



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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

Petition for Exemption of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport

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

ACTION: Notice of grant of petition with condition.

SUMMARY: Federal Aviation Administration (FAA) is granting JetBlue Airways Corporation's (JetBlue) and Spirit Airlines, LLC's (Spirit) (together, the carriers) joint petition for an exemption from the prohibition on transferring Operating Authorizations (slots) at LaGuardia Airport (LGA) beyond the duration of the applicable order. The relief permits the carriers to consummate a transaction in which Spirit would transfer to JetBlue 22 slots at LGA. The relief is granted on the condition that JetBlue is prohibited from leasing or trading any of those 22 slots to any carrier until after April 2028.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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:

The Proposed Transaction and the Exemption Request

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 slots to carriers and establishes rules for the use and operation of slots. The Order allows for a temporary lease or trade for consideration of a slot between carriers, subject to FAA approval, 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 transfer a slot at LGA beyond the duration of the Order and any extension(s) thereof is through an exemption from the Order.

Spirit ceased all passenger operations on May 2, 2026, and began a wind-down and liquidation. Spirit, therefore, ceased operating its 22 slots at LGA. Based on the unique circumstances of this case, FAA granted relief from the use-or-lose requirements to allow Spirit to continue holding the slots and pursue an appropriate sale via the bankruptcy process – subject to further review and approval by FAA. 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.³ 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, JetBlue and Spirit petitioned the Department of Transportation (the Department) and FAA for an exemption from the prohibition on transferring slots beyond the duration of the Order at LGA.⁴ The carriers requested, in part, an exemption to allow them to

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.

² “The FAA is not allowing carriers to buy and sell Operating Authorizations during the term of this Order.” 71 FR 77854 (Dec. 27, 2006).

³ Even when a carrier is the holder of a slot, the carrier only has a limited interest in that slot. During a bankruptcy proceeding, the FAA may opt to automatically withdraw the slot for non-usage or when it is in the public interest rather than allowing an auction to proceed. *FAA v. Gull Air, Inc.*, 890 F.2d 1255, 1260 (1st Cir. 1989).

⁴ A copy of the petition was placed in Docket FAA-2026-9043 and its contents were summarized and analyzed in the Notice. 91 FR 55968 (Aug. 31, 2026).

consummate a transaction in which Spirit would sell 22 slots to JetBlue. JetBlue also requested relief from the use-or-lose requirements in the Order through April 2027 due to the need to address administrative and operational factors prior to conducting operations.

FAA's Tentative Determination

On August 31, 2026, FAA published a “Notice of petition for exemption and solicitation of comments on grant of petition with conditions” (Notice).⁵ In the Notice, FAA tentatively approved the proposed transfer subject to a condition prohibiting JetBlue from trading or leasing the slots until after April 2028. Consistent with prior slot transfer proceedings, FAA tentatively found 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 carrier pricing power.⁶ Moreover, FAA tentatively approved the sale because, 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.

FAA found that an approval of the request would directly support 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

⁵ *Id.*

⁶ See 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. “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).

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.⁷

FAA also tentatively determined it would waive the use-or-lose requirements in the Order, and any extension(s) thereof, through April 2027 to allow 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 made it clear that any transferred slots would be subject to the Order and extension(s) thereof, including the requirements governing use-or-lose and the need to obtain FAA approval prior to any transfer of a slot. Moreover, any purchased slots remain subject to FAA's authority, superior interest, and absolute control, including FAA's ability to withdraw the slots for non-usage or when it 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).⁸ However, this is not an exhaustive list as Congress did not preclude the FAA Administrator from considering the “public

⁷ See 49 U.S.C. § 40101(a)(4), (6), (10), and (13).

⁸ 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).

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.⁹ These goals have been public policy since at least the time of adoption of the Airline Deregulation Act of 1978¹⁰ and they include (among others) maximizing reliance on competitive market forces; avoiding unreasonable industry 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.¹¹ 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.

Comments

FAA received eleven comments in response to the petition. Three were from individuals, two were from carriers (Frontier Airlines, Inc. and Breeze Airways), two were from associations/industry groups (Association of Value Airlines and Airports Council International - North America (ACI-NA)), one was from the Port Authority of New York and New Jersey (Port), and three were from Exhaustless. Of the nine commenters, six either supported or did not oppose the transfer.¹²

Two individuals argued that the slots should go to an ultra-low-cost (ULCC) carrier or other discount carrier. The first commenter stated that FAA did not consider “prioritizing low fares, market entry, and robust competition over private transaction outcomes.” Specifically, this

⁹ See, e.g., *Delta Air Lines v. CAB*, 674 F.2d 1 (D.C. Cir. 1982).

¹⁰ Public Law 95-504 (92 Stat. 1705).

¹¹ See, e.g., *South Dakota v. Dole*, 483 U.S. 203, 208 (1987).

¹² FAA notes its appreciation for the Port’s comment stating it will be able to accommodate JetBlue’s operations.

commenter stated that “JetBlue’s hybrid business model and higher cost structure do not substitute for Spirit’s low-fare presence.” The same commenter concluded by stating that, by not awarding the slots to Frontier Airlines, the designated Alternate Bidder at the auction, FAA would wholly eliminate the footprint of ULCCs at LGA, eliminating low-fare competition. The second commenter stated that JetBlue’s fares are not affordable for many and passengers would need to travel outside of the New York City area to obtain reasonable fares. This commenter stated that Frontier Airlines should have been approved to purchase the 22 slots.

Under § 40109(b), FAA must determine that an exemption is in the public interest. FAA public interest analysis is guided by the policy goals in 49 U.S.C. § 40101(d) and 49 U.S.C. §§ 40101(a)(4), (6), (10-13). In this case, FAA had to determine whether the transfer of 22 slots to JetBlue beyond the duration of the Order and any extension(s) thereof was in the public interest. The commenters are now asking FAA to determine whether the transfer offers the greatest public benefit or whether another carrier could generate more low-fare competition. Under the public interest standard and consistent with previous relief, it is not necessary for FAA to ensure that the proposed transfer provides the greatest public benefit or to evaluate alternative transfers when determining whether a transfer is in the public interest.

Regardless, FAA did consider fares, market entry, and robust competition when tentatively finding the transfer beyond the duration of the Order and any extension(s) thereof was in the public interest, as discussed in detail above and in the Notice. FAA found that JetBlue has a proven low-fare business model. Moreover, FAA determined that, due in part to JetBlue’s “less than 5 percent” slot share, “[a]pproving 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.” Finally, Frontier Airlines continues to provide services at LGA.

Several commenters requested that FAA amend the conditions of the relief by requiring any future transfer to go to an ULCC to preserve competition and to prohibit JetBlue from trading or leasing the slots for a period of five years. The Port, while agreeing with the transfer, wanted FAA to extend the prohibition on future transfers because “[a] five year period of operation would allow customers to build awareness of JetBlue’s operations and allow time for competitive pricing pressure.” Others argued that requiring any future transfer to go to a ULCC would be “consistent with previous decisions requiring the divestment of slots to new entrants or carriers meeting the ‘less than 5 percent’ slot share.”

The current condition limits JetBlue from trading or leasing the slots through April 2028. Imposing this condition on JetBlue goes further than prior exemptions in which FAA did not attach any restrictions on the transfer of purchased slots.¹³ FAA’s position is that restricting the transfer of these slots and requiring JetBlue to operate these slots through April 2028 is sufficient to ensure that the traveling public will receive the benefits of the service and price competition provided by JetBlue.¹⁴ Regardless, any slot transferred under this exemption will be subject to the Order and any extensions thereof. Under the Order, any trade or lease of a slot is subject to FAA approval and JetBlue would remain the holder of the slots. If JetBlue seeks to transfer the slots beyond the duration of the Order and any extension(s) thereof, FAA would evaluate whether the transfer is in the public interest, which would likely include an evaluation of the transfer’s impact on competition and the need for divestiture.

FAA also received several comments that are outside the scope of this exemption. ACI-NA and the Port, which did not oppose the transfer, advocated that FAA consider rulemaking. The Port advocated for rulemaking to provide “more predictable outcomes in the future and

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. FAA-2014-0074; Grant of Waiver (Dec. 2, 2013), Docket No. FAA-2013-1011

¹⁴ While 14 CFR part 93 is not controlling at LGA, the operating requirements/restrictions on transfers contained in 14 CFR § 93.221(a)(5) are analogous here and show that the outermost limit FAA imposes is 24 months.

allow for slots to be distributed based on policy goals such as competition and market access rather than simply by which airline is willing to pay the most.” ACI-NA called for a rulemaking, in part, to (1) ensure slots and facilities are decoupled, (2) prevent the bankruptcy process from circumventing criteria FAA otherwise considers, (3) ensure “[a] high bid is not a public-interest proxy”, and (4) to avoid bypassing the established internationally used slot-allocation framework.

FAA appreciates ACI-NA’s and the Port’s comments and will take into consideration the issues they raised, to the extent practicable, when implementing or revising the slot regulatory scheme. With regard to the commenters’ specific concerns about the auction process and slots going to the highest bidder, FAA did consider fares, market entry, and robust competition when tentatively finding the transfer was in the public interest, as discussed in detail above and in the Notice. Although JetBlue was the “Successful Bidder” at the auction, the bid amount was not relevant to FAA’s determination.

Finally, Exhaustless argued that the entire transfer was impermissible. To the extent that Exhaustless questions FAA’s authority to manage slots and facilitate schedules or seek to supersede this proceeding entirely by encouraging the federal government to establish broader aviation industry recovery policies and/or change the regulatory policy landscape for managing slots and schedule facilitation in the United States, such comments are deemed to be outside the scope of this proceeding.

However, FAA nevertheless reiterates that the FAA Administrator is required to “develop plans and policy 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,” and to issue regulations for “using the navigable airspace efficiently.” 49 U.S.C. § 40103(b). FAA’s administration of the runway slot program is adopted under the Administrator’s mandate to efficiently manage the NAS.

Summary of Findings and Conditions

FAA finds that the proposed transfer does not impact aviation safety and offers important benefits to the public. Air traffic control procedures ensure the safety of operations conducted at LGA regardless of the number or operator of slots authorized and the transfer of the 22 slots would not increase the number of operations at LGA. Moreover, approving the transfer of the slots beyond the duration of the Order and any extension(s) thereof 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. Accordingly, FAA has found that relief should be granted, subject to the condition set forth below.

The relief from the Order's prohibition on transferring the slots beyond the duration of the Order and any extension(s) thereof, contained in this exemption terminates when the subject slot transfer to JetBlue is completed. The Order and any extensions thereof, will control any future transfers, including the prohibition on sale or purchase. As such, any transferred 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.

FAA 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 subject to the terms of the Order and any extension(s) thereof, including the requirement to obtain FAA approval of a transfer, JetBlue is precluded from further sale of these slots unless proper relief is obtained pursuant 49 U.S.C. § 40109.

Finally, while these slots will be subject to the minimum usage requirements contained in the Order and any extension(s) thereof, FAA 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.

Issued in Washington, DC.

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