



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

Order 2022-1-20

Issued by the Department of Transportation
on the 21st day of January, 2022

Served: January 21, 2022

In the matter of

**Air China Limited d/b/a/ Air China; Beijing
Capital Airlines Co., Ltd.; China Eastern
Airlines Corporation Limited; China Southern
Airlines Company Limited; Hainan Airlines
Holding Co. Ltd.; Sichuan Airlines Co., Ltd.;
and Xiamen Airlines**

Docket DOT-OST-2020-0052

ORDER

Summary

As discussed below, the U.S. Department of Transportation (the Department) is further modifying the decision reached in Order 2020-6-1 in order to respond to recent actions by Chinese authorities impairing the operating rights of three U.S. carriers. This Order will be effective immediately.

Background

On June 3, 2020, the Department issued Order 2020-6-1, concluding that the Government of China had, over the objections of the U.S. Government, impaired the operating rights of U.S. carriers and denied U.S. carriers the fair and equal opportunity to exercise their operating rights under the U.S.-China Civil Air Transport Agreement (the Agreement).¹ The Chinese Government's COVID-related restrictions (*i.e.*, the "five-ones policy") were embodied in a March 26, 2020 Notice issued by the Civil Aviation Authority of China (CAAC) that, as originally drafted, precluded any scheduled passenger operations by U.S. carriers. Accordingly, the Department issued Order 2020-6-1 to suspend all Chinese carrier scheduled passenger air services between the United States and China.

In the wake of CAAC actions permitting a limited number of weekly round-trip scheduled passenger flights between the United States and China by U.S. carriers, the Department

¹ The Department fully set forth the basis for its conclusions in Order 2020-6-1, and before that in Order 2020-5-4, including references to the relevant provisions of the Agreement.

correspondingly permitted a limited number of such operations by Chinese carriers.² Three U.S. carriers have been providing scheduled passenger service between the United States and China: United Airlines, Inc. (United), Delta Air Lines, Inc. (Delta), and American Airlines, Inc. (American).

The Department subsequently issued Order 2021-8-10 on August 18, 2021, to further modify the decision reached in Order 2020-6-1 in order to respond to an action by Chinese authorities impairing the operating rights of United. The action was taken by the Chinese authorities per the terms of a unilaterally imposed “circuit breaker” provision of the five-ones policy.

The CAAC’s currently applicable Circuit Breaker Notice³ provides for carriers to choose, at their own discretion, one of two operational restrictions if 5 to 9 passengers from any single inbound flight test positive for COVID after arriving in China:

- 1) Suspend the flight for two weeks starting four weeks after the circuit breaker event; or
- 2) Impose a four-week passenger load factor limit of no higher than 40% starting four weeks after the circuit breaker event.

The Chinese authorities have recently taken a series of additional “circuit-breaker” actions against Delta, American, and United, as described in the attached Appendix A. In each instance, the concerned carrier was denied the option to reduce load factors on future operations, as established by the Circuit Breaker Notice, and was instead forced to cancel passenger operations in the China-bound direction. Carriers were denied the four-week advance notice period established by the Notice. As of January 19, CAAC had suspended forty-four (44) scheduled passenger flight segments by U.S. carriers. In response to these actions and in keeping with the U.S. Government’s longstanding position with respect to China’s use of the “circuit breaker” measure against U.S. carriers, we are issuing this instant Order.⁴

The United States Government (USG) has repeatedly raised its objections with the Government of China over the “circuit breaker” measure and its inconsistency with the provisions of the Agreement. In particular, the USG has conveyed its view that the “circuit breaker” measure places undue culpability on carriers with respect to travelers who, despite having presented negative test results prior to boarding, test positive for COVID-19 up to seven days after their arrival in China. The Chinese Government individually clears each and every potential traveler for travel to China prior to their departure from the United States, after verifying pre-departure test results and other required documentation. U.S. carriers, who are following all relevant Chinese regulations with respect to pre-departure and in-flight protocols, should not be penalized if passengers, post-arrival, later test positive for COVID-19.

² See Orders 2020-6-3, June 5, 2020; 2020-6-6, June 15, 2020; and 2020-8-6, August 18, 2020. Cf. Orders 2020-6-12, June 19, 2020, and 2020-7-19, July 30, 2020.

³ April 28, 2021, CAAC Notice on Trial Implementation of Adjusting the Circuit Breaker Measures for Scheduled International Passenger Flights.

⁴ In addition, we have been advised that the Shanghai Municipal authorities have imposed additional local “circuit breaker” measures on Delta. We are continuing to examine this issue and reserve the right to take such future action as we deem appropriate.

Decision

We find that CAAC's recent actions impairing the operations of Delta, American, and United as described above are adverse to the public interest and warrant proportionate remedial action by the Department. CAAC's unilateral actions against the named U.S. carriers are inconsistent with the provisions of the Agreement and are premised on circumstances wholly outside of the carriers' control.⁵

We therefore conclude that the public interest now requires a further modification, effective immediately, of Order 2020-6-1, to limit Chinese carriers' scheduled services accordingly. In the circumstances presented, we have determined to suspend forty-four (44) U.S. to China passenger flight segments,⁶ as specified in the attached Appendix B, which, to date, have not been suspended under the "circuit breaker." Should the selected flights listed in Appendix B also be subject to suspension by CAAC, the carriers shall report any affected flights to the Department so that the Department can determine alternative flights for suspension consistent with its decision in this Order.

As the Department stated in Order 2020-6-1, and more recently in Order 2021-8-10, our overriding goal is not the perpetuation of this situation, but rather an improved environment wherein the carriers of both parties will be able to exercise fully their bilateral rights. Only then will the Department's actions to maintain a competitive balance and fair and equal opportunity among U.S. and Chinese air carriers in the scheduled passenger service marketplace no longer be necessary. The most recent CAAC action has not created that environment. However, should the CAAC adjust its policies to bring about the necessary improved situation for U.S. carriers, the Department is fully prepared to once again revisit the action it announced in Order 2020-6-1 and the present order. On the other hand, should the situation worsen or should CAAC impose further circuit-breaker measures beyond those noted here as of January 19, we reserve the right to take additional action as we deem appropriate in the circumstances presented.

ACCORDINGLY,

1. We modify Order 2020-6-1 to the extent necessary to suspend the Chinese carrier U.S. to China passenger segments as set forth in Appendix B of this Order;
2. This Order is effective immediately;
3. We may amend, modify, or revoke this Order at any time and without hearing; and

⁵ See footnote 1, above. We would regard the CAAC actions to be inconsistent with Article 12(1) of the Agreement as well, which stipulates that airlines shall be permitted to provide capacity as agreed by both parties.

⁶ In view of the fact that U.S. carriers have been permitted to operate 'suspended flights' as all-cargo segments in the China-bound direction, our action here is limited to suspending the passenger component of the specified services.

4. We will serve this Order on Air China Limited d/b/a/ Air China; Beijing Capital Airlines Co.,Ltd.; China Eastern Airlines Corporation Limited; China Southern Airlines Company Limited; Hainan Airlines Holding Co. Ltd.; Sichuan Airlines Co., Ltd.; and Xiamen Airlines; all certificated U.S. carriers operating large aircraft; the Embassy of the People's Republic of China in Washington, D.C.; the Civil Aviation Authority of China (CAAC); the Department of State; the Transportation Security Administration; and the Federal Aviation Administration.

By:

CAROL A. (ANNIE) PETSONK
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>*

Appendix A

The Chinese authorities have recently taken a series of “circuit-breaker” actions against Delta, American, and United, as follows:

- On December 31, 2021, Delta received a notice from CAAC alleging that seven passengers who arrived in Shanghai from Detroit (DL283) on December 19, 2021, later tested positive for COVID-19. CAAC stated in the notice to Delta that two flights would be suspended, on January 7 and January 14 (departure dates from DTW).
- On January 4, 2022, American received a notice from CAAC alleging that five passengers who arrived in Shanghai from Dallas/Ft. Worth (AA127) on December 24, 2021, later tested positive for COVID-19. CAAC stated in the notice to American that two flights would be suspended, on January 13 and January 20 (departure dates from DFW).
- On January 4, 2022, United received a notice from CAAC alleging that seven passengers who arrived in Shanghai from San Francisco (UA857) on December 26, 2021, later tested positive for COVID-19. CAAC stated in the notice to United that two flights would be suspended, on January 15 and January 22 (departure dates from SFO).
- On January 8, 2022, United received a notice from CAAC alleging that six passengers who arrived in Shanghai from San Francisco (UA857) on December 30, 2021, later tested positive for COVID-19. CAAC stated in the notice to United that two flights would be suspended, on January 19 and January 26 (departure dates from SFO).
- On January 10, 2022, American received a notice from CAAC alleging that ten passengers who arrived in Shanghai from Dallas/Ft. Worth (AA127) on December 31, 2021, later tested positive for COVID-19. CAAC stated in the notice to American that four flights would be suspended, on January 27, February 3, February 10, and February 17 (departure dates from DFW).
- On January 10, 2022, Delta received a notice from CAAC alleging that six passengers who arrived in Shanghai from Seattle (DL287) on January 1, 2022, later tested positive for COVID-19. CAAC stated in the notice to Delta that two flights would be suspended, on January 20 and January 27 (departure dates from SEA).
- On January 10, 2022, United received a notice from CAAC alleging that six passengers who arrived in Shanghai from San Francisco (UA857) on January 1, 2022, later tested positive for COVID-19. CAAC stated in the notice to United that two flights would be suspended, on January 21 and January 28 (departure dates from SFO).
- On January 10, 2022, Delta received a notice from CAAC alleging that five passengers who arrived in Shanghai from Detroit (DL283) on January 2, 2022, later tested positive for COVID-19. CAAC stated in the notice to Delta that two flights would be suspended, on January 21 and January 28 (departure dates from DTW).
- On January 10, 2022, Delta received a notice from CAAC alleging that eleven

passengers who arrived in Shanghai from Seattle (DL287) on January 6, 2022, later tested positive for COVID-19. CAAC stated in the notice to Delta that four flights would be suspended, on January 25, February 1, February 8, and February 15 (departure dates from SEA).

- On January 11, 2022, United received a notice from CAAC alleging that seven passengers who arrived in Shanghai from San Francisco (UA857) on January 3, 2022, later tested positive for COVID-19. CAAC stated in the notice to United that two flights would be suspended, on January 23 and January 30 (departure dates from SFO).
- On January 13, 2022, American received a notice from CAAC alleging that seven passengers who arrived in Shanghai from Dallas/Ft. Worth (AA127) on January 4, 2022, later tested positive for COVID-19. CAAC stated in the notice to American that two flights would be suspended, on January 24 and January 31 (departure dates from DFW).
- On January 13, 2022, Delta received a notice from CAAC alleging that nine passengers who arrived in Shanghai from Detroit (DL283) on January 5, 2022, later tested positive for COVID-19. CAAC stated in the notice to Delta that two flights would be suspended, on January 24 and January 31 (departure dates from DTW).
- On January 14, 2022, United received a notice from CAAC alleging that five passengers who arrived in Shanghai from San Francisco (UA857) on January 6, 2022, later tested positive for COVID-19. CAAC stated in the notice to United that two flights would be suspended, on February 2 and February 9 (departure dates from SFO).
- On January 17, 2022, American received a notice from CAAC alleging that six passengers who arrived in Shanghai from Dallas/Ft. Worth (AA127) on January 7, 2022, later tested positive for COVID-19. CAAC stated in the notice to American that two flights would be suspended, on February 20 and February 27 (departure dates from DFW).
- On January 17, 2022, Delta received a notice from CAAC alleging that nine passengers who arrived in Shanghai from Seattle (DL287) on January 8, 2022, later tested positive for COVID-19. CAAC stated in the notice to Delta that two flights would be suspended, on February 3 and February 10 (departure dates from SEA).
- On January 17, 2022, United received a notice from CAAC alleging that seven passengers who arrived in Shanghai from San Francisco (UA857) on January 8, 2022, later tested positive for COVID-19. CAAC stated in the notice to United that two flights would be suspended, on January 28 and February 3 (departure dates from SFO).
- On January 17, 2022, United received a notice from CAAC alleging that six passengers who arrived in Shanghai from San Francisco (UA857) on January 9, 2022, later tested positive for COVID-19. CAAC stated in the notice to United that two flights would be suspended, on February 4 and February 10 (departure dates from SFO).
- On January 18, 2022, United received a notice from CAAC alleging that five passengers who arrived in Shanghai from San Francisco (UA857) on January 10, 2022,

later tested positive for COVID-19. CAAC stated in the notice to United that two flights would be suspended, on February 6 and February 13 (departure dates from SFO).

- On January 18, 2022, United received a notice from CAAC alleging that twelve passengers who arrived in Shanghai from San Francisco (UA857) on January 13, 2022, later tested positive for COVID-19. CAAC stated in the notice to United that four flights would be suspended, on February 16, February 23, March 2, and March 9 (departure dates from SFO).

Appendix B

As discussed in the text of this Order, we have determined to suspend the following forty-four (44) U.S. to China passenger flight segments which, to date, have not been suspended under the “circuit breaker”:⁷

- Air China Limited d/b/a Air China’s Shenzhen (SZX) (CA770) service departing Los Angeles (LAX) on March 1, 8, 15, 22, and 29;
- Air China Limited d/b/a Air China’s Tianjin (TSN) (CA988) service departing Los Angeles (LAX) on March 6, 13, 20, and 27;
- China Eastern Airlines Corporation Limited’s Shanghai (PVG) (MU588) service departing New York (JFK) on February 2, 7, 9, 14, 16, 21, 23, 28, March 2, 7, 9, 14, 16, 21, 23, and 28;
- China Southern Airlines Company Limited’s Guangzhou (CAN) (CZ328) service departing Los Angeles (LAX) on March 4, 11, 18, 20, 25, and 27;
- Xiamen Airlines’ Xiamen (XMN) (MF830) service departing Los Angeles (LAX) on January 30, February 6, 13, 20, 27, March 2, 6, 9, 13, 16, 20, 23, and 27.

Should the selected flights above also be subject to suspension by CAAC, the carriers shall report any affected flights to the Department so that the Department can determine alternative flights for suspension consistent with the decision in this Order.

⁷ In view of the fact that U.S. carriers have been permitted to operate ‘suspended flights’ as all-cargo segments in the China-bound direction, our action here is limited to suspending the passenger component of the specified services.