



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

Issued by the Department of Transportation on April 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: March 18, 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. On February 20, 2020, Air China filed an exemption renewal request, which we granted for an additional 30-day period, effective March 8, 2020, through April 6, 2020. We dismissed the request to the extent that Air China sought authority for a period of no less than 180 days.¹

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 renewed for a period of at least 30 days to expire on May 6, 2020.

If renewal, date and citation of last action: March 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 (subject to conditions).

Action date: April 6, 2020

Effective dates of authority granted: April 7, 2020, through May 6, 2020.²

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).

¹ See Notices of Action Taken issued February 6, 2020, and March 6, 2020, in the instant docket.

² 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:

- (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.