



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

Issued by the Department of Transportation on April 25, 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: **Sun Country, Inc. d/b/a Sun Country Airlines (Sun Country)**¹

Date Filed: **April 14, 2020, as supplemented April 20, 2020**²

XX Service Level Exemption (a) – Sun Country, Inc. d/b/a Sun Country Airlines (Sun Country) requests that the Department approve temporary suspension of service, from April 20 through the week of June 15, 2020, to the following covered points from its Service Obligation under the provisions of Order 2020-4-2.

- | | |
|---------------------------------------|--|
| (1) Anchorage, AK (ANC) | (12) Philadelphia, PA (PHL) |
| (2) Austin, TX (AUS) | (13) Portland, OR (PDX) |
| (3) Boston, MA Metro Region (BOS/PVD) | (14) Sacramento, CA (SMF) |
| (4) Chicago, IL (ORD) | (15) San Antonio, TX (SAT) |
| (5) Dallas/Ft. Worth, TX (DFW) | (16) San Diego, CA (SAN) |
| (6) Denver, CO (DEN) | (17) San Juan, PR (SJU) |
| (7) Honolulu, HI (HNL) | (18) San Francisco, CA (SFO) |
| (8) Los Angeles, CA (LAX) | (19) Seattle, WA (SEA) |
| (9) Madison, WI (MSN) | (20) St. Louis, MO (STL) |
| (10) Nashville, TN (BNA) | (21) Washington, DC Metro Region (BWI) |
| (11) Newark, NJ (EWR) | |

Sun Country states that operations to these points would represent a significant burden to the carrier, that there is extremely low demand for the services, and that, were its exemption request to be granted, each point would still receive service from other air carriers. With respect to 12 of these points (Anchorage, Alaska; Austin, Texas; Boston, Massachusetts; Honolulu, Hawaii; Madison, Wisconsin; Philadelphia, Pennsylvania; Sacramento, California; San Antonio, Texas; San Juan, Puerto Rico; Seattle, Washington; St. Louis, Missouri; and Washington, DC), Sun Country states that it had previously published summer schedules showing service commencing between May 16 and June 17; that it does not maintain facilities or staff at these points; that it is therefore not in a position to start services prior to its intended start-up dates; and that it seeks a delay in the start of these services through the week of June 15, 2020.

¹ A copy of Sun Country’s application and the basis for its exemption can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0064>, and its supplement at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0083>.

² The applicant has requested confidential treatment of certain demand and cost data, under the provisions of 14 CFR §302.12. Good cause having been shown, we will grant this request.

XX Service Level Exemption (b) – Sun Country requests that the Department approve temporary reduction of the minimum service level, from three to one weekly operation, from the following covered points from its Service Obligation under the provisions of Order 2020-4-2.

- | | |
|--------------------------|------------------------|
| (22) Ft. Myers, FL (RSW) | (24) Orlando, FL (MCO) |
| (23) Las Vegas, NV (LAS) | (25) Phoenix, AZ (PHX) |

Sun Country states that in these markets, its projected load factors range from 23% to 43%, and that a single weekly flight in each market would be more than sufficient to accommodate demand.

XX Service Level Exemption (c) – Sun Country requests that the Department approve deletion from its Service Obligation the following covered points from its Service Obligation.

- | | |
|--------------------------------|------------------------------|
| (26) Gulfport/Biloxi, MS (GPT) | (28) Sonoma County, CA (STS) |
| (27) Santa Barbara, CA (SBA) | |

Sun Country states that it canceled and stopped service to these three points on December 16, 2019, September 1, 2019, and December 1, 2019, respectively, and that therefore these cities should be permanently removed from its Service Obligation.

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

Responsive pleadings: None

DISPOSITION

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

XX **Balance, denied (see below)**

Action date: **April 25, 2020**

Effective dates of authority granted:³

For covered points 3 to 8, 10-13, 16, 18-21: **April 25, 2020 through June 21, 2020 (Large hubs, delayed start)**

For covered points 1-2, 9, 14-15, 17: **April 25, 2020 through June 21, 2020 (Seasonal delayed start)**

For covered points 23 to 25: **April 25, 2020 through September 30, 2020 (Large hubs, reduced frequency)**

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: *Service level exemption (a):* We find that a partial grant of Sun Country's request for exemption through June 21, 2020, is warranted with respect to service to the following covered points under the provisions of Order 2020-4-2:

- | | |
|---------------------------------------|-----------------------------|
| (3) Boston, MA Metro Region (BOS/PVD) | (12) Philadelphia, PA (PHL) |
|---------------------------------------|-----------------------------|

³ 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.

- | | |
|--------------------------------|--|
| (4) Chicago, IL (ORD) | (13) Portland, OR (PDX) |
| (5) Dallas/Ft. Worth, TX (DFW) | (16) San Diego, CA (SAN) |
| (6) Denver, CO (DEN) | (18) San Francisco, CA (SFO) |
| (7) Honolulu, HI (HNL) | (19) Seattle, WA (SEA) |
| (8) Los Angeles, CA (LAX) | (20) St. Louis, MO (STL) |
| (10) Nashville, TN (BNA) | (21) Washington, DC Metro Region (BWI) |
| (11) Newark, NJ (EWR) | |

The Department has, since the issuance of Order 2020-4-2, continued to monitor air carriers' operations under the Service Obligations set forth in that order, with particular emphasis on the impact of service obligations on small air carriers relative to the public interest benefits of requiring service. Order 2020-4-2 had identified proportionality of schedule impacts as an important factor in establishing minimum service obligations that were reasonable and practicable, as required by the CARES Act.⁴

Sun Country's request for exemption for Points 3 to 8, 10 to 13, 16, and 18-21 (large hubs) provides a well-justified and narrowly tailored basis for a small carrier. The Department finds that this limited exemption would be consistent with the objective of Order 2020-4-2, which is to require airlines receiving financial assistance under the CARES Act to continue serving the points on their network to the extent reasonable and practicable. In this case, our action exempting Sun Country from serving the 15 hubs shown above, which have abundant service, would relieve Sun Country from an undue economic and operational burden. Our action granting Sun Country this exemption authority in no way relieves the applicant from its obligation to provide service to any other covered point in its Service Obligation. No points lose access to the national air transportation system. The Department finds this authority to be reasonable and practicable because, at a minimum, (a) the requesting airline is a small carrier with 10% or less share of the domestic market and (b) the relief we are granting is limited in scope to service to large hubs that have abundant service by large operators using the airports in question to provide connecting services.⁵

Granting the request enables the Department to implement the CARES Act in a way that continues to appropriately balance the needs of communities to retain at least minimal connections to the national air transportation system during the current public health emergency, as required by the CARES Act, and the economic needs of certain segments of the industry. In these circumstances, we find that grant of this exemption to Sun Country, to the extent described above, is warranted, and that it would not be reasonable or practicable to require Sun Country to serve these points under the terms of Order 2020-4-2.⁶

For Points 1-2, 9, 14-15, and 17 (Seasonal delayed start), Anchorage, Alaska; Austin, Texas; Madison, Wisconsin; Sacramento, California; San Antonio, Texas; and San Juan, Puerto Rico, we grant the carrier's request to delay its commencement of service in these markets through June 21, 2020 (*i.e.*, through the week of June 15, 2020), as requested by the carrier.

- | | |
|-------------------------|----------------------------|
| (1) Anchorage, AK (ANC) | (14) Sacramento, CA (SMF) |
| (2) Austin, TX (AUS) | (15) San Antonio, TX (SAT) |
| (9) Madison, WI (MSN) | (17) San Juan, PR (SJU) |

⁴ Order 2020-4-2 at 7.

⁵ 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.

⁶ We followed a similar practice in our action on the application of Hyannis Air Service d/b/a Cape Air for exemption in this Docket. See Notice of Action taken dated April 24, 2020, in Docket DOT-OST-2020-0037.

While the carrier has itself chosen to use its summer 2019 baseline schedule going forward, we take note of the carrier's predicament in being obligated to commence service under this schedule prior to the intended start date, and before it has in place the facilities necessary to support this service. As above, we find that grant of this limited exemption to Sun Country is warranted, and that it would not be reasonable or practicable to require Sun Country to serve these points prior to June 21, 2020.

Service level exemption (b): With respect to Sun Country's request to reduce its Service Obligation from three flights to one flight per week for Ft. Myers, Florida; Las Vegas, Nevada; Orlando, Florida; and Phoenix, Arizona, we note that three of these points, Las Vegas, Nevada; Orlando, Florida; and Phoenix, Arizona, are large hubs. For the reasons we set forth justifying an exemption for the group of 15 large hubs listed above, we likewise grant the carrier an exemption for these three points, enabling it to provide service one per week as requested, through September 30, 2020.

(23) Las Vegas, NV (LAS)

(25) Phoenix, AZ (PHX)

(24) Orlando, FL (MCO)

For Ft. Myers, Florida, we deny Sun Country's request to reduce its service obligation to this covered point. 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 appropriately 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 certain segments of the industry. While, for the reasons set forth above, we have found that limited relief from that methodology is warranted with respect to some of Sun Country's covered points, the carrier has not persuaded the Department that we must strike a different balance with respect to service to Ft. Myers. Moreover, Order 2020-4-2 generally provides substantial flexibilities to covered carriers.

Service level exemption (c): With respect to Sun Country's request that the points Gulfport/Biloxi, Mississippi (GPT); Santa Barbara, California (SBA); and Sonoma County, California (STS) be removed from its Service Obligation, we find that grant of the carrier's request is warranted, as the carrier notes that it ceased operations to those points in December 2019 or earlier. Under these circumstances, it would not be reasonable or practicable to require Sun Country to serve these points under the terms of Order 2020-4-2.

Finally, Sun Country requested a waiver of the 10-business day advance filing requirement for exemptions under Order 2020-4-2 so that its proposed schedule changes could be implemented promptly. In view of our action in this proceeding, that request is now moot and we dismiss it.

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>

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.