



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

Issued by the Department of Transportation on August 28, 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: **Allegiant Air, LLC (Allegiant)**¹

Date Filed: **July 17, 2020**

XX Service Level Exemption (suspend service)

Allegiant 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, effective on the dates below and through September 30, 2020.

- (1) Clarksburg, West Virginia (CKB) – August 19
- (2) Owensboro, Kentucky (OWB) – August 19
- (3) Raleigh/Durham, North Carolina (RDU) – August 19
- (4) St. Cloud, Minnesota (STC) – August 19
- (5) Rochester, New York (ROC) – September 1
- (6) Little Rock, Arkansas (LIT) – September 1

XX Service Level Exemption (frequency reduction)

Allegiant requests that the Department approve a temporary reduction, from three weekly flights to one weekly flight, of its minimum service obligation under the provisions of Order 2020-4-2 at the following covered points and effective on the dates below.

- (7) Omaha, Nebraska (OMA) – August 19
- (8) Cleveland, Ohio (CLE) – September 1
- (9) Elmira, New York (ELM) – September 1
- (10) Plattsburgh, New York (PBG) – September 1
- (11) Traverse City, Michigan (TVC) – September 1

In its July 16, 2020 application, as amended by its July 31, 2020 supplement, Allegiant seeks exemptions to reduce its service levels at covered points 1-11 so as to match what it would have operated in August and September 2020,

¹ A copy of Allegiant’s exemption application and the basis for its exemption request can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0246>, and its supplement at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0252>. In its July 16, 2020 application, Allegiant requested exemptions at covered points 1-11 from August 19, 2020 through September 29, 2020. In the supplement to that exemption application filed on July 31, 2020, Allegiant clarified that it seeks exemptions beginning on August 19, 2020 for some of the covered points, and exemptions beginning September 1, 2020 for other covered points, as outlined above. Further, Allegiant changed the September 29, 2020 exemption termination date to September 30, 2020.

absent the coronavirus disease 2019 (COVID-19) public health emergency. In support of this, Allegiant provided data showing its longstanding schedules for these covered points, and also data from 2019 demonstrating that Allegiant has, in the past, suspended or reduced service at these covered points (except for covered point 11, Traverse City, which was a new destination in 2019 for Allegiant) in August and September.

Responsive pleadings: None

DISPOSITION

XX Granted, in part (see below)

XX Balance, dismissed or denied (see below)

Action date: **August 28, 2020**

Requests for exemption granted in part and effective dates of authority granted (suspend service):²

For covered points 1 and 3: **August 19, 2020 through September 30, 2020**

For covered point 5: **September 7, 2020 through September 30, 2020**

For covered point 6: **September 8, 2020 through September 30, 2020**

Requests for exemption granted in part and effective dates of authority granted (frequency reduction):

For covered point 7: **August 16, 2020 through September 30, 2020**

For covered points 8-10: **September 6, 2020 through September 30, 2020**

Request for exemption dismissed for covered point 2.

Requests for exemption denied for covered points 4 and 11.

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 decision: For covered points 1 and 3 (Clarksburg, Raleigh/Durham), Allegiant requested an exemption to suspend service at these covered points effective August 19, 2020, reasoning that prior to COVID19 it planned to suspend operations at these covered points as of that date and through September 30, 2020. Allegiant's data, verified by the Department using the OAG Schedule data filed January 2020,³ indicate that the carrier planned to operate no flights at each of these covered points from August 19, 2020 through the end of September 2020. Therefore, we find it reasonable and practicable to grant the relief requested at covered points 1-3 from August 19, 2020 through the end of September 2020.

For covered point 2 (Owensboro), Allegiant requested an exemption to suspend service effective August 19, 2020, reasoning that prior to COVID-19 it planned to suspend operations as of that date and through September 30, 2020. On August 21, 2020, Allegiant subsequently withdrew its request for an exemption to suspend service at this covered point. Thus, we dismiss as moot Allegiant's request for an exemption at covered point 2.

² The effectiveness of this authority will terminate on the date(s) specified above.

³ In order to verify Allegiant's claims that its proposed 2020 schedule for which it is seeking relief was made in the ordinary course of business, prior to the onset of the COVID-19 public health emergency, the Department retrieved Allegiant's OAG Schedule data filed January 2020, which show the carrier's proposed full 2020 schedule for each market in which Allegiant operates.

As with covered points 1 and 3, for covered point 4 (St. Cloud), Allegiant requested an exemption to suspend service effective August 19, 2020, reasoning that prior to COVID-19 it planned to suspend operations at these covered points as of that date and through September 30, 2020. 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. Because Allegiant is the only covered carrier at covered point 4, we are requiring it to maintain service in accordance with Order 2020-4-2. The Department has maintained that every covered point should continue to receive service from at least one covered carrier.⁴ In light of the above, we deny Allegiant's exemption request for covered point 4.

For covered points 5-6 (Rochester, Little Rock), Allegiant requested an exemption to suspend service at these covered points effective September 1, 2020, reasoning that prior to COVID-19 it planned to operate no flights at these covered points as of that date and through September 30, 2020. Yet, Allegiant's own data show that the carrier planned to operate several flights at both of these covered points during the "week beginning 9/2/2020,"⁵ and the OAG Schedule data filed January 2020 show that Allegiant had flights planned through September 6, 2020 and September 7, 2020 for covered points 5 and 6, respectively. Therefore, because Allegiant had not planned to suspend flights at covered points 5 and 6 until September 7 and 8, 2020, respectively, rather than issuing exemptions effective September 1, 2020 we find it reasonable and practicable to permit Allegiant to suspend its service obligation at covered point 5 from September 7, 2020 through the end of September 2020, and at covered point 6 from September 8, 2020 through the end of September 2020.

For covered point 7 (Omaha), Allegiant requested an exemption to reduce its service obligation from three weekly flights to one weekly flight, effective August 19, 2020, reasoning that prior to COVID-19 it planned to reduce its operations to one weekly flight as of that date and through September 30, 2020. Yet Allegiant's own data show that the carrier planned to operate two weekly flights as of the "week beginning 8/19/2020,"⁶ and the OAG Schedule data filed January 2020 show that Allegiant planned to operate two weekly flights as of the week of August 19, 2020 (which begins on Sunday August 16) and through the end of September. Therefore, because Allegiant had only planned to transition from three weekly flights to two weekly flights at covered point 7, rather than issuing an exemption permitting Allegiant to operate one weekly flight we find it reasonable and practicable to permit Allegiant to reduce to two weekly flights its service obligation at covered point 7 from the week beginning August 16, 2020 through the end of September 2020.

For covered points 8-10 (Cleveland, Elmira, Plattsburgh), Allegiant requested an exemption to reduce its service obligation from three weekly flights to one weekly flight at each of those covered points, effective September 1, 2020, reasoning that prior to COVID-19 it planned to reduce its operations to one weekly flight as of that date and through September 30, 2020. Yet, for each of covered points 8-10, Allegiant's own data show that the carrier planned to operate six weekly flights during the "week beginning 9/2/2020" and two weekly flights during the "week beginning 9/9/2020" and through the end of September.⁷ And the OAG Schedule data filed January 2020 show that Allegiant planned to operate six weekly flights at each of covered points 8-10 during the week of September 2, 2020 (which begins on Sunday August 30), transitioning to two weekly flights as of the week of September 9, 2020 (which begins on Sunday September 6) and through the end of September. Therefore, because Allegiant had only planned to transition from three weekly flights to two weekly flights at each of covered points 8-10, and had not planned to do so until the week beginning September 6, 2020, rather than issuing an exemption permitting Allegiant to operate one weekly flight as of September 1, 2020 we find it reasonable and practicable to permit Allegiant to reduce to two weekly flights its service obligation at covered points 8-10 from the week beginning September 6, 2020 through the end of September 2020.

⁴ See Final Order on Adjustments to Service Obligations, Order 2020-6-2 (June 3, 2020) at 4 ("The CARES Act requires the Department to balance the needs of communities to maintain at least minimal connections to the national air transportation system with the needs of carriers to conserve resources prior to the expiration of the Service Obligations.").

⁵ September 9, 2020 falls on a Wednesday.

⁶ August 19, 2020 falls on a Wednesday.

⁷ September 2, 2020 and September 9, 2020 fall on a Wednesday.

As with covered points 8-10, for covered point 11 (Traverse City) Allegiant requested an exemption to reduce its service obligation from three weekly flights to one weekly flight, effective September 1, 2020, reasoning that prior to COVID-19 it planned to reduce its operations to one weekly flight as of that date and through September 30, 2020. Yet, for covered point 11, Allegiant's own data show that the carrier planned to operate two or more weekly flights from the "week beginning 9/2/2020" through the end of September 2020. Meanwhile, the OAG Schedule data filed January 2020 show that Allegiant planned to operate four weekly flights at covered point 11 as of the week of September 2, 2020 (which begins on Sunday August 30) and through the end of September 2020. Therefore, after considering the OAG Schedule data, which reflect that Allegiant had not planned to transition to less than three weekly flights at covered point 11, we deny Allegiant's exemption request for covered point 11.

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 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.