



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

Issued by the Department of Transportation  
on the 17<sup>th</sup> day of May, 2021

Served: May 17, 2021

In the matter of

**AEROLINEAS ARGENTINAS S.A.**

Docket DOT-OST-2021-0061

## ORDER TO FILE SCHEDULES

### Summary

By this Order, and another order being issued concurrently,<sup>1</sup> the U.S. Department of Transportation (“the Department”) is taking steps to address the Government of Argentina’s impairment of U.S. passenger carrier operating rights provided to them under the 1985 U.S.-Argentina Air Transport Agreement, as amended (“the Agreement”) and addressing their denial of the fair and equal opportunity to exercise those operating rights. Specifically, in 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 services that Aerolineas Argentinas S.A. (Aerolineas), a foreign air carrier of Argentina, operates to/from the United States.<sup>2</sup>

### Background

Aviation relations between the Governments of the United States (USG) and Argentina (GoA) are governed by the Agreement, which establishes, among other rights, the legal basis for the

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<sup>1</sup> See Order 2021-5-9 in Docket DOT-OST-2021-0060, imposing charter prior approval requirements on Aerolineas Argentinas, S.A.

<sup>2</sup> By Order 77-12-53 in Docket 31545, the Department issued Aerolineas a foreign air carrier permit authorizing the carrier to conduct certain Argentina-U.S. scheduled and charter services. Aerolineas also holds in a number of Dockets various exemption authorities to conduct certain own-metal and code-share operations.

carriers of both parties to provide certain air services between the two countries.<sup>3</sup> For airlines of the United States, these rights include, among others, the right to “conduct international air transportation from points behind the United States via the United States and intermediate points to any point or points in Argentina and beyond.”<sup>4</sup> Article 11 of the Agreement also establishes that “[e]ach Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in providing the international air transportation governed by this Agreement.”

In response to the increasing number of positive COVID-19 cases in the country, the GoA published a number of Administrative Decisions.<sup>5</sup> Among other things, these actions have resulted in the implementation by the Argentine National Civil Aviation Administration (“ANAC”) of a forced reduction in U.S.-Argentina scheduled passenger air services for all air carriers in the market. Collectively, the actions called for ANAC and other Argentine agencies to implement: 1) a combined 40 percent reduction in international flight frequencies to and from Argentina, and 2) a cap of 2000 daily international entries and exits of passengers. Furthermore, ANAC advised us that it would be requiring a separation of two hours between arriving international flights to allow for mandatory COVID-19 testing of passengers upon arrival.

Since February 2021, U.S. combination carriers in the U.S.-Argentina market have been subjected to forced reductions by ANAC of their passenger schedules of anywhere between 33 percent and 66 percent, using January 2021 – the last month before any restrictions – as a baseline. In certain instances, U.S. carriers were forced to cancel flights altogether because ANAC offered arrival times that were not viable from an operational or commercial standpoint. On April 13, 2021, the Department sent a letter to the National Administrator of Civil Aviation for Argentina, inquiring as to the methodology that ANAC used to apply the reductions in passenger service as required by the Administrative Decisions across the various airlines operating in the market. The Department and the U.S. Embassy in Buenos Aires also participated in calls with ANAC that were inconclusive. On May 10, 2021, the Department received a response to its letter that did not offer additional insight from ANAC as to whether it was applying the restrictions to airlines in a non-discriminatory manner.

In parallel to its engagement with ANAC, the Department has analyzed information on scheduled passenger flights that Aerolineas operated to the United States between January and April 2021.<sup>6</sup> The Department has found that although Aerolineas initially reduced its U.S.-Argentina passenger service in February by about 43 percent, it has since increased its U.S.-Argentina passenger service to a level that amounts to just an 18 percent reduction for the month of April, again using January traffic figures as a baseline. U.S. carriers have not been permitted comparable increases. In fact, one U.S. passenger carrier was prevented from operating to

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<sup>3</sup> Aerolineas Argentinas is currently the only Argentine carrier providing scheduled combination services in the U.S.-Argentina market with its own aircraft. American Airlines Inc. (American), Delta Air Lines, Inc. (Delta) and United Airlines, Inc. (United) currently provide passenger services in the U.S.-Argentina air transport market.

<sup>4</sup> U.S.-Argentina Air Transport Agreement, Annex I, Section 1, Paragraph A.1.

<sup>5</sup> Administrative Decisions 155/2021, 219/2021, and 268/2021, published on February 27, 2021, March 12, 2021, and March 25, 2021, respectively

<sup>6</sup> The Department obtained data through reporting requirements under 14 CFR Part 217 and through publicly available information.

Argentina altogether for the latter half of April. The Department has voiced its objection over this situation to the GoA on numerous occasions over the last two-month period.

## **Decision**

Based on the facts before us, we find that the GoA has, over the objections of the USG, impaired the operating rights of U.S. carriers and denied them the fair and equal opportunity to exercise their operating rights in the market, and thus has acted contrary to the Agreement.

These circumstances require the imposition of the schedule filing requirements of 14 CFR Part 213 outlined in this Order. We conclude that the public interest requires that the captioned carrier file its 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 no later than May 24, 2021.

The Department will continue to engage the GoA and ANAC to press for a solution that allows for the necessary health safety protections while maintaining the rights of all of our carriers under the Agreement.

## **ACCORDINGLY,**

1. Aerolineas Argentinas S.A. shall file with the Department (via electronic mail to ScheduleFiling@dot.gov and in Docket DOT-OST-2021-0061) by May 24, 2021, any and all of its existing schedules for combination 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, 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. Aerolineas Argentinas S.A. shall file with the Department (via electronic mail to ScheduleFiling@dot.gov and in Docket DOT-OST-2021-0061) any and all of its proposed schedules for combination 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 will serve this Order on Aerolineas Argentinas S.A.; the Embassy of Argentina in Washington, D.C.; the Departments of Commerce and State; the Transportation Security Administration; and the Federal Aviation Administration.

By:

**Carol A. (Annie) Petsonk**  
**Deputy Assistant Secretary for**  
**Aviation and International Affairs**

(SEAL)

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