ORDER

As discussed below, the U.S. Department of Transportation (the Department) is further modifying the decision reached in Order 2020-6-1 in order to respond to recent action by Chinese authorities impairing the operating rights of a U.S. carrier. This order will be effective immediately.

Background

On June 3, 2020, the Department issued Order 2020-6-1, concluding that the Government of China had, over the objections of the U.S. Government, impaired the operating rights of U.S. carriers and denied U.S. carriers the fair and equal opportunity to exercise their operating rights under the U.S.-China Civil Air Transport Agreement (the Agreement). The Chinese Government’s COVID-related restrictions (i.e., the “five-ones policy”) were embodied in a March 26, 2020 Notice issued by the Civil Aviation Authority of China (CAAC). Accordingly, the Department issued Order 2020-6-1 to suspend all Chinese carrier scheduled passenger air services between the United States and China.

In the wake of CAAC actions permitting a limited number of weekly round-trip scheduled passenger flights between the United States and China by U.S. carriers, the Department correspondingly permitted a limited number of such operations by Chinese carriers. Three

1 The Department fully set forth the basis for its conclusions in Order 2020-6-1, and before that in Order 2020-5-4.
2 See Orders 2020-6-3, June 5, 2020; 2020-6-6, June 15, 2020; and 2020-8-6, August 18, 2020. C.f. Orders 2020-6-
U.S. carriers have been providing round-trip passenger service between the United States and China: United Airlines, Inc. (United), Delta Air Lines, Inc., and American Airlines, Inc.

On August 6, 2021, United received a notice from CAAC alleging that five passengers who traveled from San Francisco to Shanghai tested positive for COVID-19 on July 21. Per the terms of a unilaterally-imposed “circuit breaker” provision in China’s Notice, China required United to either: (1) cancel two San Francisco – Shanghai flights; (2) operate two flights without passengers; or (3) operate four inbound flights with a maximum passenger load factor of 40 percent. United selected the third option. CAAC then informed United that the capacity limitation must be applied to four Wednesday United San Francisco-Shanghai flights, beginning with United’s San Francisco departure on Wednesday, August 11.

The United States Government (USG) has repeatedly raised its objections with the Government of China over the “circuit breaker” measure and its inconsistency with the provisions of the Agreement. In particular, the USG has conveyed its view that the “circuit breaker” measure places undue culpability on carriers with respect to travelers that test positive for COVID-19 after their arrival in China. As carriers are following all relevant Chinese regulations with respect to pre-departure and in-flight protocols, they should not be penalized as a result of travelers later testing positive. In accordance with those regulations, the Chinese government individually clears each and every potential traveler for travel to China prior to their departure from the United States after verifying pre-departure testing results and other required documentation. Carriers have no means to independently verify positive test results alleged by Chinese authorities. Furthermore, there is no way to establish where or when a traveler may have contracted COVID-19.

**Decision**

We find that CAAC’s recent actions impairing United’s operations are adverse to the public interest and warrant proportionate remedial action by the Department. Specifically, the Department finds the CAAC action to be inconsistent with Article 12(1) of the Agreement, which stipulates that airlines shall be permitted to provide capacity as agreed by both parties. CAAC’s unilateral action against United goes directly against the provisions of the Agreement for circumstances wholly outside of the carrier’s control.

We therefore conclude that the public interest now requires a further modification, effective immediately, of Order 2020-6-1, to limit Chinese carrier scheduled services accordingly. In the circumstances presented, we have determined to collectively limit, over the course of a four-week duration as specified below, each of the four Chinese carriers currently providing scheduled China-U.S. passenger service to a 40 percent passenger load factor on a single China-U.S. flight segment. Specifically, we impose this 40 percent maximum passenger load factor limitation on Air China Limited d/b/a Air China’s Beijing (PEK) – Los Angeles (LAX) (CA987) service to be operated the week of August 23-29, 2021 (in week 1); China Eastern Airlines Corporation Limited’s Shanghai (PVG) – New York City (JFK) (MU587) service to be operated the week of August 30-September 5, 2021 (in week 2); China Southern Airlines Company Limited’s Guangzhou (CAN) – Los Angeles (LAX) (CZ327) service to be operated the week of September 6-12, 2021 (in week 3); and Xiamen Airlines’

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Xiamen (XMN) – Los Angeles (LAX) (MF829) service to be operated during the week of September 13-19 (in week 4).

As the Department stated in Order 2020-6-1, our overriding goal is not the perpetuation of this situation, but rather an improved environment wherein the carriers of both parties will be able to exercise fully their bilateral rights. Only then will the Department’s actions to maintain a competitive balance and fair and equal opportunity among U.S. and Chinese air carriers in the scheduled passenger service marketplace no longer be necessary. The most recent CAAC action has not created that environment. However, should the CAAC adjust its policies to bring about the necessary improved situation for U.S. carriers, the Department is fully prepared to once again revisit the action it announced in Order 2020-6-1 and the present order.

ACCORDINGLY,

1. We modify Order 2020-6-1 to impose a 40 percent maximum passenger load factor limitation on Air China Limited d/b/a Air China’s Beijing (PEK) – Los Angeles (LAX) (CA987) service to be operated the week of August 23-29, 2021 (in week 1); China Eastern Airlines Corporation Limited’s Shanghai (PVG) – New York City (JFK) (MU587) service to be operated the week of August 30-September 5, 2021 (in week 2); China Southern Airlines Company Limited’s Guangzhou (CAN) – Los Angeles (LAX) (CZ327) service to be operated the week of September 6-12, 2021 (in week 3); and Xiamen Airlines’ Xiamen (XMN) – Los Angeles (LAX) (MF829) service to be operated during the week of September 13-19 (in week 4);

2. This Order is effective immediately;

3. We may amend, modify, or revoke this Order at any time and without hearing; and

4. We will serve this Order on Air China Limited d/b/a Air China; Beijing Capital Airlines Co., Ltd.; China Eastern Airlines Corporation Limited; China Southern Airlines Company Limited; Hainan Airlines Holding Co. Ltd.; Sichuan Airlines Co., Ltd.; and Xiamen Airlines; all certificated U.S. carriers operating large aircraft; the Embassy of the People’s Republic of China in Washington, D.C.; the Civil Aviation Authority of China (CAAC); the Department of State; the Transportation Security Administration; and the Federal Aviation Administration.

By:

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for Aviation and International Affairs

(SEAL)

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