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[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, May 15, 2023, through September 15, 2023**

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

**ACTION:** Notice of Limited Waiver of the Slot Usage Requirement.

**SUMMARY:** This notice 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). Carriers will be permitted to voluntarily turn in up to 10 percent of their slots held at JFK and LGA as well as impacted slots at DCA for the period from May 15, 2023, through September 15, 2023, subject to the conditions and limitations in this notice. In addition, this notice announces 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. Carriers will be permitted to voluntarily turn in up to 10 percent of their approved operating timings at EWR for the period from May 15, 2023, through September 15, 2023, subject to the conditions and limitations in this notice. Carriers seeking to take advantage of this relief must identify the slots and approved operating timings they wish to turn in

before April 30, 2023. This relief is being provided to give carriers the ability to reduce operations during the peak summer travel period, which are likely to be exacerbated by the effects of Air Traffic Controller (ATC) staffing shortfalls.

**DATES:** This action is effective upon publication.

**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](mailto:7-awa-slotadmin@faa.gov).

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this notice contact: Al Meilus, Slot Administration and Capacity 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](mailto:al.meilus@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The New York Terminal Radar Approach Control facility (N90) provides ATC services to overhead flights in the North East corridor and to the New York airports -- 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 already challenging backdrop, according to FAA data, nationwide Certified Professional Controller (CPC) staffing averages 81 percent while N90 is maintained at about 54 percent of its CPC staffing target. FAA acknowledges that temporary safety mitigations put in place in response to the COVID-19 pandemic impacted controller training. Dedicated training initiatives have been successful in reducing most of the training backlog with the exception of N90. The staffing shortfalls at N90 limit the FAA's

ability to provide expeditious services to aircraft operators and their passengers that traverse this airspace.

During the period of May 2022 through September 2022, the total number of instances of delay to operations from JFK, LGA, and EWR totaled 41,498, with effects throughout the NAS and for which staffing was a contributing factor. Notwithstanding FAA's efforts to address N90 CPC staffing, the staffing rate for N90 has not improved and at the same time early carrier schedules indicate an increase in operations. This being the case, for summer 2023 the FAA expects increased delays in the New York region over summer 2022. Specifically, ATO modeling indicates operations at the New York airports is projected to increase by seven (7) percent, which FAA projects will result in overall delays increasing by 45 percent.<sup>1</sup> These projections are consistent with the 50 percent increase in the number of ground delay programs (GDPs) observed in January and February 2023 compared to the same months in 2022 at the same airports.<sup>2</sup> The FAA is progressing towards a solution to the N90 staffing issues, based on moving responsibility for the Newark, New Jersey radar sector from N90 to the Philadelphia TRACON (PHL). Training for this sector move is slated to begin in September of this year and will take time to complete for cutover of responsibilities to PHL. Accordingly, this solution will not resolve the anticipated operational impacts in the summer 2023 scheduling season.

## **Standard**

At JFK and LGA, each slot must be used at least 80 percent of the time.<sup>3</sup> Slots not meeting the minimum usage requirements will be withdrawn. The FAA may waive the 80 percent usage requirement

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<sup>1</sup> ASV studies are conducted by the Slot Administration and Capacity Analysis Group (AJR-G5) at the FAA's William J. Hughes Technical Center. ASV analysis considers multiple runway configurations, weighted by the frequency of occurrence, and utilizes an estimation of weather conditions for each configuration in its calculation. The resulting demand-delay curve can be used to estimate the average delay that results at a given level of demand.

<sup>2</sup> Aviation System Performance Metrics (ASPM): Key Advisories: GDP & GS Report. ASPM data can be viewed on the FAA Operations & Performance Data website (<http://aspm.faa.gov/>).

<sup>3</sup> 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).

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.<sup>4</sup>

At DCA, any slot not used at least 80 percent of the time over a two-month period will also be recalled by the FAA.<sup>5</sup> 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.<sup>6</sup>

When deciding 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. This minimum usage requirement is expected to accommodate routine cancellations under all but the most unusual circumstances. Carriers proceed at risk if they decide slot usage in anticipation of the FAA granting a slot usage waiver.

### **Analysis**

Due to the amount of connecting flights in the New York region as well as the interdependency and complexity of the airspace surrounding EWR, JFK and LGA, delays caused by N90 staffing shortfalls could have significant impacts in the upcoming Summer traffic season. Absent increased flexibility, there exists a high probability congestion and delay at JFK, LGA, and EWR during significant NAS impact days (e.g., holiday travel spike, adverse weather) could be exacerbated by N90 staffing shortfalls.

Typically, cancellations due to ATC staffing delays are accounted for by the 20 percent non-utilization allowed under the minimum usage requirement; however, due to the extent of N90 staffing

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<sup>4</sup> At JFK, historical rights to operating authorizations and withdrawal of those rights due to insufficient usage will be determined 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, any operating authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. *See* LGA Order, 87 FR at 65160.

<sup>5</sup> *See* 14 CFR § 93.227(a).

<sup>6</sup> *See* 14 CFR § 93.227(j).

shortfalls and the increase in scheduled operations, the effects of N90 staffing shortfalls are a highly unusual and unpredictable condition beyond the control of carriers that will impact operations through the summer 2023 scheduling season. 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 during significant NAS impact days through the summer 2023 season. A reduction in the operational volume at the New York airports would also aid in reducing the severity of significant NAS impact days.

In addition, because New York-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-DCA market, the FAA encourages carriers to utilize their DCA slots to operate to other destinations, to the extent that is practical. However, if carriers are unable to utilize their DCA slots elsewhere, it would be necessary to provide relief to DCA slots that are impacted by the reduction in operations at the New York airports.

Finally, carriers should be aware that the N90 staffing shortfalls will not form a sufficient basis for relief going forward 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 summer 2023 scheduling season will not have been beyond the carriers control and will not serve as a valid basis for a waiver.

## **Decision**

The FAA has determined the post-pandemic effects on N90 staffing meets the applicable waiver standards and warrants a limited waiver of minimum slot usage requirements at JFK and LGA to allow carriers to return up to 10 percent of their slots at each airport voluntarily as well as impacted operations

between DCA and the New York airports. In addition, the FAA has determined the post-pandemic effects on N90 staffing warrants a limited policy for prioritizing returned operations at EWR to allow carriers to return 10 percent of their approved operating timings voluntarily, for purposes of establishing a carrier's operational baseline in the next corresponding season. Carriers wishing to return their slots and approved operating timings voluntarily must do so before April 30, 2023 to be eligible for this waiver. If carriers participating in 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. Additionally, any other relief from minimum slot usage requirements or standard level 2 processes already in effect at JFK, LGA, or EWR will factor into the 10 percent of allowable returns. In other words, any returns made under a relief policy already in effect when this notice is published will count towards the carrier's 10 percent of allowable returns. Further, the FAA encourages carriers to up-gauge aircraft serving the affected airports to the extent possible to maintain passenger throughput and minimally impact consumers.

The FAA will not reallocate the 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 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 to serve markets other than New York.

The FAA will treat as used the specific slots returned in accordance with the conditions in this notice for the period from May 15, 2023, through September 15, 2023. The relief is subject to the following conditions:

1. The specific slots and approved operating timings must be returned to the FAA before April 30, 2023.
2. This waiver applies only to slots that have corresponding, scheduled operations during the period of the grant. A carrier temporarily returning a slot to FAA for relief under this waiver must identify corresponding scheduled operation. FAA may validate information against published schedule data as of March 14, 2023, and other operational data maintained by FAA. Slots returned without an associated scheduled and cancelled operation will not receive relief.
3. Slots or approved operating timings newly allocated for initial use before October 28, 2023, 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 March 22, 2023.

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