



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

Issued by the Department of Transportation on July 16, 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: **June 26, 2020**

XX Service Level Exemption – Sun Country provided two options for the Department to consider.

Option 1

Sun Country requests a temporary reduction of its minimum service level under the provisions of Order 2020-4-2, from three weekly operations to one weekly operation through September 30, 2020 for Austin (AUS) and San Antonio (SAT).

Option 2

Alternatively, Sun Country requests that the Department amend Appendix A to Order 2020-6-2 ("Final Order on Adjustments to Service Order Obligations")² to replace St. Louis (STL) and Portland (PDX) with Austin (AUS) and San Antonio (SAT).

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

Responsive pleadings: The Minneapolis-Saint Paul Metropolitan Airports Commission,³ the City of Austin Aviation Department, Austin-Bergstrom International Airport,⁴ and the San Antonio Airport System⁵ expressed support for Sun Country's request to reduce its service obligations through September 30, 2020. Sun Country is based in Minneapolis-Saint Paul.

DISPOSITION

XX Denied

Action date: **July 16, 2020**

¹ A copy of Sun Country's application and the basis for its exemption request can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0218>.

² See <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0193>.

³ See <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0221>.

⁴ See <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0230>.

⁵ See <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0241>.

Requests for exemption denied at: Austin (AUS) and San Antonio (SAT)

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 denial: We find that denying Sun Country's request with respect to both options proposed is warranted. Having previously denied Sun Country's request for an exemption at Austin and San Antonio—seasonal covered points which are part of Sun Country's baseline summer schedule—no new information was provided in this application that persuades us to grant Sun Country's exemption request here, even though for Option 1 the relief sought here is different from the relief sought by Sun Country in June.⁶

With respect to Option 1, reducing the carrier's service obligation from three weekly frequencies to one weekly frequency at Austin and San Antonio, Sun Country states that it is a small carrier with less than 10 percent share of the domestic market and the requested reduction in service obligation frequencies would relieve it from the "undue economic and operational burden" of serving two points with virtually no aircraft. It also states that load factors for booked flights to Austin and San Antonio continue to be extremely low, that Texas is facing a surge in new coronavirus cases which will further weaken the already low demand for Sun Country's flights, and other carriers will continue to provide non-stop, direct, and online one-stop service at these covered points. Sun Country also asserts that should the Department continue to require the carrier to operate three weekly flights at Austin and San Antonio, it would be forcing Sun Country to operate more frequencies to each of those covered points for the remainder of summer 2020 than Sun Country would have operated had the coronavirus disease 2019 (COVID-19) public health emergency not happened.

With the exception of the argument comparing the carrier's frequency of operations with and without the COVID-19 public health emergency, these same arguments were raised by Sun Country in its previous request for an exemption for Austin and San Antonio. Although, as noted above, that previous request sought a different type of relief from that sought here, the Department remains unpersuaded that it must strike a different balance with respect to service at Austin and San Antonio, and thus we deny the request as to option 1. The carrier chose to use its summer 2019 baseline schedule and therefore is committed to serving the three weekly frequencies required by Appendix C of Order 2020-4-2 for each of these covered points. We note that our action taken as to option 1 is consistent with our action taken on similar requests for a reduction of weekly frequencies.⁷

Regarding the new argument raised by Sun Country, as a proxy for determining the number of weekly frequencies Sun Country would have operated at Austin and San Antonio absent the COVID-19 public health emergency, we looked at the number of frequencies operated per week at those covered points during 2019. We found that, during 2019, the carrier had actually operated *more* than three frequencies per week at those covered points—refuting Sun Country's argument that the three frequencies per week for Austin and San Antonio, as required by Appendix C of Order 2020-4-2, forces the carrier to operate more flights than it otherwise would have.

With respect to option 2, amending Appendix A to Order 2020-6-2 ("Final Order on Adjustments to Service Order Obligations") to replace two of Sun Country's exemptions for St. Louis and Portland with Austin and San Antonio, the carrier notes that, if its request is granted, it would re-impose its service obligation at St. Louis and Portland for the remainder of the summer 2020 season. Sun Country claims that this alternative request is fully consistent with the Department's goal of striking the "appropriate balance between the needs of communities to maintain at least minimal access to the national air transportation system during the public health emergency, and the needs of carriers to conserve financial resources to weather this time of unprecedented loss of demand." The carrier notes further that

⁶ See Notice of Action Taken dated June 19, 2020. Sun Country had sought an exemption for San Antonio through September 30, 2020 and an exemption to terminate its service obligation at Austin on September 8, 2020 (rather than September 30, 2020).

⁷ See Notices of Action Taken dated April 25, 2020 (Sun Country at Ft. Myers, Florida) and May 12, 2020 (Silver Airways at Tallahassee, Florida).

the Department has the authority to amend, modify, or revoke the exemptions granted by Order 2020-6-2 at any time without hearing and at our discretion.

While the Department retains the right to amend, modify, or revoke these exemptions, the carrier has not provided sufficient evidence that circumstances require such action. The list of points contained in Appendix A to Order 2020-6-2 is the result of a competitive process outlined by the Notice of Adjustments to Service Obligations, dated May 12, 2020,⁸ in which carriers sought to attain additional relief to their Service Obligation in Order 2020-4-2 by submitting prioritized list of points for which they wished to be granted an exemption. Permitting carriers to swap out or trade exemption points would undermine the entire exemption process and its objectives. Therefore, we deny Sun Country's alternative request.

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.

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>

⁸ See <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0158>.

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 ensure 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.