



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

Issued by the Department of Transportation on May 12, 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: **United Airlines, Inc. (United)**<sup>1</sup>

**XX Seasonal Exemption**<sup>2</sup>

Date Filed: **April 28, 2020**

In its April 28, 2020, request for exemption, United requests that the Department approve temporary suspension of service to the following covered points in its Summer 2019 baseline schedule from its Service Obligation under the provisions of Order 2020-4-2, until, for the covered points Nantucket, Massachusetts and Sun Valley, Idaho, the scheduled start-up dates of June 20, 2020. In addition, United requests an exemption to end these seasonal services on the regularly scheduled end dates of September 2 for Sun Valley, and September 8 for Hilton Head and Myrtle Beach, South Carolina, and Nantucket.

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| (1) Hilton Head, SC – September 8 end date                               | (4) Sun Valley, Idaho – June 20 start date & September 2 end date |
| (2) Myrtle Beach, SC – September 8 end date                              |   |
| (3) Nantucket, Massachusetts – June 20 start date & September 8 end date |   |

United reiterates its selection of its Summer 2019 baseline schedule and requests that the Department clarify and confirm that it is not requiring United to start summer service to covered points 3 and 4 (Nantucket and Sun Valley) earlier than United would ordinarily have provided (March 31), and is not requiring United to serve any of the above covered points beyond their planned seasonal termination dates.

**XX Service Restart Date Exemption**<sup>3</sup>

In its April 28, 2020, request for exemption, United requests that the Department approve a delay in the service restart date for the following covered points under the provisions of Order 2020-4-2, Ordering paragraph 5.

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|------------------------|----------------------------|
| (5) San Juan, PR (SJU) | (6) St. Thomas, USVI (STT) |
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<sup>1</sup> A copy of United’s application and the basis for its exemption request can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0103>.

<sup>2</sup> United previously requested an exemption from covered points 1-4 listed above, which the Department denied. See Notice of Action Taken dated April 25, 2020.

<sup>3</sup> In its April 11, 2020, application, United requested an exemption to temporarily cease service to San Juan, Puerto Rico and St. Thomas, U.S. Virgin Islands until June 4 and July 6, respectively, which the Department denied. See Notice of Action Taken dated April 25, 2020.

United states that in response to the Department's Notice of Action Taken dated April 25, 2020, denying the air carrier's request to suspend service to San Juan, Puerto Rico, and deferring action on United's request to serve St. Thomas, U.S. Virgin Islands, United will restart service to these two covered points.<sup>4</sup> However, United argues that the requirement in Order 2020-4-2 that provides that covered carriers must resume services at their covered points within seven business days of receiving financial assistance under the CARES Act, in United's case by April 28, 2020, three days after the Department's action date on its exemption request, is not reasonable or practicable, especially given its need to reestablish necessary ground and gate support functions as well as to establish a day of week schedule that fits within United's overall schedule. United requests, in the alternative, to resume serve to covered points 5 (San Juan, Puerto Rico) and 6 (St. Thomas, USVI) the week of May 4.

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

Responsive pleadings: None

### **DISPOSITION**

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

Action date: **May 12, 2020**

Requests for exemption granted and effective dates of authority granted:<sup>5</sup>

For covered points 1-2 (Hilton Head and Myrtle Beach, SC): **September 9, 2020 through September 30, 2020**

For covered point 3 (Nantucket, MA): **May 12, 2020 through June 19, 2020 and**

**September 9, 2020 through September 30, 2020**

For covered points 5-6 (San Juan, PR and St. Thomas, USVI): **April 28, 2020 through May 8, 2020**

Request for exemption denied at: covered point 4 (Sun Valley, Idaho)

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 United's request for seasonal exemptions is warranted under the provisions of Order 2020-4-2 for covered points 1 through 3 (Hilton Head, Myrtle Beach, Nantucket), but not for covered point 4 (Sun Valley). This request differs from United's prior request in that the carrier specifies the operational period of service at these covered points. United is requesting that the Department allow it to begin its seasonal summer service to covered point 3 (Nantucket) on June 20, 2020, and to discontinue service to covered points 1-3 listed above (Hilton Head, Myrtle Beach, and Nantucket) on September 8, 2020. In previous decisions in this docket, we have recognized the impracticality of beginning early, seasonal service that was normally slated to begin later in the summer, and of extending seasonal summer service through the end of September as contemplated by Order 2020-4-2, rather than ending that service when originally planned by the carrier. We will therefore grant United's request. The effective dates of the authority granted for each of the seasonal covered points are identified above.

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<sup>4</sup> Since United is proposing to resume service to St. Thomas, USVI, we dismiss as moot the carrier's initial request filed April 11, 2020, to suspend service temporarily to this covered point.

<sup>5</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.

With respect to covered point 4 (Sun Valley), we deny United's request. The air carrier states that it has winter and summer seasonal service to Sun Valley and that by selecting its summer 2019 baseline schedule, it should be included as a seasonal summer covered point for which an exemption to suspend service temporarily until June 20, 2020, and terminate that service on September 2, 2020, is necessary. However, Sun Valley is not considered a seasonal covered point for United under Order 2020-4-2.<sup>6</sup> The Department considers a seasonal point as one that is typically scheduled for one IATA scheduling season or less. In light of the above, United is required to continue serving covered point 4.

We find that granting United's request for additional time to resume service to covered points 5 and 6 (San Juan and St. Thomas) is warranted. United explained that under this provision in Order 2020-4-2, it would be required to resume service to these covered points on April 28, 2020, three days after the Department's action on its April 11, 2020 exemption request, and that it would not be reasonable or practicable for the air carrier to resume service so soon given the time it would take the carrier to set up necessary ground and gate support functions. We agree with United that temporary relief from this provision is warranted. The effective dates of the authority granted for these covered points are identified above.<sup>7</sup>

Finally, we grant United'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.

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>*

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<sup>6</sup> By Order 2020-4-2, the Department, as a proxy for determining specific seasonal points, used the Official Airline Guide schedules for the week ending August 4, 2019 for the summer season. The Department determined that this period approximated the "peak week" for summer schedules, when carriers are operating their full summer schedule and that this period is therefore most likely to capture the full universe of summer seasonal points. Appendix C to this order shows the seasonal points for both winter and summer seasons and the points served in both seasons.

<sup>7</sup> By this Notice, we also confirm our oral action of April 29, 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 request, made orally on April 29, 2020, United requested a delay of the service restart date for San Juan, Puerto Rico and St. Thomas, USVI until the week of May 4, 2020, one week from its originally-required service restart date. In granting United's request, we found that such a delay would not unduly affect the traveling public, and that requiring the carrier to adhere to the originally-required service restart date set forth in Order 2020-4-2 would not be reasonable or practicable in the specific circumstances described above.

**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.