



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

Issued by the Department of Transportation on April 17, 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: **Hawaiian Airlines, Inc.**¹

Date Filed: **April 9, 2020**

XX Service Level Exemption: Hawaiian Airlines, Inc. (Hawaiian) 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.

- | | |
|-------------------|--------------------|
| (1) Boston, MA | (5) Portland, OR |
| (2) Las Vegas, NV | (6) Sacramento, CA |
| (3) New York, NY | (7) San Diego, CA |
| (4) Phoenix, AZ | (8) Seattle, WA |

Hawaiian offered an alternative proposal in case the Department denied its service level exemption. In the event that the requested exemption is not granted, Hawaiian requested that the Department grant it until seven business days from the later of (a) the Department's ruling on its exemption request and (b) the date Hawaiian receives its requested financial assistance under the CARES Act. Hawaiian also states that if its request for an exemption is not granted, Hawaiian would fulfill a portion of its service obligation by offering tag flights between mainland points in connection with a trans-Pacific flight (*e.g.*, HNL-SEA-PDX-SEA-HNL to fulfill its service obligation to both SEA and PDX).

XX Covered Point Exemption: (a) Hawaiian requests that the Department approve removal of a covered point from its Service Obligation under the provisions of Order 2020-4-2.

- (9) Lahaina, HI

Hawaiian offered an alternative proposal in case the Department denied its covered point exemption. In that event, Hawaiian requested that the Department permit the air carrier to fulfill its Service Obligation at Lahaina, Hawaii, by allowing it to increase the minimum service level at Kahului, Hawaii, equal to the minimum service level required for Kahului, HI to six flights per week in lieu of serving Lahaina, HI.

XX Covered Point Exemption: (b) Hawaiian requests that the Department renew its exemption to temporarily suspend service to the following covered point from its Service Obligation under the provisions of Order 2020-4-2.

¹ A copy of Hawaiian's application and the basis for its exemption request can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0052>.

(10) Pago Pago (PPG)

Responsive pleadings: The Governor of Hawaii and the Mayors of the City and County of Honolulu, County of Hawaii, County of Maui, and County of Kauai filed letters of support for Hawaiian's request to suspend service to the covered points 1 through 8 mentioned above. Each of the aforementioned government officials has expressed the same sentiment that these additional air services do not need to be reinstated and are not required at this time. Congressional support from Senator Mazie Hirono, Congresswoman Tulsi Gabbard, and Congressman Ed Case for Hawaiian's exemption for all covered points requested was also filed. In addition, the Mayor of the County of Maui stated that all required services to Maui should be provided through Kahului Airport (OGG) rather than at Lahaina, more specifically Kapalua Airport (JHM), given the more robust cargo facilities and ability to accommodate mainline aircraft flown by larger air carriers at OGG versus JHM's single runway with no air cargo facilities.

DISPOSITION

XX Granted, with condition (see below)

Action date: **April 17, 2020**

Effective dates of authority granted²

For covered points 1 through 9: **April 17, 2020 through September 30, 2020**

For covered point 10: **April 17, 2020 through June 1, 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)

Basis for approval: We find that a grant of Hawaiian's request for exemption is warranted under the provisions of Order 2020-4-2 insofar as it would allow Hawaiian to suspend service temporarily to covered points 1 through 8, as shown in the list above, from its Service Obligation. These points require long travel distances from Honolulu ranging from just under 2,500 miles to over 5,000 miles, and require widebody aircraft in some cases. Hawaiian's domestic network relies disproportionately on taking passengers originating on the mainland to Hawaii for stays of relatively short duration. The imposition of Hawaii's mandatory 14-day quarantine order for all travelers to or within Hawaii impacts severely and discourages such passenger travel. Moreover, various Hawaiian State and local government officials have supported Hawaiian's exemption request, stating that the air carrier's additional services are not required. In light of all of the above points, it would not be reasonable or practicable for Hawaiian to serve covered points 1 through 8 under the terms of Order 2020-4-2.

With respect to the Hawaiian's request to remove covered point 9, Lahaina, Hawaii, from its Service Obligation, we find that a grant of its request is warranted, with a condition. According to the Mayor of the County of Maui, critical supplies and medical personnel that must reach Maui may be accommodated more efficiently at Kahului (more specifically Kahului Airport (OGG)), one of Hawaiian's covered points, as opposed to at Lahaina (more specifically Kapalua Airport (JHM)). OGG is Maui's primary airport and has facilities that can accommodate cargo and large aircraft, including Hawaiian's B717 aircraft, while JHM can only support commuter aircraft. Thus, in lieu of providing service at Lahaina, Hawaiian requests the flexibility to fulfill its Service Obligation by serving Kahului 6 times per week. We accept Hawaiian's proposal. We will remove covered point 9 from Hawaiian's Service Obligation and increase the minimum service level of the air carrier to Kahului to 6 times per week.

² The effectiveness of this authority will terminate on the date specified above. Should the air carrier wish to extend the date 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.

By Order 2020-4-2, the Department deemed American Samoa as an exempt point from Hawaiian's Service Obligation so long as the Governor of American Samoa Lolo Moliga's request for Hawaiian to suspend service remained in effect. On April 15, 2020, Governor Moliga requested that Hawaiian suspend its flights for an additional 30 days, that is, until June 1, 2020. In this regard, the Department renews its grant of exemption to Hawaiian for its services to American Samoa, until June 1st.

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

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 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.