



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

Issued by the Department of Transportation on April 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.**¹

Date Filed: **April 13, 2020, as supplemented April 17, 2020**

XX Service Level Exemption (a) - Allegiant Air, LLC (Allegiant) requests that the Department approve a temporary reduction, to one flight per week, of its minimum service obligation under the provisions of Order 2020-4-2 at covered points 1 to 6 through June 30, 2020, and a similar reduction at covered points 7 to 19 through September 30, 2020.

- | | |
|-------------------------------|-----------------------------------|
| (1) Albuquerque, NM (ABQ) | (11) Moline-Quad Cities, IL (MLI) |
| (2) Bellingham, WA (BLI) | (12) Ogdensburg, NY (OGS) |
| (3) El Paso, TX (ELP) | (13) Owensboro, KY (OWB) |
| (4) McAllen-Mission, TX (MFE) | (14) Raleigh-Durham, NC (RDU) |
| (5) Ogden, UT (OGD) | (15) Rochester, NY (ROC) |
| (6) Palm Springs, CA (PSP) | (16) St. Cloud, MN (STC) |
| (7) Clarksburg, WV (CKB) | (17) San Antonio, TX (SAT) |
| (8) Dayton, OH (DAY) | (18) Springfield, IL (SPI) |
| (9) Grand Forks, ND (GFK) | (19) Tucson, AZ (TUS) |
| (10) Little Rock, AK (LIT) | |

XX Service Level Exemption (b) – Allegiant requests that the Department approve temporary suspension of service to the following covered point from its Service Obligation under the provisions of Order 2020-4-2.

- (20) San Juan, PR (SJU)

XX Seasonal Exemption – Allegiant requests that the Department approve temporary suspension of service to the following covered point in its Winter 2020 baseline schedule from its Service Obligation under the provisions of Order 2020-4-2.

- (21) Montrose, CO (MJT)

Responsive pleadings: The Executive Director of the Grand Forks Regional Airport Authority filed a letter of support for Allegiant's exemption request regarding service at Grand Forks, North Dakota. In its letter, the Executive Director

¹ A copy of Allegiant's application and the basis for its exemption request can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0063>, and its supplement at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0073>.

proposed that for Grand Forks, North Dakota, the Department authorize Allegiant to suspend service through June 30, 2020, and to operate below the minimum service level from its Service Obligation under the provisions of Order 2020-4-2, from July 1 through September 30, 2020.

DISPOSITION

XX Granted in part, denied in part, and dismissed in part. (see below)

Action date: **April 28, 2020**

Requests for exemption granted and effective dates of authority granted:²

For covered points 2 and 4: **April 28, 2020 through June 30, 2020**

For covered points 8-9, 11-12, 14-16, and 19: **April 28, 2020 through September 30, 2020**

Requests for exemptions denied at:

Covered points: 1, 3, 5-7, 10, 13, and 17-18.

Request for exemption dismissed at:

Covered point 21.

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: The Department has, since the issuance of Order 2020-4-2, continued to monitor air carriers' operations under the Service Obligations set forth in that order, with particular emphasis on the impact of service obligations on small air carriers relative to the public interest benefits of requiring service. Order 2020-4-2 had identified the proportionality of impacts across the industry as an important factor in establishing minimum service obligations that were reasonable and practicable, as required by the CARES Act.³

Allegiant's request for a service level reduction provides the Department an opportunity to grant well justified and narrowly tailored relief for certain covered points operated by a small and unique carrier, while being consistent with the objective of Order 2020-4-2, which is to require airlines receiving financial assistance under the CARES Act to continue serving the points on their network to the extent reasonable and practicable. Compared to other small carriers, and as noted in its application, Allegiant operates a markedly different business model, which is more akin to an on-demand charter carrier than a scheduled passenger carrier. Its operational model is focused exclusively on point-to-point service, largely from underserved small- and medium-sized markets to leisure destinations. The airline does not carry connecting traffic or cargo and uses only one aircraft type, which limits its ability to adjust aircraft gauge to correspond with reduced demand. Allegiant relies on flexible scheduling, which enables it to reduce aircraft utilization regularly to adjust to low customer demand. As a result, its block hours per day and per month vary significantly more than other carriers that typically seek to maximize aircraft utilization. Further, it serves the majority of its network points less than daily, sometimes less than weekly or monthly, with service offerings that greatly fluctuate from week-to-week and month-to-month, depending on passenger demand.

With this action, the Department seeks to address some disproportionate impacts that Order 2020-4-2 would have on Allegiant due to its business model, including the uniquely large variance in operations from one month to the next.

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

³ Order 2020-4-2 at 7.

For most carriers, the approach set out in the Order is reasonable as their schedules are relatively static throughout the season. Allegiant, however, operates differently, with a great deal of variability from week to week and month to month. This variability has the potential to create a disparate impact on the carrier vis-à-vis its service obligation, potentially requiring it to operate a much larger share of its schedule relative to other carriers and resulting in minimum service levels for Allegiant that are not reasonable or practicable for a small carrier whose business model characteristics are demonstrably different from its competitors and who has less than a 10% share of the domestic market.⁴

Based upon the factors identified above, we will authorize Allegiant to reduce its minimum service obligations from three flights per week to one flight per week at covered points 2 and 4 through June 30, 2020, and for covered points 8-9, 11-12, 14-16, and 19 through September 30, 2020. This approach provides relief for the carrier while also ensuring that no point in the carrier's network will experience a total loss in service or eliminate passenger access to the national air transportation system. Granting the request enables the Department to implement the CARES Act in a way that continues to balance appropriately the needs of communities to retain at least minimal connections to the national air transportation system during the current public health emergency, as required by the CARES Act, with the economic needs of certain segments of the industry.

With respect to Allegiant's request to suspend service to covered point 20 (San Juan, Puerto Rico), Allegiant claims that for several months it had planned to terminate service to San Juan, Puerto Rico in May 2020, and that it simply accelerated its plans in response to the public health emergency.⁵ As this decision was taken in the normal course of business, well before the onset of the COVID-19 public health emergency and the issuance of Order 2020-4-2, we will grant Allegiant's request to remove San Juan, Puerto Rico, from its service obligation.

Finally, although Allegiant selected its Winter 2019 baseline schedule, it claims that its service to covered point 21 (Montrose, Colorado) is supported by a private financial arrangement that has been terminated and thus covered by the blanket exemption in Order 2020-4-2 at 10. The Department concurs and notes that, per the terms of Order 2020-4-2, to be covered under the blanket exemption, Allegiant must submit a letter from the funding party to the arrangement indicating that the direct financial support has ceased and file its revised service pattern as part of its monthly reporting obligation. Because covered point 21 is already covered by the blanket exemption, we will dismiss Allegiant's request here.

We deny, as moot, the balance of Allegiant's request (covered points 1, 3, 5-7, 10, 13, 17-18) as the minimum service obligation at these remaining points is already only one flight per week.

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>

⁴ See, Allegiant Air, LLC - Request for Exemption from Service Obligation at 3.

⁵ In a conversation with DOT on April 27, Allegiant representatives confirmed that a specific company decision to terminate service at San Juan, Puerto Rico was made and communicated to company officials and the public in January 2020. Allegiant should submit evidence of this termination, with redactions of personal information as necessary, along with its monthly compliance reports.

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.