



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

Staffing-Related Relief Concerning Operations at Ronald Reagan Washington National Airport, John F. Kennedy International Airport, LaGuardia Airport, and Newark Liberty International Airport, October 29, 2023, through March 30, 2024 (winter 2023/2024) and March 31, 2024, through October 26, 2024 (summer 2024)

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

ACTION: Limited waiver of the slot usage requirement.

SUMMARY: The FAA announces a limited, conditional 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) due to post-pandemic effects on Air Traffic Controller (ATC) staffing at the New York Terminal Radar Approach Control (TRACON) facility (N90). In addition, the FAA is announcing a limited policy for prioritizing returned operations at Newark Liberty International Airport (EWR) due to post-pandemic effects on ATC staffing at N90 for purposes of establishing a carrier’s operational baseline in the next corresponding season.

DATES: This action is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Requests may be submitted by mail to the Slot Administration Office, System Operations Services, AJR-0, Room 300W, 800 Independence Avenue SW, Washington, DC 20591, or by e-mail to: 7-awa-slotadmin@faa.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning this notice contact: Al Meilus, Capacity and Slot Analysis, FAA ATO System Operations Services, AJR-G5, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone 202-267-2822; e-mail al.meilus@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The New York Terminal Radar Approach Control facility (N90) provides ATC services to overhead flights in the Northeast corridor and to the New York City area airports, including JFK, LGA, and EWR. The airspace complexity resulting from the close proximity of the major commercial airports serving the New York City region is a significant contributing factor to delays at JFK, LGA, and EWR. Against this challenging backdrop, N90 is also facing staffing shortfalls that are impacting its ability to efficiently manage the volume of air traffic in this congested airspace. The FAA has made it a top priority to address these capacity constraints, including by dedicating significant resources to training a new air traffic controller workforce, and these efforts remain ongoing. In addition, based on FAA observations of air carrier operations and recent discussions with industry, there are likely other contributing factors, including air carrier staffing issues on the ground.

With demand for air travel at a record high, additional measures are necessary to ensure that the FAA is able to provide expeditious services to aircraft operators and their passengers that traverse this airspace during this time of transition. Early carrier schedules/discussions indicate an increase in operations after October 29, 2023, through most of the winter 2023/2024 scheduling season and for all of the summer 2024 scheduling season. This being the case, the FAA expects increased delays and cancellations in the New York region to exceed those experienced over winter 2022/2023 and summer 2023 if a waiver similar to the one in effect for summer 2023 is not in place for the winter 2023/2024 and summer 2024 scheduling season to allow carriers to reduce schedules without penalties for non-use of slots or previously approved operating times. Reducing schedules will improve the alignment between scheduled operations and actual operations, will help prevent unnecessary delays, will help optimize the efficient use of the airports' resources, and will help deliver passengers to their destinations more reliably and on time.

Summary of Petitions Received

On July 26th, 2023, the FAA received a petition from American Airlines Inc. (American) requesting an extension of the initial summer 2023 waiver until the end of the IATA winter 2023/2024

season. American contends that extending the relief will support operational integrity in the New York region. In addition, American argues that the winter season leads to unique operational challenges, particularly de-icing, where ramp space increasingly is congested and aircraft have a limited window to depart.

On September 1, 2023, the FAA received a petition from Alaska Airlines, Inc. (Alaska) sharing the concerns of other carriers regarding the impact of ATC staffing on airspace management in the New York Area for an additional waiver extension but requested a waiver only through the winter 2023/2024 season. Alaska urges the FAA to use the additional tools at its disposal to help minimize operational disruptions before granting a long-term waiver. Alaska avers that a long-term waiver would fail to appropriately maximize the use of limited slots and potentially hinder new future competition in the New York market.

Standard

At JFK and LGA, slot-holding carriers must use each assigned slot at least 80 percent of the time.¹ The FAA will withdraw slots not meeting the minimum usage requirements. The FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable 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.²

At DCA, the FAA also will recall any slot not used at least 80 percent of the time over a two-month period.³ 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.⁴

¹ Operating Limitations at John F. Kennedy International Airport, 87 FR 65161(Oct. 28, 2022); Operating Limitations at New York LaGuardia Airport, 87 FR 65159 (Oct. 28, 2022).

² At JFK, the FAA will determine historical rights to operating authorizations and withdrawal of those rights due to insufficient usage 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, 87 FR at 65163. At LGA, the FAA will withdraw any operating authorization not used at least 80 percent of the time over a two-month period. *See* LGA Order, 87 FR at 65160.

³ *See* 14 CFR § 93.227(a).

⁴ *See* 14 CFR § 93.227(j).

In determining 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. The minimum usage requirement is expected to accommodate routine cancellations under all but the most unusual circumstances. Carriers proceed at risk if they make scheduling decisions in anticipation of the FAA granting a slot usage waiver.

Analysis

Due to the volume of originating and destination flights in the New York City region, as well as the interdependency and complexity of the airspace surrounding JFK, LGA, and EWR, delays caused in part by N90 staffing shortfalls are expected to significantly impact carriers' ability to operate and meet minimum usage requirements in the winter 2023/2024 and summer 2024 scheduling seasons. Absent increased flexibility, the FAA anticipates a high likelihood of congestion and delay at JFK, LGA, and EWR.

Typically, the 20 percent non-utilization allowed under the minimum usage requirement accounts for cancellations due to ATC staffing delays; however, the extent of N90 staffing shortfalls and the increase in scheduled operations for the winter 2023/2024 season and expected increase in schedules in the summer 2024 season present a highly unusual and unpredictable condition beyond the control of carriers that will impact operations through the entire winter 2023/2024 and summer 2024 scheduling seasons. A waiver of minimum slot usage requirements at JFK and LGA, and a similar policy of prioritizing returned operations at EWR, is necessary to allow carriers to reduce operations to enable scheduling and operational stability. In addition, because New York City-DCA is a high-frequency market for multiple carriers, the FAA recognizes this market is a likely target for carriers to consolidate flights while retaining their network connectivity. If carriers choose to reduce their schedules in the New York City-DCA market, the FAA encourages, to the extent practical, carriers to utilize their DCA slots to operate to other destinations. However, if carriers choose not to utilize their DCA slots elsewhere, the

FAA may consider providing relief to DCA slots that are impacted by the reduction in operations at the New York City airports.

Finally, carriers should be aware that the N90 staffing shortfalls will not form a sufficient basis for further relief going forward in the winter 2023/2024 and summer 2024 scheduling seasons because carriers will have had sufficient opportunity to plan and take remedial action under this waiver policy. The FAA does not foresee providing additional post-hoc relief associated with ATC staffing given the extraordinary relief provided here. Given this relief, operational impacts associated with N90 staffing during the winter 2023/2024 and summer 2024 scheduling season will not have been beyond carriers' control and will not serve as a justification for a separate waiver.

Decision

The FAA determined that the post-pandemic effects on N90 staffing meet the applicable waiver standards and warrant a limited waiver of minimum slot usage requirements at JFK and LGA to allow carriers to return up to ten percent of their slots at each airport, as well as impacted operations between DCA and the New York City airports. In addition, the FAA has determined the post-pandemic effects on N90 staffing warrant a limited policy for prioritizing returned operations at EWR to allow carriers to return up to ten percent of their approved operating timings, for purposes of establishing a carrier's operational baseline in the next corresponding season. Carriers seeking to return their slots and approved operating timings must do so by October 13, 2023, for the winter 2023/2024 scheduling season (October 29, 2023, through March 30, 2024); and by December 15, 2023, for the summer 2024 scheduling season (March 31 through October 26, 2024) to be eligible for relief under this waiver. For DCA, this relief is available only for flights impacted by operations to or from the New York City area airports. If carriers utilizing the relief provided under this limited waiver at EWR subsequently operate unapproved flights at that airport, those carriers will forfeit their scheduling preference to an equal number of returned, approved operating timings chosen at the FAA's discretion for the subsequent equivalent traffic season. Furthermore, the FAA expects carriers to up-gauge aircraft serving the affected airports to the extent possible to maintain passenger throughput and minimize the impact on consumers. The FAA also

expects carriers to maintain connections between the affected airports and regional airports to the extent possible in support of continuous scheduled interstate air transportation for small communities and isolated areas. In addition, the FAA urges carriers to return scheduled operations in the peak delay periods of the day. The following hours (in local time) are the most prone to delay at each airport: EWR: 1400 – 2159, JFK: 1300 – 2259, LGA: 1300 – 2159.

The FAA will not reallocate the temporarily returned slots or approved operating timings at JFK, LGA, or EWR, as the goal is to reduce the volume of operations in the New York City region. Carriers are encouraged to utilize their DCA slots in other markets before returning them to the FAA. In the event DCA slots are returned under this waiver, other carriers will have an opportunity to operate the slots on an *ad hoc* basis without historic precedence.

The FAA will treat as used the specific slots returned in accordance with the conditions in this notice for the period from October 29, 2023, through March 30, 2024 (winter 2023/2024) and March 31, 2024, through October 26, 2024 (summer 2024).

The relief is subject to the following conditions:

1. The specific slots and approved operating timings must be returned to the FAA by October 13, 2023, for the winter 2023/2024 scheduling season; and by December 15, 2023, for the summer 2024 scheduling season.
2. This waiver applies only to slots that have corresponding, scheduled operations during the period of the grant. A carrier temporarily returning a slot or approved operating time to the FAA for relief under this waiver must identify corresponding scheduled operations for winter 2023/2024, or approved slots or operating timings for summer 2024. The FAA may validate information against published schedule data prior to the issuance of this notice, and other operational data maintained by FAA. Slots or operating times returned without an associated scheduled and canceled operation will not receive relief.
3. Slots or approved operating timings newly allocated for initial use since the previous corresponding scheduling season are not eligible for relief.

4. Slots authorized at DCA by Department of Transportation or FAA exemptions are not eligible for relief.

Issued in Washington, D.C. on September 15, 2023.

Marc A. Nichols
Chief Counsel

Alyce Hood-Fleming
Vice President,
System Operations Services
[FR Doc. 2023-20416 Filed: 9/18/2023 4:15 pm; Publication Date: 9/20/2023]