

FAA POLICY STATEMENT:

Limited, Conditional Extension of COVID-19 Related Relief at Chicago O’Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862)

SUMMARY: The FAA has determined to extend through October 30, 2021, the coronavirus disease 2019 (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 already has made available through March 27, 2021. In addition, the FAA also has determined to extend, through October 30, 2021, its COVID-19-related policy for prioritizing flights canceled 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). This relief is available for the full Summer 2021 scheduling season and is generally subject to the same conditions currently in effect at these airports through March 27, 2021, with some additional policy updates. Also, the FAA has modified the exception for relief under “extraordinary circumstances” that is available under the current FAA waiver policy even if an operator has not complied with the standard conditions that trigger the waiver. These extensions remain subject to the FAA’s stated policy on reciprocity for the COVID-19-related slot usage and schedule relief provided to date.

DATES: The relief announced in this policy statement is available for the Summer 2021 scheduling season, which runs from March 28, 2021 through October 30 2021. All conditions of the relief remain in effect uninterrupted from the current waiver for Winter 2020/2021. For purposes of Summer 2021 relief, compliance with the four-week return condition is required beginning on February 26, 2021.

POLICY STATEMENT:

Background

On December 17, 2020, the FAA issued a notice of proposed extension of a limited, conditional waiver of the minimum slot usage requirement beyond March 27, 2021, which was published in the Federal Register on December 22, 2020 (85 FR 83672).¹ In the December 17 notice and request for comment, the FAA presented two specific proposals for continued relief from the minimum slot usage requirements and related policies due to COVID-19, including: (1) continuation of the existing relief that the FAA has provided at slot-controlled airports (DCA, JFK, and LGA)² and designated IATA Level 2 airports in the United States (EWR, LAX, ORD, SFO) through March 27, 2021 (85 FR 63335), on the same terms currently in effect for the full Summer 2021 season; and (2) a proposal for relief at slot-controlled airports for the Summer 2021 scheduling season developed by the Worldwide Airport Slot Board (WASB), which includes representatives of IATA, the Airports Council International-World (ACI World), and

¹ The FAA has authority for developing “plans and policy for the use of the navigable airspace and for assigning “by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.” 49 U.S.C. § 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR § 93.227 at DCA and under the authority of Orders at JFK and LGA. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

² 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. *See* FN 1. The FAA reiterates that the relief provided in the March 16, 2020, notice (85 FR 15018), the April 17, 2020, notice (85 FR 21500), the October 7, 2020, notice (85 FR 63335), and this policy statement, extends to all allocated slots, including slots allocated by exemption.

the Worldwide Airport Coordinators Group (WWACG). The FAA invited comment on whether the proposal adopted by the FAA should make relief available for the full duration of the Summer 2021 scheduling season, which ends on October 30, 2021. The FAA further invited commenters to propose different or additional options for relief.

Current COVID-19 Situation

Since the FAA's December 17, 2020 notice, COVID-19 has continued to cause disruption globally and within the United States. The World Health Organization (WHO) reports COVID-19 cases in more than 200 countries, areas, and territories worldwide. For the week ending January 10, 2021, the WHO reported nearly 5 million new COVID-19 cases and over 85,000 new deaths, bringing the cumulative total to more than 88.3 million reported COVID-19 cases and over 1.9 million deaths globally since the start of the public health emergency.³ The WHO reports that in recent months, two different variants of COVID-19 have been reported as unusual public health events. Research is ongoing to determine the impact of new variants on transmission, disease severity as well as any potential impacts on vaccines, therapeutics and diagnostics.. Since first detected on 14 December 2020, one variant (VOC 202012/01) has been detected in 50 countries, territories and areas; since first reported on 18 December 2020, a second variant (501Y.V2) has been detected in 20 countries, territories and areas.⁴

International travel advisories issued by the U.S. Department of State's Global Health Advisory remain in effect worldwide, including designations of either Level 3—Reconsider Travel or Level 4—Do Not Travel for more than 175 destinations.⁵ The U.S. Department of State

³ COVID-19 weekly epidemiological update, January 12, 2021, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports> See also <https://covid19.who.int/> for WHO COVID-19 Dashboard with the most current number of cases reported.

⁴ *Id.*

⁵ <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/>

advises that challenges to any international travel at this time may include mandatory quarantines, travel restrictions, and closed borders. The U.S. Department of State notes further that foreign governments may implement restrictions with little notice, even in destinations that were previously low risk.⁶ Accordingly, the U.S. Department of State warns Americans choosing to travel internationally that their trip may be disrupted severely and it may be difficult to arrange travel back to the United States.⁷

Moreover, international travel recommendations from the Centers for Disease Control and Prevention (CDC) categorize more than 175 countries, areas, and territories worldwide under Level 4—COVID-19 Risk Is Very High.⁸ Within the United States, the CDC reported 22,740,142 total cases and 379,255 deaths from COVID-19 as of January 13, 2021, with 1,737,820 new cases in the prior seven days.⁹ The CDC advises prospective domestic travelers to consider whether their destination has requirements or restrictions for travelers, and notes that State, local, and territorial governments may have travel restrictions in place, including testing requirements, stay-at-home orders, and quarantine requirements upon arrival. A national emergency related to COVID-19 remains in effect pursuant to the President’s March 13, 2020 Proclamation.¹⁰

⁶ <https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html>

⁷ *Id.*

⁸ <https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notice.html>

⁹ CDC COVID Data Tracker, updated January 13, 2021, available at https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases_casesinlast7days

¹⁰ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

On May 15, 2020, the President announced the establishment of Operation Warp Speed (OWS), a national program to accelerate the development, manufacturing, and distribution of COVID-19 vaccines, therapeutics, and diagnostics.¹¹ On December 11 and 18, 2020, the Food and Drug Administration (FDA) granted emergency use authorizations for two COVID-19 vaccines and phased distribution continues in the United States.¹² Vaccine distribution also has begun on a limited basis elsewhere in the world. As of January 13, 2021, the CDC estimates that 29,380,125 total doses of the COVID-19 vaccine have been distributed (shipped) in the United States, with 10,278,462 people having received the first of two doses since December 14, 2020.¹³

Standard Applicable to This Waiver Proceeding

The FAA reiterates the standards applicable to petitions for waivers of the minimum slot usage requirements in effect at DCA, JFK, and LGA, as discussed in the FAA's initial decision extending relief due to COVID-19 impacts.¹⁴

At JFK and LGA, each slot must be used at least 80 percent of the time.¹⁵ Slots not meeting the minimum usage requirements will be withdrawn. The FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition that is

¹¹ <https://www.hhs.gov/about/news/2020/05/15/trump-administration-announces-framework-and-leadership-for-operation-warp-speed.html>

¹² <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>

¹³ <https://covid.cdc.gov/covid-data-tracker/#vaccinations>

¹⁴ See 85 FR 15018 (Mar. 16, 2020).

¹⁵ Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 47065 at 58255 (Sep. 18, 2020).

beyond the control of the slot-holding air carrier and which affects carrier operations for a period of five consecutive days or more.¹⁶

At DCA, any slot not used at least 80 percent of the time over a two-month period also will be recalled by the FAA.¹⁷ The FAA may waive this minimum usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding carrier and which exists for a period of nine or more days.¹⁸

When making decisions concerning historical rights to allocated slots, including whether to grant a waiver of the usage requirement, the FAA seeks to ensure the efficient use of valuable aviation infrastructure while maximizing the benefits to airport users and the traveling public. This minimum usage requirement is expected to accommodate routine cancellations under all but the most unusual circumstances. Carriers proceed at risk if, at any time prior to a final decision, they make decisions in anticipation of the FAA granting a slot usage waiver.

Summary of Comments and Information Submitted

The FAA received 56 individual and combined comments¹⁹ on the proposal, including from IATA, Airlines for America (A4A),²⁰ the oneworld Alliance, the Star Alliance, the Cargo

¹⁶ At JFK, historical rights to operating authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season. *See* JFK Order, 85 FR at 58260. At LGA, any operating authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. *See* LGA Order, 85 FR at 58257.

¹⁷ *See* 14 CFR § 93.227(a).

¹⁸ *See* 14 CFR § 93.227(j).

¹⁹ The FAA notes that some comments were submitted on behalf of multiple airlines. The information contained within comments marked as Proprietary Information (PROPIN) was consistent with information submitted by other airline industry commenters. The FAA will maintain the confidentiality of this information to the extent permitted by law.

²⁰ Southwest Airlines Co., a member of A4A, does not support the comments submitted by A4A.

Airline Association (CAA), the National Air Carrier Association (NACA), Airports Council International-North America (ACI-NA), the Metropolitan Washington Airports Authority (MWAA), the Port Authority of New York and New Jersey (Port Authority), the International Association of Machinists and Aerospace Workers (IAMAW), six U.S. carriers,²¹ 28 foreign carriers,²² 15 non-aviation businesses and industry organizations, and three others.²³

With exceptions, many commenters support providing relief under one of the two specific proposals described in the December 17 notice. Nearly all proponents of relief emphasize the critical importance of an expedient decision to provide industry with stability and certainty during the ongoing public health emergency. Commenters note that carriers are already planning for the Summer 2021 season consistent with the IATA calendar and need time to adjust plans further. These commenters also emphasize the recent developments concerning COVID-19 impacts and resulting unpredictable and evolving “patchwork” of travel and other related restrictions impacting operations.

A4A, United, Delta, Star Alliance, 15 foreign carriers, one anonymous airline commenter, and 15 non-aviation U.S. businesses prefer the FAA’s proposal to extend the relief provided for Winter 2020/2021 on the same terms for the duration of the Summer 2021 season.

²¹ Comments were submitted by the following U.S. carriers: Allegiant Air, LLC, Delta Air Lines, Inc., Southwest, Spirit Airlines, Inc., United Airlines, Inc., and Polar Air Cargo Worldwide, Inc. One U.S. Airline submitted a second version of comments, which included information marked as confidential business information.

²² Comments were submitted by the following foreign carriers: Aeromexico, Aer Lingus, Air France and KLM Royal Dutch Airlines (in a combined comment), All Nippon Airways Co. Ltd., Avianca, British Airways, Cathay Pacific Airways Ltd., China Airlines, Emirates, Etihad Airways, Finnair, Iberia, Icelandair, Kuwait Airways, Lufthansa Group, Qatar Airways Co., Scandinavian Airlines System (SAS), Shenzhen Airlines, Singapore Airlines, South African Airways, Turkish Airlines, and Viva Aerobus. Lufthansa Group submitted a comment on behalf of Lufthansa German Airlines, Lufthansa Cargo, Swiss International Air Lines, Austrian Airlines, Brussels Airlines and Eurowings. One foreign carrier included information deemed to be confidential business information in its submission.

²³ The comment period closed on December 29, 2020. Comments considered in finalizing the policy announced in this policy statement include late-filed submissions posted or otherwise received as of January 4, 2021.

Nearly all of these commenters also acknowledge the compromise reached by the airline, airport, and coordination community at the global level to develop the WASB proposal and would accept adoption of the WASB proposal as a “fall-back” option in the United States.

IATA, oneworld, nine foreign carriers, and one anonymous commenter prefer adoption of the WASB proposal in the interest of global consistency. In addition, IATA and some of these commenters further support providing relief at Level 2 airports in the United States either consistent with the WASB proposal or consistent with the relief the FAA has already provided at these airports. IATA comments that it “can appreciate why a simple extension of the conditional winter waiver to the Summer 2021 season could be the more favored option for the FAA in terms of timeliness” and other foreign carriers, as well as oneworld, indicate that a full season extension of the current relief provided by FAA would be an acceptable outcome.

Three foreign carriers expressed no preference among the FAA’s proposed options and one foreign carrier suggested that a blend of the two proposals might be the best option to retain the opportunity to return slots four weeks in advance as allowed by the Winter 2020/2021 waiver, and incorporate the 50/50 usage threshold as included in the WASB proposal. Several commenters, including A4A and Delta, also emphasized the importance of a continued policy concerning reciprocity.

ACI-NA, MWAA (commenting on DCA only), NACA, Allegiant, Spirit, Polar Air Cargo, and Exhaustless generally oppose any continued relief. However, several of these commenters provided comments on alternatives or recommended modifications to the two specific options for relief proposed. Spirit offers an alternative that would differentiate between domestic slots and international slots/Level 2 operations by limiting relief to international flights only. CAA would support adoption of the WASB proposal with multiple modifications.

Southwest restates its views taking no position with regard to JFK and recommending a half-season extension, at most, of the current relief available at DCA and LGA. Allegiant supports the Southwest recommendation summarized in the FAA’s December 17 notice and Spirit would support this approach as well with an earlier full-season return deadline of March 1, if FAA retains the current waiver. The Port Authority recommends modifications for either proposal, if adopted by the FAA. The Port Authority further recommends that carriers able to operate “should then be granted priority consideration for receiving slots at the same times in the following season.”

A more detailed discussion of the comments follows below.

Comments Supporting Extension of Current Relief through Full Summer 2021 Season

A4A, United, Delta, Star Alliance, fifteen foreign carriers (Aeromexico, Cathay Pacific, Emirates, Lufthansa Group, SAS, Shenzhen, Singapore, South African Airways, Turkish, and Viva Aerobus), one anonymous airline commenter, and 15 non-aviation U.S. businesses prefer the FAA’s proposal to extend the relief provided for Winter 2020/2021 on the same terms for the full Summer 2021 season.

A4A, on behalf of nine of its members and one associate member, comments that the forecast for U.S. airlines is “ominous,” noting that its members have incurred almost \$72 billion in debt and that airlines have lost approximately 92,000 full-time employees this year. In addition, A4A highlights the unpredictability facing the industry, noting that “if the global health experts cannot predict the nature of this virus, carriers cannot be expected to predict the impact of COVID-19 to their operations in the near and even long term.” Further, A4A comments that the “pandemic, the governmental responses to it (*e.g.*, quarantines, travel bans, etc.), and the lingering uncertainty, including a new and potentially more contagious variation of the virus,

continue to decimate demand for air travel” with TSA throughput declining about 57-70% in the New York City area and international traffic volumes declining over 90%. A4A further notes that “the announcement of a new COVID-19 variation abroad and a deadly 3rd wave worldwide indicate that passenger volumes are not likely to meaningfully return by the end of the Summer season. Looking forward, industry passenger traffic is not expected to return to 2019 levels until at least 2024, maybe longer for international traffic.”

A4A prefers an extension of current slot relief for the full Summer 2021 season over the WASB proposal, which A4A refers to as a “reasonable compromise...preferable to no slot relief.” A4A warns that “anything short of a full season extension will add unnecessary complexity and uncertainty in operating schedules which detracts from the stability and flexibility needed to recover from the impacts of COVID-19” and that a mid-season change in status will have a “substantial impact on the ability of carriers to plan and position resources, which is a lengthy and costly process.” A4A outlines examples of potential costs related to storing aircraft and other issues related to re-hiring staff.

A4A states that the current narrowly tailored waivers allow “airports and the local community to gain meaningful operations that would otherwise operate empty or not operate at all due to lack of demand.” It adds that the current waiver provides simplicity and certainty that is critical for the industry.

United comments that “[t]he current limited, conditional waiver and schedule prioritization process imposed by FAA in October 2020 is working, providing planning certainty, operating flexibility, and airport and terminal access without disrupting the historical structure of slot-controls and schedule-facilitation in the United States.” Further, United comments that “the Level 2 terminal facilities in the U.S. followed the FAA’s lead and are providing priority

consideration for schedule cancellations and adjustments to U.S. and foreign flags operating at these common use facilities which is critical to carrier's ability to maintain access at both ends of the route for restoring service in the recovery."

Pointing to the increase in COVID-19 cases and new variant, United warns that the impact of the COVID-19 crisis on the airline industry is "worsening, not waning." In addition, United notes there are new travel restrictions and viral testing requirements in effect in parts of the world and states that "[e]ven as new vaccines become widely available and effective, the nation's top infectious disease expert predicted that it would be 'the end of 2021 [before] we can approach very much some degree of normality that is close to where we were before.'"

United comments that the Southwest proposal for truncated relief would "disrupt the very stability that the relief seeks to afford" and the recommended disparate treatment of DCA and LGA "ignores the impact of local and state restrictions on domestic flights and, not surprisingly, also disregards the impact of the existing reduction in demand on the domestic connectivity flights for hub-and-spoke carriers."

On behalf of its 22 member airlines, Star Alliance urges FAA to extend its current slot usage waiver for the full Summer 2021 Season to "avoid drastic schedule adjustments that would have ramifications throughout the system and disruptions to air connectivity for businesses, people and communities, and critically 'ghost flights' that needlessly increase carbon emissions."

Delta strongly favors extension of current relief through the full Summer 2021 season. Delta states that carriers "should not be penalized for not operating slots if travel restrictions prevent them from operating." Delta comments that it continues to see weak consumer demand for domestic and international travel and expects this trend to persist "until vaccines are distributed at scale."

Aeromexico comments that the extension of the current waiver “could be a better option” as a result of ongoing restrictions and quarantines, challenges forecasting passenger demand, and last-minute travel reservations.

Emirates notes that its operations have “shrunk by almost 70% and [it] does not expect a full scale recovery in [Summer 2021].”

Lufthansa Group, which comments on behalf of Lufthansa German Airlines, Lufthansa Cargo, Swiss International Air Lines, Austrian Airlines, Brussels Airlines and Eurowings, comments that both options would provide “effective and well-balanced support of the aviation industry under the given circumstances” and “[i]n general, the WASB proposal as agreed globally by industry stakeholders (ACI World, IATA and WWACG) would take priority, but since immediate implementation is of highest importance, Lufthansa Group prefers option 1, the continuation of existing slot relief until October 30, 2021.” Lufthansa believes this approach “would also circumvent the issue how to implement the WASB agreement at the US Level 2 airports” and notes that “FAA has proven several times its ability to implement the existing Slot Waiver in a laudable short time period.”

Singapore Airlines comments in support of a continuation of the current waiver, noting that while “vaccine development has been positive, the logistics of mass production and distributing it efficiently to vaccinate a sufficiently critical mass of the global population is daunting” and moreover, “[t]he timeline to achieve ‘herd immunity’ is unclear, although some experts have pegged this to occur in late 2021 or 2022.” Moreover, Singapore asserts an extension of relief would be “the environmentally responsible thing for the industry to do.”

South African Airways comments that it “has not been able to operate since the emergence and continued spreading of the Covid-19 pandemic in March 2020” and it “do[es] not

expect to recover in the coming [Summer 2021 season].” South African notes that its “government has also reported a new Covid-19 strain which appears to have mutated further than the initial Covid-19 virus” and is further impacting passenger demand.

SAS comments that the current waiver has “allowed carriers to redirect resources to repatriation and cargo flights, bringing citizens home, transporting critical medical supplies to areas of need and most recently transporting the vaccine.” SAS also points to the new variant of COVID-19 and resulting travel restrictions. SAS notes “[t]he U.S. continues to experience over 200,000 new cases of COVID-19 per day in December, more than double the number when the winter waiver was granted in October.” SAS comments that “[a] continuation of the existing waiver avoids drastic schedule adjustments that would have ramifications throughout the system, disadvantaging the people, communities and businesses that rely on air connectivity” and that “[w]ithout further action by the government, carriers will be forced to operate ‘ghost flights’ for the sole purpose of retaining schedules or slots, further destabilizing airlines and needlessly increasing carbon emissions.” Several other foreign carriers reference similar reasons as SAS in support of an extension of the current waiver.

Most of the 15 non-aviation businesses and business advocacy commenters reiterate the comments submitted by SAS and other commenters and seek “swift action” by the FAA “to provide certainty and relief for carriers by extending the existing waiver until we are well on the road to recovery.” Some of these commenters also note that such an extension would send a signal to other jurisdictions. The Illinois Manufacturers’ Association comments that “[m]anufacturers need a strong and robust transportation system that includes air travel.” The Illinois Chamber of Commerce asks the FAA to “act now” and along with the IAMAW seeks “a ‘clean’ extension of the current relief” to provide carriers with certainty.

Several commenters preferring the WASB proposal, as discussed further herein, recognize that an extension of the current waiver would also be beneficial. IATA acknowledges that timeliness is an important consideration and therefore, “can appreciate why a simple extension of the conditional winter waiver to the Summer 2021 season could be the more favored option for the FAA.” Iberia notes that both options offer “great value.” Iberia emphasizes that any waiver should be “global or at least as similar as possible” in nature. Finnair, oneworld, and China Airlines acknowledge that the continuation of the current conditional waiver could be a favored option in the interest of expediency given the ongoing crisis.

Comments Recommending Modifications to the Current Waiver, If Extended

A4A and Delta recommend that FAA consider adopting similar standards as the WASB proposal for the justified non-utilization of slots (*i.e.*, modification of the “extraordinary circumstances” relief that is available under the current FAA waiver policy even if an operator has not complied with the standard conditions that trigger the waiver). Other commenters note the WASB provision sets forth a clearer standard.

With respect to an extension of the current Winter waiver, on the same terms, the Port Authority comments that this approach “fall[s] short.” The Port Authority would prefer a waiver with a slot utilization threshold of 80/20 that allows for reallocation of unused slots with historical precedence and recommends “an earlier deadline for carriers to notify the FAA of the slots they do not plan to operate” as “[d]oing so would reasonably accommodate air carriers interested in operating under current market conditions.” The Port Authority states that “[c]arriers should then be granted priority consideration for receiving slots at the same times in the following season.”

Comments Supporting Adoption of WASB Recommendation

IATA, oneworld, nine foreign carriers (All Nippon, Aer Lingus, British Airways, China Airlines, Etihad Airways, Finnair, Iberia, Icelandair, and Qatar), as well as one anonymous commenter, prefer adoption of the WASB proposal in the interest of global consistency. All Nippon, Etihad, Icelandair, and Qatar comment in support of the WASB recommendation without modification. IATA, oneworld, British Airways, and China Airlines prefer adoption of the WASB recommendation combined with continued relief at Level 2 airports, either through an extension of the existing waiver or by providing relief along the lines of the WASB proposal. Some commenters note the adoption of the WASB proposal in other jurisdictions.

IATA, which is a party to the WASB recommendation, makes three main points in its comments. First, it emphasizes that all three parties to the recommendation “have made difficult compromises in reaching a solution that we collectively agree provide the certainty and flexibility needed to recover schedules and rebuild demand in a sustainable manner.” Second, IATA asks FAA to provide similar relief to Level 2 airports. IATA argues that similarities between Level 2 airports in the United States and Level 3 airports in the rest of the world are among the reasons for treating them consistently. Third, IATA acknowledges that a continuation of the FAA’s current relief measures might be preferable to the WASB proposal given the need for expediency.

IATA provides supporting data reflecting the impacts of COVID-19 on industry in 2020 as well as expected impacts for 2021. IATA data demonstrates “a 66% fall in passenger demand,” while “[i]nternational markets were hit disproportionately hard with a 75% fall in demand.” Moreover, IATA “predicts that losses will continue into 2021, with a net loss of \$118.5 billion expected for 2020 (deeper than the \$84.3 billion forecast in June) and in 2021, a

net loss of \$38.7 billion is expected (deeper than the \$15.8 billion forecast in June [sic].” With respect to the Summer 2021 season in particular, IATA predicts that demand “will remain a shell of what it was under pre-COVID circumstances in 2019.”

IATA references the new strain of the virus in the United Kingdom as a reminder of the unpredictable nature of this crisis and of the “patchwork” of restrictions from various governments as countries respond to new developments. IATA predicts an increase in this uncertainty in the coming months and given these “circumstances, and the likelihood of new, unpredicted developments in the future,” IATA asserts “it is imperative that governments provide the needed flexibility and relief from slot use rules for the full Summer 2021 season.”

IATA emphasizes that the WASB proposal “does not work if adopted fragmented or applied in varying degrees.” Specifically, IATA notes that the three core features of the proposal “need to work together as a package” as the proposal has been “carefully considered to balance all interests.” These interests include ensuring global compatibility and consistency and “protect[ing] the substantial investments made in pre-COVID-19 aviation networks, which are reliant on precise slot times that underpin connecting banks of traffic.”

On behalf of its 13 member airlines, oneworld Alliance fully supports the WASB proposal. Oneworld comments that “[f]aced with rapidly changing travel restrictions, airlines continue to be placed in difficult positions when planning and scheduling capacity” and references the recent impacts of the new strain identified in the United Kingdom. Oneworld “believe[s] that the recommendations represent a balanced and global approach to maintain international connectivity, preserve consumer choice and aid industry recovery in the future.”

All Nippon supports the WASB proposal reached as a compromise and comments that it would ensure global consistency. All Nippon comments further that the WASB policy for justified non-utilization of slots is clearer than in the FAA's current waiver policy.

Etihad and Iberia Airways also support the WASB proposal, as the proposal reflects an agreement among the stakeholders "most impacted by the outcome of the waiver."

Icelandair comments that "the COVID-19 crisis challenged the industry for its very survival in 2020" and that "the industry continues to operate in survival mode." Icelandair further notes that the COVID-19 crisis affected international markets disproportionately, citing a "75% fall in demand." Icelandair comments that industry only will start to recover when "restrictions and quarantine measures are removed, and consumer confidence can be rebuilt." Icelandair refers to Summer 2021 relief as an "important key to recovery for the next year."

Qatar supports the WASB proposal, which it describes as having a "consistent and transparent approach." While it recommends the WASB proposal, Qatar recognizes that FAA's prior waivers have allowed Qatar to balance appropriately "capacity to support the movement of passengers and cargo and mitigating against the financial risk."

Finnair recommends that FAA adopt the WASB proposal, which Finnair considers is the "most sustainable solution." Reiterating IATA comments, Finnair notes that the WASB proposal "does not work if adopted fragmented or applied in varying degrees." In addition, Finnair notes that the WASB proposal provides the "the global compatibility and consistency needed at both ends of routes of the 197 Slot Coordinated (Level 3) airports globally."

Many commenters preferring an extension of the relief currently provided by the FAA for the Winter 2020/2021 season also recognized the adoption of the WASB recommendation as an acceptable fall-back measure. Star Alliance comments that it considers the WASB proposal,

which adds complexity and “planning uncertainty pertaining to the early return slots in February,” only as a backup option. Aeromexico acknowledges the strengths of both the FAA and WASB proposals but considers the extension of the current waiver more advantageous for all participants and the WASB proposal a riskier option. A4A, United, Delta, SAS, Lufthansa, and several other commenters would accept the WASB recommendation as a fall-back measure, but also seek relief at Level 2 airports. While Delta favors the extension of current relief, it would not object if FAA decides to adopt the WASB recommendations instead, as it would allow for a long-term recovery of the industry and would allow for consistency in slot processes on a global scale. SAS and Lufthansa comment that the WASB proposal is an acceptable fall-back if adopted as one package that applies to Level 2 and Level 3 airports consistently, with Lufthansa noting that it would need to be adopted quickly. SAS adds that the WASB proposal would create more administrative burden for carriers and the FAA than the FAA’s current waiver. SAS notes that some of the drawbacks of the WASB proposal are that granting the justified non-use of slots in an unpredictable environment would require rapid responses from regulators and that airlines would find it very difficult to return slots as early as February when the nature of the Summer 2021 season remains uncertain due to the COVID-19 crisis. Lufthansa notes further that were relief not so urgent, the WASB proposal would be the preferred option as it is a global agreement among key industry constituencies.

Comments Recommending Modifications to the WASB Proposal, If Adopted

If FAA chooses to adopt the WASB proposal, IATA, A4A, United, China Airlines, SAS and others agree that comparable relief should be provided at Level 2 airports similar to the relief FAA provided for the Winter 2020 season. Commenters note that FAA could accomplish this

goal by extending current relief at Level 2 airports or providing relief along the lines of the WASB proposal.

In discussing the WASB proposal, United warns that adopting the WASB proposal will unnecessarily increase uncertainty, complications, and costs. United comments that the only way the WASB's "series of slots" approach would be acceptable is if it also applies to Level 2 infrastructure. United comments that it would be particularly impacted by the absence of relief at Level 2 airports as it has a hub at each of those airports. United describes airports as a "complex machine, requiring careful management of airline operations, runway and airspace capacity, gate access, and terminal congestion in order to optimize efficiency." United notes that in order to ensure appropriate administration of the WASB and this modification, FAA would have to clarify and resolve a number of issues. United adds that, because COVID-19 does not discriminate between Level 2 and Level 3 airports in creating numerous challenges, FAA should not impose different schemes for each set of airports.

CAA supports extending relief for at least the full Summer 2021 scheduling season to Level 2 and slot-controlled airports. CAA prefers the WASB proposal, but it opposes the 50/50 slot utilization threshold and advocates instead for applying the 80/20 threshold. Further, CAA would like the FAA temporarily to allocate underutilized slots to air cargo flights. With regard to uneven transfers, CAA supports "extending waiver provisions to slots newly transferred on an uneven basis without limitations based on date or transfer or any other factor(s)." However, if FAA chooses to limit the waiver's applicability to slots newly transferred on an uneven basis, CAA requests that FAA set a date by which parties to an uneven transfer can complete new transactions, ideally 14 days after publication of a waiver, to "let parties to transfers assimilate the changes in the new waiver and help to ensure the efficient use of aviation infrastructure,

maximizing benefits to the public as in the previous waiver the FAA issued for IATA Winter 2020/2021.”

While ACI-NA and MWAA prefer that FAA discontinue further waivers, both comment that, if FAA adopts the WASB proposal, it should only do so with an 80/20 slot utilization requirement for the entire season. ACI-NA makes this recommendation in light of “the air service profiles that have historically existed at the seven congested airports in the United States, all of which have substantial amounts of domestic activity that is not as affected by government travel advisories.”

The Port Authority believes that the WASB proposal does not meet the needs of all parties and further delays a return to normal conditions by interfering with competitive market forces. The Port Authority also recommends that, if FAA adopts the WASB proposal, it should be modified to apply an 80/20 utilization threshold.

Comments Presenting/Supporting Other Options for Continued Relief

In its comments, Southwest reiterates that it takes no position on the WASB proposal relative to JFK, opposes the WASB proposal relative to DCA and LGA, and suggests extending the FAA’s current relief at DCA and LGA for an additional half season at most, through June 27, 2021. Southwest believes that implementing a full season waiver for Summer 2021 under either proposal for the two domestic slot-controlled airports (DCA, LGA) is “not justified and not in the public interest.”

Southwest comments that “[d]omestic travel has significantly outpaced international travel in terms of flight and passenger activity throughout the pandemic.” It adds that “[w]ith the distribution of COVID-19 vaccines underway and ramping up quickly during the next several months in the U.S., Southwest is hopeful that there will be a meaningful rebound of domestic air

travel.” Southwest comments that “[l]ocking in waivers in December 2020 that will extend ten months out to October 30, 2021 may well be months too long and will have unintended negative effects for consumers and the nation’s economic recovery.” Alternatively, “Southwest instead urges a more tailored approach for the two critical domestic slot-controlled airports whereby the FAA extends the current waiver for one-half the summer season, i.e. until June 27, 2021, and then reevaluates whether or not the waiver should be continued for the rest of the season.” Southwest states that “making unused slots available to airlines on a short-term, *ad hoc* basis or even for a single season (six months at most) is unworkable for Southwest and would not promote any significant new service or competition.”

Although generally opposing further relief, NACA and Allegiant comment that if the FAA decides to grant relief for Summer 2021, the FAA should adopt the “middle ground” approach proposed by Southwest Airlines. Moreover, whereas Spirit prefers a “market-based” solution disfavoring any continued relief, Spirit also recommends the Southwest approach if FAA determines to grant relief for Summer 2021. Spirit recommends that FAA discontinue any further waivers except for international flights to/from a foreign slot-controlled or Level 2 airport. Spirit further comments that FAA should “require carriers to decide which authorizations they will operate at the beginning of the summer season for the full season.”

Comments Opposing Any Continued Relief

ACI-NA, MWAA, NACA, Allegiant, Spirit, Polar Air Cargo, and Exhaustless generally oppose any continued relief.

ACI-NA comments that it “believes neither continuing the current limited waiver scheme nor adopting the [WASB] compromise is in the public interest” because either option “will act to reduce travel options for customers, minimize competition, harm communities that rely on airports for air service and jobs, and impede our country’s economic recovery.” ACI-NA expects

“many more airport operator jobs will be lost in 2021 as the CARES Act and other legislative mandates for staff retention expire,” and does not want to “unnecessarily stifle” potential demand given that “by the time S21 is well underway, vaccine administration is projected to be near levels that could enable significant portions of the economy to re-open.”

ACI-NA suggests that FAA and DOT have been very flexible accommodating air carriers for more than a year and that “further waivers would effectively freeze the pre-COVID baselines for three years.” ACI-NA references the FAA’s prior waivers that state “there may come a point in time in which ongoing waivers to preserve pre-COVID slot holdings could impede the ability of airports and airlines to provide services that may benefit the economy.” ACI-NA strongly believes Summer 2021 is that point in time and market forces should be allowed to shape the “new reality for airlines as well as consumers and the myriad other businesses that support airline and airport operations.”

ACI-NA acknowledges the Winter 2020/2021 waiver “provided a small opportunity for air carriers with the ability and willingness to serve markets on an ad hoc basis,” but contends that “these opportunities do not provide historical rights and essentially allow for existing slot holders to retain their priority access privileges despite squandering these scarce public resources during the pandemic.” ACI-NA notes that while “several carriers noted on the record their willingness and ability to offer air service,” there have been “news reports indicat[ing] some slot holders at Level 3 airports have been increasing their service at other hubs while keeping operations low at the constrained facilities in part due to the protection of the slot waivers.”

In regards to the WASB recommendation, ACI-NA believes the proposal to be even more advantageous for air carriers than other limited waiver schemes already used, due to the combination of the justified non-use of slots provision and the reduced slot utilization threshold of 50/50. ACI-NA believes that “[r]emoving the waivers beginning in S21 will begin the process

of allowing supply to meet demand, thereby serving the public interest through price and service competition” and “remove an impediment to our economic recovery.”

MWAA supports the comments submitted by ACI-NA. MWAA believes a waiver extension for Summer 2021 is unwarranted given the introduction and approval of two Covid-19 vaccines coupled with improved testing capabilities. MWAA does not support the WASB proposal as it “disproportionately favors air carriers not only in the 50/50 utilization requirement but also the myriad of exemptions that are available to excuse compliance with these reduced usage thresholds.”

Allegiant states that it “simply does not make sense” for FAA to extend its waiver until October 30 given the FAA’s inability to predict air travel levels over the next 10 months. Allegiant references the FAA notice’s statement that “the ultimate duration and severity of COVID-19 impacts on passenger demand in the United States and internationally remain unclear even as the distribution of a vaccine is underway in certain parts of the world.” Allegiant asserts that “[t]he dominant DCA and LGA slot holders...should not be permitted to tie up these public assets for the entire 2021 peak season when other carriers have expressed strong interest in utilizing the slots.” With the effects of the vaccine on domestic air travel still uncertain, and for the same reasons that Southwest articulates, Allegiant contends that “FAA should limit further relief at DCA and LGA to the three-month period ending June 27, 2021. Should there be any need to reassess, that process should take place three to four months from now and should include full consideration of public comments.” Allegiant comments that “the existence of a public health crisis does not justify hoarding of public assets” and “[f]ostering an effective and competitive airline industry has never been more critical to the United States and particularly to the economic recovery of the United States than it is today.” Allegiant submits supporting data to

demonstrate the “pro-competitive results that can be expected from ultra-low-cost carrier (ULCC) and low-cost carrier (LCC) use of DCA and LGA slots that would otherwise go unutilized.” Allegiant asserts that “greater ULCC/LCC access to DCA and LGA means more choices and better prices for the traveling public.”

Spirit objects to the Summer 2021 waiver proposal for the same reason it objected to the Winter 2020/2021 waiver, which it states “[w]as unacceptably protective of dominant incumbent carriers; contravened the public interest mandate to which the FAA must adhere; and penalized low-cost and new entrant carriers willing to take on risk and operate new routes and service immediately.” With two vaccines already receiving FDA authorization and two other vaccines potentially to be authorized by the end of January 2021, Spirit believes that “by the end of this Winter season, millions of Americans will have been vaccinated.” Spirit states that “[s]lots are a public resource which will be excessively underutilized should the FAA extend the current waiver or adopt the WASB proposal.” Spirit warns that as long as service levels are below pre-COVID-19 levels, legacy carriers will continue to make the same “certainty and flexibility” arguments.

Spirit believes that if FAA extends its current waiver, FAA should require carriers to decide which authorizations they will operate at the beginning of the Summer 2021 season for the full season. Spirit states that “FAA’s view that the ‘have-not’ carriers, like Spirit, could operate *ad hoc* flights essentially on a month-to-month basis is simply incorrect” and that doing so is “both commercially and operationally impossible.” Additionally, Spirit adds that if FAA grants relief for Summer 2021, the relief should be for a limited time as proposed by Southwest. Spirit similarly opposes the WASB proposal as providing an expanded opportunity for large slot holders at both Level 2 and Level 3 airports to “provide little service, while protecting slots

which will deter smaller carriers from operating.” Additionally, Spirit asserts that reducing the 80/20 rule to a 50/50 rule encourages increased “abuse of the historical system.”

NACA agrees with Spirit and Allegiant and reiterates the points made in their comments.

Opposing further continuations of relief, Polar Air Cargo notes that during the COVID-19 crisis “all-cargo carriers have filled a void,” which “was made possible only by the dramatic draw-down of passenger flights that made slots at slot-restricted airports available on an exceptional basis.” Polar comments that it has not been able “to acquire slots for years at favorable times at certain airports because it is an all-cargo carrier and its requests were relegated to the bottom of the WSG priority list.” Polar therefore seeks “that: (1) it be given the opportunity to provide services that will eventually lead to historic slots; (2) the FAA end the relief on slots at the beginning of the Summer 2021 season; and (3) the FAA does not accept the WASB and IATA proposal granting relief from the WSG guidelines on slot usage through the Summer 2022 season.”

Exhaustless objects to the proposed extension of relief.

Other Comments Received

Spirit urges the FAA to reassess its view that “broader economic/market-based aviation recovery policies and/or change to the regulatory policy landscape for managing slots...are deemed to be outside the scope of this proceeding.” Spirit believes the FAA should remove slot and authorization regimes at Level 3 and Level 2 airports with respect to domestic operations and “allow market forces to rebuild demand.” Spirit asserts that hourly caps “[c]ontinue to serve no purpose during the COVID-19 crisis when airports are operating at a fraction of pre-COVID levels.” Spirit states that “[a]ccordingly, there should be no concern about stability and predictability except for slots or authorizations held by foreign airlines where reciprocal access

to foreign airports could be a concern.” Spirit proposes that “[i]nstead, FAA should place ‘maximum reliance on competitive market forces’ to dictate operations” as Spirit deems is mandated by the Airline Deregulation Act. Spirit believes this to be especially important given “legacy carrier historic abuse of the 80/20 rule.”

NACA comments that protecting the slots and peak-hour flights to help dominant incumbent carriers that choose not to utilize them allows these carriers to keep fares high at public expense, which NACA believes does nothing to promote an effective and competitive airline industry, which is critical to the Nation’s economic recovery. NACA reiterates Spirit’s comments concerning the requirements of the Airline Deregulation Act.

The Port Authority comments that “[i]n considering any further relief, the FAA should ensure that competitive market forces are able to thrive and that the recovery at slot-controlled airports does not remain behind that of other U.S. large hubs.” Additionally, the Port Authority states that “[s]lots are valuable public assets” and “allowing slot holders to retain their portfolios season after season without providing flights for consumers is not in the public interest.” The Port Authority adds that “[m]arket distorting waivers should not persist for years until pre-COVID demand levels return.”

CAA urges FAA to consider a long-term solution. CAA believes FAA should focus on finalizing decisions at least six months in advance of each IATA season, for purposes of “reallocating permanent rights to willing users and providing carriers that have previously obtained and operated non-historic rights priority in the subsequent corresponding season.”

Exhaustless, in objecting to the proposed extension of a waiver, questions the FAA’s legal authority to manage slots and schedules at constrained airports in the United States.

Discussion of Additional Relief for the Summer 2021 Scheduling Season

At the present time, COVID-19 continues to present a highly unusual and unpredictable condition that is beyond the control of carriers. According to data submitted by A4A, passenger demand has weakened dramatically as a result of the recent COVID-19 resurgence and a return to 2019 levels is not expected during the Summer 2021 season.²⁴ The ultimate duration and severity of COVID-19 impacts on passenger demand in the United States and internationally remain unclear even as the distribution of a vaccine is underway in the United States and certain other parts of the world.

The comments received reflect that the WASB proposal generally lacks support among U.S. stakeholders. While there are certain aspects of this approach that may be workable in the United States, the FAA does not believe the WASB proposal, as packaged, is a suitable alternative to the relief FAA has provided on a conditional basis for the Winter 2020/2021 season. Several commenters object to the reduced usage threshold of 50/50 for the duration of the season and note that there may be additional challenges to adopting such an approach in the United States; yet, as a proponent of the WASB proposal, IATA insists that the proposal works only if all three of its central features, including the 50/50 usage threshold, are adopted. The FAA also acknowledges the comments from a variety of stakeholders seeking continued relief at Level 2 airports consistent with any relief to be extended at slot-controlled airports, which was not addressed by the WASB recommendation.

As discussed in the FAA's October 2, 2020 decision (85 FR 63335), the FAA acknowledges the need for slot holders to have some flexibility in decision-making as the severe

²⁴ See December 23, 2020 presentation titled "Tracking the Impacts of COVID-19," included in the comments submitted by A4A.

impacts of the COVID-19 public health emergency continue, and as referenced in multiple comments, the FAA further notes that what starts as a highly unusual and unpredictable condition may eventually become foreseeable. Indeed, many airlines may well be on their way to restructuring their operations in response to a new, albeit volatile, environment. There may come a point in time at which ongoing waivers to preserve pre-COVID slot holdings could impede the ability of airports and airlines to provide services that may benefit the economy. However, based on current information, the FAA does not agree with ACI-NA, MWAA, and others that Summer 2021 is that time. The timeline for vaccine distribution remains uncertain and although FDA has continued to work on authorizing vaccines since the notice was issued, the world has also been forced to contend with multiple rapidly spreading variants of COVID-19. Significant travel restrictions have been extended or reinstated and information concerning the timeline for widespread immunity needed to re-open continues to evolve. For the time being, these circumstances support the grant of a further waiver.

Moreover, under the current circumstances as discussed herein, the FAA is unpersuaded by comments from Southwest, Spirit, and Allegiant asserting that, as domestic-focused airports, DCA and LGA should be subject to a shorter extension, if any relief is to be provided. As United points out, service provided at many Level 2 and slot-controlled airports is dependent in part on demand for international connectivity.

The FAA acknowledges the interests of carriers with limited or no access to historically-constrained airports in the United States and the interests of airports in serving their local communities and rebounding from COVID-19. The FAA agrees that any additional relief from the minimum slot usage requirements at U.S. slot-controlled airports should be tailored narrowly to afford increased access to carriers that are willing and able to operate at these airports, even if

on an *ad hoc* basis until such time as slots revert to the FAA for permanent reallocation under the governing rules and regulations in effect at each slot-controlled airport in the United States.

The current waiver policy was developed based on a balancing of various conflicting stakeholder interests to the extent permissible and within the bounds of the current slot rules and schedule policies in effect in the United States. None of the comments supporting alternative proposals have persuaded the FAA that this policy should be supplanted or discontinued at this juncture of the ongoing COVID-19 emergency.

The FAA to date has accommodated all *ad hoc* requests for operations (passenger and cargo) under the current waiver based on continued depressed demand and associated returns before the four-week deadline. The FAA has gained real-world experience administering the four-week return requirement for carriers seeking a waiver for the Winter 2020/2021 scheduling season and the confirmation of *ad hoc* requests for slots or flights during this season. Generally, after the first weeks the Winter 2020/2021 waiver was in effect, the majority of slot and schedule returns have been made in at least one-month increments. By early December 2020, sufficient returns had been made to allow the FAA to accommodate requests for *ad hoc* flights through the end of the season on March 27, 2021. Most of the *ad hoc* increases have been by domestic and foreign air carriers for cargo operations at JFK and by domestic carriers for passenger operations at EWR. In addition, cargo and passenger carriers at several airports requested and were approved for *ad hoc* retiming of some flights previously approved for different times. Some of those carriers indicated these changes are intended to reflect temporary adjustment to their network operations related to COVID-19 impacts. Other requests for *ad hoc* slots or flight approval have been primarily requests for restoration of short-term flights that were previously returned and additional flights often identified as repatriation or special cargo flights. Despite

significant returns, the FAA has not received any requests for *ad hoc* flights at DCA or LGA beyond limited inquiries from carriers seeking permanent slot allocations.

The FAA agrees with A4A that the waiver “is tailored narrowly with a series of conditions to afford increased access to carriers that are willing and able to operate on an *ad hoc* basis at airports while demand is dramatically reduced.” The FAA acknowledges the interests of low cost carriers, other operators, and airports, in providing increased access to these historically-constrained facilities on a more permanent basis with historic rights to enable viable operations, as well as the interests of airports in enabling air travel to rebound once passenger demand begins to increase. However, this waiver proceeding is intended to provide relief to slot-holders at slot-controlled airports as well as operators at Level 2 airports in the United States during an unprecedented global health emergency impacting demand for air travel. This waiver proceeding is also intended to provide necessary stability and flexibility to those entities. Broader slot policy changes concerning airport designations, scheduling limits, and the re-allocation of these public assets are considered to be outside the scope of this waiver proceeding.

Moreover, while the FAA allows for the possibility that passenger demand could begin to return as vaccine distribution continues, no data is available indicating that a sudden, significant increase in passenger demand is expected in the near term. IATA data demonstrates “a 66% fall in passenger demand,” while “[i]nternational markets were hit disproportionately hard with a 75% fall in demand.” IATA further “predicts that losses will continue into 2021, with a net loss of \$118.5 billion expected for 2020 (deeper than the \$84.3 billion forecast in June) and in 2021, a net loss of \$38.7 billion is expected (deeper than the \$15.8 billion forecast in June [sic].” In the event that passenger demand does begin to rebound during the Summer 2021 season, the FAA expects that carriers will eagerly resume operations to meet the demand.

While CAA prefers removing, or at a minimum, amending the condition placed on uneven transfers, the FAA has determined to retain this condition without change. Removing or revising this condition would undermine the FAA's stated goals underpinning this waiver, which seek to balance competing stakeholder interests, including the interests of carriers seeking greater access to historically-constrained airports. Carriers may still opt to engage in uneven transfers, but in doing so, would not be eligible for a waiver of the minimum usage requirement for the associated slots for the Summer 2021 season.

Based on the comments received in this proceeding, the FAA has determined to extend the relief provided for the Winter 2020/2021 scheduling season through October 30, 2021, subject to the following additional information and modifications:

- In response to comments from the Port Authority, CAA, and others, the FAA has determined to apply a standard similar to paragraph 1.4 of the WASB proposal at all slot-controlled and designated IATA Level 2 airports in the United States. Slots or schedules operated as approved on a non-historic basis in Summer 2021 will be given priority over new demands for the same timings in the next equivalent season (*i.e.*, Summer 2022) for use on a non-historic basis, subject to capacity availability and consistent with established rules and policies in effect in the United States. This priority would apply to slot or schedule requests for Summer 2022, which are comparable in timing, frequency, and duration to the non-historic *ad hoc* approvals made by the FAA for Summer 2021. This priority does not affect the historic precedence or priority of slot holders and carriers with schedule approvals, respectively, which meet the conditions of the waiver during Summer 2021 and seek to resume operating in Summer 2022. The FAA may consider this priority in the event that slots with historic precedence become available for

permanent allocation by the FAA. Foreign air carriers seeking priority under this provision will be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature.

- Multiple stakeholders have commented that the four-week return condition does not provide an adequate incentive to invest in new operations on a non-historic basis. In the FAA’s October 2, 2020 decision (85 FR 63335), the FAA strongly encouraged carriers to return slots voluntarily as soon as possible and for as long a period as possible during the Winter 2020/2021 season so that other airlines able to add or increase operations on an *ad hoc* basis may do so with increased certainty. The FAA recognizes that other jurisdictions may adopt the WASB proposal, which includes a provision for returning full-season slots for which the carrier seeks full-season alleviation by February 8, 2021. Although the FAA is extending the four-week rolling return policy generally consistent with the Winter 2020/2021 waiver, any carrier returning full-season slots or schedule approvals at an airport outside the United States and associated with a route to the United States will generally be expected to similarly return the complementary full-season U.S. slot or schedule approval to the FAA for re-allocation on a non-historic or *ad hoc* basis.
- Based on comments submitted by multiple stakeholders, including A4A and Delta, as well as informal inquiries from multiple carriers, the FAA has determined to modify the “extraordinary circumstances” exception, as set forth further in this section, in recognition of a broader range of governmental actions that could impact a carrier’s ability to comply with the conditions that trigger the waiver.

Therefore, the FAA has determined to make available to slot holders at DCA, JFK, and LGA a limited waiver from the minimum slot usage requirements due to continuing COVID-19 impacts through October 30, 2021, subject to the following conditions:²⁵

- (1) All slots not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these slots on an *ad hoc* basis without historic precedence. Compliance with this condition is required for operations scheduled from March 28, 2021 through October 30, 2021; therefore, carriers should begin notifying the FAA of returns on February 26, 2021.²⁶ Slots operated as approved on a non-historic basis in Summer 2021 will be given priority over new demands for the same timings in the next equivalent season (Summer 2022) for use on a non-historic basis, subject to capacity availability and consistent with established rules and policies in effect in the United States. Foreign air carriers seeking priority under this provision will be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature.
- (2) The waiver does not apply to slots newly allocated for initial use during the Summer 2021 season. New allocations meeting minimum usage requirements remain eligible for historic precedence. The waiver does not apply to historic in-kind slots within any 30-minute or 60-minute time period, as applicable, in which a carrier seeks and

²⁵ All conditions of the relief, with limited exception for new policies iterated in this policy statement (*e.g.*, the priority associated with *ad hoc* operations), generally remain in effect uninterrupted from the current waiver in effect for Winter 2020/2021. For purposes of Summer 2021 relief, compliance with the four-week return condition is required beginning on February 26, 2021.

²⁶ Due to the start of the Summer 2021 season beginning on Sunday, March 28, 2021, the FAA seeks compliance with the four-week return condition beginning on February 26, 2021, the business day immediately preceding the four-week return deadline for March 28 operations.

obtains a similar new allocation (*i.e.*, arrival or departure, air carrier or commuter, if applicable).

(3) The waiver does not apply to slots newly transferred on an uneven basis (*i.e.*, via one-way slot transaction/lease) after October 15, 2020, for the duration of the transfer.²⁷

Slots transferred prior to this date may benefit from the waiver if all other conditions are met. Slots granted historic precedence for subsequent seasons based on this relief are not eligible for transfer if the slot holder ceases all operations at the airport.

Additionally, as modified, an exception may be granted based on any government restriction that prevents or severely restricts travel to specific airports, destinations (including intermediate points) or countries for which the slot was held. This exception applies under extraordinary circumstances only in which a carrier is able to demonstrate that the ability to operate a particular flight or comply with the conditions of the proposed waiver is prevented or severely restricted due to an unpredictable official governmental action related to COVID-19.

Official government actions that may qualify for this exception, include—

- Government travel restrictions based on nationality, closed borders, government advisories related to COVID-19 that warn against all but essential travel, or complete bans on flights from/to certain countries or geographic areas.
- Government restrictions related to COVID-19 on the maximum number of arriving or departing passengers on a specific flight or through a specific airport.
- Government restrictions on movement or quarantine/isolation measures within the country or region where the airport or destination (including intermediate points) is.

²⁷ As previously explained, the FAA has determined not to revise this condition to include a buffer period for new transfers to be completed and still benefit from this waiver. Therefore, this policy will remain in effect continuously from the initial effective date of October 16, 2020.

- Government-imposed closure of businesses essential to support aviation activities (*e.g.*, closure of hotels).
- Governmental restrictions on airline crew, including sudden bans on entry or crew stranded in unexpected locations due to quarantine measures.

This exception is being administered by the FAA in coordination with the Office of the Secretary of Transportation (OST).

Moreover, the FAA has determined to extend through October 30, 2021 its COVID-19-related policy for prioritizing flights canceled at designated IATA Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the next corresponding season, subject to the following conditions:

- (1) All schedules as initially submitted by carriers and approved by the FAA and not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these times on an *ad hoc* basis without historic precedence. Schedules operated as approved on an *ad hoc* basis in Summer 2021 will be given priority over new demands for the same timings in the next equivalent season (Summer 2022) for use on an *ad hoc* basis, subject to capacity availability and consistent with established rules and policies in effect in the United States. Foreign air carriers seeking priority under this provision will be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature.
- (2) The priority for FAA schedules approved for Summer 2021 does not apply to net-newly approved operations for initial use during the Summer 2021 season. New approved times

would remain eligible for priority consideration in Summer 2022 if actually operated in Summer 2021 according to established processes.

Consistent with the policy for slot-controlled airports, limited exceptions may be granted from either or both of these conditions at Level 2 airports under extraordinary circumstances due to any government restriction that prevents or severely restricts travel to specific airports, destinations (including intermediate points), or countries for which the slot was held, as discussed previously with respect to slot-controlled airports. If the exception is determined not to apply, carriers are expected to meet the conditions for relief or operate consistent with standard expectations for the Level 2 environment.

The FAA believes the limited, conditional relief described in this waiver provides carriers with flexibility during an unprecedented and incomparable global emergency, supports the long-term viability of carrier operations at slot-controlled airports while also supporting economic recovery, and reduces the potential to suppress flight operations for which demand exists. The FAA believes an extension of the current waiver would also be generally consistent with the approach taken by other jurisdictions to date.

The FAA acknowledges that continuing limited, conditional relief does not fully resolve outstanding concerns about making slots available with historic precedence for permanent allocation to carriers seeking access at these airports during the ongoing emergency. While permanent slot reallocation measures may be outside the scope of this waiver proceeding, the FAA continues to believe that any additional relief from the minimum slot usage requirements at U.S. slot-controlled airports should be tailored narrowly to afford increased access to carriers that are willing and able to operate at these airports, even if on an *ad hoc* basis until such time as

slots revert to the FAA for reallocation under the governing rules and regulations in effect at each slot-controlled airport in the United States.

Discussion of Additional Issues Raised in Comments

Comments submitted in this proceeding continue to reflect widely diverging views about the continuation of waivers due to the COVID-19 public health emergency and broader considerations concerning industry recovery policies.

The FAA reiterates that operators should not assume that further relief on the basis of COVID-19 will be forthcoming beyond the end of the Summer 2021 scheduling season. The FAA expects that this additional full-season extension of conditional relief will provide adequate notice and time for carriers at U.S. slot-controlled and Level 2 airports to make schedule decisions, market flights, and plan for aircraft utilization, crew, and facilities before a possible return to standard slot management and schedule facilitation processes might occur.

The FAA reserves judgment at this time with respect to any forthcoming petitions for additional relief. Rendering a decision for the Winter 2021/2022 season or taking action to alter the established rules and policies for slot management and schedule facilitation in the United States is not within the scope of this action. Any future requests will be evaluated on their merits, based on the facts and circumstances available at that time and consistent with the established standard for considering waivers from minimum slot usage requirements.

Nothing in this decision binds the FAA to treat Level 2 and slot-controlled airports similarly in future decisions on slot usage and prioritization relief when a highly unusual and unpredictable condition occurs. The FAA continues to believe that while there may be practical similarities between Level 2 and slot-controlled airports, there remain fundamental regulatory differences between the two constructs that can justify differing relief.

Moreover, to the extent that some commenters seek to supersede this proceeding entirely by encouraging the Federal Government to establish broader economic/market-based aviation industry recovery policies and/or change the regulatory policy landscape for managing slots and schedule facilitation in the United States, such comments are deemed to be outside the scope of this proceeding.

Decision

The FAA has determined to extend through October 30, 2021 the COVID-19-related limited, conditional waiver of the minimum slot usage requirement at JFK, LGA, and DCA that the FAA has already made available through March 27, 2021, subject to the conditions and terms described herein. Similarly, the FAA has determined to extend through October 30, 2021 its COVID-19-related policy for prioritizing flights canceled or otherwise not operated as originally intended at designated IATA Level 2 airports in the United States, on a conditional basis as described herein, for purposes of establishing a carrier's operational baseline in the next corresponding season.

COVID-19 continues at this time to present a highly unusual and unpredictable condition that is beyond the control of carriers. The continuing impacts of COVID-19 on commercial aviation are dramatic and extraordinary, with a historic decrease in passenger demand. The ultimate duration and severity of COVID-19 impacts on passenger demand in the United States and internationally remain unclear. Even after the outbreak is contained, impacts on passenger demand for air travel are likely to continue for some time. The FAA has therefore concluded that an extension of relief through October 30, 2021, with conditions, is appropriate to provide carriers with flexibility 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. In light of

the evolving and extraordinary circumstances related to COVID-19 worldwide, continuing relief for this additional period on a conditional basis is reasonable to mitigate the impacts on demand for air travel resulting from the spread of COVID-19 worldwide.

While the FAA is providing continued, albeit conditional, relief through the Summer 2021 season, carriers should not assume that further relief will be forthcoming beyond the end of the Summer 2021 scheduling season. The FAA will review the facts and circumstances at the time of any future waiver requests; however, the FAA will also continue to consider the importance of providing access to the Nation's congested airports where there is capacity available. Slots are a scarce resource. Slot usage waivers accordingly are reserved for extraordinary circumstances. Even during an extraordinary period such as the COVID-19 public health emergency, carriers should utilize their slots and operating authorizations efficiently, in accordance with established rules and policy, or relinquish those slots and authorizations to the FAA so that other carriers willing and able to make use of them can do so. The FAA cautions all carriers against altering plans for usage at slot-controlled and Level 2 airports in reliance upon a presumption that additional relief will be forthcoming, which is a decision on which the FAA has not rendered a judgment at this time. The presumption that carriers should apply in preparing for operations in future scheduling seasons is compliance with standard slot management and schedule facilitation processes.

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. The FAA acknowledges that some foreign jurisdictions may opt to adopt more strict provisions in response to this policy than they had

otherwise planned. However, as previously explained, the FAA believes the conditions associated with the relief provided in this policy are necessary to strike a balance between competing interests of incumbent carriers and those carriers seeking new or increased access at these historically-constrained airports, as well as to ensure the relief is appropriately tailored to reduce the potential to suppress flight operations for which demand exists. 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.

The FAA urges carriers to return slots and approved schedules voluntarily as soon as possible and for as long a period as possible during the Summer 2021 season, so that other airlines seeking operations on an *ad hoc* basis may do so with increased certainty. The rolling four-week return deadline is only a minimum requirement. The FAA anticipates that carriers may often be able to provide notice of cancellations significantly further in advance than four weeks and, in some cases, may be able to return the full season consistent with return policies that may be in effect on the other end of a route to the United States. In both the Level 2 and slot-controlled environments, the FAA seeks the assistance of all carriers to continue to work with the FAA to ensure the national airspace system capacity is not underutilized during the COVID-19 public health emergency.

Carriers should advise the FAA Slot Administration Office of COVID-19-related cancellations and return the slots to the FAA by email to *7-awa-slotadmin@faa.gov* to obtain relief. The information provided should 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 cancellations directly relate to

the COVID-19 public health emergency. Carriers providing insufficient information to identify clearly slots that will not be operated at DCA, JFK, or LGA will not be granted relief from the applicable minimum usage requirements. Carriers providing insufficient information to identify clearly changes or cancellations from previously approved schedules at EWR, LAX, ORD, or SFO will not be provided priority for future seasons. Requests for exception from the conditions set forth in this waiver should be submitted with all pertinent supporting information for consideration by email to ScheduleFiling@dot.gov as well as to 7-awa-slotadmin@faa.gov.

Issued in Washington, DC on January 13, 2021.

Lorelei Dinges Peter
Assistant Chief Counsel for Regulations

Virginia T. Boyle
Acting Vice President, System Operations Services