

Rules and Regulations

Federal Register

Vol. 88, No. 181

Wednesday, September 20, 2023

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

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 September 20, 2023.

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 email 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 SW, Washington, DC 20591; telephone 202-267-2822; email 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

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

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

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

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).

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, DC, on September 15, 2023.

Marc A. Nichols,

Chief Counsel.

Alyce Hood-Fleming,

Vice President, System Operations Services.

[FR Doc. 2023–20416 Filed 9–18–23; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31507; Amdt. No. 574]

IFR Altitudes; Miscellaneous Amendments

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

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, October 05, 2023.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division,

Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–1139.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the

amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on September 1, 2023.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, October 05, 2023.

PART 95—IFR ALTITUDES

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113 and 14 CFR 11.49(b)(2).

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 574 effective date October 05, 2023]

From	To	MEA
§ 95.2 Red Federal Airway R39 Is Amended To Delete		
OSCARVILLE, AK NDB * 3500—MCA ANIAK, AK NDB, NE BND ** 1400—MOCA	* ANIAK, AK NDB	** 2000
ANIAK, AK NDB * 5400—MOCA	TAKOTNA RIVER, AK NDB	* 6000
TAKOTNA RIVER, AK NDB	MINCHUMINA, AK NDB	5000
MINCHUMINA, AK NDB	ICE POOL, AK NDB	4000
§ 95.60 Blue Federal Airway B2 Is Amended To Delete		
POINT LAY, AK NDB	CAPE LISBURNE, AK NDB/DME	4000
CAPE LISBURNE, AK NDB/DME	HOTHAM, AK NDB	* 8000