

Order 2012-3-8
Served: March 13, 2012



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

Issued by the Department of Transportation
on the **13th day of March, 2012**

Restoration to

REPUBLIC AIRLINE, INC.

of exemptions from 14 C.F.R. Part 93, Subparts K and S, pursuant to 49 U.S.C. § 41718(b), Special rules for Ronald Reagan Washington National Airport (within-perimeter slot exemptions)

Docket OST-2000-7182

**ORDER RESTORING WITHIN-PERIMETER SLOT EXEMPTIONS AT
RONALD REAGAN WASHINGTON NATIONAL AIRPORT**

SUMMARY

This Order restores two within-perimeter slot exemptions at Ronald Reagan Washington National Airport (DCA) to Republic Airline, Inc., (Republic) to be utilized only for operations to Kansas City International Airport (MCI).

BACKGROUND

In Order 2004-4-2, pursuant to provisions of the Vision 100 – Century of Aviation Reauthorization Act, Pub.L. No. 108-176, the Department awarded two DCA slot exemptions to Midwest Airlines, Inc. (Midwest) for service to MCI. In 2010, after Midwest had been acquired by Republic Airways Holdings, Inc., the parent of Republic, the Department withdrew the two exemptions and, in Order 2010-12-16, reallocated them through a competitive selection process to Sun Country Airlines for service between DCA and Lansing, Michigan (LAN). Republic subsequently sought judicial review of the Department’s order withdrawing those exemptions. The U.S. Court of Appeals for the District of Columbia Circuit reversed the Department’s decision and vacated Order 2010-12-16. *Republic Airline, Inc. v. United States Department of Transportation*, No. 11-1018 (D.C. Cir., Jan. 6, 2012). The Court issued its mandate on March 1, 2012.

In accordance with the Court's decision, we are restoring the two slot exemptions to Republic, to be utilized consistent with the same conditions and limitations as they appeared in Order 2004-4-2, the original award to Midwest.¹

Additionally, on March 2, 2012, the Federal Aviation Administration (FAA) granted a request by Sun Country for an exemption to operate two air carrier slots between DCA and LAN, effective that date. Exemption No. 10466 (Regulatory Docket No. FAA-2012-0089). As a result, despite the action we are taking today to comply with the Court's decision, Sun Country is authorized to continue its DCA-LAN service without interruption under the operating authority granted to it by FAA.

CONDITIONS

Start-up

The Department requires that Republic inaugurate full service within 90 days of the service of this Order. If, for any reason, Republic is not able to use these slot exemptions by such time, we request that it notify the Department as soon as possible, but not later than ten days after the date of service of this Order.

Assignment of Slot Times

Slot times for these two exemptions are in the 1100 and 1400 hour periods. Republic, in accordance with statute and Department regulations, may request that the FAA Slot Administration Office approve temporary exchanges of the assigned slot exemption times with other slots or slot exemptions in a different hour, or request different slot times to the extent they may be available, for the purpose of conducting operations authorized by this Order. In acting on such a request, the FAA will employ standard practices in conjunction with applicable statutory and regulatory requirements for the utilization of slot times between and among individual carriers. Regardless of any subsequently approved slot time exchanges, the slot times assigned by the Department or the FAA's Slot Administration Office pursuant to this Order will be tagged such that, if the service granted by this Order is either suspended or is not inaugurated in a timely manner, the Department will withdraw the slot exemptions based on their tagged slot time rather than by any subsequent slot time operated.

ENVIRONMENTAL ISSUES

Although 49 U.S.C. Section 41718(e) specifically exempts our action here from the review under the National Environmental Policy Act,² we remain sensitive to the environmental impact of

¹ However, as we indicate below, we are modifying the administrative terms in Order 2004-4-2 that prohibit a sale, trade, transfer or conveyance of the slot exemption authority to except transfers of the slot exemption authorities that may occur through an air carrier merger or acquisition. This modification complies with Section 414 of the FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, which amended 49 U.S.C. § 47178(j).

increased operations at DCA. Consistent with the statute, we will require that all operations authorized by this Order be conducted with Stage 3 aircraft. Also, under 49 U.S.C. Section 41718(e), the Department will give DCA priority in making grants for airport noise compatibility planning and programs that qualify for Federal financial assistance.

ADMINISTRATIVE TERMS

Republic may not sell, trade, transfer, or convey the operating authorities granted by the subject exemptions unless otherwise authorized therein, except through an air carrier merger or acquisition. *See* 49 U.S.C. § 41714(j), as amended by Section 414 of the FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95.

Further, granting of these exemptions in no way is to be construed as allowing a carrier to operate services that it could not otherwise operate. Republic must still meet all the requirements of the Department of Transportation, the Federal Aviation Administration, including but not limited to use-or-lose provisions, and all other statutes and regulations governing air transportation.

This Order is issued under authority delegated in 49 C.F.R. § 1.56(a).

ACCORDINGLY,

1. Two slot exemptions from 14 C.F.R. Part 93, Subparts K and S, are restored to Republic Airline, Inc. to conduct operations at Ronald Reagan Washington National Airport;
2. The slot exemptions may be utilized only for service to Kansas City International Airport;
3. The slot times for the two exemptions are, as previously assigned, in the 1100 and 1400 hour periods; however, in accordance with statute and Department regulations, Republic may request the FAA Slot Administration Office to approve exchanges of the assigned slot exemption times with other slots or slot exemptions in a different hour, or request different slot times to the extent they may be available, for the purpose of conducting operations authorized by this Order;
4. Republic must commence its proposed service no later than 90 days of the service of this Order. Operations utilizing the slot exemptions must be conducted with Stage 3 aircraft, may not be used for operations between the hours of 10:00 p.m. and 7:00 a.m., and may not increase the number of operations at Ronald Reagan Washington National Airport in any one-hour period during the hours between 7:00 a.m. and 9:59 p.m. by more than five operations;
5. The Department prohibits Republic from selling, trading, transferring, or conveying the operating authorities granted by the subject exemption, except through an air carrier merger or acquisition;

² Section 41718(e) states, “Neither the request for, nor the granting of an exemption, under this section shall be considered for the purposes of any Federal law a major Federal action significantly affecting the quality of the human environment.”

6. The authorities granted under these exemptions are subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use-or-lose requirements;

7. The Department directs Republic to contact the FAA Slot Administration Office relative to assignment of slot exemption numbers, effective dates, and operating times consistent with statutory limitations; and

8. We will serve this Order on all parties in Docket OST-2000-7182 and the FAA Slot Administration Office.

By:

SUSAN L. KURLAND
Assistant Secretary for
Aviation and International Affairs

(SEAL)

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