

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 Summer 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 October 29, 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 March 26, 2022, for international operations only. Similarly, the FAA has determined to extend through October 29, 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 October 29, 2022, and will be subject to the same terms and conditions, that the FAA has already applied to the relief that remains available through March 26, 2022.

DATES: The relief announced in this notice is available for the Summer 2022 scheduling season, which runs from March 27, 2022, through October 29, 2022. Compliance with the rolling four-week return condition on the relief announced in this notice is required beginning on April 4, 2022. 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 requirements¹ to carriers operating at all slot-controlled airports in the United States (DCA, JFK, and LGA)² 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.³ Since the initial slot usage waiver and related relief was provided, the FAA has taken action to extend the relief provided on four occasions subject to certain substantive changes, including the addition of conditions, as the COVID-19

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); the January 14, 2021, Summer 2021 FAA Policy Statement (Docket No. FAA-2020-0862-0302); and, the October 20, 2021, notice (86 FR 58134), extends to all allocated slots, including slots allocated by exemption.

³ Orders Limiting Operations at John F. Kennedy International Airport and New York LaGuardia Airport; High Density Traffic Airports Rule at Ronald Reagan Washington National Airport, 85 FR 15018 (Mar. 16, 2020).

situation continued to evolve.⁴ The most recent limited, conditional extension of COVID-19-related relief was issued by the FAA on October 18, 2021, and is due to expire on March 27, 2022.⁵

The FAA issued a notice on February 25, 2022, inviting comment on its proposal to extend through October 29, 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 March 26, 2022, for international operations only.⁶ In its proposal the FAA explained it would generally evaluate any request for relief from U.S. carriers for the Summer 2022 scheduling season based on historical levels of operations to foreign points as demonstrated in published schedules. The FAA further explained 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

⁴ Orders Limiting Operations at John F. Kennedy International Airport and New York LaGuardia Airport; High Density Traffic Airports Rule at Ronald Reagan Washington National Airport, 85 FR 21500 (Apr. 17, 2020); 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 2020/2021 Scheduling Season, 85 FR 63335 (Oct. 7, 2020); FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862-0302); and 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, 86 FR 58134 (Oct. 20, 2021).

⁵ 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, 86 FR 58134 (Oct. 20, 2021).

⁶ COVID-19 Related Relief Concerning International 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 Summer 2022 Scheduling Season, 89 FR 11805 (Mar. 2, 2022).

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.

Current COVID-19 Situation

Since FAA’s notice published October 20, 2021, granting a limited, conditional extension of COVID-19-related relief for international operations only 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.⁷ For the week ending March 20, 2022, the WHO reported over 12 million new COVID-19 cases and just under 33,000 new deaths, bringing the cumulative total to more than 468 million confirmed COVID-19 cases and over 6 million deaths globally since the start of the COVID-19 pandemic.⁸

The WHO reports that it is monitoring multiple variants globally; currently, the WHO has classified two variants as “circulating variants of concern” and recently put out a statement regarding the Omicron sublineage BA.2.⁹ The Centers for Disease Control and Prevention (CDC) is monitoring all variants of COVID-19 in the United States.¹⁰ The CDC has listed the Omicron and Delta variants as variants of concern.¹¹ The CDC reports that all Food and Drug

⁷ <https://covid19.who.int/table>

⁸ COVID-19 weekly epidemiological update, March 22, 2022, 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.

⁹ <https://www.who.int/en/activities/tracking-SARS-CoV-2-variants/>. See also <https://www.who.int/news/item/22-02-2022-statement-on-omicron-sublineage-ba.2>

¹⁰ Center for Disease Control (CDC), What You Need To Know About Variants, available at: <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html>

¹¹ *Id.*

Administration (FDA)-approved or authorized vaccines reduce the risk of severe illness, hospitalization, and death from COVID-19.¹²

Currently, three COVID-19 vaccines have been authorized for emergency use or approved by the FDA.¹³ As of March 23, 2022, 65.4 percent of Americans are fully vaccinated, and 76.8 percent of Americans have received at least one dose.¹⁴ Due to substantial efforts to increase vaccination rates across the globe, the United States moved away from a country-by-country restriction previously applied during the COVID-19 pandemic and adopted an air travel policy that relies primarily on vaccination to advance the safe resumption of international air travel to the United States.¹⁵ When the FAA extended COVID-19-related relief for international operations only by notice published October 20, 2021, the number of confirmed new cases of COVID-19 in the U.S. for the week of October 18, 2021, based on WHO data, was 509,330.¹⁶ On December 1, 2021, the first case attributable to the Omicron variant was identified in the United States.¹⁷ For the week of March 14, 2022, which is the most recent week for which data is available, the WHO reports 219,164 confirmed new cases in the United States.¹⁸

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

¹³ <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>

¹⁴ CDC, COVID-19 Vaccinations in the United States, updated March 23, 2022, available at: <https://covid.cdc.gov/covid-data-tracker/#vaccinations>

¹⁵ *Id.* See also <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/25/a-proclamation-on-advancing-the-safe-resumption-of-global-travel-during-the-covid-19-pandemic/>

¹⁶ 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, 86 FR 58134 (Oct. 20, 2021). See also <https://covid19.who.int/region/amro/country/us>

¹⁷ <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/scientific-brief-omicron-variant.html>

¹⁸ <https://covid19.who.int/region/amro/country/us>.

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 granting relief due to COVID-19 impacts.¹⁹ At JFK and LGA, each slot must be used at least 80 percent of the time.²⁰ 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.²¹

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.²² 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.²³

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

¹⁹ See 85 FR 15018 (Mar. 16, 2020).

²⁰ 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).

²¹ 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.

²² See 14 CFR 93.227(a).

²³ See 14 CFR 93.227(j).

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 from 11 stakeholders and other persons on the proposal including IATA, Airlines for America (A4A), Airports Council International-North America (ACI-NA), Exhaustless Inc. (Exhaustless), United Airlines (United), six foreign carriers or holding companies (Aer Lingus, British Airways, Etihad Airways, Iberia Airlines, ITA Airways, and Lufthansa Group). Nine commenters including A4A, IATA, and all commenting U.S. and foreign carriers, support FAA's proposal though some commenters have requested certain modifications.

Commenters Who Support FAA's Proposal

Aer Lingus, British Airways, Etihad Airways, Iberia Airlines, and ITA Airways, commented supporting FAA's proposal. Aer Lingus states that the proposed relief "is a wholly sensible and appropriate approach to mitigate against the current risks and to copper fasten US global connectivity into the future." British Airways comments in support of FAA's proposal stating "BA [British Airways] believes that the extension of slot relief into Summer 2022 is wholly appropriate and essential for preserving established international aviation networks, which in turn are vital for keeping trade routes open in support of the wider economies and assisting the global recovery from the pandemic." Etihad Airways comments that it "is in full support of the proposal in light of the uncertain recovery of demand and potential further restrictions impacting mainly its eastbound markets (GCC countries, Indian subcontinent, South- and Northeast Asia)." Iberia Airlines comments stating that it strongly supports the proposed extension and "appreciate[s] that the FAA is aware of the unpredictable environment and that the recovery from this global pandemic remains slow." ITA Airways comments generally in support

of the FAA's proposal stating "We strongly support the proposed extension of a conditional waiver of the minimum slot usage requirement for international slots only for S22".

Commenters Who Support FAA's Proposal with Requested Modifications

A4A, IATA, Lufthansa Group, and United support FAA's proposal but made additional requests for flexibility on the slot return requirements outlined in the FAA's proposal. A4A supports FAA's proposal stating that it provides "operational certainty", "simplicity", and "fairness and equity". A4A asserts that, "[i]nternational air travel for the remainder of 2022 is expected to improve over 2021 levels, but a full recovery is not expected before 2024 at the very earliest" and that "FAA should extend the Waiver for Level 2 and 3 airports, given the pandemic's continued direct impact on U.S. carriers' international operations." In support of this claim A4A provides that "[f]or the first two months of 2022, A4A member passenger traffic for Trans-Atlantic, Trans-Pacific and transborder U.S.-Canada operations have tracked at 59%, 13% and 26%, respectively, of 2019 levels. While we [A4A] anticipate improved demand as global travel restrictions ease, as we look forward, these markets remain weak." A4A requests the FAA incorporate flexibility into the slot return rules stating "FAA should permit a ten-day 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." In addition, A4A requests the FAA maintain a reciprocity requirement, and that "a lack of reciprocity would impair connectivity, distort competition, and alter passenger demand in the future, thereby directly impacting more than just U.S. carrier service at these airports; it would exacerbate uncertainty and reduce flexibility." IATA comments, "[w]hile forward looking trends are improving, future bookings for international travel remain significantly lower than pre-COVID levels. For this reason, it is wholly sensible to provide flexibility in the form of an international slot waiver, considering the season starts in one month." Further, IATA states that "airlines need certainty that there remains

a level of flexibility and assurances that impacted routes can be sustainably rebuilt in line with the recovery of demand throughout the season.” IATA request the FAA “amend the slot return period to initially seven days after publication in the *Federal Register*, and the subsequently as a rolling 4-week return region.” United comments that it “adopts and incorporates by reference the comments filed by Airlines for America (“A4A”). United “commends FAA for recognizing the continuing and extraordinary adverse effects of the COVID19 pandemic and for proposing a limited, conditional waiver applying to international operations for slot use at Level 3 airports and for schedule cancellation at Level 2 airports.” United requests the FAA “amend the date of which carriers are to make the first slot return for the Summer 2022 season from the published February 28, 2022 date to a date 7 days after final publication of the final notice.” Lufthansa Group comments in support of FAA’s proposal stating “the unexpected emergence and spread of the Delta and then Omicron variants during the last 6 months, requires the industry and government to be ready and able to react with significant flexibility, especially in the international setting.” Similarly, Lufthansa group recommend the FAA “amend the slot return period to initially 7 days after final publication in the Federal Register, and then subsequently on a rolling 4-week basis.”

Commenters Who Oppose the FAA’s Proposal

ACI-NA and Exhaustless oppose FAA’s proposal to continue COVID-19-related relief for international operations only. ACI-NA submits that “with the alleviation of regulatory restrictions to travel, airports cannot accept a situation where extending the waiver for international operations would weaken the reinstatement of much-needed connectivity and damage the competitive landscape at airports.” ACI-NA observes that “the practical effect of extending slot relief is precisely to reserve capacity for historic holders of landing privileges at constrained airports, thereby distorting the shape and trajectory of air travel recovery at these

airports. ACI-NA believes that absent these waivers, airlines serving constrained airports would be encouraged to make different, demand-responsive decisions regarding deployment of their capacity.” Further, ACI-NA suggests that “continuation of these waivers could lead to a “chilling effect” which discourages new service at constrained airports due to a lack of long-term certainty, thereby punishing the airlines most interested in deploying their capacity to respond to the needs of the traveling public.”

Exhaustless opposes FAA’s proposal, contending that it would “block the free market economy” and argues that “the DOT/FAA must consider the Exhaustless’ airspace reservation market and explain why it has proposed an administrative allocation – that excludes passengers – over Exhaustless’ competitive and coordinated market for airspace reservations.”

Discussion of Comments Regarding Flexibility in the Slot Return Policy

The FAA is persuaded by commenters that have requested the FAA modify the initial February 28, 2022, slot return deadline due to compliance issues attributable to the timing of FAA’s final waiver decision. 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 May 2, 2022 (instead of from March 27, 2022) through the duration of the Summer 2022 season. Accordingly, carriers must begin notifying FAA of Summer returns by April 4, 2022 (instead of February 28, 2022). The FAA believes this change is reasonable because it would be impracticable for carriers to meet the proposed return deadline given the timing of the FAA’s final waiver policy.

Discussion of Comments Regarding Reciprocity

The FAA received comments requesting that the FAA maintain the reciprocity requirement. As stated in FAA’s proposal and discussed later in this notice, FAA expects 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 the foreign carrier. A foreign carrier seeking a waiver may wish to ensure that the responsible authority of the foreign carrier's home jurisdiction submits a statement by email to ScheduleFiling@dot.gov confirming reciprocal treatment of the slot holdings of U.S. carriers.

Discussion of Additional Issues Raised in Comments

FAA received a comment requesting the FAA discontinue COVID-related relief for international operations due to the practical effects of relief weakening the reinstatement of connectivity, damaging the competitive landscape at airports, chilling the introduction of new services, and distorting the air travel recovery at airports. Based on global vaccination rates, changing infection rates and the threat of new virus strains, continued unpredictability of travel restrictions, and the disparity between demand for domestic air travel and demand for international air travel, extending the current limited, conditional waiver for international operations by all carriers, is reasonable. The FAA believes extending the limited, conditional slot usage waiver, for international operations only, through the Summer 2022 season provides carriers with the flexibility to operate in the unpredictable international market and supports the long term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States. The FAA notes that no U.S. carrier or foreign carrier commented in opposition of the FAA's proposed extension of COVID-related relief. Further, 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

In consideration of the foregoing information, petitions received in advance of the proposal, the comments that the FAA has received, and the evolving and highly unpredictable situation globally with respect to ongoing impacts from COVID-19, the FAA has determined to extend, for international operations only, the current limited, conditional relief that the FAA has already made available through March 26, 2022, through the end of the Summer 2022 season on October 29, 2022.²⁴ This relief is limited to slots and approved operating times used by carriers for international operations through October 29, 2022, and is subject to the same terms and conditions that the FAA has applied to the relief already made available through March 26, 2022, which the FAA reiterates in this notice. International operations, for the purpose of this notice, are flights intended for operation between one of the U.S. slot-controlled or IATA Level 2 airports and any point in a foreign jurisdiction.

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 Department to encourage high utilization of scarce public infrastructure. As previously stated, at some point in time, continuing waivers to preserve pre-COVID slot holdings may 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 will be forthcoming beyond the end of the Summer 2022 scheduling season.

Based on global vaccination rates, changing infection rates and the threat of new virus strains, continued unpredictability of travel restrictions, and the disparity between demand for

²⁴ The FAA notes that for purposes of the relief described in this proceeding, Canadian carriers are treated as foreign carriers.

domestic air travel and demand for international air travel, extending the current limited, conditional waiver for international operations by all carriers, is reasonable. The FAA believes extending the limited, conditional slot usage waiver, for international operations only, through the Summer 2022 season provides carriers with the flexibility to operate in the unpredictable international market and supports the long term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States.

The FAA recognizes that domestic carriers have a mix of both domestic and international operations, and therefore the agency intends to make this relief available for international operations that would have been operated in the Summer 2022 season, but for COVID-19 impacts on air travel demand. In other words, the FAA intends to provide this conditional relief to domestic carriers on a scale that is generally comparable to each carrier's pre-COVID level of international service. The FAA would generally evaluate any request for relief from U.S. carriers for the Summer 2022 scheduling season based on historical levels of operations to foreign points as demonstrated in published schedules from the Summer 2019 scheduling season. Domestic carriers seeking relief for a particular operation under the waiver would need to provide the FAA, if not readily apparent from FAA records and historic published schedule data, alternative supplemental information that predates this notice to demonstrate intent to use a slot or approved operating time for an international destination. The FAA would not accept evidence of intent to use a particular slot or approved operating time for an international flight during the Summer 2022 season if the information is dated after the Summer 2022 proposal (87 FR 11805) issued on February 25, 2022.

International operations eligible for a waiver under this relief are subject to all of the same conditions and policies made available in FAA's Winter 2021/2022 waiver, which remains in effect at slot-controlled, and IATA Level 2 airports in the United States for the Winter

2021/2022 season.²⁵ The FAA believes the conditions associated with the relief provided to date 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. The FAA has determined to make available to slot holders at U.S. slot-controlled airports (DCA, JFK, and LGA) a waiver from the minimum slot usage requirements, for international operations only, due to continuing COVID-19 impacts through October 29, 2022, 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. However, slots operated as approved on a non-historic basis in Summer 2022 will be given priority over new demands for the same timings in the next equivalent season (Summer 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.^{26,27}

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. Compliance

²⁵ 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, 86 FR 58134 (Oct. 20, 2021).

²⁶ Consistent with the FAA's final policy statement issued January 13, 2021, this priority applies to slot or schedule requests for Summer 2023, which are comparable in timing, frequency, and duration to the non-historic *ad hoc* approvals made by the FAA for Summer 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 Summer 2022 and seek to resume operating in Summer 2023. The FAA may consider this priority in the event that slots with historic precedence become available for permanent allocation by the FAA.

²⁷ Although the FAA is extending the four-week rolling return policy consistent with the Winter 2021/2022 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.

with this condition is required for operations scheduled from May 2, 2022, through the duration of this relief; therefore, carriers must begin notifying the FAA of Summer returns by April 4, 2022;

(2) The waiver does not apply to slots newly allocated for initial use during the Summer 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.²⁸ 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.

In addition, an exception may be granted to these conditions 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 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—

²⁸ Consistent with prior proceedings, the FAA does not propose to revise this condition to include a buffer period for new transfers to be completed and still benefit from this waiver. Therefore, this policy remains in effect continuously from the initial effective date of October 16, 2020.

- 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.).
- 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.²⁹

The conditions for COVID-19-related relief for prioritizing flights canceled at IATA Level 2 airports (ORD, EWR, LAX, and SFO), for purposes of establishing a carrier's operational baseline in the next corresponding season, which the FAA will apply to the relief in this notice include:

²⁹ The FAA may consider individualized requests from U.S. carriers for domestic relief on a case-by-case basis consistent with the applicable waiver standard.

(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 assurance of priority in the next corresponding season. However, schedules operated as approved on an *ad hoc* basis in Summer 2022 will be given priority over new demands for the same timings in the next equivalent season (Summer 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. Compliance with this condition is required for operations scheduled from May 2, 2022, through the duration of this relief; therefore carriers must begin notifying the FAA of Summer returns by April 4, 2022; and,

(2) The priority for FAA schedules approved for Summer 2022 does not apply to net-newly approved operations for initial use during the Summer 2022 season. New approved times will remain eligible for priority consideration in Summer 2023 if actually operated in Summer 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 schedule approval 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 extraordinary circumstances exception in this relief only applies within the scope of the relief otherwise

provided by the waiver; U.S. carriers should not expect to rely on the extraordinary circumstances exception for relief related to domestic operations.

The FAA believes an extension of relief for international operations only, through October 29, 2022, is reasonable due to fluctuating travel restrictions and the ongoing economic and health impacts of COVID-19 internationally. The 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.³⁰ 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.

As of the date of issuance of this notice, COVID-19 continues to present a highly unusual and unpredictable condition for international operations that is beyond the control of carriers. 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. The ultimate duration and severity of COVID-19 impacts on passenger demand for international air travel remain unclear.

The FAA expects 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

³⁰ 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).

provided in this notice 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 Summer 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. Carriers that have already advised the FAA Slot Administration Office of COVID-19-related cancellations and slot returns contingent on the Summer 2022 final policy do not need to resubmit identical requests. 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 March 25, 2022.

/s/Marc A. Nichols
Chief Counsel

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