



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

Issued by the Department of Transportation on April 30, 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: **Southern Airways Express, LLC d/b/a Southern Airways and Mokulele Airlines**¹

Date Filed: **April 16, 2020, as supplemented April 21, 2020**

XX Seasonal Exemption: Southern Airways Express, LLC d/b/a Southern Airways and Mokulele Airlines (Southern Airways) 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) Key West, FL (EYW)
- (2) Tampa, FL (TPA)
- (3) West Palm Beach, FL (PBI)

Southern Airways states that it is a small air carrier serving approximately 30 cities, using only 9-seat aircraft. It states that, with respect to covered points 1 through 3 (Key West, Tampa, and West Palm Beach, Florida), it decided in January 2020 to end seasonal service to these points early; that while its schedule for these covered points remained temporarily active in the Official Airline Guide (OAG), tickets for these covered points had not been on sale since January; that it flew its last Florida flight on March 24, 2020; and that it intends to resume service to these covered points on October 19, 2020. Southern Airways further states that its decision to decrease service to these covered points was made before, and was unrelated to, the current coronavirus (COVID-19) public health emergency and in any event its request would not substantially affect the public. Southern Airways states that it has already relocated the aircraft it used for its Florida service to New England in anticipation of its planned summer services to Boston/Norwood, Nantucket, and Hyannis, Massachusetts, and Providence, Rhode Island, which are slated to begin on May 22, 2020; that it has already started marketing and sales of these services; and that it would be unable to serve these New England points if it were forced to restart its Florida operations.

XX Service Level Exemption: Southern Airways requests that the Department approve a reduction of its required service level from three flights to one flight per week at the following covered point from its Service Obligation under the provisions of Order 2020-4-2:

- (4) Nashville, TN (BNA)

¹ A copy of Southern's application and the basis for its exemption can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0071> and its supplement at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0092>.

Southern Airways states that it discontinued daily service to covered point 4 (Nashville, Tennessee) in December 2019, that since that time it has operated only two flights per week at that covered point, and that the three-flights-per-week Service Obligation imposed on it by Order 2020-4-2 would actually require it to increase service to Nashville. It states that it is unclear as to why daily operations at Nashville by the carrier were shown for February 29, 2020 in the OAG, leading to the Department's three-flights-per-week requirement. As with its request concerning covered points 1 through 3, it states that its decision to decrease service to Nashville was made before, and was unrelated to, the current COVID-19 public health emergency and that, in any event, its request with respect to this point would not substantially affect the public.

Responsive pleadings: None

DISPOSITION

XX Granted (see below)

Action date: **April 30, 2020**

Requests for exemption granted and effective dates of authority granted:²

For covered points 1 to 3: **April 30, 2020 through September 30, 2020 (seasonal)**

For covered point 4: **April 30, 2020 through September 30, 2020 (reduced frequency)**

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

XX Holder's commuter air carrier authorization

XX Standard exemption conditions (attached)

Basis for approval: We find that granting Southern Airways' request for exemption to suspend services at covered points 1 through 3 (Key West, Tampa, and West Palm Beach, Florida) is warranted. We take note of the carrier's assertions that it ended its seasonal service to these covered points for reasons unrelated to the COVID-19 public health emergency; that it stopped selling its services to these covered points in January 2020; and that it conducted its last flights to these covered points on March 24, 2020. In addition, because Southern Airways already moved its aircraft used for service to these covered points to New England in preparation for its summer season operations, and for over 30 days has been selling tickets on its website to serve the New England market, it would not be reasonable or practicable to require the carrier at this time to serve these covered points under the terms of Order 2020-4-2.

We also find that granting Southern Airways' request for exemption to reduce its Service Obligation for flights at covered point 4 (Nashville, Tennessee), from three flights per week to one flight per week, is warranted. We note Southern Airways' statement that it ceased daily service at covered point 4 in December 2019, and since January 2020, has operated only two flights per week at that covered point. We reviewed Southern Airways' claim regarding its current frequency of service at Nashville and found the February 29, 2020 OAG listing of the daily Southern Airways flights at Nashville reflected a filing error, and that OAG did not accurately list the carrier's actual operations at that point. Order 2020-4-2 provides that in the case of a covered carrier "with less than a 10 percent share of total industry domestic capacity in calendar year 2019," for points served less than five times per week the covered carrier "would only need to provide one weekly flight."³ Therefore, we find that requiring Southern Airways to operate three flights per week at Nashville is not reasonable or practicable, and that its required weekly frequency of operation at that point should be reduced to one flight, consistent with the above-noted provisions of Order 2020-4-2.

² 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.

³ Order 2020-4-2 at 7.

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.