air carriers' operations under the Service Obligations set forth in that order, with particular emphasis on the impact of service obligations on small air carriers relative to the public interest benefits of requiring service. Order 2020-4-2 had identified proportionality of schedule impacts as an important factor in establishing minimum service obligations that were reasonable and practicable, as required by the CARES Act.<sup>4</sup>

Cape Air's request for exemption from serving JFK provides a well justified and narrowly tailored basis to provide relief for a small carrier. Cape Air has persuaded the Department that this limited exemption would be consistent with the objective of Order 2020-4-2, which is to require airlines receiving financial assistance under the CARES Act to continue serving the points on their network to the extent reasonable and practicable. In this case, exempting Cape Air from serving the hub at JFK, which has abundant service from other carriers, would relieve Cape Air from an undue economic and operational burden. It allows Cape Air to remove the hub at JFK as a service obligation point, but its obligation to serve Martha's Vineyard remains, which, according to its pleading, will be met by ongoing service to/from Boston. Our action granting Cape Air this exemption authority in no way relieves the applicant from its obligation to provide service to any other covered point in its Service Obligation. No points lose access to the national air transportation system. The Department finds this request to be reasonable and practicable because, at a minimum, the requesting airline (a) is a small carrier with 10% or less share of the domestic market and (b) is seeking relief from serving a large hub or focus city airport that has abundant service by large operators using the airport to provide connecting services.<sup>5</sup>

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<sup>2</sup> The Department acknowledges receipt of a comment filed in Docket DOT-OST-2020-0037 on April 13, 2020, by Mr. Roger Victor. We note, however, that Mr. Victor's submission was filed prior to Cape Air's exemption application. While we acknowledge Mr. Victor's comment, the information he provided does not impact our decision.

<sup>3</sup> The effectiveness of this authority will terminate on the date specified above. Should the air carrier wish to extend the date(s) of effectiveness, it must file another request for an exemption in accordance with the exemption process as described in Appendix D of Order 2020-4-2.

<sup>4</sup> Order 2020-4-2 at 7.

<sup>5</sup> For these purposes, the Department is applying the same metric applied in Order 2020-4-2, namely carriers below a 10% share of total industry domestic capacity in calendar year 2019, as measured in available seat miles (ASMs). The Department defines a large hub as those airports that are listed on the FAA's most recent (calendar year 2018) "large hub" classification, as defined by 49 U.S.C. § 47102(11), including airports within the broader metropolitan areas defined by Order 2020-4-2, as well

Granting the request enables the Department to implement the CARES Act in a way that continues to balance appropriately the needs of communities to retain at least minimal connections to the national air transportation system during the public health emergency, as required by the CARES Act, and the economic needs of certain segments of the industry. In these circumstances, we find that granting Cape Air's requested exemption to suspend service at JFK is warranted, and that it would not be reasonable or practicable for Cape Air to serve JFK under the terms of Order 2020-4-2.

With respect to White Plains, NY, we dismiss Cape Air's request for exemption. We acknowledge that the decision by Cape Air to change the destination of its Lebanon, New Hampshire service from White Plains to Boston, Massachusetts was a reasonable response to the COVID-19 public health emergency as it relates to White Plains, and, in particular, to the specific request of officials in Lebanon to move this service to Boston. However, Cape Air's service at White Plains is required under an Essential Air Service (EAS) contract with the Department and the EAS office is considering Lebanon's separate request for Cape Air to serve Boston in lieu of White Plains. As determined by Order 2020-4-2, EAS obligations take primacy over CARES Act obligations.

With respect to Points 3 through 5, Decatur, Illinois, Ogdensburg, New York, and Albany, New York, we concur with Cape Air's view that these cities should not have been listed as covered points in the carrier's Service Obligation, due to the prior replacement of Cape Air by SkyWest for the EAS services involved. By this Notice, we confirm that these cities are not covered points in the Service Obligation for Cape Air, and accordingly dismiss Cape Air's request for exemption.

We may amend, modify, or revoke this exemption at any time without hearing at our discretion.

Persons entitled to petition the Department for reconsideration of the action set forth in this Notice under the Department's regulations, 14 CFR § 302.14, 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 reconsideration will not alter such effectiveness.

Action taken by: David Short  
Deputy Assistant Secretary  
Aviation and International Affairs

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<http://www.regulations.gov>

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as additional points where the Department observes carriers connecting a high percentage of traffic. Those points are: Atlanta, Boston, Charlotte, Chicago, Dallas/Ft. Worth, Denver, Detroit, Honolulu, Houston, Las Vegas, Los Angeles, Miami, Minneapolis/St. Paul, Nashville, New York City, Orlando, Philadelphia, Phoenix, Portland, Salt Lake City, San Diego, San Francisco, Seattle, St. Louis, Tampa, and Washington, DC.

**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 consumer protection and civil rights requirements, including, but not limited, to requirements contained in 14 CFR Parts 250, 254, 257, 259, 374, 382 and 399;
- (3) Comply with the requirements for reporting data to the Department, including, but not limited, to requirements contained in 14 CFR Parts 234, 241, and 244;
- (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.