

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2021-20869 Filed 9-24-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0216]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BRAVADO (Sail); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before October 27, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0216 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0216 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0216, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and

specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

#### SUPPLEMENTARY INFORMATION:

As described in the application, the intended service of the vessel BRAVADO is:

—*Intended Commercial Use of Vessel:* “Sailing charters.”

—*Geographic Region Including Base of Operations:* “North Carolina” (Base of Operations: Beaufort, NC)

—*Vessel Length and Type:* 45.0' Sail

The complete application is available for review identified in the DOT docket as MARAD 2021-0216 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0216 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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*Secretary, Maritime Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Clarification of Departmental Position on American Airlines—JetBlue Airways Northeast Alliance Joint Venture

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Clarification notice.

**SUMMARY:** By this notice, the U.S. Department of Transportation (DOT or Department) clarifies its position on the American Airlines (American) and JetBlue Airways (JetBlue) Northeast Alliance (NEA) joint venture agreements and the January 10, 2021 agreement between and among DOT, JetBlue and American (DOT Agreement) terminating the Department's review of the NEA, following the September 21, 2021 announcement of antitrust litigation by the U.S. Department of Justice (DOJ). The Department will work closely with DOJ should it seek data and documents that will help in the resolution of DOJ's action. The DOT Agreement remains in effect during the pendency of the DOJ litigation. The Department retains independent statutory authority to prohibit unfair methods of competition in air transportation to further its statutory objectives to prevent predatory or anticompetitive practices and to avoid unreasonable industry concentration.<sup>1</sup> However, the Department intends to defer to DOJ, as the primary enforcer of Federal antitrust laws, to resolve the antitrust concerns that DOJ has identified with respect to the NEA. The Department also intends to stay the proceedings in a Spirit Airlines, Inc. (Spirit) formal complaint against the NEA's implementation while the DOJ action is pending. The Department will assess its next steps, if any, relating to the Spirit complaint and the NEA at the conclusion of the DOJ litigation.

**DATES:** September 27, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Blane A. Workie or Ryan Patanaphan, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, at 202-366-9342 or by email at

*blane.workie@dot.gov* or *ryan.patanaphan@dot.gov*, or Todd Homan, Director, Office of Aviation Analysis, 1200 New Jersey Ave. SE, Washington, DC 20590, 202-366-5903, *Todd.Homan@dot.gov* (email).

#### SUPPLEMENTARY INFORMATION:

##### Background

In 2020, American and JetBlue submitted to the Department joint venture agreements concerning the NEA, which covered code-sharing, frequent flyer, interline, revenue sharing, and asset sharing. The agreements and supporting documentation were submitted to the Department under 49 U.S.C. 41720, which requires that major air carriers submit joint venture agreements to the Department at least 30 days before the agreements take effect. Section 41720 permits the Department to extend the 30-day period up to an additional 150 days for joint venture agreements involving code-sharing and 60 days for other types of joint venture agreements.

Consistent with past precedent, the Department chose to conduct the review of the NEA informally and without establishing a docketed proceeding.<sup>2</sup> As permitted by 49 U.S.C. 41720, the Department extended its review and the waiting period for the NEA to November 19, 2020, via a Federal Notice issued on August 20, 2020.<sup>3</sup> In the notice, the Department explained that it would consult with DOJ during its review, and that its focus was on whether the NEA would likely reduce competition and create the potential for collusion or other restrictions on price and service levels in markets where the carriers compete.

Section 41720 does not provide the Department the authority to approve or disapprove agreements submitted for review under that section; rather, the section gives the Department a limited period of time to review the agreements before such agreements may take effect. DOJ, which is responsible for enforcing Federal antitrust laws and has also been conducting its own review of the NEA, had not concluded its investigation at the time DOT's review period ended and DOT entered in the DOT Agreement with American and JetBlue on January 10, 2021. Section 41720 does not require

<sup>2</sup> See, e.g., 67 FR 50,745 (Aug. 5, 2002) (United Air Lines and US Airways) and 67 FR 69,804 (Nov. 19, 2002) (Delta Air Lines, Northwest Airlines, and Continental Airlines). Both agreements were subject to an informal, non-docketed review, although third parties were given the opportunity to submit comments on the agreements due to public interest concerns, subject to access restrictions designed to ensure that confidential business information did not become public.

<sup>3</sup> 85 FR 51,552 (Aug. 20, 2020).

DOJ to adhere to a particular timeframe for its review. If an alliance agreement appears to be problematic, the Department and DOJ have separate authority to address anticompetitive conduct. As the Department's time-limited review of the NEA was concluding, it was aware that DOJ was continuing its detailed review and identifying and examining concerns on the impact on competition.

In this context, DOT's review of the NEA under section 41720 was not designed to approve or disapprove the alliance. During the Department's review, American and JetBlue entered into negotiations with DOT. These negotiations culminated in the DOT Agreement with American and JetBlue on January 10, 2021, in which the carriers agreed to take actions to address several Departmental concerns about anticompetitive harms arising out of the NEA.<sup>4</sup> The DOT Agreement did not address all of the Department's concerns resulting from the NEA's impacts on competition, but instead sought concessions from the carriers that were intended to mitigate some of the anticompetitive harm while providing a means for monitoring the NEA's implementation.

For example, the DOT Agreement required upfront slot divestitures of six slot-pairs at Ronald Reagan Washington National Airport (DCA), seven slot-pairs at John F. Kennedy International Airport (JFK), and a conditional divestiture of up to ten additional slots at JFK if the carriers failed to meet capacity growth targets in New York City (limited to JFK and LaGuardia Airports). In the case of the DCA slot-pairs, a perpetual-lease arrangement provided for the divested slots to be reacquired by the carriers in the event that the NEA is discontinued. The carriers also agreed to periodically report to DOT capacity figures, route changes, and slot and gate utilization metrics. The carriers agreed to adhere to antitrust protocols to limit the type of communications between them, as well as other commitments.

The DOT Agreement does not expand or restrict the Department's existing statutory and regulatory authorities, including the ability to investigate and prohibit potentially unfair, deceptive, or exclusionary practices.<sup>5</sup> The parties to

<sup>4</sup> The agreement can be found at <https://www.transportation.gov/sites/dot.gov/files/2021-01/Agreement%20terminating%20review%20DOT-AA-B6%20with%20appendix%2011021%20website.pdf>.

<sup>5</sup> Section 7 of the DOT Agreement specifies that "[n]othing in this Agreement shall expand or restrict DOT's existing statutory and regulatory authorities, or at any time prohibit or limit DOT

<sup>1</sup> 49 U.S.C. 40101.