



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

Issued by the Department of Transportation on April 21, 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.

Applicants: **Silver Airways LLC and Seaborne Virgin Islands, Inc.**¹

Date Filed: **April 15, 2020**

XX Service Level Exemption (a) – Silver Airways LLC (Silver) and Seaborne Virgin Islands, Inc. (Seaborne) request that the Department approve temporary suspension of service to the following covered points from their Service Obligation under the provisions of Order 2020-4-2, until the regularly scheduled start-up dates listed below.

- (1) Vieques, PR (VQS) – June 30 (Seaborne)
- (2) Huntsville, AL (HSV) – June 30 (Silver)

XX Service Level Exemption (b) – Seaborne requests that the Department approve temporary suspension of service to the following covered point from its Service Obligation under the provisions of Order 2020-4-2.

- (3) Culebra, PR (CPX) – September 30

Responsive pleadings: None

DISPOSITION

XX **Granted, in part (see below)**

XX **Balance, denied**

Action date: **April 21, 2020**

Effective dates of authority granted: ²

For covered point 1 (Vieques, PR): **April 21, 2020 through June 30, 2020**

For covered point 3 (Culebra, PR): **April 21, 2020 through September 30, 2020**

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

¹ A copy of Silver and Seaborne's application and the basis for their exemption request can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0067>.

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.

XX Holder's certificate(s) of public convenience and necessity
XX Standard exemption conditions (attached)

Basis for approval: We find that a grant of Seaborne's request for exemption to Vieques and Culebra, Puerto Rico, is warranted under the provisions of Order 2020-4-2. Specifically, Seaborne requested that the Department allow it to suspend service at Vieques, Puerto Rico, until June 30, 2020, and at Culebra, Puerto Rico, until September 30, 2020. Seaborne argues that, it is due to government-imposed restrictions, tourists are presently unable to utilize this air service. The Governor of Puerto Rico requested that the Federal Aviation Administration (FAA) impose flight restrictions to divert all scheduled and unscheduled commercial carrier passenger flights to Puerto Rico to San Juan Luis Muñoz Marín International Airport (SJU) for screening, and the FAA did not object. In addition, the Governor of Puerto Rico issued an Executive Order requiring all passengers entering Puerto Rico from outside the territory to undergo a mandatory 14-day quarantine upon arrival.³ Further, Seaborne, serving solely as the marketing carrier, with Vieques Air Link as the operating air carrier, contends that neither it nor Silver is presently able to serve Culebra, Puerto Rico, using their respective fleet of aircraft due to the runway limitations at the airport. While we agree that it would not be reasonable or practicable for Seaborne to serve Vieques and Culebra, Puerto Rico, under the terms of Order 2020-4-2, because Seaborne requested to suspend service to Vieques, Puerto Rico, only until June 30, 2020, we will require the air carrier to start service at that covered point on July 1, 2020, and allow it to suspend service to Culebra, Puerto Rico, until September 30, 2020. The effective dates of the authority granted for each covered point are identified above.

For the remaining covered point (Huntsville, Alabama), we deny Silver's request. The Department is authorized to require air carriers receiving financial assistance under Sections 4005 and 4114 of the CARES Act to maintain scheduled air transportation service as the Secretary deems necessary. By Order 2020-4-2, the Department modified its original methodology to address concerns raised by interested parties and to balance 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 all segments of the industry. Silver has not persuaded the Department that we must strike a different balance with respect to the remaining covered point in Silver's request. Order 2020-4-2 provides substantial flexibilities to covered carriers.

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 at: <http://www.regulations.gov>

³ See Executive Order of the Governor of Puerto Rico, Administrative Bulletin 2020-030 (March 30, 2020).

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.