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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA-2026-9043; Summary Notice No. 2026-23]

Petition for Exemption and Other Relief

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

ACTION: Notice of petition for exemption and solicitation of comments on grant of petition with conditions.

SUMMARY: On July 23, 2026, JetBlue Airways Corporation (JetBlue) and Spirit Airlines, LLC (Spirit) (together, the carriers) petitioned the Department of Transportation (the Department) and Federal Aviation Administration (FAA) for an exemption from the prohibition on selling or purchasing Operating Authorizations (slots) at New York LaGuardia Airport (LGA). The carriers requested the exemption to allow them to consummate a transaction in which Spirit would sell 22 slots to JetBlue.

DATES: Comments on this petition must identify the petition docket number and must be received on or before [INSERT DATE 20 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments identified by docket number FAA-2026-9043 using any of the following methods:

- Federal eRulemaking Portal: Go to http://www.regulations.gov and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: Background documents or comments received may be read at http://www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nondie.R.Hemphill@faa.gov, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, at 202-267-9677.

SUPPLEMENTARY INFORMATION:

Introduction

FAA limits the number of scheduled and unscheduled operations during peak hours at LGA pursuant to an Order that was originally published in December 2006 and extended several times since (the Order).[1] The Order allocates Operating Authorizations (slots) to carriers and establishes rules for the use and operation of slots. The Order allows temporary leases and trades of slots between carriers for consideration, provided the transfer does not extend beyond the duration of the Order. The Order prohibits the sale or purchase of slots.[2] The only way for a carrier to sell or purchase a slot at LGA is through an exemption from the Order. Any slot FAA approves for transfer remains subject to FAA's authority, superior interest, and absolute control,

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[1] *Operating Limitations at New York LaGuardia Airport*, 71 FR 77854 (Dec. 27, 2006) as amended via 72 FR 63224 (Nov. 8, 2007) and 72 FR 48,428 (Aug. 19, 2008). FAA extended the expiration date of the amended Order on October 7, 2009, April 4, 2011, May 14, 2013, March 27, 2014, May 25, 2016, September 18, 2018, September 18, 2020, October 28, 2022, May 13, 2024, and June 23, 2026. 74 FR 51653; 76 FR 18616, amended by 77 FR 30585 (May 23, 2012); 78 FR 28278; 79 FR 17222; 81 FR 33126; 83 FR 47065; 85 FR 58255; 87 FR 65159; 89 FR 41484; and 91 FR 37771.

[22] "The FAA is not allowing carriers to buy and sell Operating Authorizations during the term of this Order." 71 FR 77854 (Dec. 27, 2006).

and the Order and any extension(s) thereof, including FAA's ability to withdraw the slots for non-usage or when it is in the public interest.

FAA tentatively concludes that granting relief to the carriers from the prohibition on selling and purchasing slots in the Order, subject to certain conditions and limitations, is in the public interest.

Standard of Review; Legal Authority

The FAA Administrator may grant an exemption from a rule or order, issued pursuant to 49 U.S.C. § 40103(b), whenever "the Administrator decides the exemption is in the public interest." 49 U.S.C. § 40109(b). The Order was issued pursuant to FAA's authority to "develop plans for the use of the navigable airspace" and "assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace." 49 U.S.C. § 40103(b)(1). The Administrator is also authorized to "modify or revoke an assignment [of the use of airspace] when required in the public interest." 49 U.S.C. § 40103(b)(1). In considering what is in the public interest in this instance, FAA is guided by the policy goals prescribed for the Administrator for safety regulations in 49 U.S.C. § 40101(d).[3] However, this is not an exhaustive list as Congress did not preclude the FAA Administrator from considering the "public interest" to include factors beyond "safety," "national defense," and "security." As such, FAA is also guided by the policy goals prescribed for the Secretary in 49 U.S.C. §§ 40101(a)(4), (6), (10-13) and the pro-competition policies followed by Congress in adopting legislation on matters such as slot exemptions and airport grant programs.[4] These goals have been public policy since at least the time of adoption of the Airline Deregulation Act of 1978[5] and they include (among others) maximizing reliance on competitive market forces; avoiding unreasonable industry

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[3] For a detailed history on the standard of review, the definition of public interest and the ability to impose conditions on a grant of relief, see *Notice of a petition for waiver and solicitation of comments on grant of petition with conditions*, 76 FR 45313 (July 28, 2011).
[4] *See, e.g., Delta Air Lines* v. *CAB,* 674 F2d 1 (D.C. Cir. 1982).
[5] Public Law 95-504 (92 Stat. 1705).

concentration and excessive market domination; and encouraging entry into air transportation markets by new carriers.

In granting an exemption, FAA may impose conditions to achieve its public interest objectives.[6] Congress expressly allowed the Administrator to "amend, modify, or suspend an order" and to do so "in the way * * * the Administrator decides." 49 U.S.C. § 46105(a). Accordingly, the Administrator may impose conditions on grants of exemption.

Background and Petition

Spirit ceased all passenger operations on May 2, 2026, and began a wind-down and liquidation.[7] Spirit, therefore, ceased operating its 22 slots at LGA. On June 22, 2026, the U.S. Bankruptcy Court for the Southern District of New York approved competitive bidding and auction procedures for the disposition of Spirit's assets, including the 22 slots. JetBlue participated in and became the "Successful Bidder" for the slots at the conclusion of the auction. Spirit notified interested parties of the auction's results through the bankruptcy proceeding. At a hearing on July 22, 2026, the Bankruptcy Court approved the transfer subject to necessary regulatory approvals.

On July 23, 2026, the carriers petitioned FAA and the Department for a grant of relief from the prohibition on the sale or purchase of slots under the Order. Specifically, the carriers requested that FAA and the Department permit the "non-reversionary transfer" of the 22 slots, recognize JetBlue as the historical holder of the transferred slots for the remainder of the Order and any extension(s), and provide relief from the Order's usage requirements through April 2027. The carriers assert that the transfer will meet the public interest policies in 49 U.S.C. § 40101 for the following reasons: "scarce capacity will return to service; a limited incumbent

[6] *See, e.g., South Dakota v. Dole*, 483 U.S. 203, 208 (1987).
[7] *In re Spirit Aviation Holdings, Inc*, No. 25-11897 (Bankr. S.D.N.Y.).

will gain a sustainable platform for expanded lower-fare competition; LaGuardia's operating limits will remain unchanged."

The carriers argue that it is in the public interest to swiftly resolve this regulatory matter and, therefore, forego notice and comment on the exemption request. The carriers reference the expiration of the use-or-lose relief, past practice in similarly situated situations[8], and differentiate the facts at issue here from those involved in a 2011 decision[9].

The carriers assert the transfer will preserve competition in the "heavily restricted New York market" by keeping the slots with a "price-competitive limited incumbent" that usually faces barriers to entry. The carriers cite a Government Accountability Office report stating that "slot scarcity at slot-controlled airports creates an entry barrier for new entrants, particularly low-cost carriers, and that average fares at those airports ranked among the highest at large hubs."[10] According to the carriers, the transfer would increase JetBlue's share of assigned slots at LGA to 4.6 percent and "JetBlue's LaGuardia portfolio by approximately 71 percent, giving JetBlue a more sustainable base from which to compete while remaining below 5 percent of carrier-held Operating Authorizations." The carriers assert that the Department has previously used the below-5-percent benchmark to "identify eligible carriers with a limited airport presence" and that those carriers' ability to obtain a "sufficient 'critical mass' of slots can support sustainable patterns of service and a competitive effect beyond the transferred slots themselves."[11]

The carriers also argue approval of the exemption request preserves the collateral financing framework for slots, gates, and routes without which "[l]enders would respond with

[8] *Joint Application of Delta Air Lines, Inc. & Aerovías de México, S.A. de C.V.*, Order 2016-12-13, at 25 & n.61 (Dec. 14, 2016), Docket No. DOT-OST-2015-0070.
[9] *Notice of a petition for waiver and solicitation of comments on grant of petition with conditions*, 76 FR 45313 (July 28, 2011).
[10] July 23, 2026, JetBlue and Spirit Petition for Exemption citing U.S. Gov't Accountability Office, GAO-12-902 *Slot-Controlled Airports: FAA's Rules Could Be Improved to Enhance Competition and Use of Available Capacity* 49-50 (2012).
[11] *Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport; Procedures for the Reallocation of Slots at Ronald Reagan Washington National Airport and LaGuardia Airport,* 76 FR 63702 (Oct. 13, 2011).

lower advance rates, additional collateral demands, high pricing, or less credit." The carriers claim that smaller and low-fare carriers would primarily be the group impacted by the inability of lenders to depend on that financing framework.

The carriers argue that 14 CFR part 93, which they acknowledge is not applicable at LGA, provides regulatory flexibility and supports the ramp-up of operations when a carrier is bankrupt or ceases operations. Specifically, the carriers point out that part 93 suspends the 80 percent usage requirements for bankruptcy or cessation of services and permits slots to be sold rather than withdrawing the slots to be distributed through an auction.

Finally, JetBlue argues its request for relief from the use-or-lose requirement in the Order through April 2027 is justified due to the need to address administrative and operational factors prior to conducting operations. For example, JetBlue discusses the need to "integrate the Operating Authorizations into its network, assign aircraft and crews, complete schedule and revenue-management work, load and publish the flights through distribution channels, and market the service."

As outlined below, several of the public interest arguments the carriers assert are the same as those considered in prior relief and are relevant to this tentative decision.

Summary of Proposed Findings and Conditions and Limitations

As described in more detail below, FAA tentatively finds that the proposed transaction offers important benefits to the public. Approving the sale of Spirit's 22 slots to JetBlue ensures that scarce public airspace resources are returned to active commercial service under a proven low-fare business model. Any purchased slot remains subject to FAA's authority, superior interest, and absolute control, and the Order and any extension(s) thereof, including FAA's ability to withdraw the slots for non-usage or when it is in the public interest. Accordingly, FAA has tentatively found that relief should be granted, subject to the conditions and limitations set forth below.[12]

In the absence of a specific provision allowing for an exemption of a particular requirement or restriction, FAA applies the same standard as for granting an exemption under 14 part 11. Specifically, FAA applies the same standards for foregoing notice and comment under 14 CFR § 11.87 if FAA finds or the petitioner demonstrates good cause that FAA should not delay action on a petition. FAA also applies the same standard as for granting an exemption under 14 CFR § 11.81. This standard requires the petitioner to demonstrate (1) why granting the request would not adversely affect safety or would provide an equivalent level of safety and (2) why a grant of the request is in the public interest.

FAA finds there is no good cause to forego notice and comment based on past practice or the deadlines put forth. FAA has extended the use-or-lose relief through October 31, 2026, and will continue to evaluate the need for future relief based on the regulatory proceedings. Also, where FAA found good cause in past circumstances, there was a robust administrative process leading up to the exemption requests during which the public could submit comments.[13]

Air traffic control procedures ensure the safety of operations conducted at LGA regardless of the number or operator of slots authorized. Moreover, the transfer of the 22 slots would not increase the number of operations at LGA. Accordingly, FAA tentatively finds there is no adverse effect on safety.

In prior slot transfer proceedings, the Department established that allocating scarce operating rights to carriers with limited access to congested markets directly serves the public interest by lowering average market fares, enhancing consumer choice, and disciplining legacy

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[12] FAA does not address arguments raised by the carriers that are not germane to its tentative decision or that it did not need to reach to tentatively find public interest. FAA's decision not to address those arguments do not convey agreement.

[13] Letter from Lorelei Peter, Assistant Chief Counsel for Regulations, Federal Aviation Administration, to Christopher Walker, Delta Airlines granting relief (May 4, 2017). *See also, Grant of Waiver* (Feb. 10, 2014), Docket No. FAAA-2014-0074; *Grant of Waiver* (Dec. 2, 2013), Docket No. FAA-2013-1011.

carrier pricing power.[14] As in those prior proceedings where relief was granted, the proposed slot transfer at LGA would provide opportunities for greater competition at LGA by JetBlue.

Approval of this request is consistent with previous decisions requiring the divestment of slots to new entrants or carriers meeting the “less than 5 percent” slot share.[15] After the transfer, JetBlue would continue to hold less than five percent of the total slot interest holdings at LGA, does not code share on flights to or from LGA with any carrier that has five percent or more slot interest holdings, and is not a subsidiary, either partially or wholly-owned, of a company whose combined slot interest holdings are equal to or greater than five percent at LGA. Approving this transfer enables a limited incumbent, independent, non-aligned carrier to strengthen its competitive position against dominant competitors, which, with the benefit of greater slot resources, could pursue anticompetitive strategies such as significantly increasing existing services in any market entered by JetBlue. Approval of the request directly supports the public interest factors enumerated at 49 U.S.C. § 40101(a) by enhancing the availability of a variety of adequate, economic, efficient, and low-priced services; placing maximum reliance on competitive market forces and on actual and potential competition; avoiding unreasonable industry concentration and excessive market domination; and by encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.[16]

FAA tentatively finds that as a condition of this relief, JetBlue is precluded from trading or leasing the slots to any carrier until after April 2028. While JetBlue may thereafter trade or lease these slots, the carrier is precluded from outright sale of these slots in the future. This

[14] See *Id.* and “As we stated previously, we believe the competition induced by this action will bring many benefits, including lower fares, more throughput, higher utilization of scarce assets, more opportunities to develop flexible or common use airport facilities, and reduced opportunities for exclusionary behavior such as ‘babysitting.’” *Notice - Reassignment of Schedules at Newark-Liberty International Airport*, 86 FR 52285 (Sep. 20, 2021).
[15] *Petition for Waiver and Other Relief*, 76 FR at 63706–07, 63711.
[16] *See* 49 U.S.C. § 40101(a)(4), (6), (10), and (13).

restriction will help to ensure that the traveling public will receive the benefits of the service and price competition provided by JetBlue.

If FAA issues a final exemption approving the transfer, JetBlue will become the holder of the slots. As such, FAA does not need to act on the carriers' request with regard to historics. Any purchased slots remain subject to FAA's authority, superior interest, and absolute control, and the Order and any extension(s) thereof, including FAA's ability to withdraw the slots for non-usage or when it is in the public interest.

Finally, while these slots will be subject to the minimum usage requirements contained in the Order, FAA tentatively grants a waiver from the use-or-lose requirements through April 2027 in order for JetBlue to start up service at new markets or add service to existing markets. This waiver would allow the carriers to complete the transaction and JetBlue to ramp-up its new operations at LGA.

FAA invites comments regarding the petition for exemption, its tentative decision, and any other relevant matters. FAA will issue a final decision after reviewing any relevant comments that it receives.

Issued in Washington, DC.

Brett T Daee,

Principal Deputy Chief Counsel.

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