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ORDER 2000-4-12



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**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 14th day of April, 2000

In the matter of

**THE WENDELL H. FORD AVIATION
INVESTMENT AND REFORM ACT FOR
THE 21st CENTURY**

For exemptions from 14 CFR Part 93, under 49
U.S.C. § 41716(a)

Served: April 19, 2000

Docket OST-2000-7177 - 2

**ORDER GRANTING SLOT EXEMPTIONS AT
JOHN F. KENNEDY INTERNATIONAL AIRPORT**

By this order the Department is exempting air carriers that have applied, or may subsequently apply, for slot exemptions at John F. Kennedy International Airport (JFK) under the provisions of 49 U.S.C § 41716(a) as enacted by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

BACKGROUND

On April 5, 2000, the President signed into law the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21). Among other things, AIR-21 liberalizes slot and slot exemption access at the four airports now subject to the provisions of the High Density Rule, 14 CFR 93 Subparts K and S. Specifically, at JFK Airport, the Act provides *inter alia* that the slot restrictions will be totally eliminated after January 1, 2007. AIR-21 also provides that certain interim slot and slot exemption requirements take effect immediately. Under one of these interim provisions, new 49 U.S.C. section 41716(a), exemptions must be granted to any airline using Stage 3 aircraft with less than 71 seats, that proposes to provide nonstop service between JFK and an airport that was designated as a small hub or nonhub¹ under certain

¹ Section 41714(h)(7) defines a nonhub airport as an airport that had "...less than .05 percent of the total annual boardings in the United States as determined under the Federal Aviation Administration's Primary Airport Enplanement Activity Summary for Calendar Year 1997." Section 41714(h)(8) defines a small hub airport as an airport that each year had "...at least .05 percent, but less than .25 percent, of the total annual boardings in the United States as determined under the summary referred to in paragraph (7)."

conditions. The exemption must be granted² if (1) the airline was not providing such nonstop service between the small hub or nonhub and JFK Airport during the week of November 1, 1999; or (2) if the proposed service between the small hub or nonhub and JFK Airport, exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999. Also, the Department has 60 days to issue a decision from the date of application for slot exemptions for such service,³ or else the application is deemed to have been approved. This order implements the provisions of this new section 41716(a).

DECISION

In accordance with the provisions of 49 U.S.C. § 41716(a), we will exempt any air carrier meeting the statutory tests required for the grant of slot exemptions at JFK Airport in order to provide service with aircraft with less than 71 seats between a nonhub or small hub airport as defined by 49 U.S.C. § 41714(h)(7) and § 41714(h)(8). For carriers to receive the blanket approval for slot exemptions granted in this order, they must certify in accordance with 14 CFR 302.4(b) that they meet each and every one of the statutory criteria.⁴ The certification should state the communities and airports to be served, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers should also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service as of the week of November 1, 1999. In addition, carriers should state the number of slot exemptions and the times needed to provide the service.

In the event that the carrier fails to initiate service or initiates and later discontinues the air services specifically enabled under the slot exemptions allocated here, or it is determined that the carrier failed at any time to meet the required statutory criteria for grant of the exemptions, the effectiveness of the exemptions will be terminated.

² Because ATR-21 directs such action to be taken if the specified criteria are met, and short, mandatory deadlines are imposed, there is no requirement to prepare an environmental impact statement under the National Environmental Policy Act. See, e.g., American Airlines v. Department of Transportation, 202 F.3d 788 (5th Cir., 1999). Note, however, that in accordance with Congressional direction and Departmental requirements, any service to be undertaken under this section must be with Stage 3 aircraft (the quietest category), priority is to be given in making grants for airport noise compatibility planning and programs to the four high-density airports, and the Department next year will study the community noise levels compared with the levels in such areas before 1991.

³ Within 20 days of the date of application, the Department may request additional information of the applicant, thus temporarily stopping, or "tolling," the 60-day clock. Upon submission of the requested information the 60-day period would then restart.

⁴ On March 10, 2000, we issued a Notice advising all parties that until further notice, certifications prescribed by 14 CFR 302.4(b) need only accompany filings in connection with fitness proceedings. We find that such certification here is also in the public interest.

ADMINISTRATIVE TERMS

As the FAA slot regulation makes clear, slot(s) "...do not represent a property right but represent an operating privilege subject to absolute FAA control (and) slots may be withdrawn at any time..." to fulfill the Department's operational needs

14 CFR 93.223(a). Under the provisions of 49 U.S.C. § 41714(j) these carriers may not sell, trade, transfer, or convey the operating authorities granted by the subject exemptions. Further, granting of these exemptions in no way is to be construed as allowing a carrier to provide services that it otherwise could not, i.e., carriers must still meet all the requirements of the Department of Transportation, the Federal Aviation Administration, and all other statutes and regulations governing air transportation.

The Department is allocating slot exemptions by this order on the grounds that the services proposed by applicants meet the statutory criteria. The Department reserves the right to modify or terminate such exemption authority if the Department determines that these criteria were not met or are no longer satisfied by an applicant's use of the authority.

If any carriers are unclear whether their proposal would qualify for the blanket exemption granted here, they may submit an individualized application to the Department for a ruling.

This Order is issued under authority delegated in 49 CFR 1.56(a).

ACCORDINGLY,

1. The Department grants an exemption from 14 CFR Part 93, Subparts K and S, to each air carrier that has applied, or may subsequently apply, for authority to conduct operations at New York's John F. Kennedy International Airport under the provisions of 49 U.S.C § 41716(a) during the slot-controlled hours of 3:00 p.m. to 8:00 p.m. This authority may be used only under one of the three situations (a carrier's new service, additional frequencies, or upgraded service) specified in § 41716(a) to provide nonstop service with Stage 3 aircraft of less than 71 seats between New York's John F. Kennedy International Airport and a nonhub airport as defined by 49 U.S.C. § 41714(h)(7) or a small hub airport as defined by 49 U.S.C. § 41714(h)(8);

2. This order is effective immediately, and shall remain in effect until further order of the Department, or it is superseded by statute;

3. The authority granted under this exemption is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S including the slot use or lose provisions;

4. We direct all applicant carriers to contact the Federal Aviation Administration's Slot Administration Office in order to determine the start-up date in consultation with that Office for the exemption authority granted here. The Federal Aviation Administration will assign slot withdrawal numbers for the slot exemptions authorized in ordering paragraph 1;
5. We may amend, modify, or revoke this order at any time and without hearing; and
6. We shall serve a copy of this order on U.S. certificated air carriers and the the Port Authority of New York and New Jersey.

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

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