



**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 2020/2021 Scheduling Season**

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

**ACTION:** Extension of limited waiver of the minimum slot usage requirement.

**SUMMARY:** The FAA has determined to extend through March 27, 2021, the coronavirus disease 2019 (COVID-19)-related limited waiver of the minimum slot usage requirement at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald Reagan Washington National Airport (DCA) that the FAA already has made available through October 24, 2020, with additional conditions as described herein. In addition, the FAA also has determined to extend, through March 27, 2021, its COVID-19-related policy for prioritizing flights canceled at designated International Air Transport Association (IATA) Level 2 airports in the United States, for purposes of establishing a carrier’s operational baseline in the next corresponding season, also with additional conditions as described in this notice. These IATA Level 2 airports include Chicago O’Hare International Airport (ORD), Newark Liberty International Airport (EWR), Los Angeles International Airport (LAX), and San Francisco International Airport (SFO). These extensions remain subject to the stated policy on reciprocity that applied to the COVID-19-related relief that the FAA earlier granted through October 24, 2020.

**DATES:** The relief announced in this notice is available for the Winter 2020/2021 scheduling season, which runs from October 25, 2020 through March 27, 2021. Conditions on the relief announced in this notice require compliance beginning on October 15, 2020.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

In a notice published in the Federal Register on March 16, 2020 (85 FR 15018), the FAA announced certain relief through May 31, 2020, in light of impacts on air travel demand related to the COVID-19 public health emergency.<sup>1</sup> As announced in that notice, through May 31, 2020, the FAA waived the minimum usage requirement as to any slot associated with a scheduled nonstop flight between JFK, LGA, or DCA, respectively, and another point that was canceled as a direct result of COVID-19-related impacts.<sup>2</sup> In addition, that notice announced that the FAA would prioritize flights canceled due to COVID-19 at designated IATA Level 2 airports in the United States—including ORD, EWR, LAX, and SFO—through May 31, 2020, for purposes of

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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.” 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 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), and this notice extends to all allocated slots, including slots allocated by exemption.

establishing a carrier's operational baseline in the next corresponding season.<sup>3</sup> In granting this relief, the FAA asserted its expectation that foreign slot coordinators would accommodate U.S. carriers with reciprocal relief. The FAA further stated that it would continue to monitor the situation and might augment the waiver as circumstances warrant.

Subsequently, following a notice of opportunity for interested persons to show cause why the FAA should or should not extend the relief provided due to continuing COVID-19-related impacts on demand for air travel (85 FR 16989; Mar. 25, 2020), the FAA extended the relief through October 24, 2020 (85 FR 21500; Apr. 17, 2020). The FAA explained its intent to provide carriers with maximum flexibility during this unprecedented situation and to support the long-term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States.

On September 11, 2020, the FAA issued a notice of proposed extension of the limited relief already provided through the Summer 2020 scheduling season, with additional conditions, which was published in the Federal Register on September 15, 2020 (85 FR 57288). In this notice, the FAA invited comment on its specific proposals for continued relief from the minimum slot usage requirements and related policies due to COVID-19. Specifically, the FAA proposed to extend the relief already made available at U.S. slot-controlled airports (DCA, JFK, and LGA) with additional conditions through the Winter 2020/2021 season. The FAA also proposed limited additional relief at U.S. designated IATA Level 2 airports (EWR, LAX, ORD, and SFO) on a conditional basis through December 31, 2020.

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<sup>3</sup> The FAA notes that a minimum usage requirement does not apply at designated IATA Level 2 airports in the United States. However, established procedures under the IATA Worldwide Slot Guidelines (WSG) allow for the prioritization of such cancellations in subsequent corresponding seasons consistent with the FAA's policy statement.

The FAA notes that carriers have not begun providing any significant slot returns or schedule updates for Winter 2020/2021, as they await a final decision on FAA policies relative to waiving minimum usage requirements at DCA, LGA, and JFK and relief at Level 2 airports for prioritization in Winter 2021/2022. Several carriers have advised the FAA informally that they already have identified slot returns and schedule reductions for some or all of the scheduling season, and that they will provide additional information after the FAA finalizes its usage waiver policy. The FAA encountered similar carrier behavior earlier this year when it initially granted relief through May 31, 2020, before extending the waiver through October 24, 2020.

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

Since the FAA's September 11, 2020 notice was issued, COVID-19 has continued to cause disruption globally and within the United States. The World Health Organization (WHO) reports COVID-19 cases in more than 200 countries, areas, and territories worldwide. For the week ending September 27, 2020, the WHO reported more than 2 million new COVID-19 cases and 36,475 new deaths, bringing the cumulative total to over 32.7 million confirmed COVID-19 cases and 991,000 deaths.<sup>4</sup>

International travel recommendations from the Centers for Disease Control and Prevention (CDC) categorize nearly 200 countries, areas, and territories worldwide under Level 3—COVID-19 Risk Is High. Although the U.S. Department of State's Global Health Advisory was downgraded from Level 4—Do Not Travel for certain destinations, advisories ranging from Level 2—Exercise Increased Caution to Level 3—Reconsider Travel and up to Level 4 remain in

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<sup>4</sup> COVID-19 weekly epidemiological update, September 28, 2020, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports>

effect for many parts of the world due to continuing impacts of COVID-19.<sup>5</sup> The U.S. Department of State advises that challenges to any international travel at this time may include mandatory quarantines, travel restrictions, and closed borders. The U.S. Department of State notes further that foreign governments may implement restrictions with little notice, even in destinations that were previously low risk.<sup>6</sup> Accordingly, the U.S. Department of State warns Americans choosing to travel internationally that their trip may be disrupted severely and it may be difficult to arrange travel back to the United States.<sup>7</sup>

Within the United States, the CDC reported 7,260,465 total cases and 207,302 deaths from COVID-19 as of October 2, 2020, with 302,093 new cases in the prior seven days.<sup>8</sup> The CDC advises prospective domestic travelers to consider whether their destination has requirements or restrictions for travelers, and notes that state, local, and territorial governments may have travel restrictions in place, including testing requirements, stay-at-home orders, and quarantine requirements upon arrival. A national emergency related to COVID-19 remains in effect pursuant to the President's March 13, 2020 Proclamation.<sup>9</sup>

### **Standard Applicable to This Waiver Proceeding**

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

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

<sup>7</sup> *Id.*

<sup>8</sup> CDC COVID Data Tracker, updated October 2, 2020, available at [https://covid.cdc.gov/covid-data-tracker/?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases\\_casesinlast7days](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases_casesinlast7days)

<sup>9</sup> <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

The FAA reiterates the standards applicable to petitions for waivers of the minimum slot usage requirements in effect at DCA, JFK, and LGA, as discussed in the FAA's initial decision extending relief due to COVID-19 impacts.<sup>10</sup>

At JFK and LGA, each slot must be used at least 80 percent of the time.<sup>11</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>12</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>13</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>14</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 and maximize the benefits to both airport users and the traveling public. This minimum usage requirement is expected to accommodate routine cancelations under all but

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<sup>10</sup> See 85 FR 15018 (Mar. 16, 2020).

<sup>11</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>12</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>13</sup> See 14 CFR § 93.227(a).

<sup>14</sup> See 14 CFR § 93.227(j).

the most unusual circumstances. Carriers proceed at risk if they make decisions in anticipation of the FAA granting a slot usage waiver.

### **Summary of Comments and Information Submitted**

The FAA received 196 comments<sup>15</sup> on the proposal from stakeholders and other persons, including IATA, Airlines for America (A4A), the oneworld Alliance, the Star Alliance, the Cargo Airline Association (CAA), the National Air Carrier Association (NACA), Airports Council International-World (ACI World), Airports Council International-North America (ACI-NA), Airlines for Europe (A4E), the Latin American and Caribbean Air Transport Association (ALTA), the Association of Asia Pacific Airlines, the Arab Air Carriers Organization, 10 U.S. carriers,<sup>16</sup> 33 foreign carriers,<sup>17</sup> the International Association of Machinists and Aerospace Workers (IAMAW), the Professional Flight Control Association (PAFCA-UAL), the Association of Flight Attendants-CWA, AFL CIO, 22 members of Congress, 10 state/elected

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<sup>15</sup> The FAA notes that some comments were submitted on behalf of multiple persons. For example, the FAA received three Congressional letters, which collectively reflected signatures from 22 members. Four commenters, including U.S. and foreign carriers, submitted comments marked as proprietary and confidential. The information contained within comments marked as Proprietary Information (PROPIN) was consistent with information submitted by other airline industry commenters. The FAA will maintain the confidentiality of this information to the extent permitted by law.

<sup>16</sup> Comments were submitted by the following U.S. carriers: Alaska Airlines, Inc., Allegiant Air, LLC, Delta Air Lines, Inc., JetBlue Airways Corp., Southwest Airlines Co., Spirit Airlines, Inc., United Airlines, Inc., Eastern Airlines, LLC, and Polar Air Cargo Worldwide, Inc. United and one additional U.S. carrier submitted comments, or a portion thereof, marked as proprietary and confidential.

<sup>17</sup> Comments were submitted by the following foreign carriers: Aeromexico, Air Canada, Air China, Air France/KLM, Air New Zealand, Air Serbia, Alitalia, All Nippon Airways, Austrian Airlines, Avianca, Brussels Airlines, Cathay Pacific, Copa, Emirates, Ethiopian Airlines, Eurowings, Finnair, Iberia, LATAM, LOT Polish Airlines, Deutsche Lufthansa, Norwegian Air International, Ltd., Qantas Airways, Ltd., Royal Air Maroc, SAS Airlines, Singapore Airlines, Swiss International Air Lines Ltd., Turkish Airlines Inc., Virgin Atlantic, VivaAerobus, and Xiamen Airlines. Two additional foreign carriers submitted comments marked as proprietary and confidential.

officials, 54 other non-aviation businesses and industry organizations, and 71 individuals (most of whom identified as airline or other aviation and travel industry employees).<sup>18</sup> In addition, one foreign carrier also submitted a comment to the U.S. Department of State, which has been included in the docket for this proceeding with all other comments not containing proprietary or confidential business information.

Most incumbent U.S. and foreign airline commenters, as well as their industry representatives and others, support an extension of relief and advocate for aligning the duration of relief at slot-controlled and Level 2 airports in the United States through the upcoming Winter 2020/2021 season. These commenters also generally opposed the FAA's proposal for bulk (monthly) slot returns four weeks in advance of the date of operation, which is equivalent to four to eight weeks in advance of certain operations. While some commenters, particularly among the airport community, support the FAA's approach for the Winter 2020/2021 season as proposed, several carriers assert that the policies are inadequate and/or unlikely to have the intended effect. Several commenters suggest that the FAA should close the door to any further relief beyond the Winter 2020/2021 season, while other commenters offer alternative approaches to force full-season bulk returns for permanent reallocation. Some commenters seek to supersede this waiver proceeding entirely by encouraging the Federal Government to establish broader economic/market-based aviation industry recovery policies and/or change the regulatory policy landscape for managing slots and schedule facilitation in the United States. Some comments were limited to discussing either the proposal for slot-controlled airports or the proposal for Level 2 airports. The comments are summarized in more detail below.

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<sup>18</sup> The comment period closed on September 22, 2020. Comments considered in finalizing the policy announced in this notice include late-filed submissions received as of September 25, 2020.



*Comments Concerning FAA's Proposal for Continued Relief at U.S. Slot-Controlled Airports (DCA, JFK, and LGA) and Other General Provisions of the FAA's Proposal*

Eastern Airlines commented that it fully supports the FAA's proposal to extend the COVID-19-related limited waiver of the minimum slot usage requirement at JFK through March 27, 2021.

ACI World expresses full support for the FAA's proposal, including the attachment of strict conditions to the proposed extension of the waiver, which ACI World believes are instrumental to support the recovery of aviation by ensuring waivers are not used "to insulate slots from market realities during the recovery period." ACI World comments that the strict conditions proposed would avoid unintended impacts on competition and ensure consumers are protected from last-minute cancellations. ACI World asserts the slot return condition is "necessary to incentivize airlines to return slots...to enable airports to safely plan operations, complying with physical distancing requirements and encouraging efficient reallocation when possible;" the condition excluding new allocations from relief "will avoid the possibility of airlines building up historic for the post-COVID-19 future;" and the exclusion of newly transferred slots from relief will "ensure that airlines that are ready and able to operate to support the recovery are not blocked from entering airports by anti-competitive holding of slots by airlines exiting these markets." ACI World emphasizes that "'ghost flights' are not justified" and "[u]nder no circumstances are air carriers required to operate flights because of slot usage requirements" as "[c]arriers who reported being 'forced' to operate such flights actually made a strategic decision to protect their slot portfolio."

ACI-NA supports the FAA's proposal, commenting that the proposal "acknowledges the critical role that access to the most congested airports plays in economic vitality for communities, the significance of recognizing the cataclysmic impact from COVID-19 to the

aviation industry, and the importance of providing price and service competition where air carriers see opportunity as opposed to allowing precious resources to be squandered because of historical happenstance.” ACI-NA believes the proposal is “a strong restatement that [slot resources] are not the property of the air carriers” consistent with 14 CFR § 93.223(a). ACI-NA comments that “[w]hile ACI-NA is not advocating for a wholesale realignment of slot and access portfolios at this time, the Notice should be the foundation for a careful investigation and analysis of the changing landscape in the air service competitive environment.” ACI-NA remarks that the proposal is “a reasonable step and consistent with the determination of other civil aviation authorities across the world,” but “it is likely that even with four to eight weeks of notice to the air carrier community of available slots, not all carriers have the flexibility to respond commercially to take advantage of these openings.” ACI-NA recommends “that DOT and FAA carefully monitor how the proposed system is applied during W20 and account for the results, to include expressions of interest by new entrants who consider the slot regime to be a barrier to entry, in any future consideration of limited relief of slot utilization requirements through expanding the timeframe for [returns] to further encourage utilization of these scarce resources.”

The PANYNJ comments that it fully agrees with comments submitted by ACI-NA. In addition, given that “fundamental shifts in the industry have occurred,” the PANYNJ suggests that “[p]olicy should reflect the industry’s new reality, and market-distorting waivers should not persist for years until pre-COVID demand levels return.” The PANYNJ further “concur[s] with the assertion that [ghost flights] are an inefficient use of resources and are inconsistent with the purpose of slot-controls” and believes that this issue “should continue to be of importance once demand for air travel fully rebounds.” PANYNJ comments that “no carrier is ever forced to

conduct operations to maintain slots, and carriers unable to sustain genuine operations consistent with their slot portfolio should return unused slots for reallocation.”

JetBlue and Alaska support the FAA’s proposal to extend relief at slot-controlled airports in the United States through the Winter 2020/2021 season, and JetBlue further notes that it “accepts the FAA’s proposed conditions, which are intended to balance the needs and requirements of various stakeholders.”

The CAA fully supports the FAA’s proposal “and recognize[s] that airlines should not be penalized for their temporary inability to meet the required slot utilization rates because of flight cancellations stemming from drastically reduced passenger traffic caused by the extraordinary and unforeseen COVID-19 pandemic.” The CAA further emphasizes the “expanding needs [of cargo carriers] for service at many of the communities with slot constrained airports” and asserts that “it would be in the public interest for the FAA to temporarily reallocate to cargo airlines the slots not used by passenger airlines” given the interests served by air cargo service in support of transporting medical supplies and equipment to combat COVID-19. The CAA notes that the DHS Cybersecurity and Infrastructure Security Agency has recognized air cargo workers as “Essential Critical Infrastructure Workers” exempt from shelter-in-place rules. The CAA also notes that the upcoming “October-December timeframe is when demand will peak to the highest point in the year and this year will undoubtedly present challenges for the air cargo industry.” CAA urges the FAA to finalize the relief proposed through March 27, 2021 and to “make available unused slots for temporary reallocation to air cargo operations.”

While IATA generally supports the FAA’s intent in providing further relief from the minimum slot usage requirements for the full Winter 2020/2021 season at DCA, JFK, and LGA, IATA opposes the FAA’s proposed conditions for a carrier to benefit from the proposed waiver

extension. IATA asserts that “[f]ailure to eliminate these limitations would negatively and unnecessarily impact all carriers operating to U.S. Level 2 and [slot-controlled] airports as well as expose them to restrictions to their operations around the world.” IATA urges the FAA to amend the proposed slot return condition “to a simple rolling deadline prior to operation in line with the rest of the world and grant exemptions for those slots not covered by the return period at the start of the season.” IATA notes that as carriers at U.S. slot-controlled airports would be required to return slots that will not be used at least four weeks in advance by the first day of the preceding month, the effect is a return deadline of four to eight weeks prior to operation to be eligible for relief. IATA asserts that this “far exceeds the conditions of other waivers globally, which range from no [return] deadline to maximum four weeks in advance” and “will result in cancellations not dictated by market demand and hinder recovery further.” IATA asserts the proposal is “confusing in terms of implementation, impractical, and unjustifiable given current demand and booking behaviors” and further that “[i]t is also made practically impossible by government restrictions that limit the ability of airlines to plan schedules in advance.”

IATA points to evolving government travel advisories, changes to crew restrictions and requirements, testing regimes, quarantines, and passenger booking behavior<sup>19</sup> as examples of considerations that make it challenging for carriers “to make decisions on their operating schedule by the first of the month prior to the operating month...” Thus, according to IATA, carriers would be likely to cancel more flights than otherwise necessary to preserve their long-term access to slots. IATA references a collaborative approach used to reach consensus by the European Commission (EC), which has resulted in a three-week deadline being applied

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<sup>19</sup> IATA’s analysis and airline data shows that 67% of U.S. domestic bookings and 46% of U.S. international bookings are currently made less than four weeks from travel.

voluntarily at all European Union and European-coordinated airports for the Winter 2020/2021 season, thus concluding that it may be advisable for the FAA to consider the EC agreed upon deadline. IATA further notes practical challenges associated with the proposed return deadline given the timing of the announcement of the proposal and seeks to ensure relief will be provided to carriers to address concerns “that slots for the last week of October and the whole of November will not benefit from the waiver unless they are exempted from any return deadlines.” IATA points out that issuance of the FAA’s final waiver policy in October would prevent carriers from being able to meet October and November deadlines.

IATA also seeks clarification of the conditions for newly allocated slots, treatment of transfers, and the exception for certain cancellations that have not met the conditions “to ensure maximum benefit to the industry.” IATA urges the FAA to indicate that it will consider “border or airport closures; quarantine requirements; load restrictions/passenger caps; and onerous or economically infeasible testing protocols” in determining whether to grant an exception from any conditions imposed on the waiver and to establish a “procedure to allow for this alleviation without unnecessary bureaucratic review and processing that would unnecessarily burden both the slot coordinator and airlines.” IATA supports a condition that new slots allocated for the Winter 2020/2021 season be excluded from the waiver and remain subject to minimum slot usage requirements. However, IATA asks the FAA to clarify the condition for new allocations and, specifically, whether it applies to slots allocated for purposes of the Winter 2020/2021 season regardless of the timing of the new allocation. IATA also asks for additional clarification concerning the circumstances under which a transfer would not be eligible for the waiver. IATA assumes that condition “would only apply to those transactions undertaken 14 days post-publication of the waiver that are not continuing long-term transfers.”

A4A generally supports FAA's proposal to make relief from the minimum slot usage requirements available at slot-controlled airports in the United States through the Winter 2020/2021 season. However, A4A opposes the FAA's proposed condition for returns and similarly points to the booking curve, which A4A asserts has "shifted substantially, with more passengers now booking within just a week or two of departure." A4A seeks the alignment of this proposed condition with certain foreign jurisdictions providing for a three-week rolling return deadline consistent with current demand and booking patterns and in order to increase operational flexibility.

The oneworld Alliance generally supports the FAA's consideration of continued relief from the minimum slot usage requirements, but expresses concern that the proposed conditions "will negatively impact airlines...and potentially result in carriers being subject to unfair reciprocal treatment in other jurisdictions." In addition, the oneworld Alliance urges FAA "to amend the condition for the return of unused slots to a four-week deadline prior to operation, to align with conditions globally."

United generally supports the FAA's proposal for slot-controlled airports to the extent the proposal would preserve the general status quo, but United opposes the imposition of any conditions on the relief made available given "the entire point of the Notice is to afford relief due to extraordinary circumstances." Nevertheless, consistent with comments from IATA and A4A, United urges the FAA to simplify the process and timing for slot returns and to clarify the basis for approving exceptions from the conditions at slot-controlled airports.

Delta supports the FAA's proposal to extend relief from the minimum slot usage requirements at JFK, LGA, and DCA through March 27, 2021, noting that this extension "will provide carriers with critical flexibility and support the long-term viability of carrier operations

at slot-controlled airports in the United States.” Delta encourages the FAA to amend the proposed return condition “to allow carriers to return a slot no later than three weeks in advance of the corresponding flight” in order “[t]o align the advance slot return requirement with the current demand and booking patterns.” Delta comments that the proposed condition requiring returns four to eight weeks in advance of an operation “would cause commercial and operational challenges for Delta and other carriers” as “approximately 75% of customer bookings on Delta flights now take place within just four weeks of the scheduled flight, and approximately one-third of passenger bookings have been occurring within just one week of departure.” Delta notes that a three-week return condition would allow “more operational flexibility while still supporting the FAA’s objective of allowing other interested carriers to operate the unused slots on an *ad hoc* basis” and be “more consistent with international slot waiver and return standards.”

Star Alliance supports the FAA’s proposal to extend relief at slot-controlled airports in the United States through the end of the Winter 2020/2021 season, but opposes the FAA’s proposed return deadline to the extent it “force[s] airlines to forego flexibility in recovery opportunities” and diverges from foreign jurisdictions that require returns at most four weeks in advance of the date of planned operation.

With limited exceptions, foreign carriers generally support the full season extension of relief proposed at slot-controlled airports, endorsing the IATA comments and expressing opposition to the FAA’s proposed timeline for returning unused slots. Foreign carriers articulate two main concerns about the FAA’s proposed deadline for returning slots: 1) that the FAA’s return deadline is a global outlier that complicates unified schedule planning; and 2) that the FAA’s deadline is too restrictive in the current COVID-19-impacted commercial environment.

Royal Air Maroc comments that the FAA's proposed return deadline "far exceeds the conditions of other waivers globally, which range from no deadline to maximum four weeks in advance." Royal Air Maroc asserts that, "[g]iven the crisis, airlines are not in a position to make decisions on whether or not to operate certain flights eight weeks prior to departure." Ethiopian Airlines also takes issue with the proposed slot return timeline, asking that the "FAA amend [its] proposal for advance slot returns" and "align with the global best practice of requiring returns in advance (one week) of the planned date of operation."

Carriers propose various return deadline timelines, with some advocating for one week in advance while others proposed two-week, three-week, or four-week rolling return deadlines. Iberia advocates for the FAA to require the return of slots three weeks before the date of the operation. Alitalia is most concerned with the proposed FAA deadline being at the beginning of the preceding month, proposing a "simple" four-week rolling deadline instead. Qantas also commented that, "a simple four-week deadline prior to operation would be appropriate." Cathay Pacific supported a two-week return deadline, commenting that the lead-time for cargo services "will be even shorter than passenger services."

A4E supports the FAA's proposal to extend relief at slot-controlled airports in the United States through the end of the Winter 2020/2021 season, but expresses concern about certain aspects of the proposal. A4E comments that "[t]ransatlantic routes are critically important for some [A4E] members, who provide extensive business and leisure connectivity between the United States (U.S.) and Europe, and thereby generate substantial economic and employment benefits on both sides of the Atlantic." A4E asserts that "[c]ontinued slot relief is essential for an industry experiencing its most severe crisis in history" and notes that "Eurocontrol's recent traffic scenarios for Europe forecast 55% (6 million) fewer flights in 2020 compared to 2019"



and that “the overall revenue loss across the industry, including airports and ANSPs, is estimated at €140 billion.” A4E also asserts that “[t]raffic is expected to remain 50% down on 2019 by February 2021.” A4E urges the FAA to reconsider its proposal for slot returns and align its policy with Europe’s policy, to require slot returns no later than three weeks in advance of planned operation based on reciprocity concerns and patterns of current demand, which make it impossible “to predict demand more than two or three weeks in advance under current circumstances.” A4E also recommends an exception that “provides for potential alleviation of slot returns made within three weeks if this is caused by circumstances outside of the airline’s control and related to crisis (e.g. the imposition of travel restrictions at short notice).”

ALTA comments that the proposal to extend relief at slot-controlled and Level 2 airports “allows airlines to operate flights in an environmentally and financially sustainable manner instead on [sic] focusing on just filling slots.” However, ALTA is “concerned that the proposed [conditions] to the waiver will have undue negative impact on all carriers operating to U.S. [slot-controlled] and Level 2 airports and at the same time expose carriers to unfair reciprocal treatment regardless of which U.S. airport they operate from.” ALTA asserts that the U.S. “should provide slot relief that is consistent and equal to other countries given the global nature of the airline’s operations and slot holdings on each end of the route.” ALTA therefore urges FAA to amend the condition for returning slots to a simple four-week deadline prior to operation given “airlines are not in a position to make decisions on whether or not to operate certain flights eight weeks prior to departure.” ALTA also expresses concern about the timing of the proposal and how usage of slots will be addressed for the early part of the Winter 2020/2021 season. ALTA emphasizes the importance of certainty during this crisis, especially for those carriers

“from Latin America and the Caribbean which have been acutely affected with prohibitions of flying in many cases.”

The Arab Air Carriers Organization comments that “industry remains in the deepest crisis it has ever experienced with little hope of any return to near normal levels of flying this winter season” and urges the FAA “to amend the condition for returning slots to a simple four-week deadline prior to operation in line with the rest of the world.”

One individual expressed support for the FAA’s proposal to extend relief at slot-controlled airports through March 27, 2021, but also advocated for a revised return deadline of three to four weeks to be applied on a rolling basis to better align with standards adopted internationally and to reflect the limited ability of carriers to forecast demand up to eight weeks prior to operation.

Polar Air Cargo “fully supports” IATA’s request to extend relief through the full Winter 2020/2021 season, elaborating that “all-cargo carriers like Polar benefit from the flexibility provided by these slot waivers to schedule extra-sections, as well as numerous charters, to make up for the lack of belly capacity caused by the suspension of the vast majority of flights by passenger carriers.” Polar states that “[t]his has allowed the movement of critical medical supplies the world over and for the global supply chain to survive through service to numerous and usually slot-congested airports.” However, Polar comments further that “this policy should be discontinued thereafter to permit all-cargo services, as well as other categories of service that are being pressed to fill the void in air freight capacity, to qualify for permanent awards of the vacated passenger carrier slots starting in the Northern Summer 2021 Season.” In support of its argument for discontinuation, Polar notes that “[i]t now appears that the recovery of passenger services will be much slower, the shrinkage of passenger fleets much greater, and the overall

frequency of passenger services much lower than anticipated, underscoring the need for the continuation of additional all-cargo lift and the accompanying slot availability.”

Southwest opposes the FAA’s proposed extension for relief at slot-controlled airports in the United States through the Winter 2020/2021 season, but urges that, if the FAA nonetheless proceeds with finalizing the proposal, the FAA should affirmatively state in its final decision that “no further usage waivers will be granted so that all stakeholders will have ample time to plan accordingly.” Southwest comments that the conditions placed on the relief are insufficient and “largely impractical” as they do not provide an adequate incentive or assurance for carriers like Southwest to invest in new service for short-term, *ad hoc* access to slot-controlled airports. Southwest states that, in the absence of a “guarantee that Southwest would be able to use the reallocated slots *permanently*, an investment in new service would not be justified.” Lastly, Southwest notes that “[i]f full utilization is required beginning March 28, 2021, Southwest is prepared not only to operate its full complement of slots at both DCA and LGA but would welcome the opportunity to offer additional flights using any slots that are reallocated on a permanent basis.”

Spirit opposes the FAA’s proposal in its entirety as “unacceptably protective of dominant incumbent carriers at the expense of the traveling public and of low-cost carriers ready and willing to serve.” Spirit advocates for a “market-based restructuring of domestic competition.” Spirit asserts that the “proposal contravenes the procompetitive public interest mandate to which the FAA must adhere and penalizes low-cost and new entrant carriers willing to take on risk and operate new routes and service immediately.”

In lieu of the FAA’s proposal, Spirit seeks the removal of slot control rules and schedule facilitation parameters at all airports in the United States, at least with respect to domestic

operations, in an effort to “allow market forces to rebuild demand.” Spirit suggests a process for reintroducing such parameters in the future “[i]f and when congestion returns.” In the absence of such action, Spirit suggests several ways in which the rules governing slots should be amended, including revising the minimum slot usage requirements and by requiring carriers “to fly larger aircraft on routes that begin and end at large or medium hub airports, using fewer slots, rather than underutilizing slots to prevent new entry.” Spirit believes that “discontinuing waivers alone is not enough...while keeping the slot regimes in place” as it encourages incumbents to fly “empty airplanes to preserve their slot priority when they may never use many of these slots and authorizations again.” Spirit asserts that the FAA’s proposal for slot returns is “unrealistic, even absurd” as it does not allow Spirit or other carriers looking to add flights to operate profitably given the lead time necessary for selling flights, crew scheduling and securing long-term leases with assurance of future long-term priority. Spirit comments that the FAA’s proposal “[i]gnores the Department and FAA mandate to set policies in the public interest.” Spirit asks that the FAA treat domestic and international operations differently and disregard reciprocity concerns raised by other commenters.

Spirit recommends that, if the FAA grants a full-season waiver at slot-controlled airports, slot-holding carriers should be required to determine what they will operate for the entire season in advance and return slots that will not be used by October 1; all returned slots would then be made available for permanent reallocation “even if the original [slot holders] want them back.” Spirit suggests that “FAA can exceed the caps, if necessary, for one or two seasons to allow for continuity of service in the case of low-cost or new entrants, as a scheduling conference is worked out.” Spirit further urges the FAA to make clear that, barring a major resurgence of COVID-19, this will be the last waiver at slot-controlled airports.

Allegiant comments that “an extension of the [current] waiver without change would be contrary to the public interest,” and “while the modifications stated in the Notice represent an improvement over the existing situation, they do not go far enough and as such, do not adequately serve the public interest” with reference to 49 U.S.C. 40101. Allegiant comments that “a public health crisis does not justify hoarding of public assets – in this case, slots at Level 2 and [slot-controlled] airports – by any carrier when others are prepared to utilize at least some of those assets, benefitting the public.” Allegiant comments that “[u]nder the FAA’s approach, the flexibility reserved for incumbents would confer a competitive advantage on them, given that the most non-incumbents could hope for under the Notice is ad hoc slots made available in monthly installments” and “a competitive advantage conferred by a government agency upon any carrier or carriers is contrary to the public interest.” Allegiant asserts that a proper balancing of interests “requires that each group be provided an equal opportunity to utilize the public assets in question.”

In lieu of a waiver, Allegiant suggests that the FAA should require “each incumbent carrier to declare by a date certain which slots it will utilize for the Winter 2020-21 scheduling season and which it will not. Slots retained by an incumbent for the season would be subject to normal FAA use-or-lose requirements. In the case of Level 2 airports, up-to-date winter schedules would be required from incumbents by the same date. Other U.S. carriers wishing to utilize the slots/times thus made available... would apply for them by a subsequent date certain, listing the requested slots/times in order of preference for that carrier.” Allegiant suggests that the FAA then assign slots and priorities and ties could be broken by the FAA using a procedure similar to the DOT’s procedure for issuing CARES Act Service exemptions. Allegiant comments that it “knows of no reason its proposal would be any more complex or time-consuming than the

proposal outlined in the Notice,” which Allegiant asserts “is silent as to how the slots turned back in one-month increments would be distributed.” Allegiant urges the FAA “to modify its proposal so that non-incumbent carriers proposing to utilize available capacity at Level 2 and [slot-controlled] airports during the Winter 2020-21 season will have at least four months (December through March) of uninterrupted use of the slots/times they receive, enabling them to offer service on a realistic basis.”

NACA supports the comments submitted by Spirit and Allegiant and “believe[s] an extension of these waivers without further modifications creates an anti-competitive atmosphere and would be contrary to the public interest.” Agreeing with Spirit and Allegiant, NACA believes “the situation can be easily remedied by simply requiring each incumbent carrier to declare by a date certain which slots it will utilize for the Winter 2020-21 scheduling season and which it will not” to “ensure that non-incumbent carriers would have a reasonable opportunity to provide meaningful Winter 2020-21 service utilizing these public assets.”

Exhaustless, Inc. opposes the proposed extension of the waiver of the minimum slot usage requirements. This commenter expresses opposition to the concept and practice of “grandfathering slots” and requests enforcement of “1) the statutory terms of all air carrier’s [sic] economic certificates and 2) the binding case law that declares a legitimate replacement for the prohibited practice of grandfathering slots.”

*Comments Concerning the FAA’s Proposal for Continued Relief at U.S. designated IATA Level 2 Airports*

As previously explained, ACI World expresses full support for the FAA’s proposal; the FAA therefore understands this comment as supportive of the FAA’s proposal to provide relief at Level 2 airports through December 31, 2020.

The PANYNJ “acknowledges that certain key differences exist in the management of [slot-controlled] and Level 2 facilities,” observes that the absence of slots at Level 2 airports is a “distinction” that “is critical to the success of Level 2 facilities,” and expresses appreciation that the distinction “is acknowledged in the FAA’s [proposal].” The PANYNJ “also appreciates that consistency is necessary for air carriers to schedule their operations in a commercially viable manner, and that both the FAA and airports have traditionally maintained a historic baseline for schedules properly utilized in the Level 2 environment,” but notes that “in the Level 2 environment [FAA] has no legal obligation to maintain such a baseline.”

JetBlue supports the FAA’s proposal that for flights at EWR after December 31, 2020, priority would be based on approved schedules as operated for the balance of the scheduling season. JetBlue notes that “EWR has now been a Level 2 airport for almost five years and JetBlue continues to grow at EWR.” Moreover, “[g]iven that EWR is a Level 2 airport where any carrier is free to operate flights at any time, JetBlue certainly supports the FAA providing assurances to any carrier at EWR that it will not lose access to EWR as a result of the partial waiver, if the FAA ultimately decides to adopt its proposal to only extend the EWR waiver until December 31, 2020.”

IATA opposes the FAA’s proposal for relief at U.S. designated IATA Level 2 airports, asserting that equal relief should be provided for Level 2 and slot-controlled airports as IATA does not expect industry recovery in the U.S. market until 2023 and internationally until 2025. IATA asserts that Level 2 and slot-controlled airports are effectively similar, particularly in the New York City area given comparable decreases in booking and throughput due to COVID-19,<sup>20</sup>

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<sup>20</sup> IATA notes that according to TSA data, all three airports are down a total of 85.6% this summer compared to summer 2019 throughput and the New York City area has the second highest percentage reduction in scheduled flights in the total U.S. market for September (-74% versus September 2019). IATA reports that LAX, SFO, and

and similar congestion challenges within the market as well as compared to slot-controlled airports elsewhere in the world. IATA asserts that it has “no data...that would provide any basis for differentiating Level 2 and [slot-controlled] airports at the mid-winter 2020/21 season point.” IATA further asserts that “[a]irlines will be forced to spend their limited cash to ensure future access to Level 2 airports” as they “will be compelled to operate financially unsustainable flights in order to preserve their positions at these Level 2 airports” where airlines have “made multi-million/billion and multi-year investments to support their traffic levels at these airports.” IATA comments that “even if demand was back to normal levels in January 2021, this partial season approach is coming too late in the winter planning process to permit an 80% flight schedule,” which depends upon selling tickets, crew and fleet assignments, airport facility access, and airport personnel including airline staff, airport vendors, and security and immigration personnel.

IATA further notes that the FAA’s proposal for Level 2 airports coupled with the FAA’s policy on reciprocity “will likely result in other governments imposing additional restrictions on their previous full season waiver grant for U.S. carriers serving foreign Level 2 and possibly [slot-controlled] airports,” which “will put U.S. carriers at a disadvantage versus their competitors at a time when they can least afford it and force them to spend precious dollars to maintain their positions at these international hubs.” IATA references several reciprocity provisions adopted by foreign jurisdictions as examples likely to lead to this result. Lastly, IATA also expresses concerns regarding the proposed return condition within the context of the Level 2 proposal to the extent that the return deadline exceeds the conditions of other waivers globally and is “unjustifiable given current demand and booking behaviors.”

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ORD are facing similar challenges, with SFO down 85.6% in throughput over 2019, LAX down 80%, and ORD down 76%.



A4A opposes the FAA’s proposal for relief at Level 2 airports through December 31, 2020 and seeks alignment of relief at these airports with the full-season extension of relief at slot-controlled airports. A4A contends that the failure to align these policies will “lead to a distortion in the market and place dramatic burdens on airlines, put undue strain on American businesses and workers, impact the environment, and set the FAA apart from other global regulators.” A4A offers that the pandemic and regulatory response thereto have decimated demand for air travel<sup>21</sup> and, looking ahead, “passenger traffic is not expected to return to 2019 levels until at least 2024, maybe longer for international traffic.”

Consistent with IATA’s comments, A4A asserts that the proposal for Level 2 airports will have a substantial adverse impact on the entire industry and, particularly on A4A members that operate at these airports. A4A indicates that carriers already have made plans in reliance on a forthcoming full-season waiver at Level 2 airports. A4A also asserts that based on the proposal, carriers would have to “quickly re-hire staff, ensuring that all the training and certification requirements are met, which takes time.” A4A contends that “[w]hile no carrier would compromise safety, the resources and rush that will need to be employed to ensure this happens by January 1, 2021 will be significant and avoidable.” A4A “submits that the uncertainty will further destabilize airlines and make recovery even more difficult and costly.” Moreover, A4A reiterates that “the bifurcation [of relief at Level 2 and slot-controlled airports] will distort markets and/or cause airlines to fly mostly empty airplanes to avoid losing the significant investments that carriers have made in these airports...” by “[f]orcing airlines” “to make an unfair choice between operating empty aircraft, losing further resources in a distressed market

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<sup>21</sup> A4A also points to TSA throughput data indicating a 75% decline in summer 2020 generally and a decline of 86 percent in the New York market.

and facing a longer road to recovery or abandoning the market and with it the investments it has made to operate in that market.”

Also consistent with IATA, A4A points to concerns about reciprocity from foreign jurisdictions that have indicated they only will provide relief to the extent it is provided to their carriers. A4A expresses concern that a “lack of reciprocity will impair connectivity and therefore distort competition and alter passenger demand in the future.” With respect to its reciprocity concerns, A4A reiterates its concerns about a sudden need to ramp-up operations given “[a]irlines have put significant portions of their aircraft fleets in storage, permitted their employees to take voluntary furloughs, and reduced their winter schedules.” This ramp up is expected to put “strains on already diminished carrier resources” and “could also put more employees at risk of exposure to the virus as they return to airports and airplanes – without demand.” Lastly, A4A asserts that “[n]o data suggests that removing the waivers at Level 2 airports will generate demand, giving new entrants the opportunity to enter a struggling market and displace another carrier and its personnel that have invested substantially in the airport for the long-term.”

United opposes limiting the duration of relief at Level 2 airports to less than the full-season waiver that the FAA proposed for slot-controlled airports.<sup>22</sup> United contends that “[r]elief for both [slot-controlled] and Level 2 airports should be synchronous, parallel, and consistent through the full Winter 2020/2021 season.” According to United, disparate treatment of Level 2 airports means that “airlines serving Level 2 airports will be forced to take extreme actions in order to maintain their operational capability developed over decades at those airports.” United

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<sup>22</sup> In addition to submitting comments for consideration in the public docket, United submitted additional materials marked as proprietary and confidential.

asserts that the FAA’s proposed Level 2 treatment “fosters conditions that incentivize carriers to rush aircraft back into service” and thereby “introduces needless potential health and safety risks – both to frontline airline employees and the operation.” United references investments at Level 2 airports that carriers would be trying to protect: “Carriers have paid substantial rates, fees and charges, committed to signatory status, and worked collaboratively with Level 2 airports to improve gates, terminals, and other infrastructure. Carriers have established hubs at Level 2 airports.”

Regarding the prospect of losing priority at Level 2 airports, United observes that the “consequences are severe for airlines, like United, that operate international hubs at Level 2 airports,” and notes that “United would be singularly affected” because “United has a hub at each of those airports, where it has contributed through rates, charges, and fees to improve facilities and built a robust international network.” United notes that “[b]ecause of reduced demand...United has already been particularly affected by the drop in international travel that has, in turn, exacerbated the drop in domestic travel” and “[i]f other airlines are able to establish priority for *ad hoc* operations, United will be blocked from reopening the passageways when the crisis abates.”

United comments that “[a]s a matter of reasonable notice and fairness, airlines should have been provided more fulsome notice and time for public comments, and government should have afforded itself more time to consider the second- and third-order effects of a decision to change prioritization.” United emphasizes that the current waiver in effect has not precluded carriers from seeking and gaining approval from the FAA for *ad hoc* use of temporarily available slots and movements. United also argues that the FAA’s proposal would lead to “perverse” results and encourage “manipulation,” offering as an example that a major carrier operating at

JFK or LGA would benefit from the waiver there, and could then commence *ad hoc* flights at EWR, moving its NYC area operations in a manner that secures priority at EWR while also preserving unoperated slots at JFK or LGA.

United views the distinction between the two levels, slot-controlled and Level 2, in the United States as based upon “airspace management, airport capacity, and congestion and delay mitigation considerations rather than on competition.” In addition, United references reciprocity concerns consistent with other commenters and notes that “[o]ne of the foundational precepts of the original waiver was to ensure international reciprocity of relief,” which “calls into question whether full season waivers issued by other countries that are contingent on reciprocity will be withdrawn or similarly limited to grant only partial relief.” United discusses “the self-interest of carriers who rely on domestic business and thus have no concern about reciprocity or other second order effects that a split season and process changes will have on international networks.” United further asserts that “[a]t a minimum, the current waiver should remain in effect for two full scheduling seasons, Summer and Winter, so that the concept of corresponding seasons remains viable” and to ensure stability. United also recommends that the FAA “consult with carriers, slot coordinators, and IATA before altering international and industrial norms.”

Lastly, United acknowledges the existence of “long-standing disputes” about slot controls and schedule facilitation and how to balance the interests involved, but argues that the goal now should be “preservation, not reconstruction,” and that “[t]he last time that government should tinker with airline markets and competition is during the most severe threat in history to the survival of the industry.” United asserts that “it is far too early to draw any conclusions about a ‘new paradigm’” and warns against “the false assumption that the situation over the past six

months signals permanent change to demand patterns” rather than an “artificial landscape (*i.e.*, an environment shaped by the effects of the pandemic and government restrictions).”

The oneworld Alliance urges the FAA “to amend its proposal to provide relief at Level 2 airports for the full winter 2020/21 season, through 27 March 2021, to ensure equal treatment for operators at these airports and at [slot-controlled] airports, as well as other airports globally where waivers have been granted.”

Star Alliance urges the FAA to maintain consistency in its relief for Level 2 and slot-controlled airports, which would “ensure global consistency in the non-discrimination of airports.” Star Alliance asserts that continued and consistent relief is necessary to provide airlines certainty to forward-plan. In the absence of such relief, Star Alliance asserts that “airlines will be forced to fly all their previously allocated movements, or forfeit them,” connectivity for businesses and communities through Level 2 cities will be negatively impacted, and foreign airlines are likely to be disadvantaged by the U.S. not reciprocating the relief adopted by foreign jurisdictions.

Alaska generally supports the FAA’s “proposal to extend prioritization of flights cancelled at IATA Level 2 U.S. airports,” but “urges the FAA to apply the same duration of extension for Level 2 airports (to March 27, 2021) to align with the proposed extension date for JFK, DCA, and LGA.” Alaska notes that it has “sustained a high level of operations across [its] network” throughout the pandemic, but that “an extension of the existing waiver is necessary” for “flexibility to align scheduling with demand” given the “underlying purpose of an extension is the same regardless of whether an airport is categorized as Level 2 or [slot-controlled]” and “there is no reason to expect that demand at Level 2 airports will recover more quickly than at [slot-controlled] airports.”

The FAA received 33 comments from foreign air carriers, all of whom believe the FAA should extend the waiver for IATA Level 2 airports through the end of the Winter 2020/2021 scheduling season. A number of foreign air carriers express concern that ending relief at the Level 2 airports could hamper access to the U.S. market, slow the recovery of the international air market, and financially harm carriers trying to remain viable enterprises during COVID-19. Foreign air carriers believe that ending Level 2 relief would force them to sever and forfeit long-established international air connections between their respective countries and the United States or maintain such ties by operating at a tremendous financial loss. Carriers submitted information about forward bookings in their relevant markets. For example, Alitalia submits data showing that the U.S.-Italian passenger market continues to be depressed by more than 80 percent due to COVID-19 related impacts. Air France and KLM highlight that, “our sector is suffering from an unprecedented crisis.” Turkish Airlines notes that, “[t]he industry remains in the deepest crisis it has ever experienced with little hope of any return to near normal levels of flying this winter season. The number of passengers carried by Turkish Airlines to the USA between July-August 2020 decreased by 73 percent compared to between July-August 2019, which is a severe example of the decrease in demand.”<sup>23</sup>

The commenting foreign air carriers largely assert that the FAA’s Level 2 proposal would force them to either operate flights at a large cost or potentially cede access to the United States market. Air Canada states that “[t]he current FAA proposal goes against the international norms applied to [slot-controlled] and Level 2 airports. It cuts the Winter season into two halves, each with different rules and requirements, and introduces an entirely new, punitive structure that

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<sup>23</sup> Turkish Airlines also submitted a substantially similar comment to the U.S. Department of State. That comment has been posted to the public docket for this proceeding.

forces airlines to fly all their previously allocated movements or, apparently, forfeit them.” Singapore Airlines calls the FAA’s Level 2 proposal “extremely concerning,” and comments that, “[w]hen we are on the path to recovery, it is extremely stressful if these slots we have been utilising [sic] in the Level 2 U.S. airports are no longer available to us. This will further slow down the rate of recovery and dampen our presence in the [United States] market.”

Foreign air carriers also emphasize in their comments that the FAA proposal for ending Level 2 relief on December 31, 2020 is not in alignment with policies at non-U.S. airports, which could cause reciprocity concerns for U.S. carriers. Deutsche Lufthansa writes that “[f]or the U.S. Level 2 airports...we cannot accept the proposal to limit the extension only until December 31, 2020, basically splitting the winter season in half” and observes that “countries whose airlines are disadvantaged by this differential treatment in the U.S. might in return only grant waivers until December 31 for U.S. carriers operating to those countries on the principle of reciprocity.” These carriers also note that most global aviation regulators and slot coordinators have granted relief at Level 2 airports for the entirety of the scheduling season.

Foreign air carriers also note difficulty planning to operate service starting January 1, 2020 in light of the timing of FAA’s issuance of its proposed policy. Avianca, for example, comments that “[t]he proposals for the US relief are coming very late in the planning for winter operations. We cannot simply have crew and fleet ready to operate again from January 1, 2021 without considerable costs and time to ensure all operating and safety aspects are duly prepared. Our schedule needs considerable operational and commercial review if we are to return to flying in January.”

A4E urges the FAA to “reconsider its proposal and to provide alleviation at Level 2 airports for the full winter season...to ensure equal treatment for operators [at all slot-controlled

and Level 2 airports]...and to ensure consistency with the full season waivers that have been planned or granted at other airports globally, including Europe.” A4E notes that “[w]ith the European Union (EU) set to introduce a waiver for the full winter season, European airlines may potentially face a difficult situation by the end of 2020, knowing that a slot at one end of the route is protected but could be lost at U.S. level 2 airports.”

As previously discussed, ALTA is “concerned that the proposed [conditions] to the waiver will have undue negative impact on all carriers operating to U.S. [slot-controlled] and Level 2 airports and at the same time expose carriers to unfair reciprocal treatment regardless of which U.S. airport they operate from.” ALTA therefore, urges the FAA to provide relief at Level 2 airports for the full winter season.

The Arab Air Carriers Organization also supports the comments of IATA “urging the U.S. FAA to provide relief at Level 2 airports for the full winter season, through to March 27, 2021 to ensure equal treatment for operators at EWR, LAX, ORD and SFO to those at [slot-controlled] airports and the full season waivers granted at other airports globally.”

Twenty-two members of Congress<sup>24</sup> collectively submitted three comments advocating for an extension of the relief already provided at Level 2 airports through the Winter 2020/2021 season consistent with the proposal for extending relief at slot-controlled airports. These members of Congress express concern about the termination of relief at Level 2 airports and associated financial, labor, environmental, operational, and competitive impacts. Senator Booker

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<sup>24</sup> The twenty-two members of Congress who submitted comments include Senator Cory A. Booker, Senator Dick Durbin, Senator Tammy Duckworth, Representative Mike Quigley, Representative Darin LaHood, Representative Bobby L. Rush, Representative Raja Krishnamoorthi, Representative Mike Bost, Representative Rodney Davis, Representative Bill Foster, Representative John Shimkus, Representative Daniel W. Lipinski, Representative Adam Kinzinger, Representative Cheri Bustos, Representative Robin L. Kelly, Representative Danny K. Davis, Representative Bradley S. Schneider, Representative Jan Schakowsky, Representative Kevin Brady, Representative Dan Crenshaw, Representative Pete Olson, and Representative Randy Weber.



notes that “January is a known low-demand period for airlines and demand for air travel is expected to continue to hover around 40% compared to pre-COVID-19 levels,” but an abrupt end to the relief already provided “will result in many barely filled or empty airplanes being forced to fly.” The Greater Houston area delegation comments that the proposal “runs the risk of forcing carriers...to make dramatic scheduling changes at a time where certainty is desperately needed” as a “split season waiver makes it difficult for carriers to properly prepare a demand-driven schedule, and could impose significant financial and operational concerns on air carriers.” The Illinois delegation sees “no reason to treat Level 2 and [slot-controlled] airports separately – the COVID pandemic has impacted the aviation industry uniformly,” and accordingly “urge[s] the FAA to simply continue its equal treatment of congested airports in the [United States] until we are on the road to recovery.”

State and local officials from California and Illinois<sup>25</sup> similarly urge the FAA to continue equal treatment of congested airports in the United States “until we are on the road to recovery.” These officials advocate for a sustainable aviation recovery and the economic benefits that aviation brings to communities and workers [across] the U.S., which these officials assert depends on flexibility for carriers to match demand with capacity. These officials comment further that given COVID-19 impacts are the same for airlines operating to all airports, congested airports should be treated the same by the FAA. These officials also reference the likelihood that carriers “will be forced to operate ‘ghost flights’” to retain slots and schedule

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<sup>25</sup> These State and local officials from California and Illinois include State Controller Betty T. Yee, State Senator Jerry Hill, State Senator Shannon Grove, State Senator Patricia C. Bates, Assemblyman Vince Fong, Assemblyman and California Aviation Caucus Chair Jim Patterson, Los Angeles Councilmember Joe Buscaino, Governor JB Pritzker, State Senator Bill Brady, and State Representative Jim Durkin.

approvals and emphasize that the U.S. would “stand alone if it continues with this policy proposal,” subjecting U.S. jobs and travelers to even greater risk and uncertainty.

The IAMAW and PAFCA-UAL submitted comments substantially similar to the comments submitted by the State and local officials. The Association of Flight Attendants-CWA also urges the FAA to maintain harmonization of the COVID-19 relief for Level 2 airports and slot-controlled airports in the United States through the end of the Winter 2020/2021 season. In support of its views, the Association states that “the current FAA COVID-19 policy to treat congested airports equally...is the best way forward at this time” and suggests that this approach can be re-evaluated and adjusted if needed, “once we are on the path to recovery.”

The FAA received 54 comments from a diverse array of businesses and organizations, including Visa Inc., the United States Chamber of Commerce, the California Chamber, the Environmental Policy and Law Center, Oracle, and dozens of others. The majority of comments focused on advocating for an extension of the Level 2 waiver through the end of the Winter 2020/2021 scheduling season, with commenters iterating concerns about the economic and environmental effects of ending relief on December 31, 2020. Many of these organizations used similar phrasing to the effect that “[o]ur ask is to simply treat Level 2 and [slot-controlled] airports the same, as the COVID 19 impacts to airlines operating to these airports are the same.” The African American Chamber of Commerce of New Jersey contends that “the FAA’s proposal to provide disparate treatment to air carriers at Level 2 airports as compared to carriers at [slot-controlled] airports would address the pandemic-induced demand disruption by picking market winners and losers.” Commenters assert that the proposed Level 2 policy would impose large costs on air carriers either through loss of market access or through increasingly unprofitable flying during COVID-19.

Visa Inc. writes that “[r]ather than support an aviation recovery – and by extension a wider economic recovery – the FAA’s policy proposals do the opposite,” and asserts further that “the proposed Notice...imposes severe consequences for an airline not flying its full allocation of movements.” Commenters assert that the broader economic recovery from COVID-19 is going to depend in part on continued connectivity at U.S. Level 2 airports that serve as major domestic and international connection points. Stressing the importance of good air connectivity to their local and regional economy, the Illinois Chamber of Commerce comments that “Chicago area businesses depend on the routine functioning of the aviation industry at O’Hare in order to survive and thrive,” and states further that “[a]s the economy continues to suffer the economic fallout of the pandemic, the Illinois business community cannot also bear a market distortion which results in a weakened carrier base at O’Hare.”

Many commenters also stressed the potential environmental and carbon impact of operating “ghost flights” to “maintain slots.” The Environmental Law and Policy Center comments that “[u]ntil the minimum usage waiver was put in place last March, ‘ghost flights’ wasted fuel and contributed to climate change for the sole purpose of allowing airlines to retain slots at airports. The [initial] waiver was thus a sensible, common sense response to the unprecedented drop in travel demand caused by COVID-19.”

Travelers United disapproves of the FAA’s proposal, arguing that “[t]he free market should be allowed to function as the industry rebuilds itself over the next several years,” that “the existing slots waiver should not be extended,” and that “[i]f extended, the FAA should indicate that this will be the final extension.” According to Travelers United, “[t]he free market should be allowed to reallocate the use of these slots, which are actually owned by the public, to airlines

that are willing to provide service for the benefit of the public.” Travelers United contends that a “free market will allow all airline consumers greater choices.”

In addition, 71 individuals commented on the FAA’s proposed discontinuation of relief at Level 2 airports beyond December 31, 2020. Most of the individual commenters (69 in total) comment to the effect that the FAA should, “extend through the end of the International Air Transport Association (IATA) 2020/2021 winter season the COVID-19 related policy that prioritizes flights canceled at IATA Level 2 airports in the [United States].” Most of these 69 commenters are individual employees of United and their comments are substantially similar, though some comments reflect on how FAA policies could have an impact on an airline employee’s career.

One individual commenter asserts that “the proposed partial-season extension arbitrarily discriminates between the users of slot-controlled and Level 2 airports and will visit far more damage than benefit on the industry, with little or no offsetting benefit to the traveling public” or to new entrant carriers, because incumbents will opt to fly mostly empty airplanes to keep priority. This individual also referenced international reciprocity concerns and the likelihood of foreign jurisdictions adopting partial season relief for U.S. carriers at both Level 2 and slot-controlled airports. This individual asserts that “commercial aviation – so fundamental a prerequisite to that recovery – requires policy decisions predicated on stability and predictability,” as “[i]t makes little sense to base policy on calls to ‘let the market function’ when there is no functioning market.” In addition, as previously noted, this commenter proposes that the FAA reconsider the return deadline and adopt a three to four week rolling deadline in lieu of the proposal.

Another individual commenter objects to the proposed relief from the minimum slot usage requirements. This commenter acknowledges that COVID-19 “has certainly disadvantaged most of the legacy carriers and has lead [sic] to substantial downsizing in their fleets and workforce,” but asserts that “other carriers, such as Southwest Airlines, Frontier, Spirit, and Allegiant, have a different business model that will allow them a far quicker recovery.” This commenter argues that “[c]ontinuing to deny other carriers who may be capable of using these slots economically the right to claim these underutilized slots just promotes a monopoly that disadvantages taxpayers and customers.”

As previously discussed, Spirit opposes the FAA’s proposal in its entirety. With regard to the FAA’s Level 2 proposal, Spirit comments that the Level 2 designations at EWR, LAX, ORD, and SFO “should end now given the low airport utilization and the minimum three-year expectation for recovery” or “[a]t an absolute minimum, FAA should eliminate the flight caps at EWR as irrelevant for the foreseeable future.” Spirit asserts that if limits are needed again in the future “FAA can consider first raising the caps” to 2017 levels and “if necessary and pursuant to statute, hold a scheduling conference to fairly allocate slots based on an assessment of pre-COVID operations, and operations over the two years preceding the need to reimpose the caps.” Moreover, as discussed previously, Allegiant proposes an alternative process in lieu of a waiver for both slot-controlled and Level 2 airports, which would require updated schedules from incumbent airlines based on planned operations over a three to four month period for reallocation to non-incumbent carriers like Allegiant. Similarly, “NACA recommends that the FAA should immediately end the Level 2 designation at ORD, EWR, LAX, and SFO in light of the historically low airport utilization and the legacy carriers’ own forecasts that a return to pre-pandemic levels of passenger demand will take three years or more.”

As previously noted, some commenters seek to supersede the Level 2 policy proceeding entirely by encouraging the Federal Government to establish broader economic/market-based aviation industry recovery policies and/or change the regulatory policy landscape for managing slots and schedule facilitation in the United States.

### **Discussion of Relief for Slot Holders at U.S. Slot-Controlled Airports (DCA/JFK/LGA)**

At the present time, COVID-19 continues to present a highly unusual and unpredictable condition that is beyond the control of carriers. As demonstrated in comments submitted by carriers as well as industry advocates, passenger demand has decreased dramatically as a result of COVID-19,<sup>26</sup> and is expected to remain as low as 40-50% of 2019 demand during the upcoming Winter 2020/2021 season, even as there are some signs of limited recovery in some markets and some restructuring of airline operations. The ultimate duration and severity of COVID-19 impacts on passenger demand in the United States and internationally remain unclear. Even after COVID-19 is contained, impacts on passenger demand are likely to continue for some time.

In its proposal, the FAA acknowledged the need for slot holders to have some flexibility in decision-making as the severe impacts of the COVID-19 public health emergency continue, but further noted that what starts as a highly unusual and unpredictable condition may eventually become foreseeable. Indeed, many airlines may well be on their way to restructuring their operations in response to a new, albeit volatile, environment. There may come a point in time at

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<sup>26</sup> Multiple carriers commented on decreased demand and financial losses. A4A commented that “about one-third of the US fleet is parked” and provided information on bookings on U.S. domestic flights and U.S. international flights for October 2020 through March 2021 as of August 2020 vs. August 2019. IATA provided similar information for the U.S. Level 2 and slot-controlled airports. As discussed earlier in this notice, A4A and IATA also provided information on TSA passenger screening data in 2020 compared to the same periods in 2019. The FAA notes that additional information on TSA passenger checkpoint throughput data for 2020 and 2019 is available at <https://www.tsa.gov/coronavirus/passenger-throughput>. A4A maintains additional information on COVID-19 related data at <https://www.airlines.org/dataset/impact-of-covid19-data-updates/#>.

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. The FAA acknowledged the interests of carriers with limited or no access to constrained airports in the United States and the interests of airports in serving their local community and rebounding from COVID-19. Further, the FAA agreed that any additional relief from the minimum slot usage requirements at U.S. slot-controlled airports should be tailored narrowly to afford increased access to carriers that are willing and able to operate at these airports, even if on an *ad hoc* basis until such time as slots revert to the FAA for reallocation under the governing rules and regulations at each slot-controlled airport.

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 due to continuing COVID-19 impacts through March 27, 2021, subject to each of the following revised and clarified 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. Compliance with this condition is required for operations scheduled from November 12, 2020 through the rest of the Winter 2020/2021 season; therefore, carriers should begin notifying the FAA of returns on October 15, 2020. Slots for the period from October 28, 2020 through November 11, 2020 are not subject to this condition.<sup>27</sup>
- (2) The waiver does not apply to slots newly allocated for initial use during the Winter 2020/2021 season. New allocations meeting minimum usage requirements would remain eligible for historic precedence. The waiver will 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).

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<sup>27</sup> The usual process for treating slots as used for the Thanksgiving and Winter holiday periods provided by 14 CFR § 93.227(l) of the High Density Rule and the JFK and LGA orders will still apply and will not be superseded by this decision.

- (3) The waiver does not apply to slots newly transferred on an uneven basis (*i.e.*, via one-way slot transaction/lease) after October 15, 2020, for the duration of the transfer. 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 proposed relief would not be eligible for transfer if the slot holder ceases all operations at the airport.<sup>28</sup>

Additionally, an exception may be granted and the waiver therefore applied, if a government's official action (*e.g.*, travel prohibition or other restriction due to COVID-19), prevents the operation of a flight on a particular route that a carrier otherwise intended to operate. This exception will be administered by the FAA in coordination with the Office of the Secretary of Transportation (OST). This exception will apply under extraordinary circumstances only in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to an official governmental prohibition or restriction. A carrier seeking an exception may provide documentation demonstrating that the carrier qualifies for the requested exception. If documentation is not provided in support of a request for an exception, the FAA and OST will make a determination based on publicly available resources.

The FAA believes this final decision on further relief at slot-controlled airports for the Winter 2020/2021 season maintains a reasonable balancing of the various competing interests in an uncertain environment with ongoing COVID-19-related impacts and within the bounds of the current regulatory and policy landscape for slot management in the United States. The FAA believes this approach is appropriate to provide carriers with flexibility during this unprecedented situation, to support the long-term viability of carrier operations at slot-controlled

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<sup>28</sup> The FAA notes that this provision is not intended to apply to continuing long-term transfers that are already part of the operating environment pre-dating October 15, 2020.



airports while also supporting economic recovery, and to reduce the potential for a long-term waiver to suppress flight operations for which demand exists. The FAA also believes this decision is more consistent with the approach taken by other jurisdictions.

The FAA received a number of comments and requests for clarification on the proposed conditions and exception, including some general comments from carriers that the conditions are not strict enough, as well as others such as the comment from Southwest that the conditions placed on the relief are insufficient and “largely impractical” as they do not provide an adequate incentive or assurance for carriers like Southwest to invest in new service for short-term, *ad hoc* access to slot-controlled airports. Southwest states that, in the absence of a “guarantee that Southwest would be able to use the reallocated slots *permanently*, an investment in new service would not be justified.” Additional comments, clarifications, and changes to the conditions and exception are discussed below.

#### Slot Return Deadline

The FAA is amending the return deadline to a simple, rolling four-week time period beginning October 15, 2020, for purposes of planned operations four weeks from that date on November 12, 2020. The four-week return period will not apply to slots for the period from October 28, 2020 through November 11, 2020. Usage will be waived for COVID-19 cancellations during this period consistent with the other conditions applied to the waiver.

The FAA notes that this condition is a minimum requirement for carriers to benefit from the waiver. However, the FAA strongly encourages carriers to return slots voluntarily as soon as possible and for as long a period as possible during the Winter 2020/2021 season so that other airlines able to add or increase operations on an *ad hoc* basis may do so with increased certainty. The FAA understands that there is a lag period between when schedule changes are submitted to

the distribution systems and when schedules are made public.<sup>29</sup> To help inform future decisions, the FAA intends to monitor the results of the return deadline, including trends on how close to the deadline returns are made to the FAA and whether the returns are sufficient to meet demand for the following few weeks. Multiple industry groups and airlines, including a number of the largest operators at the Level 2 and slot-controlled airports, cited the impacts of COVID-19 on demand, their operations, and cash flow positions in support of the FAA granting a full season waiver at slot-controlled airports. Those supporting similar alleviation at Level 2 airports for the full season rather than through December 31, 2020, as the FAA proposed, cited the difficulties with adding significant new flights starting in January, even with three months or more notice. That suggests that some carriers have made decisions that at least some flights will not operate. The FAA believes carriers may often be in a position to well exceed the minimum four-week slot return deadline that the FAA is adopting.

The FAA recognizes that commenters including ACI World, ACI-NA, and PANYNJ support the return deadline as proposed. Furthermore, Allegiant, Spirit, and NACA oppose even the proposed return deadline as they contend that it disproportionately favors incumbent airlines and does not provide sufficient notice or certainty for carriers to add flights during the Winter 2020/2021 season; they propose alternative return processes for the full season to allow greater certainty of *ad hoc* operations for multiple months.

Nevertheless, the FAA is persuaded by comments supporting a shorter, rolling return period, while believing there remains a valid basis for making slots returned to the FAA available to other carriers for as long as possible consistent with the current slot management

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<sup>29</sup> The FAA encourages submission of cancellation as early as feasible and carriers are reminded that they may mark specific information as PROPIN, if applicable. Carriers should identify a date when the PROPIN limitation would no longer apply.

rules in effect. A4A, A4E, IATA, oneworld Alliance, Star Alliance, ALTA, and the Association of Asia Pacific Airlines supported a shorter period by which unused slots would need to be returned to qualify for a waiver. Likewise, many foreign and domestic air carriers supported a shorter, rolling deadline or endorsed comments filed by IATA. Experience has shown that, even in the absence of any return deadline in connection with the waiver the FAA provided during the Summer 2020 season, carriers still have flown *ad hoc* operations in unused slots; looking ahead to Winter 2020/2021, CAA specifically asks “that the FAA make available unused slots for temporary reallocation to air cargo operations” and states that “the October-December timeframe is when [air cargo] demand will peak to the highest point in the year.” Polar Air Cargo notes that “all-cargo carriers like Polar benefit from the flexibility provided by these slot waivers to schedule extra-sections, as well as numerous charters, to make up for the lack of belly capacity caused by the suspension of the vast majority of flights by passenger carriers.”

As noted in comments, the FAA’s change to the final return deadline condition as compared to the proposal is based on a number of factors including: (1) the occurrence of the return deadline varying from as little as four weeks to as much as eight weeks in advance based on when in the month the operation occurs, because of the proposal’s use of a fixed return deadline rather than a rolling deadline; (2) the impracticality of a return deadline up to eight weeks in advance when demand and passenger bookings have been materializing much closer in time to the scheduled flight than that; (3) the divergence from other waivers already issued globally that range from no advance return deadline up to four weeks on a rolling basis; (4) the complications for reciprocal treatment of U.S. carriers at foreign airports and potential impacts to their operations or slot holdings; (5) the compliance issues for returning slots and receiving a waiver for slots in the last week of October and potentially the month of November depending on

when the final FAA policy is issued; and (6) the reasonable expectation that this return deadline will in fact result in some level of *ad hoc* operations rather than inactivity. The FAA considered proposals for shorter rolling return deadlines, but believes four weeks strikes a reasonable balance to support the FAA's objective of allowing other interested carriers to operate unused slots on an *ad hoc* basis.

#### Newly Allocated Slots

The FAA proposed the waiver would not be made available for net newly-allocated slots eligible for historic precedence, based on allocation decisions made prior to the start of the Winter 2020/2021 scheduling season. IATA had included a similar condition in its recommendations for consideration globally, and IATA agrees that "new slots allocated from the pool for the winter 2020 season must be operated according to normal 80/20 requirements, and therefore are not eligible for winter season waivers."

IATA suggests, however, amending the proposed condition to include newly allocated slots regardless of the timing of the new allocation, and not limit the condition to allocation decisions made prior to the start of the season. Information submitted by Air New Zealand indicates newly allocated slots at New Zealand airports are not eligible for a Winter season waiver, without reference to whether the allocation was made prior to or after the start of the season. In Europe, A4E, IATA, Airports Council International-Europe, and the European Union Airport Coordinators Association reached voluntary agreement on conditions for Winter 2020/2021 providing that "slots newly allocated and operated as a series may be considered for historic status only if they meet the 80% usage requirement."<sup>30</sup> Waivers granted for other foreign airports contain similar exclusions for newly allocated slots.

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<sup>30</sup> [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_20\\_1645](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1645)

The FAA agrees that it is not necessary to make a distinction based on when a new slot allocation from the available slot pool is approved, and accordingly, the FAA is removing the reference in the condition that refers to allocation decisions made prior to the start of the Winter 2020/2021 scheduling season. In addition, the FAA clarifies that in considering net newly-allocated slots for the purposes of this condition, the FAA will review a carrier's historic slots in conjunction with any newly allocated slots for the Winter 2020/2021 season. The FAA does not intend for the waiver to apply for historic slots while a newly allocated slot in the same time period potentially meets minimum usage and qualifies for historic status. For example, the waiver would not apply to historic slots unused on the basis of COVID-19 if newly requested and FAA-allocated comparable slots (*e.g.* arrival/departure, air carrier/commuter) or operating approvals are able to be operated in the same 30-minute or 60-minute time period, as applicable. Both the historic slots as well as the newly allocated slots in that time period would be excluded from the relief made available in this notice. The FAA also will closely review requests that could result in carriers obtaining relief in one time period while potentially gaining historic rights or priority through operations in another time period.

#### Slots Newly Transferred on an Uneven Basis

IATA requested clarification on this condition, specifically the statement that “this provision is not intended to apply to continuing long-term transfers.” The FAA received comments from a few airlines requesting clarification but without raising specific questions.

For the purposes of Condition 3, the FAA clarifies that it considers long-term transfers (*i.e.*, one-way slot transfers and leases that had previously been approved by the FAA for the Winter 2019/2020 or Summer 2020 scheduling seasons) to be a part of the established operating environment. Airlines seeking to transfer slots after October 15, 2020 will not be able to qualify

for a waiver as to those slots under this condition. Carriers may still opt to engage in uneven transfers, but in doing so, would not be eligible for a waiver of the minimum usage requirement for the associated slots for the Winter 2020/2021 season. Carriers are reminded that they would still be required to request approval from the FAA for any transfers, consistent with applicable provisions in the FAA rules and Orders. In determining whether a proposed slot transfer would qualify as a long-term transfer for these purposes, the FAA will review prior approved transfers. In particular, the FAA would review the duration of prior season transfers relative to transfer requests for the Winter 2020/2021 scheduling season to see if the duration of the transfers is similar. For example, a one-week transfer in a prior season that is proposed for a full season transfer in Winter 2020/2021 would not be considered a long-term transfer that is already part of the operating environment. A prior transfer for a substantial portion, but not the full season, could be extended to the full Winter 2020/2021 season and meet this condition. Carriers would still need to meet the eligibility to hold slots and comply with transfer provisions in the FAA rules and Orders. Further, the FAA notes that it adopted a date certain for this condition to simplify the policy and align with the timeline for beginning compliance with the slot return condition.

#### Limited Exception Based on Specific COVID-19-Related Government Prohibitions or Restrictions

In the September 11, 2020, notice, the FAA proposed to apply each of the foregoing conditions in considering whether a slot-holding carrier has justification for a waiver based on the non-use of a slot due to COVID-19 impacts, subject to a limited exception. As proposed, this exception would have applied only under extraordinary circumstances in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to a governmental action directly restricting travel due to COVID-19.

The FAA is finalizing the exception largely as proposed, but is providing additional clarification based on comments received. IATA urges the FAA to provide clarification that “travel restrictions” and “government action” would “include the various factors that may make a particular flight unsustainable, including but not limited to: Border or airport closures; Quarantine requirements; Load restrictions/passenger caps; and Onerous or economically infeasible testing protocols.” IATA further urges the FAA “to put in place a procedure to allow for this alleviation without unnecessary bureaucratic review and processing that would unnecessarily burden the slot coordinator and airlines.” JetBlue requests a “broad understanding of criteria for government mandated closure waivers.” United asks for clarification on “extraordinary circumstances,” which it believes could include “quarantines, travel constraints, border closures, testing requirements, limited airport hours, crew entry and rest exclusions, local curfews, caps on the number of arriving international passengers, and operating limitations.”

In the final text of the exception, the FAA made limited changes to clarify that: (1) the exception only would be considered based on evidence of an official prohibition or restriction issued by a governmental authority related to COVID-19 (such as a travel ban) that prevents a carrier from operating on a particular route at a particular date/time (consistent with the FAA’s runway approval or authorized slot); (2) non-binding protocols, guidance, and other policies issued by any entity related to COVID-19 will not be considered to be a valid basis for an exception; and (3) a carrier’s intent to operate will be evaluated for possible exception based upon several factors, including published schedules, carrier website information, flight cancellation information from flight plans or other FAA operational sources, carrier statements on operational plans or market restrictions, and information provided by airlines, airports, or other

parties. If the exception is determined not to apply, carriers will be expected to meet the conditions of the waiver or operate consistent with applicable minimum slot usage requirements.

The FAA seeks to avoid a situation in which this exception swallows the rule; accordingly, the FAA does not agree with comments suggesting a broader expansion of the exception. The FAA believes that applying the exception as broadly as some commenters seem to anticipate would negate the underlying purpose of the conditions and would not adequately incentivize the timely return of unused slots or notification of canceled operations. The concern about unnecessary bureaucratic review and processing in administering this exception is mitigated by the intent that relief under this exception will be afforded sparingly rather than frequently. That said, articulation of specific categories of qualifying circumstances would unnecessarily restrain the flexibility that the exception is intended to provide.

#### **Discussion of Relief for Operators at U.S. Designated IATA Level 2 Airports (EWR/LAX/ORD/SFO)**

The FAA proposed to extend, through December 31, 2020, its COVID-19-related policy for prioritizing flights canceled at designated IATA Level 2 airports in the United States, including EWR, LAX, ORD, and SFO, for purposes of establishing a carrier's operational baseline in the initial months of the next corresponding season, also with additional conditions as described herein. This limited extension was proposed in recognition of the fact that the IATA Level 2 construct differs from the rules and process in place at slot-controlled airports; the concepts of historic rights, series of slots, and minimum usage requirements do not exist under the Level 2 construct. As stated in the proposal, the FAA believes the voluntary, cooperative nature of Level 2 schedule facilitation is less amenable to continuing a policy that provides priority for flights that are not operated for extended periods of time while potentially denying access to carriers that are willing and able to add service.



Based on the comments received in this proceeding, the FAA has determined to extend through March 27, 2021, with conditions, its COVID-19-related policy for prioritizing flights canceled at designated IATA Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the next corresponding season.

The FAA additionally has determined to apply some conditions to carriers at Level 2 airports seeking relief and alleviation under this policy similar to the conditions finalized for carriers to benefit from the proposed relief at slot-controlled airports. Some minor adjustments have been made to reflect the different procedures, terminology, and regulatory requirements at slot-controlled airports that are not applicable at Level 2 airports. The conditions applicable to Level 2 airports are as follows:

- (1) All schedules as initially submitted by carriers and approved by 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 12 through the rest of the season; therefore, carriers should begin notifying FAA of returns or other schedule adjustments on October 15. Times for previously approved flights for the period from October 28, 2020 through November 11, 2020 are not subject to this condition.
- (2) The priority for FAA schedules approved for Winter 2020/2021 does not apply to net-newly approved operations for initial use during the Winter 2020/2021 season. New approved times would remain eligible for priority consideration in Winter 2021/2022 if actually operated in Winter 2020/2021 according to established processes.

Consistent with the final decision for slot-controlled airports, the FAA will consider, in coordination with OST, limited exceptions from either or both of these conditions at Level 2 airports under extraordinary circumstances if a government's official action (*e.g.*, travel prohibition or other restriction due to COVID-19), prevents the operation of a flight on a particular route that a carrier otherwise intended to operate. This exception will apply under extraordinary circumstances only in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to an official

governmental prohibition or restriction. A carrier seeking an exception may provide documentation demonstrating that the carrier qualifies for the requested exception. If documentation is not provided in support of a request for an exception, the FAA and OST will make a determination based on publicly available resources. 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 has previously approved schedules by carriers for the Winter 2020/2021 scheduling season at Level 2 airports and carriers may choose to operate as approved, request application of this proposed policy subject to the stated conditions, or submit new schedule proposals for the season.

The FAA is persuaded by the overwhelming number of comments supporting an extension of relief for the full duration of the Winter 2020/2021 season ending March 27, 2021. The FAA agrees that the underlying cause and purpose of an extension is the same regardless of whether an airport is categorized as Level 2 or slot-controlled, and that there is no reason to expect that demand at Level 2 airports will recover more quickly than at slot-controlled airports. The FAA further acknowledges difficulties caused by the timing of its proposal issued September 11, 2020, in proximity to the start of the Winter 2020/2021 season on October 25, 2020. The FAA had anticipated that offering relief through December 31, 2020 would provide reasonably sufficient advance notice for carriers to make their plans relative to Level 2 airports thereafter, but comments reveal that is not the case under the circumstances here. The FAA also is mindful of unintended consequences for reciprocity—*i.e.*, the prospect that the shorter duration of relief at Level 2 U.S. airports as compared to what other jurisdictions have already

offered could result in a corresponding shorter period of relief internationally for U.S. carriers at not only Level 2 but also slot-controlled airports.

The FAA further acknowledges practical concerns with, as proposed, establishing a distinct waiver duration at one airport in the New York City area, EWR, which could result in carriers leveraging the waiver at JFK or LGA to preserve slots at those airports while adding operations at EWR to attempt to gain priority there. The FAA has observed cases in Summer 2020 and requests for Winter 2020/2021 where airlines seek additional operations at EWR in hours that were previously at the scheduling limits while benefitting from a minimum usage waiver for slots held at JFK and LGA. While DOT and FAA are not seeking to interfere in competitive decisions by carriers on their operating airport if they have slots or approved schedules at more than one New York City area airport, neither is the purpose of this policy to countenance the potential for gaming that could be enabled by disparate treatment of New York City area airports.

As with its final decision regarding relief at slot-controlled airports, the FAA believes that this final decision on further relief at Level 2 airports for the Winter 2020/2021 season maintains a reasonable balance of the various competing interests in an uncertain environment with ongoing COVID-19-related impacts and within the bounds of the current regulatory and policy landscape for slot management in the United States. The FAA believes this approach is appropriate to provide carriers with flexibility during this unprecedented situation, to support the long-term viability of carrier operations at Level 2 airports while also supporting economic recovery, and to reduce the potential for long-term relief to suppress flight operations for which demand exists. The FAA also believes this decision is more consistent with the approach taken by other jurisdictions.

Regarding conditions on the relief at Level 2 airports, the FAA proposed a single condition imposing a return deadline similar to the condition proposed for slot-controlled airports. For the reasons stated above in discussing this condition at slot-controlled airports, at Level 2 airports, as well, the FAA strongly encourages carriers to return approved schedules voluntarily as soon as possible and for as long a period as possible during the Winter 2020/2021 season, and the FAA believes carriers may often be in a position to well exceed the minimum four-week return deadline that the FAA is adopting.

Given the extension of relief at Level 2 airports for the full season, and extensive comments advocating for parallel treatment of Level 2 and slot-controlled airports, the FAA determined to apply a second condition at Level 2 airports similar to the second condition that applies at slot-controlled airports.<sup>31</sup>

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

Several parties commented on the duration and severity of COVID-19 impacts, with particular emphasis on the FAA's proposal to discontinue relief at Level 2 airports in the United States after December 31, 2020. The proposal reflected an attempt to balance the need for relief due to COVID-19 impacts of unprecedented magnitude with the FAA's mission to ensure access to the national airspace system to the greatest extent practicable. To strike this balance, the FAA stated that "there may come a point in time in which ongoing waivers to preserve pre-COVID slot holdings could impede the ability of airports and airlines to provide services that may benefit

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<sup>31</sup> Different from the policy for slot-controlled airports, for Level 2 airports, the FAA does not include a third condition relative to schedule times newly transferred on an uneven basis. There have been occasional transfers of approved times at EWR but not at other Level 2 airports and not during Winter 2019/2020 or Summer 2020. The FAA does not anticipate there would be a need to approve any transfers at Level 2 airports during the effective period of this policy, as the FAA would consider schedule adjustments on an *ad hoc* basis after reviewing available capacity. If any transfers are needed in Winter 2020/2021 for operational reasons, they would be for the season only and would not be subject to the priorities provided by this policy.

the economy.” Further, the proposal stated that while “the FAA is proposing continued, albeit conditional, relief through the Winter 2020/2021 season, carriers should not assume that further relief on the basis of COVID-19 will be forthcoming beyond the end of the Winter 2020/2021 scheduling season.”

Comments reflected widely diverging views about the concept of ending waivers in the future and the appropriate timing for considering such action with respect to the ongoing COVID-19 public health emergency. Some parties strongly supported ending COVID-19 waivers soon—either before, during, or at the end of the Winter 2020/2021 season—and advocated broader regulatory and policy changes such as eliminating slot rules and/or Level 2 designations altogether. Other parties indicated that ongoing relief will be critical to the viability of operators at congested airports, and that FAA should keep an “open mind” on waiver petitions for the upcoming Summer 2021 season. Parties holding authorizations at congested airports indicated that, if waivers were to end in the demand environment currently projected for 2021, airlines would be forced to fly “ghost” flights to preserve their holdings in light of investments made in the airport facilities.

The FAA reiterates that operators should not assume that further relief on the basis of COVID-19 will be forthcoming beyond the end of the Winter 2020/2021 scheduling season. The FAA expects that this additional full-season extension of conditional relief will provide adequate notice and time for carriers at U.S. slot-controlled and Level 2 airports to make schedule decisions, market flights, and plan for aircraft utilization, crew, and facilities before a possible return to standard slot management and schedule facilitation processes might occur.

The FAA reserves judgment at this time with respect to any forthcoming petitions for additional relief. Rendering a decision for the Summer 2021 season or taking action to alter the

established rules and policies for slot management and schedule facilitation in the United States is not within the scope of this action. Any future requests will be evaluated on their merits, based on the facts and circumstances available at that time and consistent with the established standard for considering waivers from minimum slot usage requirements.

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

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

### **Process for Administering Relief**

Some comments requested information on the process to request, and for FAA to approve, available slots at slot-controlled airports or available schedule times at Level 2 airports. The FAA intends to follow existing procedures whereby carriers submit requests for new flight requests or changes to previously approved slots or flights to the FAA Slot Administration Office by email at [7-awa-slotadmin@faa.gov](mailto:7-awa-slotadmin@faa.gov). As noted earlier, the FAA expects that new allocations, approvals, and changes will be on an *ad hoc* basis only for the Winter 2020/2021 season, as much of the flexibility would be based on returns received under this waiver policy. Historic slot rights or priority at Level 2 airports would be retained by the original carrier provided the

appropriate conditions are met. To facilitate the FAA temporarily reallocating capacity returned under this waiver policy in a timely and efficient manner, carriers should submit updated and accurate information to the FAA as quickly as possible so the FAA can make unused capacity available to other carriers.

Carriers should assume that new allocations in the Winter 2020/2021 season are granted without historic precedence eligibility, unless explicitly stated and discussed otherwise with the FAA Slot Administration Office. Carriers should clearly state if they are unwilling or unable to accept *ad hoc* allocations limited to Winter 2020/2021 only. Requests for historically eligible slots will continue to be evaluated and processed according to availability, per established FAA processes. Those processes include maintaining a list of carriers with outstanding requests so that they can potentially be met if slots or times subsequently become available.

### **Decision**

The FAA has determined to extend through March 27, 2021 the COVID-19-related limited waiver of the minimum slot usage requirement at JFK, LGA, and DCA that the FAA has already made available through October 24, 2020, subject to additional conditions. Similarly, the FAA has determined to extend through March 27, 2021 its COVID-19-related policy for prioritizing flights canceled or otherwise not operated as originally intended at designated IATA Level 2 airports in the United States, subject to additional conditions, for purposes of establishing a carrier's operational baseline in the next corresponding season.

COVID-19 continues at this time to present a highly unusual and unpredictable condition that is beyond the control of carriers. The continuing impacts of COVID-19 on commercial aviation are dramatic and extraordinary, with a historic decrease in passenger demand. The ultimate duration and severity of COVID-19 impacts on passenger demand in the United States

and internationally remain unclear. Even after the outbreak is contained, impacts on passenger demand are likely to continue for some time. The FAA has therefore concluded that an extension of relief through March 27, 2021, with conditions, is appropriate to provide carriers with flexibility during this unprecedented situation and to support the long-term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States. In light of the evolving and extraordinary circumstances related to COVID-19 worldwide, continuing relief for this additional period on a conditional basis is reasonable to mitigate the impacts on demand for air travel resulting from the spread of COVID-19 worldwide.

While the FAA is providing continued, albeit conditional, relief through the Winter 2020/2021 season, carriers should not assume that further relief will be forthcoming beyond the end of the Winter 2020/2021 scheduling season. The FAA will review the facts and circumstances at the time of any future waiver requests; however, the FAA will also continue to consider the importance of providing access to the Nation's congested airports where there is capacity available. Slots are a scarce resource. Slot usage waivers accordingly are reserved for extraordinary circumstances. Even during an extraordinary period such as the COVID-19 public health emergency, carriers should utilize their slots and operating authorizations efficiently, in accordance with established rules and policy, or relinquish those slots and authorizations to the FAA so that other carriers willing and able to make use of them can do so. The FAA cautions all carriers against altering plans for usage at slot-controlled and Level 2 airports in reliance upon a presumption that additional relief will be forthcoming, which is a decision on which the FAA has not rendered a judgment at this time. The presumption that carriers should apply in preparing for operations in future scheduling seasons is compliance with standard slot management and schedule facilitation processes.



The FAA reiterates its expectation that foreign slot coordinators will provide reciprocal relief to U.S. carriers. To the extent that U.S. carriers fly to a foreign carrier's home jurisdiction and that home jurisdiction does not offer reciprocal relief to U.S. carriers, the FAA may determine not to grant a waiver to that foreign carrier. The FAA acknowledges that some foreign jurisdictions may opt to adopt more strict provisions in response to this policy than they had otherwise planned. However, as previously explained, the FAA believes the conditions associated with the relief provided in this policy are necessary to strike a balance between competing interests of incumbent carriers and those carriers seeking new or increased access at these historically-constrained airports, as well as to ensure the relief is appropriately tailored to reduce the potential 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 2020/2021 season, so that other airlines seeking operations on an *ad hoc* basis may do so with increased certainty. The rolling four-week return deadline is only a minimum requirement, 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 public health emergency.

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

relief. The information provided should include the dates for which relief is requested, the flight number, origin/destination airport, scheduled time of operation, the slot identification number, as applicable, and supporting information demonstrating that flight cancellations directly relate to the COVID-19 public health emergency. Carriers providing insufficient information to identify clearly slots that will not be operated at DCA, JFK, or LGA will not be granted relief from the applicable minimum usage requirements. Carriers providing insufficient information to identify clearly changes or cancellations from previously approved schedules at EWR, LAX, ORD, or SFO will not be provided priority for future seasons.

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