

740 CMR: MASSACHUSETTS PORT AUTHORITY

740 CMR 27.00: BOSTON-LOGAN INTERNATIONAL AIRPORT- PEAK PERIOD SURCHARGE ON AIRCRAFT OPERATIONS

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27.01: Scope and Applicability

740 CMR 27.00 provides the basis upon which the Authority shall monitor published air carrier schedules and non-scheduled demand, and request that aircraft operators, with assistance from the Federal Aviation Administration if appropriate, voluntarily adjust their schedules or intended use of Boston-Logan International Airport (BOS) to avoid runway use delays. In addition, it provides the basis upon which Peak Period conditions can be declared based upon the projected level of runway use delays at Boston-Logan International Airport, and for the establishment of a Peak Period surcharge payable by aircraft operators. 740 CMR 27.00 also provides for exemptions from the surcharge applicable to certain aircraft operations.

27.02: Definitions

Authority shall mean the Massachusetts Port Authority.

BOS shall mean Boston-Logan International Airport.

Capacity shall mean the number of landing and takeoff operations per hour in Civil Aircraft that can be accommodated without incurring unacceptable levels of delay under visual flight rule (VFR) conditions.

Chief Executive Officer shall mean the person holding the position of Chief Executive Officer/Executive Director of the Massachusetts Port Authority or such other person as may be designated by the Members of the Massachusetts Port Authority to fulfill the responsibilities of the Chief Executive Officer/Executive Director under 740 CMR 27.00, or such person as may be delegated responsibility by the Chief Executive Officer/Executive Director for administering pertinent provisions of 740 CMR 27.00.

Civil Aircraft shall have the meaning set forth in 49 U.S.C. § 40102(a)(16).

Computer Simulation Delay Analysis shall mean the results obtained through use of a computer software model that will be used when Monitoring Program activity indicates that hourly flight levels are approaching or exceeding Capacity. The model, identified in consultation with FAA, will estimate the levels of runway-related delays that will occur during VFR conditions based on the forecast levels of monthly, daily, and hourly flight activity at BOS. The simulation will incorporate factors such as forecast levels of hourly flight demand, a measure of BOS's normal VFR capacity, and a delay algorithm based on queuing theory.

27.02: continued

Demand shall mean the total number of landings and takeoffs in Civil Aircraft that occur, or are projected to occur under the Monitoring Program, during each hour at BOS.

EAS shall mean the federal Essential Air Service program established under 49 USC § 41731.

Extra Sections shall mean commercial service flight operations added by an Operator to supplement a specific published schedule Operation to accommodate excessive demand for such Operation.

FAA shall mean the Federal Aviation Administration.

Fixed Base Operator shall mean those businesses at BOS that are authorized by the Authority to provide aeronautical services and are required by the Authority to collect landing fees on the Authority's behalf.

Hub Airport shall have the meaning set forth in 49 USC § 41731(a).

Monitoring Program shall mean a program developed and maintained by the Authority that:

- (a) monitors and projects Demand based upon published schedules and other information obtained by the Authority with respect to scheduled and unscheduled prospective operations;
- (b) projects, based upon the Computer Simulation Delay Analysis, levels of delay for current and future periods based upon Demand and Capacity levels for the relevant period; and
- (c) develops and submits information to the Authority in a timely manner that will allow the Authority to provide, to the scheduled airlines operating at BOS, the FAA, and general aviation, notice up to six months in advance of the declaration of Peak Period conditions to allow Operators and the FAA, if FAA elects to participate in such process, an opportunity on a voluntary basis to adjust flight activities to an extent that will avoid Peak Period conditions at BOS.

Operation shall mean a landing or takeoff in Civil Aircraft conducted at BOS, whether pursuant to a published schedule or otherwise.

Operator shall mean the person or entity conducting or authorizing the conduct of an Operation.

Overscheduling shall mean conditions in which Demand exceeds Capacity.

Peak Period shall mean any period of three or more consecutive hours within which the projected average number of minutes of delay per Operation during VFR conditions exceeds, or is expected (based upon the Monitoring Program and any other relevant information) to exceed, an average of 15 minutes (or such other level as may be established by the FAA as its standard for measuring delay). For purposes of 740 CMR 27.02: Peak Period, average delay shall be calculated by dividing the total time (in minutes) of delay incurred, or expected to be incurred, by the total number of all projected Operations (with allowance for Extra Sections) conducted over a period of at least three consecutive hours.

Runway Facilities shall mean the system of runways at BOS.

Small Hub Airport shall have the meaning as set forth in 49 USC § 41731(a).

USDOT shall mean the United States Department of Transportation.

VFR shall mean visual flight rule conditions as established by the FAA.

27.03: Monitoring Program

The Authority shall continuously monitor published air carrier schedules and other information available to the Authority reflecting future flight activity. Such monitoring shall be used to project, through Computer Simulation Delay Analysis, future levels of delay.

27.04: Advance Notice of Overscheduling – Opportunity for Voluntary Schedule Adjustment

In the event the Monitoring Program projects Overscheduling conditions that would result in Peak Period conditions, the Authority will provide to the FAA and to each Operator conducting scheduled commercial air transportation service at BOS registered with the Office of the Authority's Aviation Director advance notice of the Authority's intent to impose a Peak Period surcharge, absent elimination of such projected overscheduling conditions, and the anticipated level of such surcharge. Such notice shall be provided up to six months in advance of the declaration of Peak Period conditions, if feasible. Such notice shall also be provided to each Fixed Base Operator and shall be posted in the General Aviation Terminal at BOS.

This notice is intended to provide:

- (a) Operators with an opportunity to modify schedules or other intended use of BOS to such an extent as to avoid the need for the declaration of Peak Period conditions under 740 CMR 27.05; and
- (b) FAA with an opportunity, if it chooses, to establish or participate in the process to examine and, if appropriate, implement such voluntary schedule modifications. Unless the Chief Executive Officer is advised of actual modifications to Demand within 60 days of the date initial notice is given under 740 CMR 27.04 and determines that such modifications will avoid Overscheduling conditions, the Chief Executive Officer may declare Peak Period conditions in accordance with 740 CMR 27.05.

27.05: Peak Period Conditions

(1) Declaration of Peak Period Conditions on Runway Facilities. Whenever conditions warrant such declaration, and after the notice described in 740 CMR 27.04 of the Authority's intent to impose a Peak Period surcharge and an opportunity to modify flight levels has been provided as required in 740 CMR 27.04, the Chief Executive Officer may declare that Peak Period conditions exist on the Runway Facilities at BOS and shall specify the hours, days of the week and months comprising such Peak Period. In establishing each Peak Period to be in effect at BOS, the Chief Executive Officer shall take into account data and other information obtained or developed by the Monitoring Program and related projections, information from similar periods during previous years, updated published schedule filings to the extent generally available, and any other information deemed relevant by the Chief Executive Officer.

At least 30 days prior to the effective date of any declaration of Peak Period conditions, notice of such declaration, and the specification of the hours, days of the week, and months, of the Peak Period, shall be provided by the Chief Executive Officer to the FAA, to each Operator providing scheduled commercial air transportation services at BOS registered with the Office of the Aviation Director, and to each Fixed Base Operator; shall be posted in the General Aviation Terminal at BOS; and shall be published in the *Boston Globe* and the *Boston Herald*.

(2) Adjustment of Peak Period. The Peak Period designated under 740 CMR 27.05(1), and any other subsequent Peak Period established under 740 CMR 27.05(2), are subject to adjustment by the Chief Executive Officer to reflect any change in operating conditions that result in a contraction or expansion of the Peak Period. In establishing any adjustment to the Peak Period, the Chief Executive Officer shall take into account data and other information obtained or developed by the Monitoring Program and related projections, information from similar periods during previous years, updated published schedule filings to the extent generally available, and any other information deemed relevant by the Chief Executive Officer.

Advance notice of a potential expansion in the Peak Period shall be provided in the same manner as the advance notice of Overscheduling provided in 740 CMR 27.04 for the purpose of providing Operators an opportunity to modify schedules or other intended use of BOS in order to avoid an expansion of the Peak Period and to allow FAA, if it chooses, the opportunity to establish or participate in the process to examine, and if appropriate, implement such voluntary modification in flight levels. In the event the Chief Executive Officer determines that such action is necessary to avoid imminent occurrence of Overscheduling conditions, the Peak Period may be adjusted without the notice provided for in 740 CMR 27.05(2), but subject to the provision of notice as required in the ensuing paragraph.

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At least 30 days prior to any adjustment to the Peak Period, notice of such adjustment shall be provided by the Chief Executive Officer to the FAA, to each Operator providing scheduled commercial air transportation services at BOS registered with the Office of the Aviation Director and to each Fixed Base Operator at BOS; shall be posted in the General Aviation Terminal at BOS; and shall be published in the *Boston Globe* and the *Boston Herald*.

27.06: Peak Period Surcharge

(1) Establishment of Peak Period Surcharge. In addition to any other fees or surcharges applicable at BOS, the following surcharge shall be payable by each Operator for each landing and each takeoff Operation conducted in Civil Aircraft by such Operator during Peak Period conditions as designated in accordance with 740 CMR 27.05(1) and 740 CMR 27.05(2): \$150.00.

The surcharge established under 740 CMR 27.06(1) shall be subject to adjustment in accordance with 740 CMR 27.06(2).

(2) Adjustment of Peak Period Surcharge. The initial Peak Period surcharge established under 740 CMR 27.06(1), and any other subsequent surcharge established in accordance with 740 CMR 27.06(2), may be adjusted by the Authority from time to time for the purpose of aligning Demand for use of the Runway Facilities with the Capacity of said Runway Facilities in order to prevent the average delay time for operations during the Peak Period from exceeding an average of 15 minutes (or such other level as may be established by the FAA as its standard for measuring flight delay) for three or more consecutive hours under VFR conditions.

In making any adjustment in the Peak Period surcharge, the Authority shall take into account the mix of aircraft types operating during the Peak Period, the total number of projected Operations, airport costs, including opportunity costs during the Peak Period, the effects on Demand of imposing the additional costs associated with the Peak Period surcharge adjustment.

At least 30 days prior to each adjustment to the Peak Period surcharge, notice of such adjustment shall be provided by the Chief Executive Officer to the FAA, to each Operator providing scheduled commercial air transportation services at BOS registered with the Office of the Aviation Director, and to each Fixed Base Operator; shall be posted in the General Aviation Terminal at BOS; and shall be published in the *Boston Globe* and the *Boston Herald*.

27.07: Automatic Exemptions from Peak Period Surcharge

(1) Operations Qualifying for Automatic Exemption from Surcharge. The following Operations conducted during the Peak Period shall not be subject to any Peak Period surcharge under 740 CMR 27.06(1) and/or (2):

- (a) Non-stop commercial passenger published schedule Operations to and from eligible EAS communities for which BOS is the designated Hub Airport, subject to the limitations in 740 CMR 27.09;
- (b) Operations conducted solely for the purpose of emergency medical missions; and
- (c) Landings as a result of an in-flight emergency for flights not otherwise scheduled or intended to land at BOS.

(2) Limit on Automatic Exemptions. The total number of exemptions available to an airport located in an EAS community during the Peak Period under 740 CMR 27.07(1)(a) shall be limited as set forth in 740 CMR 27.09.

27.08: Special Circumstances Exemptions

(1) Operations Qualifying for Exemption. Individual landings and/or takeoffs in qualifying Civil Aircraft shall be exempted from the Peak Period surcharge required to be paid under 740 CMR 27.06, by determination of the Chief Executive Officer if a community in which a qualifying airport is located files a completed and verified Request for Exemption, in a form approved by the Authority, identifying the Operation(s) for which the exemption is sought and establishing to the satisfaction of the Chief Executive Officer that:

- (a) the Operation(s) for which the exemption is sought is a landing and/or takeoff conducted in connection with the enplaning and/or deplaning of passengers for hire pursuant to a published schedule;

27.08: continued

- (b) the Operation is non-stop between BOS and the designated qualifying airport;
- (c) BOS is the only Hub Airport for which commercial air transportation service is available from the designated qualifying airport, and no other commercial air transportation service is available between such airport and a Small Hub Airport or Hub Airport;
- (d) the Operation(s) for which the exemption is sought is necessary to accommodate demand that cannot reasonably be accommodated by an Operation(s) outside of the Peak Period without economic hardship to the communities served by the designated qualifying airport; and
- (e) year-round service is provided between BOS and the designated qualifying airport.

(2) Submission of Exemption Request and Supporting Documentation- Chief Executive Officer Determination. Any community requesting an exemption under 740 CMR 27.08 may submit the completed Request for Exemption and accompanying documentation required under 740 CMR 27.08(1) at any time following March 11, 2005. The Chief Executive Officer shall act upon the Request for Exemption and advise the community of his/her determination within 60 days of the receipt of the completed Request for Exemption and all of the information required to be supplied as specified in 740 CMR 27.08(1).

(3) Exemption Period - Renewal. Any exemption granted under 740 CMR 27.08 shall commence as of the date of grant by the Chief Executive Officer and shall be valid for a period determined by the Chief Executive Officer, which shall not be more than five years in duration. Further exemptions following the expiration of the specified exemption period may be granted in response to a Request for Renewal or Extension of Exemption that contains the information required under and otherwise complies with 740 CMR 27.08(1) and (2).

(4) Limit on Number of Exemptions. The total number of Special Circumstances Exemptions granted under 740 CMR 27.08 for non-stop operations between BOS and a designated qualifying airport shall be limited as set forth in 740 CMR 27.09.

27.09: Limitation on Number of Automatic Exemptions Under 740 CMR 27.07 and Special Circumstances Exemptions Under 740 CMR 27.08

(1) Limit on Number of Flights from Qualifying Communities Exempted from Requirement to Pay Peak Period Surcharge. The total number of exemptions under 740 CMR 27.07 and/or 740 CMR 27.08 between BOS and each pertinent qualifying airport shall not exceed the number of non-stop commercial passenger flights provided in August, 2003 pursuant to a published schedule (including allowance for Extra Sections) between that airport and BOS during the hours comprising any relevant Peak Period at BOS, provided, however, that each qualifying airport shall receive exemptions for a minimum of four total non-stop commercial passenger published schedule Operations per day during the Peak Period.

The total number of exempted flights for airports that have Operations eligible for exemption under 740 CMR 27.07 is set out in 740 CMR 27.14: *Appendix A*, which provides the number of flights based on the August 2003 published schedule (including allowance for Extra Sections) and an illustrative number of available exemptions per qualifying airport based on an assumed Peak Period of 4:00 P.M. to 7:59 P.M. The total number of exemptions available to the qualifying airport may be expanded or contracted, as the case may be, from the totals shown in 740 CMR 27.14: *Appendix A* to reflect the actual hours comprising the Peak Period and the flights conducted to and from such qualifying airport during said period based upon the August 2003 published schedule (including allowance for Extra Sections) provided, however, that each qualifying airport shall receive exemptions for a minimum of four total non-stop commercial passenger published schedule Operations per day during the Peak Period.

The total number of flights available for exemption under 740 CMR 27.08 shall be established at the time of application for and approval of such exemption request provided, however, that, if the Special Circumstances Exemption application is approved, subsequent adjustments (upward or downward, as the case may be) shall be made to reflect actual hours of the Peak Period and the flights conducted to and from such qualifying airport during said period based upon the August 2003 schedule (including allowance for Extra Sections), and provided further that each qualifying airport shall receive a minimum of four total non-stop commercial passenger published schedule Operations per day during the Peak Period.

27.09: continued

(2) Allocation of Available Exemptions Among Competing Scheduled Operators. In the event a qualifying airport is served by more than one Operator that provides published schedule year round service, the number of exemptions available shall be allocated among such Operators in alternating sequence. The initial order of sequencing shall be determined by the Chief Executive Officer and this order shall change in alternating sequence each month. In the event a qualifying airport is served by additional Operators that provide non-stop published scheduled service between that airport and BOS on less than a year round (seasonal) basis, exemptions shall be available for published schedule non-stop Operations conducted by such scheduled service Operators during the Peak Period only to the extent that exemptions remain after allocating exemptions among Operators that provide scheduled year-round service. In the event more than one Operator conducts such seasonal service, the allocation of any such remaining exemptions shall be in alternating sequence among such Operators. The initial order of sequencing shall be determined by the Chief Executive Officer and this order shall change in alternating sequence each month.

(3) Adjustment in Number of Exemptions Available to an Eligible Airport. In the event the level of non-stop commercial passenger published schedule flight frequency being provided between a qualifying airport that receives the benefit of an exemption under 740 CMR 27.07 and/or 740 CMR 27.08 and BOS is reduced for any reason (including, without limitation, an increase in the seating capacity of aircraft used on said route by an Operator providing non-stop published schedule service), the Chief Executive Officer may reduce the number of available exemptions for the airport under 740 CMR 27.09(1), provided, however, that no such airport shall be eligible for fewer than four total daily exemptions for non-stop commercial passenger published schedule Operations conducted during the Peak Period.

(4) Definition of Scheduled Year-Round Service. For purposes of 740 CMR 27.09, the term "published schedule year-round service" shall mean that an Operator provides a minimum of one daily non-stop round-trip operation pursuant to a published schedule at least five days per week between the pertinent qualifying airport and BOS during each of the 12 months that precedes the relevant month in which the Peak Period surcharge is assessed.

27.10: Payment and Reporting of Peak Period Surcharge

The total amount of Peak Period surcharges due from each Operator shall be paid monthly at the time of payment of all landing fees. Each Operator required to file a landing fee report with the Authority also shall file or shall cause to be filed on its behalf a Peak Period surcharge and exemption report in a form approved by the Authority, which shall contain a separate designation of all landings and takeoffs conducted by the Operator during the Peak Period by aircraft type, date, and time, and notation of each Operation covered by an exemption under 740 CMR 27.07 or 740 CMR 27.08, indicating the specific exemption provision or effective date of the exemption grant and such other information as the Authority may require. If no landing fee report is required by the Authority to be filed as a result of the adoption by the Authority of a direct invoice or other billing system, then the Chief Executive Officer may waive the requirement to file a report providing the information required in the preceding sentence with respect to landings and takeoffs conducted during the Peak Period.

27.11: Adjustments to Landing Fee Rates Outside of Peak Period

The Authority shall adjust the landing fee rates that are applicable during the period of the day outside of the Peak Period to the extent such adjustment is required to restrict overall revenues collected from such landing fees plus the Peak Period surcharge.

27.12: Violation – Penalties

Each Operation which is subject to the Peak Period surcharge in effect under 740 CMR 27.06 but which is not reported by the Operator or its agent if such reporting is required under 740 CMR 27.10, or for which the required surcharge is not paid by the Operator or its agent, shall constitute a separate violation subject to payment of a fine by the Operator in an amount up to three times the Peak Period surcharge due, subject to the maximum limitation on such fines.

27.13: Severability

If any provision of 740 CMR 27.00, or the application thereof to any Operator or class of Operator is held unconstitutional or otherwise unlawful by any court or governmental agency of competent jurisdiction, or violative of any contractual covenant between the Authority and any governmental agency, the remainder of 740 CMR 27.00 and their application to other Operators shall not be affected thereby.

27.14: Appendix A

APPENDIX A

Number of Exemptions Available Based Upon Review of
August 2003 Flight Schedule (with allowance for Extra Sections)
Between Boston-Logan International Airport
and Airports Qualifying for Exemptions (with assumed
Peak Period of 4:00 P.M. to 7:59 P.M.)

| Community | Flights Daily | 4:00 p.m. 7:59 p.m. | Illustrative Exemptions |
|--------------------------|------------------|------------------------|----------------------------|
| ACK Nantucket | 64 | 17 | 17 |
| AUG Augusta | 4 | 0 | 4 |
| BGR Bangor | 22 | 4 | 4 |
| BHB Bar Harbor | 9 | 3 | 4 |
| HYA Hyannis | 14 | 4 | 4 |
| MVY Martha's Vineyard | 47 | 13 | 13 |
| PQI Presque Isle | 6 | 2 | 4 |
| PVC Provincetown* | 30 | 9 | 9 |
| PWM Portland | 14 | 4 | 4 |
| RKD Rockland | 7 | 1 | 4 |
| RUT Rutland | 6 | 1 | 4 |
| Total | 223 | 58 | 71 |

* Provincetown is not a designated market under the federal Essential Air Service Program. Its inclusion in 740 CMR 27.14: *Appendix A* is for illustrative purposes only and assumes that it is eligible for and will apply for a Special Circumstances Exemption under 740 CMR 27.08.
Source: Official Airline Guide hourly schedules with allowance for Extra Sections based on Massport records.

REGULATORY AUTHORITY

740 CMR 27.00: St. 1956, c. 465, §§ 3(a) and 3(g).