



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 (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: **Spirit Airlines, Inc. (Spirit)**

**1. XX Service Level Exemption (large hub)<sup>1</sup> Date Filed: April 27, 2020**

In its April 27, 2020 request for exemption, Spirit Airlines requests that the Department approve a temporary suspension of service to the following covered points from its Service Obligation under the provisions of Order 2020-4-2:

- |                              |                  |
|------------------------------|------------------|
| (1) Charlotte, NC            | (4) Phoenix, AZ  |
| (2) Denver, CO               | (5) Portland, OR |
| (3) Minneapolis/St. Paul, MN | (6) Seattle, WA  |

Spirit states that it had requested to suspend service at three of these six covered points (Charlotte, Denver, and Minneapolis/St. Paul) in its April 8, 2020 request for exemption in this Docket, and that the Department denied its request by Notice of Action Taken dated April 16, 2020 in that Docket. It states that in light of the Department's subsequent decision regarding Hyannis Air Service d/b/a Cape Air (Cape Air),<sup>2</sup> in which we granted the carrier an exemption to suspend service to John F. Kennedy International Airport (JFK), a large hub airport, we should now grant Spirit's request to suspend service at the six large hub airports listed above.

**XX** Waiver from the 10-business day advance filing requirement for the covered carrier's proposed service alteration date.

Responsive pleadings: None

**2. XX Service Level Exemption (deferred portion of application)<sup>3</sup> Date Filed: April 8, 2020**

- |                            |                         |
|----------------------------|-------------------------|
| (5) Charlotte Amalie, USVI | (7) Christiansted, USVI |
|----------------------------|-------------------------|

<sup>1</sup> A copy of Spirit's application and the basis for its exemption request can be found at:

<https://www.regulations.gov/document?D=DOT-OST-2020-0037-0100>.

<sup>2</sup> See Notice of Action Taken dated April 24, 2020, in this Docket, in which we acted on the request of Cape Air described above.

<sup>3</sup> A copy of Spirit's application and the basis for its exemption request can be found at:

<https://www.regulations.gov/document?D=DOT-OST-2020-0037-0049>.

In its April 8, 2020 request for exemption, Spirit Airlines requested that the Department approve a temporary suspension of service to a number of covered points from its Service Obligation under the provisions of Order 2020-4-2, including two covered points in the U.S. Virgin Islands, Charlotte Amalie (covered point 5) and Christiansted (covered point 7). By Notice of Action Taken dated April 16, 2020, in this Docket (noted above), the Department deferred action on the request from Spirit as it related to these two covered points.

Responsive pleadings: None

## DISPOSITION

### 1. XX Service Level Exemption (large hub)

- |                              |                  |
|------------------------------|------------------|
| (1) Charlotte, NC            | (4) Phoenix, AZ  |
| (2) Denver, CO               | (5) Portland, OR |
| (3) Minneapolis/St. Paul, MN | (6) Seattle, WA  |

### XX Granted (see below)

Action date: May 5, 2020

Requests for exemption granted and effective dates of authority granted:<sup>4</sup>

For covered points 1-6: 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)

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Basis for approval: We find that granting Spirit's request for exemption to suspend temporarily, through September 30, 2020, service to covered points 1 through 6 is warranted based upon our ongoing monitoring of carrier operations. In our action on the request of Cape Air, which Spirit cites, 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 Spirit here, given the carrier's size and the nature of the covered points for which it seeks relief.<sup>5</sup> Our action granting Spirit 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 Spirit's request for a waiver of the 10-business day advance filing requirement for exemptions under Order 2020-4-2, so that its proposed scheduled changes can be implemented promptly.

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<sup>4</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>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 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.

## 2. XX Service Level Exemption (deferred portion of prior exemption request)

(5) Charlotte Amalie, USVI

(7) Christiansted, USVI

### XX Denied (see below)

Action date: May 5, 2020

Requests for exemption denied at: covered points 5 and 7.

In its April 8, 2020 request for exemption, which the Department deferred as to covered points 5 (Charlotte Amalie, USVI) and 7 (Christiansted, USVI), Spirit claimed that local restrictions limited or burdened passengers flying to these covered points and that requiring the carrier to provide service was not in the public interest given the minimal level of service Spirit would provide against otherwise available service and low passenger demand. We acknowledge Spirit's position; however, the situation in the U.S. Virgin Islands has changed since Spirit's filing on April 8, 2020. At that time, a stay-at-home order in response to the COVID-19 public health emergency was in effect in the U.S. Virgin Islands.<sup>6</sup> But on April 29, 2020, the Governor of the U.S. Virgin Islands announced that beginning on May 4, 2020, some restrictions on movement, gatherings, and operations would be relaxed, which included a phased-in approach to opening the local economy.<sup>7</sup> In the absence of a comment from the Governor of the U.S. Virgin Islands in this record, the Department takes note of the April 29, 2020 announcement and denies Spirit's request to suspend service to covered points 5 and 7.

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 appropriately 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. Spirit has not persuaded the Department that we must strike a different balance with respect to covered points 5 and 7.

We may amend, modify, or revoke this exemption at any time without hearing at our discretion.<sup>8</sup>

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<sup>6</sup> See <https://www.vi.gov/wp-content/uploads/2020/04/20200323-Establishing-Prohibitions-Restrictions-to-Movement-Gatherings-Operations-of-Business-Govt.-and-Schools.pdf>, as amended and extended.

<sup>7</sup> See <https://www.vi.gov/wp-content/uploads/2020/05/6th-Supplemental-Executive-Order-COVID-19.pdf>.

<sup>8</sup> By this Notice, we also confirm our oral actions of April 24 and 30, 2020 in this Docket. Ordering paragraph 5 of Order 2020-4-2 provides that covered carriers must resume services at their covered points within seven business days of receiving financial assistance under the CARES Act, but also permits the Department to grant exemptions from the service restart date. In its first request, made orally on April 24, 2020, Spirit requested a delay of the service restart date for all its covered points until May 1, 2020. Spirit explained that it had planned to resume its covered services on May 1, 2020; that it received its first payroll support payment under the CARES Act a day earlier than anticipated, necessitating its resumption of service seven business days later (on April 30 rather than May 1); that it had already loaded schedules into its reservation system showing a May 1 service restart date; and that allowing it to resume services on May 1 rather than April 30 is warranted. We granted this exemption by oral action on April 24, 2020, permitting a delay until May 1, 2020 for all of Spirit's covered points.

In its second request, made orally on April 30, 2020, Spirit requested a further delay of the service restart date for covered points 1 through 6 until the Department acted on the instant exemption request. We granted this exemption by oral action on April 30, 2020, permitting a delay until May 5, 2020 for covered points 1 through 6.

In granting Spirit's requests, we found that such delays would not unduly affect the traveling public, and that requiring the carrier to adhere to the originally-required service restart dates set forth in Order 2020-4-2 would not be reasonable or practicable in the specific circumstances presented. We are placing in Docket DOT-OST-2020-0037 copies of emails from Spirit memorializing its oral requests for these exemptions.

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.