

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SPIRIT AIRLINES, INC.,)
)
 Petitioner)
)
 v.)
)
 UNITED STATES DEPARTMENT)
 OF TRANSPORTATION and)
 FEDERAL AVIATION)
 ADMINISTRATION)
)
 Respondents)

Case No. 19-1248

PETITION FOR REVIEW

Pursuant to 49 U.S.C. § 46110, 5 U.S.C. § 706, Federal Rule of Appellate Procedure 15(a), and other applicable authority, petitioner Spirit Airlines, Inc. hereby petitions for review of the Department of Transportation and Federal Aviation Administration’s (FAA) “Notice of Submission Deadline for Schedule Information for Newark Liberty International Airport for the Summer 2020 Scheduling Season,” dated October 2, 2019, at 84 FR 52580 (attached). The portion of the Notice entitled “Southwest’s EWR Station Closure” states the FAA, following Southwest Airlines’ cessation of flights from Newark Airport, will not allow other airlines to replace the peak hour authorizations previously flown by Southwest. The Notice is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law, and without observance of procedure required by law.

The corporate disclosure statement required by Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1 is attached to this Petition.

Respectfully submitted,



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Dated: November 25, 2019

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RULE 26.1 CERTIFICATE OF CORPORATE DISCLOSURE FOR PETITIONER SPIRIT AIRLINES, INC.

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Spirit Airlines, Inc. ("Spirit") hereby discloses the following:

Spirit is a publicly-traded commercial airline operator, and certifies that it has no parent company, and that no publicly held corporation owns 10% or more of its stock.

Respectfully submitted,

Handwritten signature of Joanne W. Young

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*Attorneys for Petitioner
Spirit Airlines, Inc.*

Dated: November 25, 2019

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Appellate Procedure 15(c) and Circuit Rule 15(a), I hereby certify that I have, on November 25, 2019, caused the foregoing Petition for Review and Rule 26.1 Corporate Disclosure Statement to be served, by deposit in the United States Mail, first-class postage prepaid, in accordance with the Rules of this Court, upon:

Christina Aizcorbe, Esq.
Acting General Counsel
United States Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Arjun Garg, Esq.
Chief Counsel
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591



Joanne W. Young

be mailed or delivered to: David Blalock, Airport Manager, City of Malden Regional Airport & Industrial Park, 3077 Mitchell Drive, P.O. Box 411, Malden, MO 63863-0411, (573) 276-2279.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE-620G, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329-2603, amy.walter@faa.gov. The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release two tracts of land approximately 2.44 acres and 9.79 acres each, of airport property at the Malden Regional Airport & Industrial Park (MAW) under the provisions of 49 U.S.C. 47107(h)(2). This is a Surplus Property Airport. On May 21, 2019, the Airport Manager of the City of Malden requested a release from the FAA to sell two tracts of land, 2.44 acres and 9.79 acres each. Buyer, Walt Construction, LLC, will use the land for development. On September 25, 2019, the FAA determined that the request to release property at the Malden Regional Airport & Industrial Park (MAW) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Malden Regional Airport & Industrial Park (MAW) is proposing the release of airport property containing two tracts of land, 2.44 acres and 9.79 acres each, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Malden Regional Airport & Industrial Park (M) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances in order to dispose of the land. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation use.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Malden City Hall.

Issued in Kansas City, MO on September 25, 2019.

Jim A. Johnson,
 Director, FAA Central Region, Airports Division.

[FR Doc. 2019-21363 Filed 10-1-19; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for Newark Liberty International Airport for the Summer 2020 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of October 3, 2019, for Summer 2020 flight schedules at Newark Liberty International Airport (EWR). The deadline coincides with the schedule submission deadline for the International Air Transport Association (IATA) Slot Conference for the Summer 2020 scheduling season.

DATES: Schedules must be submitted no later than October 3, 2019.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC-200, Office of the Chief Counsel, 800 Independence Avenue SW, Washington, DC 20591; facsimile: 202-267-7277; or by email to: 7-AWA-slotadmin@faa.gov.

FOR FURTHER INFORMATION CONTACT: Al Meilus, Manager (Acting), Slot Administration Office, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-2822; email Al.Meilus@faa.gov.

SUPPLEMENTARY INFORMATION: This document provides routine notice to carriers serving EWR, one of the capacity-constrained airports in the United States, of the upcoming schedule submission deadline for Summer 2020. The FAA has designated EWR as an IATA Level 2 airport consistent with the

Worldwide Slot Guidelines (WSG).^{1,2} A separate schedule submission notice for John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Chicago O'Hare International Airport (ORD), and San Francisco International Airport (SFO) was published in the **Federal Register** on September 27, 2019 (84 FR 51222).

General Information for EWR in the Summer 2020 Season

For the Summer 2020 scheduling season at EWR, the FAA is primarily concerned about scheduled and other regularly conducted commercial operations from 0600 to 2300 Eastern Time (1000 to 0300 UTC). Carriers may submit schedules for the entire day in

addition to the identified hours. Carriers should submit schedule information in sufficient detail including, at minimum, the marketing or operating carrier, flight number, scheduled time of operation, frequency, aircraft equipment, and effective dates. IATA standard schedule information format and data elements for communications at Level 2 airports in the IATA Standard Schedules Information Manual (SSIM) Chapter 6 may be used. The WSG provides additional information on schedule submissions at Level 2 airports.

The U.S. Summer 2020 scheduling season is from March 29, 2020, through October 24, 2020, in recognition of the IATA northern Summer scheduling period.

As stated in the WSG, schedule facilitation at a Level 2 airport is based on the following: (1) Schedule adjustments are mutually agreed upon between the airlines and the facilitator; (2) the intent is to avoid exceeding the airport's coordination parameters; (3) the concepts of historic precedence and series of slots do not apply at Level 2 airports; although WSG recommends giving priority to approved services that plan to operate unchanged from the previous equivalent season at Level 2 airports; and (4) the facilitator should adjust the smallest number of flights by the least amount of time necessary to avoid exceeding the airport's coordination parameters. Consistent with the WSG, the success of Level 2 in the U.S. depends on the voluntary cooperation of all carriers.

The FAA considers several factors and priorities as it reviews schedule

¹ This designation remains effective until the FAA announces a change in the **Federal Register**.

² The FAA applies the WSG to the extent there is no conflict with U.S. law or regulation. The FAA is reviewing recent substantive amendments to the WSG adopted in version 10 (Aug. 1, 2019) and considering whether to implement certain changes in the U.S.

requests at Level 2 airports, which are consistent with the WSG, including—services from the previous equivalent season over new demand for the same timings, services that are unchanged over services that plan to change time or other capacity relevant parameters, introduction of year-round services, effective period of operation, regularly planned operations over *ad hoc* operations, and other operational factors that may limit a carrier's timing flexibility. In addition to applying these Level 2 priorities from the WSG, the U.S. Government has adopted a number of measures and procedures to promote competition and new entry at U.S. slot controlled and schedule facilitated airports.

At Level 2 airports, the FAA seeks to improve communications with carriers and terminal schedule facilitators on potential runway schedule issues or terminal and gate issues that may affect the runway times. The FAA also seeks to reduce the time that carriers consider proposed offers on schedules. Retaining open offers for extended periods of time may delay the facilitation process for the airport. Reducing this delay is particularly important to allow the FAA to make informed decisions at airports where operations in some hours are at or near the scheduling limits. The agency recognizes that there are circumstances that may require some schedules to remain open. However, the FAA expects to substantially complete the review process on initial submissions each scheduling season within 30 days of the end of the Slot Conference. After this time, the agency would confirm the acceptance of proposed offers, as applicable, or issue a denial of schedule requests.

Slot management in the United States differs in some respect from procedures in other countries. In the United States, the FAA is responsible for facilitation and coordination of runway access for takeoffs and landings at Level 2 and Level 3 airports; however, the airport authority or its designee is responsible for facilitation and coordination of terminal/gate/airport facility access. The process with the individual airports for terminal access and other airport services is separate from, and in

addition to, the FAA schedule review based on runway capacity. Approval from the FAA for runway availability and the airport authority for airport facility availability is necessary before implementing schedule plans. Carriers seeking terminal approval at EWR may contact the terminal facilitator at ewrslots@panynj.gov.

Generally, the FAA uses average hourly runway capacity throughput for

airports and performance metrics in its schedule review at Level 2 airports.³ The FAA also considers other factors that can affect operations, such as capacity changes due to runway, taxiway, or other airport construction, air traffic control procedural changes, airport surface operations, and historical or projected flight delays and congestion.

The FAA notes that it remains committed to the implementation of reference IDs for administrative tracking at EWR, as discussed in the Notice of Schedule Submission for the Winter 2019/2020 Scheduling Season, 84 FR 18630 at 18632 (May 1, 2019), and will continue working with carriers to implement this tracking tool.

Finally, the FAA notes that the schedule information submitted by carriers to the FAA may be subject to disclosure under the Freedom of Information Act (FOIA). The WSG also provides for release of information at certain stages of slot coordination and schedule facilitation. In general, once it acts on a schedule submission or slot request, the FAA may release information on slot allocation or similar slot transactions or schedule information reviewed as part of the schedule facilitation process. The FAA does not expect that practice to change and most slot and schedule information would not be exempt from release under FOIA. The FAA recognizes that some carriers may submit information on schedule plans that is both customarily and actually treated as private. Carriers that submit such confidential schedule information should clearly mark the information as "PROPIN". The FAA will take the necessary steps to protect properly designated information to the extent allowable by law.

EWR Operational Performance

The FAA regularly monitors operations and performance metrics at EWR to identify ways to improve operational efficiency and achieve delay reductions in a Level 2 environment. Demand for access to EWR and the New York City area remains high. Requests for flights at EWR have exceeded the

³ The FAA typically determines an airport's average adjusted runway capacity or typical throughput for Level 2 airports by reviewing hourly data on the arrival and departure rates that air traffic control indicates could be accepted for that hour, commonly known as "called" rates. The FAA also reviews the actual number of arrivals and departures that operated in the same hour. Generally, the FAA uses the higher of the two numbers, called or actual, for identifying trends and schedule review purposes. Some dates are excluded from analysis, such as during periods when extended airport closures or construction could affect capacity.

scheduling limits in the early morning and for multiple hours in the afternoon and evening. The FAA has regularly advised carriers that it would not be able to accommodate requests for new or retimed operations into peak hours and worked with carriers to identify alternative times that were available. In some cases, carriers have been able to swap with other carriers for their preferred times. Carriers may continue to seek swaps in order to operate within the peak, but are ultimately expected to operate according to the FAA's approved runway times. The FAA also continues to seek the voluntary cooperation of all carriers operating in peak hours to retime operations out of the peak to meet the scheduling limits described below and improve performance at EWR, benefitting all carriers, passengers, and other customers.

For the Summer 2020 season, the hourly scheduling limit remains at 79 operations and 43 operations per half-hour.⁴ Based on historical demand and recent schedule changes, the FAA anticipates limited or no availability in the 0700 to 0859 and 1330 to 2159 local hours for new flights within the applicable scheduling limits. In addition, consistent with FAA's usual practices, availability in shoulder/adjacent periods may be limited in order to offset peak demand. To help with a balance between arrivals and departures, the maximum number of scheduled arrivals or departures, respectively, is 43 in an hour and 24 in a half-hour. This would allow some higher levels of operations in certain periods (not to exceed the hourly limits) and some recovery from lower demand in adjacent periods. Consistent with past practice at EWR, the FAA will accept flights above the limits if the approved flights were operated by the same carrier on a regular basis in the previous corresponding season (*i.e.*, Summer 2019). However, as previously explained, the FAA's preference is for carriers to voluntarily retime operations out of the peak periods and to smooth schedules in other hours to ensure operations are within the applicable

limits. Absent such adjustments, the operational performance of the airport is unlikely to improve.

The FAA notes there are periods when the demand in half-hours and consecutive half-hours exceeds the optimum runway capacity and the scheduling limits in this notice.⁵ The

⁴ 83 FR 21335 (May 1, 2018).

⁵ Following the Level 2 designation effective with the winter 2016/2017 scheduling season, the FAA

imbalance of scheduled arrivals and departures in certain periods has contributed to increased congestion and delays when the demand exceeds the arrival or departure rates. In particular, retiming a minimal number of arrivals in the early afternoon hours such as 1400 to instead be scheduled during the 1300 and 1200 hours could have significant delay reduction benefits, as early afternoon delays continue to impact operations into the evening hours.

Consistent with the WSG, carriers should be prepared to adjust schedules to meet the scheduling limits in order to minimize potential congestion and delay. Carriers are reminded that runway approval must be obtained from the FAA in addition to any requirements for approval from the airport terminal or other facilities prior to operating flights at the airport. As the FAA has previously stated, if voluntary schedule adjustments are not achievable, consideration may be given to whether a Level 3 designation is necessary and whether a schedule reduction meeting pursuant to 49 U.S.C. 41722 is necessary. If the FAA reinstates Level 3 at EWR, historic precedence would not be granted for any operation conducted without FAA approval under Level 2.

Southwest's EWR Station Closure

On July 25, 2019, Southwest Airlines (Southwest) announced that it will cease operations at EWR effective November 3, 2019.⁶ The FAA has received numerous inquiries from various public and private entities concerning the effects of Southwest's plans, including multiple requests for approval of new operations to replace the operations previously conducted by Southwest.

On a peak summer weekday, Southwest operated up to 40 operations at EWR, a portion of which (approximately 16) were in the peak periods. As noted previously, several hours in the high demand periods at EWR are above the FAA's stated scheduling limits. In an effort to improve performance at EWR, the FAA has consistently stated in prior seasonal schedule submission notices that new operations will not be approved unless the period is below the FAA scheduling

limits.⁷ Consistent with this approach, the FAA will not be approving new flights in peak hours for the Summer 2020 scheduling season if operations are at or above the applicable scheduling limits. The FAA plans to assess the impacts of the peak period Southwest reductions and other schedule changes at EWR on performance, as well as the impacts on competition in close coordination with the Office of the Secretary of Transportation, in the upcoming Winter 2019/2020 and Summer 2020 scheduling seasons. The FAA intends to publish additional information on the outcome of this assessment in future notices related to these airports. However, the FAA will not during that assessment period be replacing or "backfilling" the peak morning and afternoon/evening operations that Southwest conducted during Winter 2018/2019 and Summer 2019, to the extent the new operations would exceed the current scheduling limits. New operations are being approved by the FAA, subject to terminal and gate availability, in off-peak hours in which operations are below the scheduling limits, including any offsets for periods above the limits, consistent with established FAA policy and procedures as described in seasonal notices and the WSG.⁸ In addition, the FAA is tracking unmet schedule requests at EWR for future consideration.

The FAA will continue to follow the established schedule facilitation process at EWR consistent with the IATA WSG and as described in prior schedule submission notices.⁹ In periods with limited availability, new entrant carriers may be prioritized consistent with the IATA WSG, as appropriate. Carriers requesting new operations in off-peak periods with sufficient availability may be approved. The FAA will continue to closely monitor demand in each hour at EWR and, based on recent requests or inquiries for additional flights, the FAA expects availability to change in some off-peak periods.

EWR Runway 4R/22L Preliminary Construction Plans

The FAA is aware of preliminary plans by the Port Authority of New York and New Jersey (PANYNJ) to reconstruct

Runway 4R/22L at EWR. The FAA is closely monitoring the scope and timing of this project. Once the details of this project are available, the FAA plans to work with the PANYNJ and carriers to assess operational impacts and potential changes in delays and to develop mitigation strategies, as appropriate.

Issued in Washington, DC on September 27, 2019.

Virginia Boyle,

Deputy Vice President, System Operations Services.

[FR Doc. 2019-21485 Filed 10-1-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA-2019-55]

Petition for Exemption; Summary of Petition Received; U.S. Aviation Academy

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 22, 2019.

ADDRESSES: Send comments identified by docket number FAA-2019-0626 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.

has rolled out reduced hourly scheduling limits from 81 per hour to 79 and applied additional half-hour and arrival and departure limits.

⁶ Southwest Airlines Press Release <https://www.swamedia.com/releases/release-424146113c6f2a2eebe84fb61d59a4ff-southwest-reports-record-second-quarter-revenues-and-earnings-per-share>.

⁷ See e.g., Notice of Submission Deadline for the Winter 2019/2020 Scheduling Season, 84 FR 18630 at 18632 (May 1, 2019); Notice of Submission Deadline for the Summer 2019 Scheduling Season, 83 FR 49155 at 49156-49157 (Sep. 28, 2018); and, Notice of Submission Deadline for the Winter 2018/2019 Scheduling Season, 83 FR 21335 at 21337-21338 (May 9, 2018).

⁸ See *supra* note 7.

⁹ See *supra* note 7.