



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 (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.**¹

Date Filed: **April 11, 2020, as supplemented April 17, 2020**

XX Seasonal Exemption – United Airlines, Inc. (United) requests that the Department approve temporary suspension of service to the following covered points in its Summer 2019 base line schedule from its Service Obligation under the provisions of Order 2020-4-2, through the dates listed below.

- (1) Fairbanks, AK – July 6
- (2) Hilton Head, SC – July 6
- (3) Myrtle Beach, SC – July 6
- (4) Nantucket, Massachusetts – September 30

XX Service Level Exemption (a) - United 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, through the dates listed below.

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|---------------------------------------|------------------------------------|
| (5) San Juan, PR (SJU) – June 4 | (9) Anchorage, AK (ANC) – July 6 |
| (6) Aguadilla, PR (BQN) – July 6 | (10) Key West, FL (EYW) – July 6 |
| (7) Saint Thomas, USVI (STT) - July 6 | (11) Santa Rosa, CA (STS) - July 6 |
| (8) Saipan, CNMI (SPN) – May 2 | |

XX Service Level Exemption (b) - United 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.

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|---------------------------|---------------------------|
| (12) Sun Valley, ID (SUN) | (18) Gunnison, CO (GUC) |
| (13) Hilo, HI (ILO) | (19) Ithaca, NY (ITH) |
| (14) Kona, HI (KOA) | (20) Kalamazoo, MI (AZO) |
| (15) Lihue, HI (LIH) | (21) Santa Fe, NM (SAF) |
| (16) Kahului, HI (OGG) | (22) Valparaiso, FL (VPS) |
| (17) Green Bay, WI (GRB) | |

¹ A copy of United’s application and the basis for its exemption can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0060>; and its supplement can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0084>.

United argues that points 1 to 3 and 9-12 are largely tourist markets, demand for which has dropped to near zero as a result of the public health emergency, stay-at-home orders, and closures of tourist attractions. At points 5 to 7, United states that the Caribbean is also a largely-tourist driven market and that, specifically to point 6, the Federal Aviation Administration (FAA) has closed the airport, requiring all flights to Puerto Rico arrive at SJU for medical screening. For points 8 and 13 to 16, United argues that the Governors of Hawaii and the Commonwealth of the Northern Mariana Islands have issued mandatory 14-day quarantines for all arriving passengers. This directive, combined with the necessary use of large aircraft with expensive operating costs, make these services unfeasible. At points 17 to 22, United argues that load factors at each point are historically low and all are within easy driving distance of another airport with service.² Finally, at point 4, United argues that its service to Nantucket uses contract workers on the island whom United will have to hire and house at considerable expense.

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

Responsive pleadings: Mayor Harry Kim of Honolulu County, Hawaii, wrote in support of United's request to suspend its non-Honolulu Hawaii services. United also filed in the docket a letter from Mr. Jon Urdi, Executive Director of Mammoth Lakes Tourism, requesting that United suspend its Los Angeles-Mammoth Lakes, California, service and stating that payments under the applicable minimum-revenue guarantee for the service would be suspended. Corporate Counsel for Brown County, representing the Green Bay Austin Straubel International Airport (GRB) and Brown County officials, submitted an objection. Brown County objected to United's decision to cease serving GRB versus other airports in the region, citing disproportionate impact on Green Bay's ability to provide viable air service to the region.

DISPOSITION

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

Action date: **April 25, 2020**

Effective dates of authority granted:³

Fairbanks, AK: **April 25, 2020 through July 6, 2020**
Aguadilla, PR: **April 25, 2020 through July 6, 2020**
Hilo, HI: **April 25, 2020 through September 30, 2020**
Kona, HI: **April 25, 2020 through September 30, 2020**
Lihue, HI: **April 25, 2020 through September 30, 2020**
Kahului, HI: **April 25, 2020 through September 30, 2020**
Saipan, CNMI: **April 25, 2020 through May 2, 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)**

Basis for approval: At Fairbanks, Alaska, we find that granting United's request to begin service on the regularly scheduled seasonal start date of July 6, 2020, is warranted. United confirmed its selection of the summer 2019 baseline schedule and is requesting that the Department allow it to begin its seasonal summer service to Fairbanks on

² We note that, while not explicitly requested as an exemption, United stated that the service it was providing at Mammoth Lakes (MMH) and Stockton, CA (SCK) was pursuant to a minimum-revenue guarantee and that the communities have suspended that financial support. Under the terms of Order 2020-4-2, United is not obligated to continue service that was funded by a minimum-revenue guarantee that has ceased.

³ 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.

July 6, 2020. In previous decisions in this docket, we have recognized the impracticality of beginning seasonal service normally slated to begin later in the summer, immediately. We will therefore grant United's request.

With respect to Aguadilla, Puerto Rico, we grant United's request to suspend service until July 6, 2020. 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. While we agree that it would not be reasonable or practicable for United to serve Aguadilla, Puerto Rico under the terms of Order 2020-4-2, because the air carrier requested to suspend service to Aguadilla, Puerto Rico only until July 6, 2020, we will require the air carrier to start service at that covered point on July 7, 2020.

We find that granting United's request for exemption as it concerns Hilo, Kona, Lihue, and Kahului, Hawaii, is warranted under the provisions of Order 2020-4-2, insofar as it would allow the air carrier to suspend service temporarily to these points from its Service Obligation. United's service to these points requires the use of large aircraft with long flight times, and the imposition of Hawaii's mandatory 14-day quarantine order for all travelers to or within Hawaii severely impacts passenger travel. Moreover, various Hawaiian State and local government officials have submitted filings in Docket DOT-OST-2020-0037 noting the existence of the 14-day quarantine period and the goal of minimizing the number of visitors to Hawaii until the current coronavirus (COVID-19) public health emergency has ended.⁴ Further, United will continue to provide scheduled service to Honolulu, Hawaii. In light of all of the above concerns, it would not be reasonable or practicable for United to serve Hilo, Kona, Lihue, and Kahului, Hawaii under the terms of Order 2020-4-2.

At Saipan, Commonwealth of the Northern Mariana Islands, we also grant United's exemption request to suspend service until May 2, 2020. We find that the situation at Saipan is similar to that of Hawaii. The Governor of the Commonwealth has imposed a mandatory 14-day quarantine period for all travelers arriving from the United States.⁵ Likewise, United must use large aircraft with high operating costs to serve Saipan. While we agree that it would not be reasonable or practicable for United to serve Saipan, CNMI under the terms of Order 2020-4-2, because the air carrier requested to suspend service to Saipan, CNMI only until May 2, 2020, we will require the air carrier to start service at that covered point on May 3, 2020.

With respect to United's request to suspend service at St. Thomas, USVI, we are deferring action. A deferral by the Department still obligates the air carrier to serve the covered point for which it requested relief. In this regard, United must continue to service St. Thomas, USVI, pending final Department action.

We deny the balance of United's request. The Department is authorized to require air carriers receiving financial assistance under sections 4005 and 4114(b) of the CARES Act to maintain scheduled air transportation service as the Secretary deems necessary. By Order 2020-4-2, the Department believes it struck an appropriate balance between 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 the airline industry. United has not persuaded the Department that we must strike a different balance with respect to the remaining covered points in United's request. Order 2020-4-2 provides substantial flexibilities to covered carriers.

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.

⁴ See, e.g., Letter of David Y. Ige, Governor of Hawaii, Docket DOT-OST-2020-0037-0054.

⁵ <https://www.mymarianas.com/coronavirus-covid-19-resources/>.

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.