



Order 2020-4-10

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

Issued by the Department of Transportation
on the 29th day of April 2020

Served: April 29, 2020

In the matter of

Expanded Cargo and Passenger Flexibility at Puerto Rican International Airports

Docket DOT-OST-2019-0085

FINAL ORDER

Summary

By this Order, the U.S. Department of Transportation is finalizing our tentative findings and conclusions in Order 2020-2-12 and granting certain blanket authority to foreign air carriers under 49 U.S.C. § 40109 to enable them to provide certain expanded cargo and passenger transfer services at international airports in the Commonwealth of Puerto Rico (Puerto Rico).

Background

By Order 2020-2-12, issued February 19, 2020, in response to an application filed in this Docket by Puerto Rico, we directed interested persons to show cause why we should not grant exemption authority for a two-year term to all foreign air carriers (except as specified below and in ordering paragraph six) that currently hold, or that may subsequently receive, effective Department authority to engage in scheduled foreign air transportation of cargo (whether under authorizations permitting combination or all-cargo services), an exemption from 49 U.S.C. § 41301 to engage in the following cargo transfer activities at Puerto Rico international airports, and to all foreign air carriers (except as specified below and in ordering paragraph six) that currently hold, or that may subsequently receive, effective Department authority to engage in the foreign air transportation of passengers, an exemption from 49 U.S.C. § 41301 to engage in the following transfer activities at Puerto Rican international airports:

- (1) to transfer cargo and passengers from any of their aircraft to any of their other aircraft, provided that both aircraft are operating to/from a point in the carrier's homeland;
- (2) to make changes, at Puerto Rico international airports, in the type or number of aircraft used to transport cargo and passengers, provided that in the outbound direction, the

transportation beyond Puerto Rico is a continuation of the transportation from the carrier's homeland to Puerto Rico, and in the inbound direction, the transportation to the carrier's homeland is a continuation of the transportation from behind Puerto Rico;

(3) to commingle cargo and passenger traffic moving in foreign air transportation with cargo and passenger traffic not moving in foreign air transportation;¹

(4) to discharge cargo and passenger traffic at Puerto Rico international airports for transfer to a U.S. carrier for onward carriage to a final destination in the United States or in a third country, and to uplift from Puerto Rico cargo and passenger traffic transferred from a U.S. carrier that was transported by that carrier to Puerto Rico from a point of origin elsewhere in the United States or in a third country; and

(5) to discharge passengers and cargo at Puerto Rico international airports for transfer to another foreign carrier for onward carriage to a final destination in a third country, and to uplift from Puerto Rico international airports passengers and cargo transferred from another foreign carrier that was transported by that carrier to Puerto Rico from a point of origin in a third country.

We also proposed to grant all foreign air carriers (except as specified below and in ordering paragraph six) that currently hold, or that may subsequently receive, effective Department authority to engage in scheduled foreign air transportation, an exemption from 49 U.S.C. § 41301 to allow them to serve Puerto Rico and to coterminalize Puerto Rico with other U.S. points for which they hold our authority.

We further proposed to invite eligible foreign carriers to apply for authority to serve new U.S. points on an extrabilateral basis, so long as these flights also serve Puerto Rico, and subject to the standard that there must be a procompetitive agreement with the applicant's homeland country and that interested parties will be allowed to raise overriding public interest reasons for denying the requested authority.²

We also noted that our tentative decision to exclude from eligibility for these authorities foreign carriers from Venezuela was based on the state of our aviation relationships with that country.³ Finally, we dismissed without prejudice Puerto Rico's request concerning in-bond cargo storage, as it is properly within the jurisdiction of the United States Customs and Border Protection within the Department of Homeland Security.

As was the case in the earlier transfer proceedings for other areas, we recognized that air service is vitally important to Puerto Rico, and that it is heavily dependent on air transportation as a vital element of its economy. We also noted that Puerto Rico provided specific evidence of the negative impact that its economy has suffered in the aftermath of Hurricane Maria and for other

¹ We emphasize that this is not to include cabotage.

² We stated that we tentatively believed that this condition will bring about the desired benefits for Puerto Rico without compromising our ability to protect the full range of important U.S. aviation interests or hampering U.S. negotiating ability. *See* Order 99-12-10, at 4-5.

³ Order 2020-2-12, at 5.

reasons, and that Puerto Rico had demonstrated, in our tentative view, that a strong public interest basis existed for the relief we proposed to confer.⁴

Responsive Pleadings

While no objections were filed to the tentative decision, the Air Line Pilots Association, International (ALPA) and Puerto Rico filed pleadings in response.

In its comments, ALPA states that it respectfully disagrees that the relief at issue is necessary, but states its belief that the Order - as specifically conditioned to prohibit cabotage - is unlikely to cause significant harm to the public interest. ALPA also disagrees with the Department's tentative decision to expand transfer flexibility to passenger traffic, but notes that the Department makes clear that its decision to extend such relief in this case is narrowly tailored to the unique harm and natural disasters suffered by Puerto Rico.⁵ ALPA asserts its belief that Puerto Rico's best prospect for improving its air services and potentially regaining its former hub status lies with U.S. airlines that can provide international and domestic service without restriction.

For its part, Puerto Rico notes that, in ALPA's response to the Order, ALPA stated its position but did not oppose issuance of a final order. Therefore, Puerto Rico requests the Department expedite issuance of a final order on its application.

Decision

No party objected to our tentative grant of authority as specified in Order 2020-2-12. Therefore, we have decided to finalize our tentative findings and conclusions as set forth in that Order, and grant eligible foreign air carriers the relief proposed.

We have considered the issues raised by ALPA in its comments and do not find that they warrant altering of our tentative decision. We also make final our finding that there is a need to exclude foreign air carriers from Venezuela from eligibility for the extrabilateral relief at issue here.⁶

In light of the above, we make final our findings and conclusions as stated in Order 2020-2-12. We find that our action, as limited and conditioned, is consistent with applicable law and with the public interest.

ACCORDINGLY,

1. We grant to all foreign air carriers (except as noted in paragraph 6) that currently hold, or that may subsequently receive, effective Department authority to engage in the foreign air transportation of cargo (whether under authorizations permitting combination or all-cargo

⁴ As in the cited prior cases involving Alaska and Hawaii, we noted that the authority we proposed to grant in Order 2006-8-5 would not permit cabotage operations by foreign carriers.

⁵ Order 2020-2-12, at 4.

⁶ We note that the Department has suspended foreign air transportation by all U.S. and foreign air carriers between Venezuela and the United States. *See* Order 2019-5-5 in Docket DOT-OST-2019-0072. In the event this suspension is modified, our exclusion of Venezuelan carriers from the authority at issue here will remain in place until further order of the Department.

services), an exemption from 49 U.S.C. § 41301 to engage in the following cargo transfer activities at Puerto Rico international airports, and to all foreign air carriers (except as noted in paragraph 6) that currently hold, or that may subsequently receive, effective Department authority to engage in the foreign air transportation of passengers, an exemption from 49 U.S.C. § 41301 to engage in the following passenger transfer activities at Puerto Rico international airports: (1) to transfer cargo and passengers from any of their aircraft to any of their other aircraft, provided that both aircraft are operating to/from a point in the carrier's homeland; (2) to make changes, at Puerto Rico international airports, in the type or number of aircraft used to transport cargo and passengers, provided that in the outbound direction, the transportation beyond Puerto Rico is a continuation of the transportation from the carrier's homeland to Puerto Rico, and in the inbound direction, the transportation to the carrier's homeland is a continuation of the transportation from behind Puerto Rico; (3) to commingle cargo and passenger traffic moving in foreign air transportation with cargo and passenger traffic not moving in foreign air transportation;⁷ (4) to discharge cargo and passenger traffic at Puerto Rico international airports for transfer to a U.S. carrier for onward carriage to a final destination in the United States or in a third country, and to uplift from Puerto Rico cargo and passenger traffic transferred from a U.S. carrier that was transported by that carrier to Puerto Rico from a point of origin elsewhere in the United States or in a third country; and (5) to discharge passengers and cargo at Puerto Rico international airports for transfer to another foreign carrier for onward carriage to a final destination in a third country, and to uplift from Puerto Rico international airports passengers and cargo transferred from another foreign carrier that was transported by that carrier to Puerto Rico from a point of origin in a third country;

2. Our action in Paragraph 1 above would not permit (1) the carriage of traffic by a foreign air carrier, in its own name and under its code, from any point in the carrier's homeland to a point in the United States not otherwise authorized by the Department from that homeland point; (2) the carriage of traffic by a foreign air carrier, in its own name and under its code, from any third country point to a point in the United States except as otherwise authorized by the Department; (3) code-share operations to U.S. points unless both carriers otherwise hold Department authority between the points involved and the requisite Statement of Authorization; and (4) cabotage operations;⁸

3. We grant all foreign air carriers that currently hold, or that may subsequently receive, effective Department authority to engage in scheduled foreign air transportation, except as noted in ordering paragraph 6 below, an exemption from 49 U.S.C. § 41301 to allow them to serve Puerto Rico, carrying passengers and/or cargo, and to coterminize Puerto Rico with other U.S. points for which they hold Department authority;

4. The authority granted above shall be effective on the date of issuance of this Order, and shall remain in effect for two years;

⁷ We emphasize that this is not to include cabotage.

⁸ Cabotage operations would include the carriage by a foreign air carrier of passengers or cargo between Puerto Rico and other U.S. points for transfer to either a U.S. air carrier, or another foreign air carrier for carriage between Puerto Rico and a foreign point, in either direction. *Qantas Empire Air, Foreign Transfer Traffic*, 29 C.A.B. 33 (1959).

5. We invite eligible foreign air carriers, except as noted in paragraph 6 below, to apply for exemption authority to serve additional U.S. points on an extrabilateral basis, carrying passengers and/or cargo, where those additional points would be served only on flights also serving Puerto Rico, and subject to the standard that there must be a procompetitive agreement with the applicant's homeland country and that interested parties will be allowed to raise overriding public interest reasons for denying the requested authority;
6. The authority granted in this Order shall not apply to foreign air carriers of Venezuela, and those carriers shall be deemed not to meet the eligibility standards set forth in this Order;
7. To the extent not acted upon above, we dismiss all requests for relief in Docket DOT-OST-2019-0085;
8. Our action is subject to amendment, modification, or revocation, at our discretion and without public hearing, should such action be necessary in the public interest; and
9. We will serve a copy of this Order on all U.S. certificated and foreign air carriers, all other parties to this proceeding, and the Department of State.

By:

JOEL SZABAT
Assistant Secretary
Aviation and International Affairs

(SEAL)

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