

CARES Act Minimum Service Requirements: A Brief Guide for Airports



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April 12, 2020- Sections 4005 and 4114(b) of the [Coronavirus Aid, Relief, and Economic Security Act, H.R. 748 \(the "CARES Act"\)](#) authorize the Department of Transportation to require an air carrier receiving CARES Act funding to maintain scheduled air transportation, if DOT deems necessary, to any point served by that carrier prior to March 1, 2020.

On March 31, DOT issued a [Show Cause Order](#) describing how it would implement this mandate. After receiving comments and objections to the Show Cause Order from carriers, affected communities and others, DOT issued a [Final Order](#) on April 7.

The Final Order establishes the following parameters for DOT's implementation of its CARES Act mandate through September 30, 2020 (subject to further extension by DOT):

- **Covered Carriers:** The Final Order applies to passenger carriers with scheduled air service. Charter and air taxi service is exempt. DOT did not apply minimum service requirements for cargo carriers, but reserved its rights to do so later.
- **Covered Points:**
 - The Final Order only sets minimum service requirements for points in the United States. DOT is not requiring minimum service to international points. However, if pharmaceutical or other interests encounter a critical supply chain disruption because of a loss of international service, those interests may petition DOT to expand its authority to require international service as well.
 - DOT is allowing air carriers to consolidate operations at a single airport serving the same point. For instance, an air carrier would not need to continue to serve Chicago through both O'Hare and Midway.
 - Air carriers that provide seasonal service to a point may choose whether to continue to provide that service to the points they served based on a winter 2020 or summer 2019 schedule.
 - Carriers that ceased service at covered points between March 1 and the date of the Final Order (April 7) must resume service at those covered points

within seven business days of receiving CARES Act funding.

- Essential Air Services requirements in place prior to March 27 continue to apply.
- **Required Service Levels:** The service level required for each point and each carrier is listed in Appendix B to the Final Order. In many cases, the required service level is orders of magnitude lower than the air carrier provided before March 1. The required level of service a carrier has to continue to a covered point depends on its overall market share of domestic flights:
 - An air carrier with a greater than 10% share of domestic passenger capacity must:
 - Serve a point that it served more than 25 times per week at least five times per week.
 - Serve a point that it served between 5-25 times per week at least three times per week.
 - Serve a point that it served fewer than 5 times per week at least once per week.
 - All other air carriers need to provide three flights per week to points they served five or more times per week, and one flight per week to other points.
- **Exemptions:** The Final Order permits air carriers to seek exemptions from these requirements with respect to particular covered points or minimum service levels. Appendix D to the Final Order establishes the exemption process. An air carrier must file the exemption request with DOT and serve a copy of the request on interested parties, including directors of affected airports and the chief executive of the community they serve (typically the mayor). *Interested parties have three business days to respond to the exemption request.* A carrier must maintain its minimum service requirement under the Final Order until DOT acts on its request.

As of April 11, six air carriers have requested exemptions.

- **Delta** requested that it be permitted to delay the start of summer seasonal services, including to Nantucket and Martha's Vineyard, and service to the U.S. Virgin Islands
- **Frontier** requested exemptions from 35 points.

- **Hawaiian** requested an exemption from certain inter-island service and all of its obligations to serve U.S. mainland points other than San Francisco and Los Angeles.
- **JetBlue** requested that it be permitted to suspend service between April 15 and June 10 at 11 airports. It also requested an exemption from seasonal service to Palm Springs.
- **SkyWest** requested exemptions for service to Stockton, CA and Cheyenne, WY.
- **Spirit** requested exemption for 26 points.
- **United** requested exemptions from certain seasonal and small community service and service to Caribbean and Pacific destinations.

DOT has yet to issue a decision on any of these requests.