

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

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AIR CHINA LIMITED	)	
d/b/a AIR CHINA	)	Docket DOT- OST-2020-0014
	)	
for renewal of Exemption Authority pursuant to 49 U.S.C.	)	
§ 40109	)	
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**APPLICATION OF AIR CHINA LIMITED d/b/a AIR CHINA  
FOR RENEWAL OF EXEMPTION AUTHORITY**

Communications with respect to this Application should be sent to:

George N. Tompkins, III, Esq.  
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george.tompkinsiii@wilsonelser.com  
  
Counsel for AIR CHINA LIMITED

Dated: March 18, 2020

NOTICE: Any person may support or oppose this Application by filing an answer on or before April 3, 2020.

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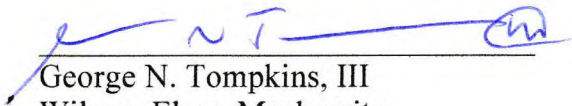
1. As a result of the continuing coronavirus outbreak and the effect it is having on air travel worldwide, Air China Limited, d/b/a Air China (“Air China”), is seeking to extend its current emergency exemption authority with respect to its air transport services between Beijing (PEK), People’s Republic of China and New York (JFK) and Washington, D.C. (IAD) on a coterminal basis.

2. Accordingly, pursuant to 49 U.S.C. §40109, Air China hereby applies for the renewal of the Exemption Authority originally granted in the Notice of Action Taken (NOAT) issued on February 6, 2020 by the Department of Transportation in Docket DOT-OST-2020-0014, permitting Air China to serve New York (JFK) and Washington, D.C. (IAD) on a coterminal basis on its services from Beijing (PEK), People’s Republic of China. See NOAT Exhibit “A” hereto. This Exemption Authority was further extended in the NOAT dated March 6, 2020 permitting Air China to continue its PEK-JFK-IAD service on a coterminal basis to April 6, 2020. See Exhibit “B” hereto

3. By this Application, Air China respectfully requests that the current Exemption Authority be renewed for a period of at least 30 days to expire on May 6, 2020, pursuant to NOAT issued on March 6, 2020 in Docket DOT-OST-2020-0014. See Exhibit "B" hereto.

WHEREFORE, Air China Limited, d/b/a Air China, respectfully requests that the Department of Transportation renew the Exemption Authority applied for herein for a period of not less than thirty (30) days to May 6, 2020. Air China further requests that the Department grant such other, further and different relief as the Department finds to be consistent with this Application and with the Civil Air Transport Agreement between the Governments of the United States of America and the People's Republic of China.

Respectfully submitted,



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george.tompkinsiii@wilsonelser.com  
Counsel for AIR CHINA LIMITED

DATED: March 18, 2020

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Application of Air China Limited d/b/a Air China for renewal of Exemption Authority was served by electronic mail this 18th day of March upon the following:

Airline Info:	<a href="mailto:info@airlineinfo.com">info@airlineinfo.com</a>
American Airlines/ US Airways:	<a href="mailto:robert.wirick@aa.com">robert.wirick@aa.com</a> <a href="mailto:john.b.williams@aa.com">john.b.williams@aa.com</a>
Atlas Air, Inc.	<a href="mailto:rpommer@atlasair.com">rpommer@atlasair.com</a> <a href="mailto:Naveen.rao@atlas.com">Naveen.rao@atlas.com</a>
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Delta Airlines:	<a href="mailto:Chris.walker@delta.com">Chris.walker@delta.com</a> <a href="mailto:Steven.seiden@delta.com">Steven.seiden@delta.com</a> <a href="mailto:Alex.krulic@delta.com">Alex.krulic@delta.com</a>
Hawaiian Airlines:	<a href="mailto:perkmann@cooley.com">perkmann@cooley.com</a>
Federal Express:	<a href="mailto:Anne.bechdolt@fedex.com">Anne.bechdolt@fedex.com</a>
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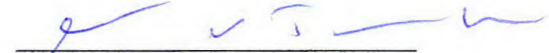
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George N. Tompkins, III

# **EXHIBIT A**



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

Issued by the Department of Transportation on February 6, 2020

**NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2020-0014**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **AIR CHINA LIMITED d/b/a AIR CHINA (Air China)**

Date Filed: February 2, 2020

Background: Air China filed an emergency application to the extent necessary to permit it to modify its scheduled air transportation between the People's Republic of China and the United States in light of the coronavirus outbreak and the resulting decline in travel between the United States and the PRC. Air China plans to replace its existing PRC-U.S. services with combination services only on a Beijing-Los Angeles-San Francisco routing beginning February 11, 2020, and a Beijing-New York-Washington, DC routing beginning February 12, 2020.<sup>1</sup>

Relief requested: To implement its proposed services, Air China specifically requires an emergency exemption under 49 USC §40109 to permit the applicant to serve New York and Washington, DC, on a coterminal basis, on its services from Beijing, PRC.<sup>2</sup> Air China requests that this exemption be granted for a period of no less than 180 days.

Applicant representative: George N. Tompkins, III, 212-490-3300 DOT analyst: Brett D. Kruger, 202-366-8025

Responsive pleadings: None.

**DISPOSITION**

Action: Approved in part (subject to conditions), remainder (request for longer-term authority) dismissed.

Action date: February 6, 2020<sup>3</sup>

Effective dates of authority granted: February 6, 2020, through March 7, 2020.<sup>4</sup>

Basis for approval: United States-China Air Transport Services Agreement

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of our standard exemption conditions (attached), and to the otherwise-applicable terms, conditions, and limitations of Air China's foreign air carrier permit (Order 2007-7-9).

**Action taken by: Brian J. Hedberg, Director, Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

<sup>1</sup> Air China states that it plans to operate the services in both directions, and further states that it is not seeking authority for cabotage rights between the named U.S. points.

<sup>2</sup> See Order 2007-7-9 and Docket DOT-OST-2014-0008, regarding Air China's existing authority for its current operations to these points.

<sup>3</sup> We acted on the application without awaiting the expiration of the answer period with the consent of all parties served.

<sup>4</sup> We have decided in the circumstances presented to limit the emergency award of New York-Washington coterminalization authority to a period of 30 days, subject to renewal should circumstances still warrant.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:*

<http://www.regulations.gov>



## Foreign Air Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) 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, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR 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;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380);
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (12) Be subject to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this exemption remains in effect, to which the United States and the holder's homeland are or shall become parties.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

# **EXHIBIT B**





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

Issued by the Department of Transportation on March 6, 2020

**NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2020-0014**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **AIR CHINA LIMITED d/b/a AIR CHINA (Air China)**

Date Filed: February 20, 2020

Background: On February 2, 2020, Air China filed an emergency application to the extent necessary to permit it to modify certain routes of its scheduled air transportation services between the People's Republic of China and the United States in light of the coronavirus outbreak and the resulting decline in travel between the United States and the PRC.

On February 6, 2020, the Department approved Air China's request to the extent necessary to permit the applicant to serve New York and Washington, DC, on a coterminal basis, on its services from Beijing, PRC. We granted Air China's request for a 30-day period, effective February 6, 2020, through March 7, 2020. We dismissed the request to the extent that Air China sought authority for a period of no less than 180 days.<sup>1</sup>

Present relief requested: Renewal of emergency exemption under 49 USC §40109 to permit the applicant to continue to serve New York and Washington, DC, on a coterminal basis, on its services from Beijing, PRC. Air China requests that this exemption be granted for a period of 180 days.

If renewal, date and citation of last action: February 6, 2020, in this docket.

Applicant representative: George N. Tompkins, III, 212-490-5562

DOT analyst: David R. Christofano, 202-366-0584

Responsive pleadings: None.

**DISPOSITION**

Action: Approved in part (subject to conditions), remainder (request for longer-term authority) dismissed.

Action date: March 6, 2020

Effective dates of authority granted: March 8, 2020, through April 6, 2020.<sup>2</sup>

Basis for approval: United States-China Air Transport Services Agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of our standard exemption conditions (attached), and to the otherwise-applicable terms, conditions, and limitations of Air China's foreign air carrier permit (Order 2007-7-9).

**Action taken by: Brian J. Hedberg, Director, Office of International Aviation**

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<sup>1</sup> See Notice of Action Taken issued February 6, 2020, in the instant docket.

<sup>2</sup> We have decided in the circumstances presented to limit the renewal of the emergency award of New York-Washington coterminalization authority to a period of 30 days, subject to renewal should circumstances still warrant.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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## Foreign Air Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant shall:

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- (2) 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, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR 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;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380);
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (12) Be subject to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this exemption remains in effect, to which the United States and the holder's homeland are or shall become parties.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.