

4910-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Orders Limiting Operations at John F. Kennedy International Airport and New York LaGuardia Airport; High Density Traffic Airports Rule at Ronald Reagan Washington National Airport

AGENCY: Department of Transportation, Federal Aviation Administration (FAA).

ACTION: Notice of extension of limited waiver of the minimum slot usage requirement.

SUMMARY: The FAA has determined to extend through October 24, 2020, the coronavirus (COVID-19)-related limited waiver of the minimum slot usage requirement at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald Reagan Washington National Airport (DCA) that the FAA has already made available through May 31, 2020. Similarly, the FAA has determined to extend through October 24, 2020, its coronavirus-related policy for prioritizing flights canceled or otherwise not operated as originally intended at designated International Air Transport Association (IATA) Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the next corresponding season. These IATA Level 2 airports include Chicago O'Hare International Airport (ORD), Newark Liberty International Airport (EWR), Los Angeles International Airport (LAX), and San Francisco International Airport (SFO). These extensions through October 24, 2020, are available on the same terms as the relief that the FAA already has announced through May 31, 2020.

DATES: Effective upon publication.

FOR FURTHER INFORMATION CONTACT: Bonnie Dragotto, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591; telephone: (202) 267-3808; e-mail: bonnie.dragotto@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

In a notice that the FAA issued on March 11, 2020, and published in the Federal Register on March 16, 2020 (85 FR 15018), the FAA announced certain relief through May 31, 2020, in light of impacts on air travel demand related to the outbreak of novel 2019 coronavirus (also known as “SARS-CoV-2,” causing the disease COVID-19) (“coronavirus”). As announced in that notice, through May 31, 2020, the FAA will waive the minimum usage requirement as to any slot associated with a scheduled nonstop flight between JFK, LGA, or DCA, respectively, and other points that is canceled as a direct result of coronavirus-related impacts.¹ In addition, that notice announced that the FAA will prioritize flights canceled due to coronavirus at designated IATA Level 2 airports in the United States—including ORD, EWR, LAX, and SFO—through May 31, 2020, for purposes of establishing a carrier’s operational baseline in the next corresponding season.²

¹ Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, the FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3. The FAA clarifies that the relief provided in the March 11 notice and in this decision extends to all allocated slots, including slots allocated by exemption.

² The FAA notes that a minimum usage requirement does not apply at designated IATA Level 2 airports in the United States. Moreover, established procedures under the IATA Worldwide Slot Guidelines allow for the prioritization of such cancellations in subsequent corresponding seasons consistent with the FAA’s policy statement.

In granting this relief, the FAA asserted its expectation that foreign airport slot coordinators would accommodate U.S. carriers with reciprocal relief. The FAA further stated that it would continue to monitor the situation and might augment the waiver as circumstances warrant.

On March 22, 2020, the FAA issued a notice inviting stakeholders to show cause why the FAA should or should not extend the relief provided in the March 11, 2020, notice through the Summer 2020 scheduling season, which ends on October 24, 2020. *See* 85 FR 16989 (Mar. 25, 2020). In the March 22, 2020 show cause notice, the FAA reviewed the increased disruption to demand for air travel caused by the coronavirus since the March 11, 2020 notice, and summarized the petitions of many carriers and IATA seeking additional relief from the 80 percent minimum slot usage requirement at U.S. airports through the Summer 2020 scheduling season.

Since the March 22, 2020 show cause notice, the disruption from the coronavirus public health emergency has continued to grow in the United States and worldwide. On March 27, 2020, the Centers for Disease Control and Prevention (CDC) issued a worldwide Level 3 Warning to avoid nonessential international travel due to widespread ongoing transmission of COVID-19. On March 29, 2020, the President announced an extension through April 30, 2020, of the “Slow the Spread” campaign that includes social distancing guidelines and a recommendation to avoid discretionary travel. “Stay-at-home” orders have been introduced or extended across much of the United States, including for all locations of U.S. slot-controlled and designated IATA Level 2 airports, to varying degrees and durations. Many other countries are also implementing travel

restrictions and mandatory quarantines, closing borders, and prohibiting non-citizens from entry.

Consistent with the FAA's tentative determination, on March 31, 2020, the Council of the European Union (EU) enacted a measure to extend relief from the minimum slot usage requirements applicable at slot-controlled airports in the EU through the Summer 2020 scheduling season. In addition, several other foreign coordinators have likewise extended, or announced the intent to extend, relief from minimum slot usage rules through the end of the Summer 2020 season.

The FAA continues to receive cancelation notices at slot-controlled airports in the United States, which include JFK, LGA, and DCA, as well as U.S. airports designated as IATA Level 2, for flights to and from areas with significant coronavirus outbreaks. Nearly every carrier at the U.S. slot-controlled and IATA level 2 airports has experienced significant COVID-19 related schedule impacts, with many carriers indicating that they expect to operate 20% or less of their previously planned and published schedules over the coming months.

Summary of Comments and Information Submitted

The FAA received comments from 31 stakeholders, including IATA, Airlines for America (A4A), the Cargo Airline Association (CAA), SkyTeam Airline Alliance, numerous U.S. and foreign carriers,³ Airports Council International – North America (ACI-NA), the City of Chicago Department of Aviation (CDA), the Metropolitan

³ Individual carriers from whom comments were received include Air New Zealand, LOT Polish Airlines, Kuwait Airways, Royal Jordanian, Scandinavian Airlines, Cathay Pacific, Emirates, Delta Air Lines, KLM Royal Dutch Airlines, American Airlines, Avianca, Xiamen, Viva Aerobus, Iberia, JetBlue, Air France, Alitalia, Finnair, Aer Lingus, Southwest Airlines, Etihad, British Airways, United Airlines, and Lufthansa Group.

Washington Airports Authority (MWAA), and the Port Authority of New York and New Jersey (PANYNJ). One additional comment was received from the Hong Kong Schedule Coordination Office regarding the FAA's stated policy concerning reciprocity, noting Hong Kong's provision of relief from the minimum usage requirement for carriers impacted by COVID-19 through the end of the Summer 2020 scheduling season.

All of the airlines and airline industry advocates expressed support for an extension through the end of the Summer 2020 scheduling season. IATA submits that it forecasts negative impacts from coronavirus on airline revenue amounting to a 259 billion USD loss in passenger revenues worldwide and a 50 billion USD loss in the North American market due to a -27% change in passenger demand. IATA asserts that "[t]he ability for the airline industry to survive depends on government support and accommodation" as "airlines are being forced to ground entire fleets and halt international flying entirely in an effort to survive the devastating impact of this crisis." IATA notes that the minimum usage rule is "well suited to normal operations, but its implementation under such exceptional circumstances is unnecessary and only forces flying that is neither economically or environmentally responsible or sustainable." Analysis provided by IATA in support of its position demonstrates that a deep economic recession would be expected to further delay recovery of the airline industry beyond the Summer 2020 season.

Several airlines provided data demonstrating the dramatic decrease in passenger demand for travel through 2020 compared to the same periods in 2019, the details of

which they have deemed proprietary.⁴ The FAA finds that this data is consistent with the aggregate data provided by IATA and in some cases individual carriers have reported demand at even lower levels than reflected in IATA's report. U.S. carriers have also asserted that the impacts on air travel demand from the COVID-19 crisis are expected to persist well into the summer and an extension of the waiver will allow airlines to create plans to protect jobs, ensure continued air service to the communities served, and position the airline industry for a robust economic recovery. Several foreign carriers also noted that, due to current travel restrictions, they have had to cancel all flights for certain periods. Most carriers point to the uncertainty associated with the public health emergency and indicate that providing relief from the usage requirement will enable carriers to resume flights as quickly as possible in the aftermath of this public health emergency. Some carriers noted plans to increase frequencies at U.S. slot-controlled airports, which will now be postponed as recovery from "these life-changing events" is expected to take a significant period of time. Airlines assert that the temporary suspension of minimum slot usage rules will provide necessary flexibility to tailor operating plans to the evolving situation and adjust resources in preparation for the future recovery of demand.

In addition, the CAA and others specifically note that in this time of emergency it would be in the public interest for the FAA to temporarily reallocate to cargo airlines the slots not used for passenger operations during this time period. CAA elaborates that "[a]s

⁴ Five carriers, including U.S. and foreign carriers, submitted detailed information on the reduction in passenger demand related to COVID-19. Each of these carriers marked portions of comments, or entire comments, as proprietary and confidential, and the FAA will maintain the confidentiality of this information to the extent permitted by law.

the nation copes with the pandemic and implements ‘shelter-in-place’ policies, supply chain continuity (including consumer staples, medical and health-related supplies) has become a key element of the private sector’s response to the pandemic, and many of these goods travel by air.”

While mindful of industry impacts, the airport authorities and their advocates, including ACI-NA, CDA, MWAA, and PANYNJ, collectively oppose an extension for the full duration of the Summer 2020 season at this time. The PANYNJ and MWAA expressed support for an extension through June 30, 2020, with the possibility of further relief per ongoing review as the situation evolves. MWAA explains that this more limited action would provide justifiable relief to the air carriers operating at DCA, and does not preclude the FAA from extending such relief beyond June 30, 2020, should it continue to be necessary. MWAA further asserts that “waiver decisions should be tailored to address the unusual and unpredictable condition at issue, with the goal to facilitate the swift restoration of the connectivity and economic benefits of air travel as soon as practicable.” ACI-NA and the CDA similarly comment that “uncertainty around the evolving pandemic and recovery supports the FAA taking a more precise and targeted approach to slot waivers, as opposed to a broad general waiver, particularly given that most of the slot-controlled facilities covered under this waiver are at predominantly domestic airports.” ACI-NA further notes that “some air carriers may be in a diminished financial condition when the recovery begins and therefore may be further incentivized to add capacity more slowly than demand warrants in order to bolster their market pricing power and enhanced yields.”

The PANYNJ commented that it seeks to ensure that valuable infrastructure is put to use as soon as demand warrants. In support of its position, PANYNJ asserts that based on published schedule data, a majority of carriers have made “sweeping near-term schedule adjustments, though none extending beyond May or June.” Thus, according to PANYNJ, a waiver of slot requirements extending through October 24, 2020 is not justified by current scheduling behavior.

Discussion

The FAA agrees with the position of the airport authorities that waiver decisions should be tailored to address the unusual and unpredictable condition at issue, with a goal of facilitating the swift restoration of the connectivity and economic benefits of air travel as soon as practicable. The FAA finds that this threshold has been met under the exceptional circumstances surrounding the coronavirus public health emergency, including with respect to the situation domestically. Ample evidence supports a conclusion that the airline industry is likely to need flexible relief for the duration of the Summer 2020 scheduling season.

The FAA is unpersuaded by comments opposing an extension through the end of the Summer 2020 season based on the uncertainty of the recovery timeline. The FAA finds that the proposed alternative extension of one additional month of relief through June 30, with ongoing review for further relief, would unduly burden airlines with added uncertainty. The FAA recognizes that demand is unlikely to immediately return to historic levels as soon as travel restrictions and stay at home orders are lifted. Therefore, the FAA concludes that, beyond the pendency of the coronavirus public health emergency, further accommodating a reasonable buffer period thereafter is appropriate to

allow airlines the ability to recall employees, inspect aircraft, market flights, and take other actions necessary to resume normal operations.

Indeed, as noted by the PANYNJ, global air carriers have collectively grounded thousands of aircraft and laid-off or furloughed up to 90% of their workforce. The FAA notes that some airports have also experienced operational changes to adjust to temporary flight reductions such as closing terminals or gates to manage remaining flights more efficiently. These factors will have a significant impact on the speed with which air service can be re-mobilized. Airlines will need flexibility in the recovery period expected to follow this unprecedented disruption. As commenters noted, extending relief through the Summer 2020 season is prudent, with the information presently available and under the circumstances that are reasonably foreseeable at this time, to allow carriers to continue to provide service at a level that reflects depressed demand trends until it is feasible to return to previous levels of flying. Further, providing prospective relief through the end of the Summer 2020 season is expected to incentivize the continued advance return of slots, making them available for temporary reallocation to carriers that are in a position to offer critical public services until slot holders are able to resume normal pre-coronavirus operating levels.⁵

Finally, the FAA notes that published schedule data is preliminary and subject to change; it is therefore not a reliable marker of future airline behavior as the industry awaits the FAA's final decision following the March 22 show cause notice. FAA weekly Cirium schedule information confirms considerable volatility as airlines change and

⁵ Consistent with usual practice, the Slot Office has been granting non-historic approval for additional cargo, passenger, repatriation, and other flights based on flight cancelations responsive to the March 11, 2020, usage waiver.

update schedules frequently. Absent an extended grant of relief, airlines would not have the certainty necessary to adjust their schedules beyond May 31, 2020, especially for domestic flights.

The FAA finds that the benefits to the airline industry of providing relief through the end of the Summer 2020 scheduling season significantly outweigh the risks identified in comments opposing that relief. Therefore, the FAA will not penalize airlines for flights canceled or otherwise not operated as originally intended at slot-controlled airports or designated IATA Level 2 airports, stemming from drastically reduced passenger demand caused by the extraordinary and unforeseen coronavirus public health emergency.⁶ This decision does not preclude carriers from resuming operations during the Summer 2020 scheduling season should circumstances shift toward recovery more rapidly than currently anticipated.

The FAA agrees with comments from CAA and others that, consistent with established rules in effect at slot-controlled airports in the United States and the FAA's usual practices, it is in the public interest to make unused slots available on a temporary basis to carriers that are providing important public services during this public health emergency. The FAA has already approved additional flights on a non-historic basis at JFK given the number of flight cancellations. The FAA therefore encourages carriers to

⁶ The FAA notes that some flights may not yet be published for sale during the full Summer 2020 scheduling season; the FAA therefore, clarifies in this notice that the reference to "cancellations" is used to refer to any scheduled flight or slot approved by the FAA that will not be operated as a direct result of COVID-19 impacts.

return any slots that may not be used during the Summer 2020 scheduling season to the FAA as soon as possible for temporary reallocation.

Decision

In consideration of the foregoing information, the comments that the FAA has received, and absent a showing of good cause to take alternative action, the FAA has determined to extend through October 24, 2020, the coronavirus-related limited waiver of the minimum slot usage requirement at JFK, LGA, and DCA that the FAA has already made available through May 31, 2020, on the same terms as the FAA announced in granting that relief.⁷ Similarly, the FAA has determined to extend through October 24, 2020, its coronavirus-related policy for prioritizing flights canceled or otherwise not operated as originally intended at designated IATA Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the next corresponding season.

The coronavirus continues to present a highly unusual and unpredictable condition that is beyond the control of carriers. Passenger demand continues to decrease dramatically as a result of the coronavirus. The ultimate duration and severity of coronavirus impacts on passenger demand in the United States and internationally remain unclear. Even after the outbreak is contained, impacts on passenger demand are likely to continue for some time. The FAA has therefore concluded that an extension of relief through October 24, 2020, is appropriate to provide carriers with maximum flexibility

⁷ The FAA is responsible to develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. *See* 49 U.S.C. § 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 C.F.R. § 93.227 at DCA and under the authority of Orders at JFK and LGA. *See* Operating Limitations at John F. Kennedy International Airport, 83 FR 46865 (Sep. 17, 2018); Operating Limitations at New York LaGuardia Airport, 83 FR 47065 at 47066 (Sep. 18, 2018).

during this unprecedented situation and to support the long-term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States.⁸ Continuing relief for this additional period is reasonable to mitigate the impacts on demand for air travel resulting from the spread of the coronavirus worldwide.

The FAA reiterates its expectation that foreign slot coordinators will provide reciprocal relief to U.S. carriers. To the extent that U.S. carriers fly to a foreign carrier's home jurisdiction and that home jurisdiction does not offer reciprocal relief to U.S. carriers, the FAA may determine not to grant a waiver to that foreign carrier. A foreign carrier seeking a waiver may wish to ensure that the responsible authority of the foreign carrier's home jurisdiction submits a statement by email to *ScheduleFiling@dot.gov* confirming reciprocal treatment of the slot holdings of U.S. carriers.

Carriers should advise the FAA Slot Administration Office of coronavirus-related cancelations as soon as possible and return the slots to the FAA by email to *7-awaslotadmin@faa.gov* to obtain relief. The information provided must include the dates for which relief is requested, the flight number, origin/destination airport, scheduled time of operation, the slot identification number, as applicable, and supporting information demonstrating that flight cancelations directly relate to the coronavirus outbreak.

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⁸ Nothing in this decision relieves carriers of any minimum air service obligations arising under DOT Order 2020-4-2, posted in Docket DOT-OST-2020-0037.