



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

Issued by the Department of Transportation on May 5, 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 (the 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: **JetBlue Airways Corporation (JetBlue)**

Date Filed: **April 28, 2020**

XX Service Level Exemption (large hub):¹ JetBlue requests that the Department approve temporary suspension of service, through September 30, 2020, to the following covered points from its Service Obligation under the provisions of Order 2020-4-2.

- | | |
|--------------------------------|-----------------------------|
| (1) Atlanta, GA (ATL) | (9) Minneapolis, MN (MSP) |
| (2) Charlotte, NC (CLT) | (10) Nashville, TN (BNA) |
| (3) Chicago, IL (ORD) | (11) Philadelphia, PA (PHL) |
| (4) Dallas/Ft. Worth, TX (DFW) | (12) Phoenix, NV (PHX) |
| (5) Denver, CO (DEN) | (13) Portland, OR (PDX) |
| (6) Detroit, MI (DTW) | (14) San Diego, CA (SAN) |
| (7) Houston, TX (IAH) | (15) Seattle, WA (SEA) |
| (8) Las Vegas, NV (LAS) | (16) Tampa, FL (TPA) |

JetBlue contends that continued operations to covered points 1-16 represent a significant burden to the carrier.² It states that there is extremely low demand for its services at these cities and that, were its exemption request to be granted, each point would still receive service from other air carriers.

JetBlue further states that in light of recent Department actions that expanded exemptions available to small air carriers operating at large hub airports, granting its current exemption request is warranted, as its request is consistent with those the Department has granted to other covered carriers.³ JetBlue states that it intends gradually to resume service to these cities as circumstances warrant.

XX Waiver from the 10-business day advance filing requirement for exemptions under Order 2020-4-2.

¹ A copy of JetBlue’s application and the basis for its exemption request can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0101>.

² JetBlue previously requested an exemption for covered points 4, 7, 9, and 13, which the Department denied. See Notice of Action Taken dated April 16, 2020, in this Docket.

³ JetBlue cites as an example our recent action on an exemption requested by Hyannis Air Service d/b/a Cape Air in this Docket. See Notice of Action Taken dated April 24, 2020,

Responsive pleadings: None⁴

DISPOSITION

XX Granted (see below)

Action date: **May 5, 2020**

Requests for exemption granted and effective dates of authority granted:⁵

For covered points 1-16: **May 5, 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)

Basis for approval: We find that granting JetBlue's request for exemption to suspend temporarily, through September 30, 2020, service to covered points 1 through 16 is warranted based upon our ongoing monitoring of carrier operations. In our action on the request of Cape Air, we found that exempting the carrier from serving a large hub, in that case JFK, was reasonable and practicable because the requesting air carrier (a) was a small carrier with a ten percent or less share of the domestic market, and (b) was seeking relief from serving a large hub or focus city airport that has abundant service by large air carriers using the airports to provide connecting services. We find that the same factors exist in the case of JetBlue here, given the carrier's size and the nature of the covered points for which it seeks relief.⁶ Our action granting JetBlue this exemption does not relieve the applicant from its obligation to provide service to any other covered point in its Service Obligation. Pursuant to this action, no covered points will lose access to the national air transportation system.

Finally, we grant JetBlue's request for a waiver of the 10-business day advance filing requirement for exemptions under Order 2020-4-2 so that its proposed schedule changes can be implemented promptly.

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

⁴ The Department acknowledges receipt of communications filed in Docket DOT-OST-2020-0037 by Mr. Samuel Rosecan, Mr. Mashad Arora, and Ms. Kelly FitzSilva, commenting in support of JetBlue's application. These submissions were posted to the docket between April 29 and 30, 2020. We note, however, that these submissions were not properly filed and served under the provisions of 14 CFR §302.304.

⁵ The effectiveness of this authority will terminate on the date(s) 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.

⁶ 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 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.

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 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.