



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

Issued by the Department of Transportation  
on the 15<sup>th</sup> day of April, 2008

**CORRECTED COPY\*\***

**Served: April 15, 2008**

In the Matter of

**2009 U.S.-CHINA ALL-CARGO  
DESIGNATION AND FREQUENCY  
ALLOCATION PROCEEDING**

**Docket DOT-OST-2008-0127**

**ORDER INSTITUTING PROCEEDING AND INVITING APPLICATIONS**

**SUMMARY**

By this order we institute the *2009 U.S.-China All-Cargo Designation and Frequency Allocation Proceeding* and invite interested U.S. air carriers to file applications for certificate authority and a designation to serve the U.S.-China market, and for allocation of all-cargo frequencies that become available effective March 25, 2009.<sup>1</sup>

**BACKGROUND**

On May 22, 2007, representatives of the United States and the People's Republic of China (PRC) signed a memorandum of consultations reflecting *ad referendum* agreement on an amended U.S.-PRC aviation agreement that expands opportunities for air carriers of both countries. The agreement provides for annual increases in service opportunities, including all-cargo opportunities, effective March 25 of each year through 2010. We are instituting this proceeding to award expanded rights available to all-cargo air carriers effective March 25, 2009. Specifically, we note that one additional U.S. air carrier may be designated to operate scheduled all-cargo

**\*\* This copy reflects the corrected dates for the submission of Petitions for Reconsideration and Answers to Petitions under the procedural timetable on page 4.**

<sup>1</sup> Incumbent carriers seeking additional frequencies in this proceeding that also need additional economic authority to operate such frequencies, should submit applications for new or amended certificate authority, along with their applications for frequencies.

services between the United States and China and 15 additional weekly all-cargo frequencies will become available to U.S. carriers to serve points in China Zone 1 or China Zone 2.<sup>2</sup> Beginning March 25, 2011, the limitations on scheduled all-cargo carrier designations and frequencies are eliminated.

## DECISION

We have decided to institute the *2009 U.S.-China All-Cargo Designation and Frequency Allocation Proceeding* to award the available designation to a U.S. air carrier to operate all-cargo services between the United States and China and to allocate 15 all-cargo frequencies to serve points in China Zone 1 or China Zone 2. These rights become available on March 25, 2009.

Accordingly, we invite U.S. air carriers interested in providing scheduled all-cargo service between the U.S. and China to submit applications for certificate authority as well as for frequencies to perform such scheduled service. We will award the U.S.-China route authority at issue in the form of a temporary, experimental certificate of public convenience and necessity under 49 U.S.C. section 41109(c).<sup>3</sup> The duration of the authority will be five years.<sup>4</sup>

Incumbent carriers designated to provide all-cargo service between the United States and China Zone 1 or China Zone 2 are invited to apply for the 15 all-cargo frequencies that become available on March 25, 2009, and should request new or amended certificate authority, as needed, to operate the frequencies.<sup>5</sup>

We expect all applicants to provide specific service proposals at the time they submit applications for a designation and/or frequency allocation.

In awarding the rights available in this proceeding, our principal objective will be to maximize the public benefits that will result from the various awards of authority in this case. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the shipping public. We will consider the effects of the applicants' service proposals on the overall market structure and level of competition in the U.S.-China market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where relevant. Based on the material in the record, we will consider whether it is in the public interest to award backup authority in this case.

The agreement, in general, provides for all-cargo services from any point or points in the United States, either nonstop or via any intermediate points, to any point or points in China and beyond to any points. However, in this proceeding, the use of the available frequencies is limited to

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<sup>2</sup> As defined by the amended agreement, China Zone 1 consists of Beijing, Shanghai, and Guangzhou. China Zone 2 consists of Fujian, Guangdong (except Guangzhou), Hebei, Jiangsu, Shandong, Tianjin, and Zhejiang.

<sup>3</sup> We note that the limitations on scheduled all-cargo carrier designations and frequencies will be removed effective March 25, 2011.

<sup>4</sup> See 14 CFR § 399.120.

<sup>5</sup> In the case where frequencies are undersubscribed, we may take separate action with respect to frequency awards to incumbent carriers and may do so by final Department action.

specific points in China Zone 1 and China Zone 2.<sup>6</sup> We are prepared to consider the award of intermediate and beyond authority as set forth in the amended agreement, provided that such proposals are consistent with, and may be implemented under, the relevant bilateral aviation agreement(s).

## **PROCEDURES AND EVIDENCE**

### **Procedures and Evidence**

We have decided to use written, non-oral, show-cause procedures under Rule 210 of our regulations (14 CFR 302.210) in deciding this case. We believe that such procedures are appropriate to establish an evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We will also not require a traffic forecast from the applicants.

Appended to this order is an evidence request for the benefit of the parties to this case.<sup>7 8</sup> We emphasize that the evidence request includes specific instructions regarding the type and format of the information to be submitted. We view adherence to these directives as critical to our consideration of the proposals in carrier selection cases. We put all applicants in this case on notice that we expect full compliance with the evidence request appended to this order. Any carrier not in full compliance in any material respect with our request will be subject to elimination from consideration for an award in this case. In addition to the material requested, applicants and any other parties may submit any additional information they believe will be useful to us in reaching a decision.

Consistent with our current practice, the frequencies allocated in this proceeding will be for an indefinite term, provided the carriers continue to hold the underlying economic authority to serve the market. The awarded frequencies will also be subject to a start-up condition and our standard 90-day dormancy condition. For any frequency not used for a period of 90 days, once inaugurated, the allocation with respect to that frequency will expire automatically and revert to the Department for reallocation, or to the backup carrier, if any is selected.

### **Procedural Timetable**

The Agreement provides valuable new rights for U.S. carriers to serve China effective March 25, 2009. We believe that it is in the public interest to select carriers on a timetable that will allow the selected carriers to enjoy the maximum benefit of these rights as soon as they become available. To this end, we are establishing the following procedural schedule for submissions:

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<sup>6</sup> See footnote 2, *supra*.

<sup>7</sup> Carriers' evidentiary materials are expected at the New Applications stage of this proceeding.

<sup>8</sup> Any applicant not previously found fit by the Department to provide scheduled transoceanic foreign air transportation will be expected to comply with the evidentiary requirements of Section 204.3 of the Department's regulations (14 CFR Part 204), in addition to the evidentiary requirements set forth in this order.

Petitions for Reconsideration:	10 calendar days after instituting order issued
Answers to Petitions:	7 business days after petition
New Applications:	14 calendar days after petitions for reconsideration
Answers:	10 calendar days after applications
Replies:	7 calendar days after answers

All dates are delivery dates and all submissions must be filed in the docket assigned to this proceeding. An original and five copies of all submissions are to be received at the Department of Transportation, Dockets, no later than the dates indicated.<sup>9</sup> Because of security screening procedures of all incoming mail to the Department, parties are encouraged to electronically submit documents to Dockets via the Federal eRulemaking Portal in order to guarantee receipt of the pleadings in the necessary time limits. Electronic submissions can be completed by following the instructions at the website: <http://www.regulations.gov>.

Additionally, service by facsimile or electronic mail is authorized. Parties should include their fax numbers and email addresses on their submissions and should indicate the method(s) of service used on their certificates of service.

**ACCORDINGLY,**

1. We institute the *2009 U.S.-China All-Cargo Designation and Frequency Allocation Proceeding* in Docket DOT-OST-2008-0127, to be decided by non-oral, show-cause procedures under Rule 210 of our regulations (14 CFR 302.210);
2. The proceeding will consider the following issues:
  - (a) Which carrier should be selected for the available designation and how many frequencies should it be allocated to provide scheduled all-cargo service to points in China Zone 1 or China Zone 2;
  - (b) How should the remaining available all-cargo frequencies be allocated;<sup>10</sup> and
  - (c) What terms, conditions, and limitations, if any, should be placed on the frequencies awarded in this proceeding.
3. Petitions for reconsideration of this order shall be filed no later than 10 calendar days from the date of service of this order; answers to petitions shall be due no later than 7 business days thereafter;
4. Applications and evidentiary material should be filed in accordance with the procedural schedule set forth in this order; and

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<sup>9</sup> The original filing should be on 8½" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system.

<sup>10</sup> Incumbent carriers are free to submit applications based on the pool of 15 cargo frequencies available effective March 25, 2009, and any as yet unallocated frequencies. Currently, 17 frequencies remain unallocated.

5. We will serve this order on all U.S. certificated air carriers operating large aircraft, the National Air Carrier Association, the Air Transport Association, the U.S. Department of State (Office of Aviation Negotiations), the Federal Aviation Administration (AFS-200), and the Ambassador of the People's Republic of China in Washington, DC.

By:

**Michael W. Reynolds**  
**Acting 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>

## EVIDENCE REQUEST

### I. Procedures and Ground Rules

In the interest of a complete and adequate record, the parties should provide the following information. In responding to this evidence request, all parties are advised to heed the admonitions and notice regarding compliance contained in the attached order.

### II. Request for Information and Evidence

Submit, at a minimum, the following:<sup>1</sup>

1. Proposed schedules and startup dates for each route segment, with complete routings for origin and destination of all flights (including any linear routing proposals). Indicate the equipment types for each route segment (or linear routing), and include all payload capacities for each aircraft in **U.S. pounds**.<sup>2</sup> For all of the proposed services, indicate any variation of frequencies/routings by traffic season, if applicable. If not applicable, so indicate. If carriers will utilize change of gauge in equipment in their operations, indicate where and specify all information, as required below, for all aircraft. If change of gauge is not part of the carrier's proposed schedule, so indicate;
2. Indicate the percentage of express/small package and general air freight expected to be carried. If mail is expected to be carried, this should also be shown separately;
3. Specify capacity for all aircraft proposed for operations in the U.S.-China all-cargo market in this proceeding and clearly indicate how much of that capacity will be dedicated for (a) U.S.-China traffic for each flight, (b) third country-China traffic for each flight, and (c) third country-third country traffic;
4. Indicate whether the aircraft to be used in the proposed schedules are (a) on hand or (b) on order. If on hand, indicate where, and the extent to which, those aircraft are currently being used by the applicant. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate specific plans for achieving compliance. Also, indicate whether the acquisition of needed aircraft has an impact on the specified schedules above;

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<sup>1</sup> The original filing should be on 8½" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, parties are encouraged to use the electronic submission capability available through the Federal eRulemaking Portal (<http://www.regulations.gov>) and follow the online instructions for filing submissions. Additionally, service by facsimile or electronic mail is authorized. Parties should include their fax numbers and email addresses on their submissions and should indicate the method(s) of service used on their certificates of service.

<sup>2</sup> The carriers **must** specify the actual equipment type, including payload capacity **in U.S. pounds, for each proposed route segment**. Please note that, if an unspecified mix of equipment is proposed for the subject services, rather than specific equipment per route, we may elect to evaluate the proposal based on the smallest aircraft presented, and make our decision accordingly.

5. Estimated number of gallons of fuel to be consumed by aircraft type in the first year of operation as a result of the proposed service, and indicate the availability and method of obtaining the necessary fuel;
6. Indicate whether the carrier will accept a partial grant of its frequency allocation application, how such allocation would be used, and the startup date for such services if different from above. Also, state whether there is a minimum number of frequencies that the carrier will accept;
7. Specify whether the applicant's service will be operated in conjunction with any cooperative arrangement (*e.g.*, wet lease, code share) with any other U.S. air carrier and/or any foreign carrier. If such services will be operated, provide a detailed description regarding such operations, as well as a copy of the cooperative agreement, if not already filed with the Department;
8. For New Designation Applicants

Indicate whether, if the applicant is not selected for the primary award, the applicant would accept a backup award. If the carrier is selected for backup authority, will it accept a condition that (i) permits it to implement the authority within the first year should the primary carrier withdraw from the market, and (ii) the authority expires at the end of one year should the authority not be activated;

9. For Incumbent Carriers Seeking Frequencies<sup>3</sup>

Specify how many frequencies the carrier is seeking. Provide a complete description of all existing all-cargo China services (*e.g.*, code-share, charter, seasonal), including how the frequencies currently allocated are being used (*i.e.*, routings and schedules of all-such frequencies); and

10. Incumbent Carrier Data (Federal Express Corporation, Northwest Airlines, Inc., Polar Air Cargo, Inc., and United Parcel Service Co.)

- (a) Identify the number of currently authorized frequencies being utilized and specify the complete routing of those frequencies.
- (b) For each month of the twelve months ended December 2007, provide the number of flights and complete itinerary (including aircraft size and load factor) for all flights operated in each city-pair market where service was provided in the U.S.-China market. If service was seasonal, the markets and level of service should be clearly identified. Carriers should distinguish between flights operated under code-share arrangements and those that are not operated under code-share

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<sup>3</sup> We may address any such requests for frequencies from incumbent carriers separately and by final Department action.

arrangements. In addition, specify whether there was a change of gauge over any segment of the routes for each flight.

Applicants are also free to submit any additional relevant information that they believe will help us in making our decision.