

**4910-13**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**[Docket No. FAA-2020-0862]**

**COVID-19 Related Relief Concerning Operations 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 Winter 2021/2022 Scheduling Season**

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

**ACTION:** Extension of limited, conditional waiver of the minimum slot usage requirement for international operations only.

**SUMMARY:** The FAA has determined to extend through March 26, 2022, the Coronavirus (COVID-19)-related limited, conditional 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 October 30, 2021, for international operations only. Similarly, the FAA has determined to extend through March 26, 2022, its COVID-19-related limited, conditional 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, for international operations only. 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 limited to slots and approved operating times used by any carrier for international operations only, through March 26, 2022, and will be subject to the same terms and conditions, with minor

modifications, that the FAA has already applied to the relief that remains available through October 30, 2021.

**DATES:** The relief announced in this notice is available for the Winter 2021/2022 scheduling season, which runs from October 31, 2021, through March 26, 2022. Compliance with the rolling four-week return condition on the relief announced in this notice is required beginning on October 25, 2021. Compliance with all other conditions remains in effect without change from prior seasons.

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#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On March 16, 2020, the FAA granted a limited waiver of the minimum slot usage requirements<sup>1</sup> to carriers operating at all slot-controlled airports in the United States (DCA, JFK, and LGA)<sup>2</sup> and related relief to carriers operating at designated IATA Level 2 airports in the United States (EWR, LAX, ORD, SFO) due to the extraordinary impacts on the demand for air travel resulting from the COVID-19 pandemic.<sup>3</sup> Since the initial slot usage waiver and related relief was provided, the FAA has taken action to extend the relief provided on three occasions

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<sup>1</sup> 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).

<sup>2</sup> 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.

<sup>3</sup> Notice of Limited Waiver of the Slot Usage Requirement, 85 FR 15018 (Mar. 16, 2020).

subject to certain substantive changes, including the addition of conditions, as the COVID-19 situation continued to evolve.<sup>4</sup> The most recent limited, conditional extension of COVID-19-related relief was issued by the FAA on January 13, 2021, and is due to expire on October 31, 2021.<sup>5</sup>

The FAA issued a notice on September 16, 2021, inviting comment on its proposal to extend through March 26, 2022, the COVID-19-related limited, conditional waiver of the minimum slot usage requirement at United States (U.S.) slot controlled and IATA Level 2 airports that the FAA has already made available through October 30, 2021, for international operations only.<sup>6</sup> In its proposal the FAA explained it would generally evaluate any request for relief from U.S. carriers for the Winter 2021/2022 scheduling season based on historical levels of operations to foreign points as demonstrated in published schedules and that domestic carriers seeking relief for a particular operation under the waiver will need to provide the FAA, if not readily apparent from FAA records and historic published schedule data, alternative supplemental information that predates FAA's proposal to demonstrate intent to use a slot or approved operating time for an international destination. The notice explained that international operations eligible for a waiver at U.S. slot-controlled and IATA Level 2 airports under FAA's proposal would be subject to all of the same conditions and policies already in effect, with minor modifications.

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<sup>4</sup> Notice of Extension of Limited Waiver of the Minimum Slot Usage Requirement, 85 FR 21500 (Apr. 17, 2020); Extension of Limited Waiver of the Minimum Slot Usage Requirement, 85 FR 63335 (Oct. 7, 2020); and FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862-0302).

<sup>5</sup> FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862-0302).

<sup>6</sup> Notice of proposed extension of a limited, conditional waiver of the minimum slot usage requirement for all international operations, 86 FR 52114 (Sep. 20, 2021).

In addition, the FAA invited comment and supporting information to demonstrate why the FAA should or should not finalize its proposed decision. In particular, U.S. carriers were invited to provide individualized responses to several questions concerning FAA’s proposal and the continuing need for relief due to COVID-19.

### **Current COVID-19 Situation**

Since FAA’s January 13, 2021, policy statement granting a limited, conditional extension of COVID-19-related relief at slot-controlled airports and IATA Level 2 airports in the United States, COVID-19 has continued to cause disruption globally and the timeline for recovery from this global pandemic remains uncertain. The World Health Organization (WHO) reports COVID-19 cases in more than 200 countries, areas, and territories worldwide.<sup>7</sup> For the week ending October 10, 2021, the WHO reported 2.8 million new COVID-19 cases and just over 46,000 new deaths, bringing the cumulative total to more than 237 million reported COVID-19 cases and more than 4.8 million deaths globally since the start of the COVID-19 pandemic.<sup>8</sup>

The WHO reports that it is monitoring multiple variants globally; currently the WHO has classified four different variants as “variants of concern” and two different variants as “variants of interest.”<sup>9</sup> The Center for Disease Control (CDC) is monitoring all variants of COVID-19 in the United States.<sup>10</sup> The CDC has listed the Delta variant as a variant of concern and warns that it spreads more easily and quickly and may cause more severe cases than the other variants.<sup>11</sup>

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<sup>7</sup> <https://covid19.who.int/table>

<sup>8</sup> COVID-19 weekly epidemiological update, October 13, 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.

<sup>9</sup> <https://www.who.int/en/activities/tracking-SARS-CoV-2-variants/>

<sup>10</sup> Center for Disease Control (CDC), About Variants of the Virus that Causes COVID-19, available at: <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html>

<sup>11</sup> *Id.*

However, the CDC reports that so far, studies suggest that the current Food and Drug Administration (FDA)-approved or authorized vaccines do work against the circulating variants.<sup>12</sup>

On January 21, 2021, President Biden announced the National Strategy for the COVID-19 Response and Pandemic Preparedness, a national strategy to beat the COVID-19 pandemic.<sup>13</sup> The strategy is a comprehensive plan that starts with restoring public trust and mounting an aggressive, safe, and effective vaccination campaign while continuing with the steps that stop the spread like expanded masking, testing, and social distancing. On September 9, 2021, President Biden announced a six-pronged approach to expand vaccinations, provide booster shots, keep schools safely open, increase testing and masking, protect the economic recovery, and improve care for those with COVID-19.<sup>14</sup>

Currently three COVID-19 vaccines have been authorized for emergency use or approved by the FDA.<sup>15</sup> As of October 17, 2021, 57 percent of Americans are fully vaccinated and 65.9 percent of Americans have received at least one dose.<sup>16</sup> Increased rates of vaccination in the U.S., along with other measures to stop the spread have resulted in an overall decline of the U.S. COVID-19 infection rate since the previous COVID-19 waiver proceeding. However, cases increased again following the U.S. reaching its lowest rates of infection experienced since the week of March 16, 2020 (79,358 confirmed new cases for the week of June 14, 2021, reflected

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<sup>12</sup> *Id.* See also <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html>

<sup>13</sup> <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>

<sup>14</sup> President Biden's COVID-19 Plan | The White House

<sup>15</sup> <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>

<sup>16</sup> CDC, COVID-19 Vaccinations in the United States, updated October 17, 2021, available at: <https://covid.cdc.gov/covid-data-tracker/#vaccinations>

the lowest rate of infection since the week of March, 16, 2020).<sup>17</sup> When the FAA extended COVID-19-related relief on January 13, 2021, the number of confirmed new cases of COVID-19 in the U.S. for the week of January 11, 2021, based on WHO data, was 1,580,016.<sup>18</sup> For the week of October 3, 2021, which is the most recent week for which data is available, the WHO reports 653,837 confirmed new cases in the United States.<sup>19</sup>

The U.S. is attempting to distribute vaccines globally to help vaccination numbers improve.<sup>20</sup> On August 18, 2021, President Biden announced that in the months of June and July the United States had donated 100 million doses and that in the coming months of fall and early winter another 100 million boosters and 200 million additional doses will be donated to other countries.<sup>21</sup>

The United States is moving to a system of vaccine verification to facilitate international travel to/from the United States. There remain a number of travel advisories and foreign government restrictions that are affecting the demand and operational flexibility of U.S. and foreign carriers that serve Level 2 and Level 3 airports from some international destinations.

### **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 FAA's initial decision

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<sup>17</sup> <https://covid19.who.int/region/amro/country/us>

<sup>18</sup> FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season. (Docket No. FAA-2020-0862-0302). *See also* <https://covid19.who.int/region/amro/country/us>

<sup>19</sup> COVID-19 weekly epidemiological update, October 13, 2021, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports> *See also* <https://covid19.who.int/region/amro/country/us>

<sup>20</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/03/statement-by-president-joe-biden-on-global-vaccine-distribution/>

<sup>21</sup> <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/18/remarks-by-president-biden-on-fighting-the-covid-19-pandemic-2/>

granting relief due to COVID-19 impacts.<sup>22</sup> At JFK and LGA, each slot must be used at least 80 percent of the time.<sup>23</sup> 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 beyond the control of the slot-holding air carrier and which affects carrier operations for a period of five consecutive days or more.<sup>24</sup>

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.<sup>25</sup> 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.<sup>26</sup>

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 cancelations 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 comments on the proposal from 32 stakeholders and other persons including IATA, Airlines for America (A4A), the Cargo Airline Association (CAA), Airports

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<sup>22</sup> See 85 FR 15018 (Mar. 16, 2020).

<sup>23</sup> 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).

<sup>24</sup> 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.

<sup>25</sup> See 14 CFR 93.227(a).

<sup>26</sup> See 14 CFR 93.227(j).

Council International-North America (ACI-NA), Port Authority of New York and New Jersey (PANYNJ), Metropolitan Washington Airports Authority (MWAA), Exhaustless Inc. (Exhaustless), 4 U.S. carriers, 12 foreign carriers, 7 individuals, and 2 anonymous commenters.<sup>27</sup> A majority of commenters including IATA, A4A, and all commenting U.S. and foreign carriers except for CAA, generally support FAA’s proposal though some commenting carriers have requested certain modifications. In addition, the FAA received one clarifying question from PaxEx.Aero.

#### *Commenters Who Support FAA’s Proposal*

MWAA, EVA Air, Etihad Airways, Lot Polish Airlines, China Airlines, Singapore Airlines, Aer Lingus, Air New Zealand, British Airways, and Emirates commented supporting FAA’s proposal. MWAA supports “the FAA’s decision to limit the continuation of the conditional waiver to international operations” and that the “restoration of the 80 percent slot utilization requirement for domestic operations recognizes that domestic air travel is rebounding.” The foreign carriers that commented in support of FAA’s proposal generally stated that international demand for air travel has not yet recovered from COVID-19-related impacts and that FAA’s proposal provides the airline community needed flexibility and supports the long-term viability of airlines operations and networks.

#### *Commenters Who Support FAA’s Proposal with Requested Modifications*

Avianca Airlines, Delta Air Lines (Delta), A4A, IATA, ACI-NA, Iberia Airlines, Tap Air Portugal, PANYNJ, Spirit Airlines (Spirit), United Airlines (United), Southwest Airlines (Southwest), and one individual support FAA’s proposal but made additional requests or comments. IATA states that it agrees with the FAA that “the industry has not seen any

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<sup>27</sup> The FAA notes that two carriers submitted comments marked as containing proprietary information (PROPIN). The information contained within these comments 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.



meaningful recovery from the circumstances it faced when the FAA last provided a waiver for the Summer 2021 season.” IATA believes that this “combined with the late notice of this relief so close to season start, warrants the full, conditional waiver to be extended for the Winter 2021-22 season.” However, IATA states that it “believes that the WASB offers the most sustainable solution.”<sup>28</sup> In addition IATA asks the FAA to reconsider the proposed return date of October 4, 2021, and to instead set the return date “two weeks after the publication of the final order in the Federal Register.”

A4A supports FAA’s proposal stating that it provides “operational certainty”, “simplicity”, and “fairness and equity.” A4A submitted additional requests including that FAA “maintain a reciprocity requirement”, “incorporate flexibility into slot return rules to allow the initial slot return deadline to be 2 weeks from the Final FR publication”, “clarify that the historic baseline is the Winter 2019 season”, and “support international slot usage”. A4A requests the FAA “permit a two-week slot return notice requirement for the first two weeks after a final notice is issued and thereafter revert to a four week slot return notice requirement” given the timing of the final notice. A4A also asks the FAA to “clarify that the Historic Baseline is the Winter 2019 Season.” Specifically, A4A asks that the FAA to “permit carriers to provide evidence that would demonstrate the W19 schedule and the historical international slot times to account for the many adjustments that must be made over time.” In addition A4A asks that the FAA not use the Official Airline Guide data published at the time the final notice is issued because “the U.S. is one of the last countries to finalize a W21 policy and carriers have already taken action to adjust some published schedules based on previous slot return deadlines imposed by foreign jurisdictions.” Finally, A4A asks that the FAA support international slot usage by

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<sup>28</sup> A summary of the Worldwide Airport Slot Board (WASB) proposal for Winter 2021/2022 was included in an annex to IATA’s June 4, 2021 petition, which has been placed in the docket for this proceeding.

giving carriers “the ability to utilize one-half of a historic international slot pair and waive the other half to maximize utilization of planned operations.”

Delta supports the FAA’s proposal stating that “COVID-19 continues to cause disruption in global air travel and the timeline for recovery remains fluid and unpredictable.” Noting that “in contrast to the resurgence of domestic travel we are seeing in the United States, the global pandemic continues to depress international air travel demand – necessitating the extension of the existing slot waiver framework for international flying.” While Delta fully supports the Department’s proposal in principle, Delta asks “the Department to modify the initial October 4, 2021 slot return deadline proposed in the notice to avoid compliance issues.” Specifically, Delta asks for a two-week extension of the four-week advance slot return condition of the waiver. Finally, Delta provided responses to the individualized questions posed to carriers in FAA’s proposal.

United commented that it adopts and incorporates by reference the comments filed by A4A as well as supports and endorses IATA’s comments supporting the full season extension of FAA’s existing conditional waiver. United supports FAA’s proposal stating that “the proposed COVID-19 Relief Notice continues to recognize the importance to international commerce of granting reciprocal waivers and the significance of affording parallel relief to Level 2 and Level 3 airports and promotes certainty, stability, and fairness across the industry.” In addition, United urges the FAA “to not grant slot historic status/historic precedence at Level 3 airports or priority consideration at Level 2 airports to ad hoc movements allocated during the Winter 2020 season unless the airport is below the declared capacity limit at the time of the ad hoc movement.” Moreover, United disagrees that COVID-19 is causing structural and operational changes to the airline industry and asserts that “the pandemic is not the new normal.” Finally, United provided responses to the individualized questions posed to carriers in FAA’s proposal.

Spirit comments that it supports FAA’s proposal to end the “limited, conditional waiver of the minimum slot usage requirement for domestic operations.” Spirit notes that it does not oppose continuing the waiver “for an additional season for international operations.” However, Spirit states that it “assumes the FAA will continue to approve operations by carriers that have been operating with otherwise unused international slots and authorizations during the current season to continue using those operating times if the holder does not reinstate service for the Winter 21-22 season.” In addition, Spirit states that it “supports the FAA’s plan to require domestic carriers to establish that specific slot/authorizations were in fact used for international operations pre-pandemic.” Spirit asks the FAA “to remain vigilant to prevent large domestic slot holders to use loopholes to retain slots/authorizations using a range of anticompetitive tricks.”

Southwest supports FAA’s proposal stating that “recognizing that numerous COVID-related circumstances continue to inhibit international air travel uniquely, the DOT has wisely limited its proposed waiver of slot usage requirements to international operations.” In addition, Southwest believes that FAA’s decision not to grant further COVID-related usage waivers for domestic operations will increase competition which will benefit “travelers, airports, communities, and the national economy.”

ACI-NA is supportive of FAA’s proposal to “restore slot utilization requirements for domestic flight beginning in W21.” ACI-NA points out that the FAA has stated that “there may come a point in time 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” and ACI-NA believes “the end of W21 is that point in time.”

PANYNJ supports FAA’s decision to extend slot usage waivers for international operations only for the Winter 2021/2022 Scheduling Season. PANYNJ states that the decision to enforce utilization requirements for domestic flight “reflects the strong recovery in domestic

demand and will serve the public interest by ensuring valuable airport infrastructure is used to deliver crucial air service to our customers and help drive our region's economic recovery.” PANYNJ requests “greater visibility and information relative to returned capacity and reallocation under the usage waivers.” In addition, PANYNJ asserts that “carriers that have clearly and publicly communicated the indefinite discontinuation of operations at capacity constrained airports should not be waiver eligible without clear documentation to both FAA and the airport operator of plans to recommence operations within a reasonable timeframe” and otherwise PANYNJ recommends “the slots be returned to the pool for re-allocation.”

Avianca Airlines supports FAA's proposal however requests more flexibility in the usage threshold, such as a “50/50” minimum usage requirement, for slots newly allocated for W21. Iberia Airlines supports FAA's proposal and asserts that “the recovery period has not yet arrived and that we are still in a period of uncertainty and waiting for demand.” In addition, Iberia requests the reciprocity as a condition be removed. Tap Air Portugal supports FAA's proposal but notes that it will “have to fight for the reciprocity in the EU, to have real benefits from the relief.”

#### *Commenters Who Oppose the FAA's Proposal*

CAA, seven individuals, two anonymous commenters, and Exhaustless oppose FAA's proposal to continue COVID-19-related relief for international operations only.

CAA opposes FAA's proposal to extend relief from minimum slot usage requirement for international operations. CAA submits that it is “in the public interest for the FAA to require carriers that cannot use slots or timings in Winter 2021/2022 Season to return them to the FAA permanently.” CAA states that it is “fully aware of the daunting operating challenges facing both airports and airlines in an environment poisoned by COVID” and that “airlines should not be penalized for their temporary inability to fully utilize their slots and other operating rights as a

result of government travel restrictions and drastically reduced passenger demand caused by the COVID pandemic.” However, CAA believes that “the high demand for air cargo and the location and time sensitive nature of the demand for e-commerce air cargo deliveries mean that air cargo services need the opportunity to secure slots and authorizations at peak times with historic rights to close in airports in the northeast as ever before.” CAA states that “the *ad hoc* slots and authorizations that waivers have made available do not substitute for slots or approved operating times that have a greater likelihood of securing long-term access for association members.” In addition, due to the continued national emergency and the roll of all-cargo industry, CAA asserts that “the slots or authorizations at Level 2 airports not needed by passenger airlines should be available for temporary allocation to cargo airlines rather than being un- or underused.” Moreover, CAA urges the FAA to consider “a longer-term solution to avoid serial, last-minute renewals of slot use waivers in the future” and “begin working toward a long-term plan on rights reallocation to account for the need for expansions and retiming of all-cargo services as an important component of competition.” Finally, CAA asks that if the FAA extends a limited waiver, that the FAA “clearly define the basis any U.S. carrier might use to claim a waiver; describe how it will evaluate whether any individual slot or authorization will qualify for a waiver; and permit further public comment on those criteria.”

The individual and anonymous commenters believe that demand for domestic air travel has not recovered to a point that warrants discontinuing relief and that FAA’s proposal will result in unnecessary flights that would be detrimental from an environmental perspective. However, one individual commenter states that they “oppose continued slot usage relief” because “gate space is a scarce resource and the FAA should make every effort to utilize this space to maximize productivity and encourage economic recovery with airlines who believe they can successfully repurpose this space.” This individual commenter states that they “favor JetBlue’s

opinion that the DOT/FAA enable a case-by-case evaluation for limited exemptions based on extreme circumstances such as boarder [sic] closure or conditions of entry that represent de facto border closure.”

Exhaustless opposes FAA’s proposal as unlawful, contending the FAA has no authority to administer runway slots or manage schedules and that “[t]he only decision before the FAA is whether to voluntarily continue to violate the law or to extricate itself from this regulatory taking and illegal subsidy to a conspiracy.”

#### *Clarifying Question*

PaxEx.Aero sent an e-mail to the FAA slot office on September 17, 2021, asking the FAA to clarify how the Agency will “determine what slots are international service” and if it will be “from 2019/2020 scheduled levels.” The FAA sent a response e-mail on September 20, 2021, that quoted the portion of FAA’s proposal that addressed PaxEx.Aero’s question. A copy of the communication has been included in the docket of this proceeding.

#### **Discussion of Continued Relief for International Operations Only for the Winter 2021/2022 Scheduling Season**

At the present time, U.S. domestic air travel demand and U.S. vaccination rates have reached a level that the FAA believes no longer justifies COVID-19-related slot usage relief domestically. However, COVID-19 continues to present a highly unusual and unpredictable condition for international operations that is beyond the control of carriers. As demonstrated in comments submitted by carriers and industry advocates, passenger demand for international air travel continues to be depressed as a result of COVID-19. The continuing impacts of COVID-19 on global aviation are dramatic and extraordinary, with an unprecedented decrease in passenger demand for international air travel globally.

As with the proposal, the FAA acknowledges the need for slot holders to have some flexibility in decision-making, in regard to international operations, as the severe impacts of the COVID-19 pandemic continue globally, but note it is not the policy of the Department of Transportation (DOT) to use slot and Level 2 rules to reserve capacity for historic incumbent carriers until demand returns to predetermined levels. Instead, it is the policy of the DOT to encourage high utilization of scarce public infrastructure. Under the established standard, slot usage waivers are generally used to address short-term, unpredictable shocks to demand or capacity that are beyond carriers' control. After 19 months of experience, the DOT believes it is becoming apparent that COVID-19 is causing structural and operational changes to the airline industry; the industry is adapting; and the issuance of waivers should not hinder that adaptation. As previously stated, at some point in time, repeated waivers to preserve pre-COVID slot holdings will impede the ability of airports and airlines to provide services that benefit the overall national economy and make appropriate use of scarce public assets. Therefore, the FAA emphasizes that operators should not assume further relief on the basis of COVID-19 for international operations will be forthcoming beyond the end of the Winter 2021/22 scheduling season.

Based on the comments received in this proceeding, the FAA has determined to make available to slot holders at DCA, JFK, and LGA a waiver from the minimum slot usage requirements, for international operations only, due to continuing COVID-19 impacts through March 26, 2021, subject to the following conditions:

(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. As explained further below, compliance with this condition is required for operations scheduled from November 22, 2021, through the duration of

this relief; therefore, carriers must begin notifying the FAA of Winter returns by October 25, 2021. Slots operated as approved on a non-historic basis in Winter 2021/2022 will be given priority over new demands for the same timings in the next equivalent season (Winter 2022/2023) for use on a non-historic basis, subject to capacity availability and consistent with established rules and policies in effect in the United States.<sup>29,30</sup> Foreign 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 Winter 2021/2022 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 obtains a similar new allocation (*i.e.*, arrival or departure, air carrier or commuter, if applicable); and,

(3) The waiver does not apply to slots newly transferred on an uneven basis (*i.e.*, via one-way slot transaction/lease) since October 15, 2020, for the duration of the transfer.<sup>31</sup> 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.

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<sup>29</sup> Consistent with the FAA's final policy statement issued January 13, 2021, this priority applies to slot or schedule requests for Winter 2022/2023, which are comparable in timing, frequency, and duration to the non-historic ad hoc approvals made by the FAA for Winter 2021/2022. 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 Winter 2021/2022 and seek to resume operating in Winter 2022/2023. The FAA may consider this priority in the event that slots with historic precedence become available for permanent allocation by the FAA.

<sup>30</sup> Although the FAA is extending the four-week rolling return policy consistent with the Summer 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.

<sup>31</sup> 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.



In addition, an exception may be granted to these conditions based on any government restriction that prevents or severely restricts international 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. This exception includes minor modifications compared to the exception currently in effect for the Summer 2021 season.<sup>32</sup> The FAA seeks to provide greater flexibility in allowing exceptions under certain circumstances based on issues that have arisen in the course of implementing the relief currently available. 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 flights and/or the number of 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 located.
- Government-imposed closure of businesses essential to support aviation activities (*e.g.*, closure of hotels, ground handling suppliers, etc.).

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<sup>32</sup> See FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862-0302).

- Governmental restrictions on airline crew, including unreasonable entry requirements or unreasonable testing and/or quarantine measures.

This exception is being administered by the FAA in coordination with the Office of the Secretary of Transportation (OST). The extraordinary circumstances exception in this slot usage relief is limited to the scope of the relief otherwise provided by this waiver; U.S. carriers should not expect to rely on the extraordinary circumstances exception for relief for domestic operations.

Moreover, the FAA has determined to extend through March 26, 2021, its COVID-19-related policy for prioritizing flights canceled at designated IATA Level 2 airports in the United States (EWR, LAX, ORD and SFO), 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. Compliance with this condition is required for operations scheduled from November 22, 2021, through the duration of this relief; therefore, carriers must begin notifying the FAA of Winter returns by October 25, 2021. Schedules operated as approved on an *ad hoc* basis in Winter 2021/2022 will be given priority over new demands for the same timings in the next equivalent season (Winter 2022/2023) 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 carriers seeking priority under this provision are required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature; and,

(2) The priority for FAA schedules approved for Winter 2021/2022 does not apply to net-newly approved operations for initial use during the Winter 2021/2022 season. New approved

times will remain eligible for priority consideration in Winter 2022/2023 if actually operated in Winter 2021/2022 according to established processes.

Consistent with the final decision 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 will be expected to meet the conditions for relief or operate consistent with standard expectations for the Level 2 environment.

The FAA believes a conditional extension of relief for international operations only, through March 26, 2022, is reasonable due to fluctuating travel restrictions and ongoing economic and health impacts of COVID-19 internationally. The proposed relief is expected to provide carriers with flexibility during this unprecedented situation and to support the long-term viability of international operations at slot-controlled and IATA Level 2 airports in the United States.<sup>33</sup> Continuing relief for this additional period is reasonable to mitigate the impacts on passenger demand for international air travel resulting from the spread of COVID-19 worldwide.

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 believes the conditions associated with

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<sup>33</sup> The FAA is responsible to develop plans and policy for the use of 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 CFR 93.227 at DCA and under the authority of Orders at LGA and JFK. *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).

the relief provided to date and in this decision are generally comparable to the WASB package and remain 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.

*Discussion of Comments Regarding Administering Relief Under This Waiver*

The FAA received comment requesting clarification on how it will evaluate whether any individual slot or schedule approval will qualify for a waiver and whether the Winter 2019/2020 season would be used to establish a carrier's historic international operational baseline. The conditional relief described in this notice is available for international operations that would have been operated in the Winter 2021/2022 season, but for COVID-19 impacts. This conditional relief is available to domestic carriers on a scale that is generally comparable to each carrier's pre-COVID level of international service. The FAA will generally evaluate any request for relief from U.S. carriers for the Winter 2021/2022 scheduling season based on historical levels of operations to foreign points as demonstrated in published schedules from the Winter 2019/2020 scheduling season. Domestic carriers seeking relief for a particular operation under the waiver will need to provide the FAA, if not readily apparent from FAA records and historic published schedule data, alternative supplemental information that predates FAA's proposal (86 FR 52114) to demonstrate intent to use a slot or approved operating time for an international destination. The FAA will not accept evidence of intent to use a particular slot or approved operating time for an international flight during the Winter 2021/2022 season, if the information is dated after FAA's proposal issued September 16, 2021.

The FAA is persuaded by commenters that have requested the FAA modify the initial October 4, 2021, slot return deadline due to compliance issues attributable to the timing of

FAA’s final waiver decision. The slot return deadline, as proposed, would have required airlines to return slots associated with flights to be operated on November 1, 2021, by October 4, 2021 (*i.e.*, four weeks in advance). Due to the timing of this final notice, the FAA will require compliance with the 4-week advance slot return condition for operations scheduled from November 22, 2021 (instead of from October 31, 2021) through the duration of the Winter 2021/2022 season. Accordingly, carriers must begin notifying FAA of Winter returns by October 25, 2021 (instead of October 4, 2021). The FAA believes this change is reasonable because it would be impracticable for carriers to meet the proposed October 4, 2021, return deadline given the timing of the FAA’s final waiver policy.

The FAA also received a comment requesting carriers be given flexibility to “utilize one-half of a historic international slot pair and waive the other half to maximize utilization of planned operations.” The FAA administers slots and schedule approvals on an individualized basis, not as slot pairs. Indeed, some slot allocations or schedule approvals are paired with operations outside of slot-controlled or schedule-facilitated hours. Due to slots not being administered in pairs the flexibility requested is already built into the underlying rules and waiver policy. Carriers therefore will have flexibility to and are encouraged to, operate any individual slot or schedule approval that does not necessitate this relief.

In addition, the FAA received a comment requesting that the FAA “not grant slot historic status/historic precedence at Level 3 airports or priority consideration at Level 2 airports to ad hoc movements allocated during the Winter 2020 season unless the airport is below the declared capacity limit at the time of the ad hoc movement.” The FAA notes that the conditions of this waiver provide that slots operated as approved on a non-historic basis in Winter 2021/2022 will be given priority over new demands for the same timings in the next equivalent season (Winter 2022/2023) for use on a non-historic basis, *subject to capacity availability and consistent with*

*established rules and policies in effect in the United States* (emphasis added). However, the FAA further notes that this stated priority was initially added in FAA’s Summer 2021 Policy Statement.<sup>34</sup> The FAA has flexibility under usual rules and procedures to apply the priority even in the absence of this.

Further, FAA received comment requesting that carriers that have “clearly and publicly communicated the indefinite discontinuation of operations at capacity constrained airports should not be waiver eligible without clear documentation to both FAA and the airport operator of plans to recommence operations within a reasonable timeframe” should be returned to the FAA for re-allocation. The FAA noted that the third condition for slot-controlled airports expressly states “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.” However, aside from the conditions provided in this relief, other established local rules in the United States continue to apply.

Furthermore, the FAA received comment requesting “greater visibility and information relative to returned capacity and reallocation under the usage waivers.” 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. Generally, after the first weeks the Summer 2021 waiver was in effect, the majority of slot and schedule returns have been made in at least one-month increments. By June 2021, sufficient returns had been made to allow the FAA to accommodate most requests for *ad hoc* flights through the end of the season on October 30, 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

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<sup>34</sup> FAA Policy Statement: Limited, Conditional Extension of COVID-19-Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862-0302).

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 and only a small number of requests for *ad hoc* flights at LGA beyond limited inquiries from carriers seeking permanent slot allocations.

Finally, the FAA received comments from some individuals and anonymous commenters suggesting that relief should be continued for domestic operations. The FAA notes that no U.S. carrier or industry advocate has petitioned the FAA for such continued relief for domestic operations. Indeed, comments from industry reflect a consensus view that demand in the United States for domestic travel is rebounding and further relief would be detrimental to recovery.

### **Discussion of Additional Issues Raised in Comments**

The FAA received individualized responses from some carriers to the questions posed to carriers in FAA's proposal. This information will be useful in FAA's administration of this waiver and the additional information provided is consistent with the policy in this final notice. To the extent that some commenters question FAA's authority to manage slots and facilitate schedules or seek to supersede this proceeding entirely by encouraging the federal government to establish broader 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 March 26, 2022, 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 October 30, 2021, for international operations only. Similarly, the FAA has determined to extend through March 26, 2022, its COVID-19-related limited, conditional policy for prioritizing flights canceled at designated IATA Level 2 airports in the United States (EWR, LAX, ORD, and SFO), for purposes of establishing a carrier's operational baseline in the next corresponding season, for international operations only. This relief is limited to slots and approved operating times used by any carrier for international operations only, through March 26, 2022, and will be subject to the same terms and conditions, with minor modifications, as previously explained herein.

As of the date of issuance of this notice, U.S. domestic air travel demand and vaccination rates have reached a level that the FAA believes no longer necessarily justifies COVID-19-related slot usage relief domestically. However, COVID-19 continues to present a highly unusual and unpredictable condition for international operations that is beyond the control of carriers. Indeed, foreign carriers in many parts of the world are prevented from operating to the United States due to governmental restrictions resulting from COVID-19. The continuing impacts of COVID-19 on global aviation are dramatic and extraordinary, with an unprecedented decrease in passenger demand for international air travel globally.

Therefore, the FAA believes an extension of conditional relief for international operations only, through March 26, 2022, is reasonable due to fluctuating travel restrictions and ongoing economic and health impacts of COVID-19 internationally. The available relief is expected to provide carriers with flexibility during this unprecedented situation and to support the long-term viability of international operations at slot-controlled and IATA Level 2 airports in the United States.<sup>35</sup> Continuing relief for this additional period is reasonable to mitigate the

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<sup>35</sup> The FAA is responsible to develop plans and policy for the use of 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 CFR 93.227 at DCA and



impacts on passenger demand for international air travel resulting from the spread of COVID-19 worldwide.

While the FAA is providing continued, conditional, relief through the Winter 2021/2022 season for international operations, carriers should not assume that further relief will be forthcoming beyond the end of the Winter 2021/2022 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 pandemic, 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 made 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

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under the authority of Orders at LGA and JFK. *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).

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 for a long-term waiver 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 emphasizes that it strongly encourages carriers to return slots and approved schedules voluntarily as soon as possible and for as long a period as possible during the Winter 2021/2022 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, and FAA anticipates that carriers may often be able to provide notice of cancellations significantly further in advance than four weeks. 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 pandemic.

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 pandemic. Carriers providing insufficient information to clearly identify 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.

Issued in Washington, DC on October 18, 2021.

/s/ Lorelei Dinges Peter  
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/s/ Virginia T. Boyle  
Vice President, System Operations Services.