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ORDER 2000-4-13



**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

Served: April 19, 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(b)

Dockets OST-2000-7178 -2

**ORDER GRANTING SLOT EXEMPTIONS AT NEW YORK'S
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 New York's John F. Kennedy International Airport, under the provisions of 49 U.S.C. § 41716(b) 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 New York's LaGuardia and John F. Kennedy International Airport (New York Airports), the Act provides *inter alia* that slot restrictions will be totally eliminated after January 1, 2007. AIR-21 also makes certain interim slot and slot exemption requirements effective on the date of its enactment. Under one of these interim provisions, new 49 U.S.C. section 41716, exemptions must be granted¹ to any new

¹ Because AIR-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

entrant or limited incumbent airline using Stage 3 aircraft that proposes "...to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20."² The application must identify (1) the airports to be served (2) and the times requested.³ Also, the Department has 60 days to issue a decision from the date of application for slot exemptions for such service,⁴ or else the application is deemed to have been approved. This order implements the provisions of this new section 41716.

DECISION

In accordance with the provisions of 49 U.S.C. § 41716(b) and subject to the terms of 49 U.S.C. § 41714(i) and § 41714(k), we exempt any air carrier meeting the statutory tests to qualify as a new entrant or limited incumbent air carrier required for the grant of slot exemptions at New York's John F. Kennedy International Airport. 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.⁵ The certification must state that the carrier holds or operates (or held or operated since December 16, 1985) fewer than 20 slots and slot exemptions at John F. Kennedy International Airport; provide the names of the communities and airports to be served; state that the aircraft are Stage 3 compliant; the planned effective dates; the number of requested exemptions; and identify the times requested. Further, carriers must certify that the total number of exemptions they requested, when added to all of their existing slots and slot exemptions, will not exceed 20.⁶

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.

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.

² 49 U.S.C. § 41716(b). In addition, under 49 U.S.C. § 41714(k) "...an air carrier that operates under the same designator code, or has or enters into a code-share agreement, with any other air carrier shall not qualify for a new slot or slot exemption as a new entrant or limited incumbent air carrier at an airport if the total number of slots and slot exemptions held by the 2 carriers at the airport exceed 20 slots and slot exemptions."

³ 49 U.S.C. § 41714(i)(1)

⁴ Under 49 U.S.C. § 41716(i)(2), 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.

⁵ 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.

⁶ See Footnote 2.

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 operate that 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(b) and § 41716(c) during the slot-controlled hours of 3:00 p.m. to 7:59 p.m. This authority is granted only to new entrant or limited incumbent air carriers as defined by 49 U.S.C. § 41716(b) and may be used only to provide air transportation with Stage 3 aircraft and is subject to the provisions of 49 U.S.C. § 41714(i), § 41714(j), and § 41714(k);
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 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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