



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

Issued by the Department of Transportation
on the 23rd day of May, 2018

Served: May 23, 2018

In the matter of

**PUBLIC JOINT STOCK COMPANY
AEROFLOT RUSSIAN AIRLINES**

AIRBRIDGECARGO AIRLINES LIMITED

and

**JOINT STOCK COMPANY AIRCOMPANY
YAKUTIA**

Docket DOT-OST-2018-0073

ORDER TO FILE SCHEDULES

Summary

By this order, we are imposing Phase 1 schedule filing requirements under 14 CFR Part 213 of the Department's regulations to cover all of the scheduled combination and all-cargo services of the captioned foreign air carriers operated to/from the United States, including code-share services where any of these carriers is the marketing or operating carrier.¹ The carriers will thus be required to file, for information purposes, their U.S. schedules of service so that we may determine whether the operation of such services, or any part thereof, may be contrary to applicable law or adversely affect the public interest. We are taking this action in response to the failure of the Government of the Russian Federation to grant U.S. carriers authorizations to overfly Russia as provided by the Air Transport Service Agreement between the Government of

¹ The captioned carriers represent those Russian carriers that hold authority to conduct scheduled combination and/or all-cargo service to/from the United States. These same carriers, as well as a number of other Russian carriers, hold authority to conduct charter combination and/or all-cargo services to/from the United States. We note that, if warranted in the circumstances presented, nothing in our present action precludes us from separately taking steps to condition or limit the charter authority held by Russian carriers.

the United States of America and the Government of the Russian Federation of 1994, as amended (the “Agreement”).

Background

Aviation relations between the Governments of the United States and Russia are governed by the Agreement, which was entered into force on January 14, 1994, and subsequently amended in 1999. The Annexes to the Agreement detail provisions relating to traffic rights, commercial opportunities, and opportunities for U.S. carriers to overfly Russian territory, among other provisions. Both parties have consistently observed the terms of the Annexes in their entirety on the basis of comity and reciprocity since 2001, and U.S. carriers throughout this period have formulated overflight operational plans, and adhered to Russian requirements for the authorization of such plans, in full reliance on such continued observance.

Specifically, U.S. carriers designated under the Agreement consistently have filed seasonally for authorization to exercise opportunities included in Annex IV, and have consistently received the appropriate Russian authorization. However, for the IATA Summer 2018 traffic season, Russia deviated from the comity and reciprocity regime when it failed to authorize U.S. carriers operating all-cargo services to overfly Russian airspace as described in Annex IV Section 2(B), instead unilaterally altering the route to a more eastern entry point in Russian airspace. U.S. carriers are now experiencing significant disruption to all-cargo services between Europe and Asia and have had to adjust service to utilize routings that require significant additional time and cost (fuel, crew, reduced payload, etc.), reducing competition and jeopardizing established slot access at Asia’s and Europe’s busiest airports. Some flights may be canceled as no longer commercially viable.

Attempts to revise and update the Annexes in 2002, 2005, 2008, and 2013 resulted in amendments that have never been brought into effect; however, both sides consistently have applied these successive amendments on the basis of comity and reciprocity. Because Russia has now ceased reciprocal application of the 2013 Annexes that have been applied on the basis of comity and reciprocity, the actions we may take to remedy this matter are not constrained. These overflights were denied without prior notification to, or discussions with, the USG that would have specified reasons for Russia to cease to apply the Annexes on the basis of comity and reciprocity. Nevertheless, we are taking appropriate measures as prescribed in the Agreement.²

Recent Events

Since 2016, the United States Government (USG) has repeatedly engaged Russia with the intention of updating the Annexes to reflect current operations related to the two countries. Although the most recently planned discussions were scheduled for April 18-19, 2018, in Washington, DC, Russia informed the USG on April 6 that it would not participate in the talks.

² We note that Article 5(1) and (2) of the Agreement specify that “Each Party may revoke, suspend, or limit the operating authorizations or technical permissions of an airline designated by the other Party where...the other Party or its airline has failed to fulfill the conditions under which the rights are granted in accordance with this Agreement” and that “[u]nless immediate action is essential to prevent further non-compliance with subparagraphs 1b, 1c, or 1d of this Article, the rights established by this Article shall be exercised only after consultations with the other Party.”

The USG has since contacted Russia several times regarding approval of overflights and the rescheduling of negotiations. Russia responded via letter on April 26, 2018, confirming the intent of its authorities to alter the route and without response to the USG-proposed dates.

To our knowledge, U.S. carriers have met all applicable requirements for overflight approvals and there should be no impediment to Russia's continued authorization of overflights consistent with Annex IV of the Agreement.

Decision

Based on the facts before us, we find that the failure by the Government of Russian Federation to authorize U.S. carrier overflights is contrary to the provisions of Annex IV Section 2(B) of the Agreement, as has been consistently applied on the basis of comity and reciprocity. We find further that, in light of this failure on the part of the Government of Russian Federation, the Government of the Russian Federation has, over the objections of the U.S. Government, impaired and effectively denied the overflights rights of U.S. carriers as provided for in the Agreement and consistently maintained on the basis of comity and reciprocity for the past seventeen years.

We therefore impose the schedule filing requirements of 14 CFR Part 213 that are outlined in this order. We conclude that, under these circumstances, the public interest requires that the captioned carriers file their schedules so that we may determine whether the operation of the services contained in those schedules, or any part thereof, may be contrary to applicable law or adversely affect the public interest. We are requiring these schedules to be filed within seven days of the service date of this Order.

ACCORDINGLY,

1. Public Joint Stock Company Aeroflot Airlines, AirBridgeCargo Airlines Limited, and Joint Stock Company Aircompany Yakutia shall file with the Director, Office of International Aviation (X-40), within seven days of the service date of this order, all of their existing schedules for services, including codeshare, common branding, and extra sections, between any point or points in the United States and any point or points not in the United States, which shall include:

- the type of equipment used or to be used,
- the frequency and day(s) of operation of each flight,
- the specific airport served at each point, and
- the time of arrival and departure at each point;

2. Public Joint Stock Company Aeroflot Airlines, AirBridgeCargo Airlines Limited, and Joint Stock Company Aircompany Yakutia shall file with the Director, Office of International Aviation (X-40), all of their proposed schedules for services, including code-share, common branding, and extra sections, between any point or points in the United States and any point or points not in the United States, including the information noted in ordering paragraph 1

above, the proposed effective date of such schedules, and the proposed termination date of such schedules (if known), at least 30 days prior to inauguration of service;

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

4. We shall serve this order on Public Joint Stock Company Aeroflot Airlines; AirBridgeCargo Airlines Limited; Joint Stock Company Aircompany Yakutia.; all certificated U.S. carriers operating large aircraft; the Embassy of the Russian Federation in Washington, D.C.; the Department of State; and the Federal Aviation Administration.

By:

JOEL SZABAT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://www.regulations.gov>*