



4910-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Orders Limiting Operations at John F. Kennedy International Airport and New York LaGuardia Airport; High Density Traffic Airports Rule at Ronald Reagan Washington National Airport

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

ACTION: Notice of limited waiver of the minimum slot usage requirement.

SUMMARY: This notice announces a limited waiver of the minimum usage requirement that applies to Operating Authorizations or “slots” at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA) and Ronald Reagan Washington National Airport (DCA), in light of the current impacts on air travel demand related to the outbreak of novel 2019 coronavirus (also known as “SARS-CoV-2,” causing the disease COVID-19) (“Coronavirus”). Through May 31, 2020, the FAA will waive the minimum usage requirement as to any slot associated with a scheduled nonstop flight between JFK, LGA, or DCA, respectively, and other points that is canceled as a direct result of Coronavirus-related impacts. This action is effective for Coronavirus-related flight cancellations through May 31, 2020. The duration of the Coronavirus outbreak and its effect on demand for commercial air travel remains to be seen. The FAA will continue to monitor the situation and may augment this waiver as circumstances warrant. The FAA will inform carriers of any decision to extend the waiver period as soon as possible.

In addition, this notice announces the policy that the FAA will prioritize flights canceled at designated International Air Transport Association (IATA) Level 2 airports in

the U.S. due to Coronavirus through May 31, 2020, including at Chicago O'Hare International Airport (ORD), Newark Liberty International Airport (EWR), Los Angeles International Airport (LAX), and San Francisco International Airport (SFO), for purposes of establishing a carrier's operational baseline in the next corresponding season.

The FAA is acting in good faith in granting relief to carriers worldwide impacted by the Coronavirus. In doing so, the FAA expects that U.S. carriers will be accommodated with reciprocal relief by foreign slot coordinators.

DATES: Effective upon publication.

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

SUPPLEMENTARY INFORMATION:

Background

The Coronavirus was detected in China in December 2019 and as of March 7, 2020 had been detected in almost 90 locations internationally, including in the United States.

The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), has determined that the virus presents a serious public health threat and continues to take steps to prevent its spread. On January 27, 2020, the CDC issued a Level 3 Travel Health Notice recommending that travelers avoid all nonessential travel to China due to widespread community transmission of COVID-19. On January 30, 2020, the World Health Organization

(WHO) declared the outbreak a public health emergency of international concern (PHEIC). On January 31, 2020, HHS declared a public health emergency for the United States to aid in responding to COVID-19. That same day, citing the threat of this communicable disease, the President issued a Proclamation suspending the entry into the United States of certain foreign nationals who have been in China within the last 14 days prior to their entry or attempted entry. On February 2, 2020, the Department of State raised its China travel advisory to Level 4 (do not travel), citing the Coronavirus outbreak. Since then, the Department of State has cited the Coronavirus outbreak in raising its travel advisory level for Macau, Hong Kong, Japan, Mongolia, Iran, Italy, South Korea, Turkmenistan, and Azerbaijan—including Level 4 advisories for Iran and for parts of South Korea and Italy. Again citing the threat of this communicable disease, another Presidential Proclamation issued on February 29, 2020 suspended the entry into the United States of certain foreign nationals who have been in Iran within the last 14 days prior to their entry or attempted entry.

Demand for travel decreased initially to points in China with several U.S. and foreign air carriers reducing or suspending service. The Civil Aviation Administration of China (CAAC) required all carriers serving China to waive restrictions on changes or refunds for travel to and from all of mainland China. Other airports in Asia also began to experience flight cancellations due to health concerns and lower demand. More recent travel warnings and changes in passenger demand have impacted flights as Coronavirus spread to other parts of the world, including the U.S. The FAA continues to receive cancellation notices at slot-controlled airports in the U.S., which include JFK, LGA, and

DCA, as well as U.S. airports designated as IATA Level 2 for flights to and from areas with significant Coronavirus outbreaks.¹

Several foreign airlines have petitioned the FAA to grant a waiver of the 80 percent minimum slot usage requirement at JFK through the Winter 2019/2020 scheduling season ending on March 28, 2020 and some petitioners have sought relief for portions, or the entirety, of the Summer 2020 scheduling season. On March 2, 2020, IATA petitioned on behalf of airlines for a slot usage waiver at all constrained airports through the Summer 2020 scheduling season ending on October 24, 2020. On March 6, 2020, Airlines for America petitioned the FAA on behalf of domestic member airlines for “a waiver of the minimum slot usage requirement at all slot-controlled and schedule facilitated airports for at least Summer 2020.” Multiple U.S. carriers have also submitted individual petitions for slot usage relief with respect to all three U.S. slot-controlled airports. The petitioners base their requests on the public health situation, travel restrictions, and the highly unusual and unpredictable nature of the Coronavirus impacts on demand for air travel.

Standard

At JFK and LGA, each slot must be used at least 80 percent of the time.² 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

¹ Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3.

² Operating Limitations at John F. Kennedy International Airport, 83 FR 46865 (Sep. 17, 2018); Operating Limitations at New York LaGuardia Airport, 83 FR 47065 at 47066 (Sep. 18, 2018).

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.³

At DCA, any slot not used at least 80 percent of the time over a two-month period will also be recalled by the FAA.⁴ 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.⁵

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 the most unusual circumstances. Carriers proceed at risk if they make decisions in anticipation of the FAA granting a slot usage waiver. Relevant here, however, the FAA has established precedent for granting a limited waiver of the minimum slot usage requirement related to an infectious disease outbreak.⁶

Analysis

Slots are a scarce resource. Slot usage waivers accordingly are reserved for extraordinary circumstances. The FAA has determined that the exceptional circumstances associated with the Coronavirus meet the criteria for a limited waiver, as

³ 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, 83 FR at 46867. 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, 83 FR at 47066.

⁴ *See* 14 CFR § 93.227(a).

⁵ *See* 14 CFR § 93.227(j).

announced here, of the minimum slot usage requirements for flights scheduled between JFK, LGA, and DCA, respectively, and other points that are canceled as a direct result of Coronavirus-related impacts. The FAA also acknowledges that the timeframe and scope of impacts of Coronavirus on commercial air travel remain uncertain. The FAA does not intend routinely to grant broad, generalized relief from the minimum slot usage requirements. The usage requirement allows for up to 20 percent nonuse to accommodate planned and unplanned cancelations. This allowance is expected to accommodate routine weather and other cancelations under all but the most unusual circumstances. However, the current impacts of Coronavirus on commercial aviation are dramatic and extraordinary. In light of these evolving and extraordinary circumstances, the relief announced here from the minimum slot usage requirement at all slot-controlled airports in the U.S. is appropriate.

The FAA will continue to monitor the outbreak and its effects on commercial aviation and may augment this waiver as circumstances warrant. The FAA will inform carriers of any extension to the waiver period as soon as possible.

In addition, the FAA notes that numerous carriers have inquired about Coronavirus-related relief at U.S. airports designated as IATA Level 2 schedule facilitated airports, including ORD, EWR, LAX, and SFO. It is the policy of the FAA to prioritize flights canceled at IATA Level 2 airports in the U.S. due to Coronavirus

⁶ See e.g. Operating Limitations at John F. Kennedy International Airport and Newark Liberty International Airport; Notice of Limited Waiver of the Slot Usage Requirement, 74 FR 34393 (July 15, 2009).

through May 31, 2020, consistent with the IATA Worldwide Slot Guidelines (WSG), for purposes of establishing a carrier's baseline in the next corresponding season.⁷

The FAA is acting in good faith in granting the relief announced here to all carriers impacted by the Coronavirus worldwide. Without slot usage waivers to accommodate the current reduction in passenger demand, carriers may have to operate substantially empty flights to preserve their slots. In granting this relief from slot usage requirements, the FAA expects that U.S. carriers will be accommodated with reciprocal relief by foreign coordinators. 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. 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 e-mail to ScheduleFiling@dot.gov confirming reciprocal treatment of the slot holdings of U.S. carriers.

Decision

The FAA will waive the minimum slot usage requirements for all carriers canceling scheduled flights at JFK, LGA, and DCA as a direct result of the Coronavirus. This action is effective for Coronavirus-related flight cancelations through May 31, 2020. This decision is intended to provide limited relief to allow airlines to adjust schedules to changing demand projections at U.S. slot-controlled airports directly resulting from Coronavirus. Carriers should advise the FAA Slot Administration Office of Coronavirus-related cancelations and return the slots to the FAA by e-mail to 7-awa-

⁷ The FAA notes that a minimum usage requirement does not apply at designated IATA Level 2 airports in the U.S. Moreover, established procedures under the IATA WSG allow for the prioritization of such cancelations in subsequent corresponding seasons consistent with the FAA's policy statement in this notice.

slotadmin@faa.gov to obtain relief. The information provided must 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 cancelations directly relate to the Coronavirus outbreak.

Issued in Washington, DC on March 11, 2020.

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