

Rules and Regulations

Federal Register

Vol. 88, No. 155

Monday, August 14, 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, September 16, 2023, Through October 28, 2023

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

ACTION: Extension of limited waiver of the slot usage requirement.

SUMMARY: The FAA has determined to extend through October 28, 2023, the 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) the FAA has already made available through September 15, 2023. 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 September 16, 2023, through October 28, 2023. In addition, the FAA has determined to extend through October 28, 2023, the 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 September 16, 2023, through October

28, 2023. These extensions through October 28, 2023, are available on the same conditions and limitations as the relief that the FAA already has announced through September 15, 2023. Carriers seeking to take advantage of this relief must identify the slots and approved operating timings they wish to return to the FAA before September 2, 2023.

DATES: This action is effective August 14, 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, Slot Administration and Capacity 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

In the notice that FAA issued on March 22, 2023, the FAA announced certain relief from May 15, 2023, through September 15, 2023, allowing carriers to return operations at DCA, EWR, JFK, and LGA due to post-pandemic effects on ATC staffing at the N90.¹ 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. The 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 FAA’s ability to provide expeditious

¹ See 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, 88 FR 18032, (Mar. 27, 2023.)

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

The relief provided by the FAA during the peak of the summer season has provided stability at the NYC area airports. During the period of May 15, 2023, through June 30, 2023, the total number of scheduled operations at JFK, LGA and EWR, compared to the same period in 2022, was up about one (1) percent while cancellations were down about 40 percent, and Ground Delay Programs (GDPs) and Ground Stops (GSs), were down 20 percent. The FAA continues to monitor performance at N90 and assess options for addressing the staffing shortages. As FAA efforts will not be completed in time to address the near-term anticipated operational impacts in the remainder of the summer 2023 scheduling season, the FAA plans to extend the existing relief until October 28, 2023.

Petitions Received

On June 28, 2023, the FAA received a petition from United Airlines, Inc. (United) requesting an extension of the current Summer 2023 limited waiver through the end of the summer 2023 season, October 28, 2023.² United stated that, “Historically, slots and timings are set for entire seasons, enhancing predictability, and effecting the baseline for the next corresponding season.”³ Without an extension of the current waiver, United states that it will “be forced to resume operating all slots at LGA and return to its full baseline level of operations at EWR.” United also stated that the FAA has not transferred responsibility for the Newark radar sector from N90 to the Philadelphia TRACON (PHL).

On August 7, 2023, the FAA received a petition from Airlines for America (A4A) requesting identical relief to that requested by United. In addition, A4A requested the FAA “make public the data relating to progress on hiring and certifying air traffic controllers at critical facilities.”

² The FAA received a letter dated July 26, 2023, from American Airlines, Inc. requesting that the FAA extend the current limited, conditional waiver of the minimum usage requirement through the summer 2023 season as well as the winter 2023/2024 season. The FAA will address this request, and any other received request for the winter 2023/2024 season separately.

³ United at 1.

Standard

At JFK and LGA, each slot must be used at least 80 percent of the time.⁴ Slots not meeting the minimum usage requirements will be withdrawn. 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.⁵

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.⁶ 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.⁷

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 on slot usage in anticipation of the FAA granting a slot usage waiver.

Analysis

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 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 remainder of the summer 2023 scheduling season. Given this fact, along with the fact that slots and timings are historically set for entire seasons, as United noted, the FAA will waive the minimum slot usage

requirements at JFK and LGA, and apply a similar policy of prioritizing returned operations at EWR, to enable scheduling and operational stability during significant NAS impact days through the remainder of the Summer 2023 season.

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.

The FAA previously mentioned in the current Summer 2023 waiver that the FAA was progressing towards a solution to the N90 staffing issues, based on moving responsibility for the Newark, New Jersey radar sector from N90 to the PHL.⁸ As FAA continues to evaluate solutions, the FAA finds a basis for granting the petition for relief.

Without an extension of this waiver, carriers would be forced to increase their scheduled operations from September 16, 2023, through October 28, 2023, to meet usage requirements. This waiver will give carriers the ability to reduce operations during the remainder of the summer travel period and reduce corresponding delays which are likely to be exacerbated by the effects of ATC staffing shortfalls on significant NAS impact days.

Carriers should be on notice that N90 staffing shortfalls will not form a sufficient basis for relief for the summer 2023 season beyond this waiver 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.

Decision

The FAA has determined that the current post-pandemic effects on N90 staffing meet the applicable waiver standards for the remainder of the summer 2023 scheduling season. Given carriers' historical scheduling practices

and the experience of the summer 2023 season, the FAA finds it appropriate to extend the limited waiver of minimum slot usage requirements at JFK and LGA to allow carriers to return up to (10) ten percent of their slots at each airport voluntarily as well as impacted operations between DCA and the New York airports from September 16, 2023, through October 28, 2023. In addition, the FAA has determined that the current post-pandemic effects on N90 staffing warrant an extension of the limited policy for prioritizing returned operations at EWR to allow carriers to return (10) ten percent of their approved operating timings voluntarily from September 16, 2023, through October 28, 2023, 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 September 2, 2023, *i.e.*, at least 14 days prior to, 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) ten 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 minimize the impact on consumers.

The FAA will not reallocate the returned slots or approved operating timings at JFK, LGA, or EWR. 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. In addition, the FAA acknowledges A4A's request for data relating to air traffic controller staffing at critical facilities, given the breadth of this request and the timing of this notice the agency's response to this request will be forthcoming.

The FAA will treat as used the specific slots returned in accordance with the conditions in this notice for the

⁴ 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).

⁵ 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.

⁶ *See* 14 CFR 93.227(a).

⁷ *See* 14 CFR 93.227(j).

⁸ *See* 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, 88 FR 18032, (Mar. 27, 2023.)

period from September 16, 2023, through October 28, 2023. The relief is subject to the following conditions:

1. The specific slots and approved operating timings must be returned to the FAA before September 2, 2023.
2. This waiver applies only to slots that have corresponding, scheduled operations during the period of the grant. A carrier returning a slot or approved operating time to FAA for relief under this waiver must identify corresponding scheduled operations. The FAA may validate information against published schedule data prior to 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 before October 28, 2023, are not eligible for relief.
4. Slots authorized at DCA by the Department of Transportation or FAA exemptions are not eligible for relief.

Issued in Washington, DC, August 9, 2023.

Marc A. Nichols,
Chief Counsel.

Alyce Hood-Fleming,
Vice President, System Operations Services.
[FR Doc. 2023-17419 Filed 8-11-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738 and 742

[Docket No. 230807-0186]

RIN 0694-AJ25

Expansion of Nuclear Nonproliferation Controls on the People's Republic of China and Macau

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In response to the People's Republic of China's (China) military modernization efforts, military-civil fusion strategy, and expansion of its nuclear forces, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by adding additional nuclear nonproliferation controls on China and Macau. This change specifically applies to items controlled for Nuclear Nonproliferation (NP) column 2 reasons for control. These controls enhance U.S. Government efforts to monitor the

export of these items and to ensure they are only being used in peaceful activities such as commercial nuclear power generation, medical developments, production of or use in medicine, and non-military industries.

DATES: This rule is effective August 11, 2023.

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Director, Nuclear and Missile Technology Controls Division, tel. (202) 482-1641 or email steven.clagett@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Existing Nuclear Nonproliferation Export Controls

The multilateral Nuclear Suppliers Group (NSG) comprises nuclear supplier countries that seek to contribute to the nonproliferation of nuclear weapons through the implementation of two sets of guidelines for nuclear exports and nuclear-related exports. The first set of NSG guidelines applies to exports of nuclear material, equipment, and technology generally subject to the export licensing jurisdiction of the Nuclear Regulatory Commission (NRC) and the Department of Energy. The second set of NSG guidelines applies to exports of nuclear-related dual-use items, which are subject to the Export Administration Regulations (EAR) (15 CFR parts 730-774), administered by the Department of Commerce, Bureau of Industry and Security (BIS). Such items are listed on the Commerce Control List (CCL) (supplement no. 1 to part 774) and controlled for nuclear nonproliferation column 1 (NP1) reasons (see § 742.3(a)(1)). Items controlled for NP1 reasons require a license to all destinations except NSG member countries listed in Country Group A:4 (see supplement no. 1 to part 740).

In addition to implementing the multilateral NP1 controls, BIS controls certain additional items unilaterally for nuclear nonproliferation reasons. Such items are listed on the CCL and controlled for nuclear nonproliferation column 2 (NP2) reasons (see § 742.3(a)(2)). These items require a license when destined to Country Group D:2 (supplement no. 1 to part 738) countries, and with this rule, to the People's Republic of China (China) or Macau. (Note: Effective December 23, 2020, BIS removed Hong Kong as a separate destination under the EAR; accordingly, licensing requirements for China apply to all exports and reexports to, as well as transfers within, Hong Kong (see 85 FR 83765)). Items

controlled for NP2 reasons are listed in Export Control Classification Numbers (ECCNs) 1A290, 1C298, 2A290, 2A291, 2D290, 2E001, 2E002, and 2E290. Items controlled under these ECCNs include, for example, depleted uranium, graphite and deuterium for non-nuclear end use, and generators and other equipment for nuclear plants. Deuterium and graphite for nuclear end use is subject to NRC export licensing jurisdiction pursuant to 10 CFR part 110.

Nuclear Nonproliferation Export Controls Applicable to China and Macau Prior to This Rule

Although China is a NSG member country, it is not listed in Country Group A:4 (supplement no. 1 to part 740). Accordingly, a license is required, as specified on the Commerce Country Chart (supplement no. 1 to part 738), for items controlled for NP1 reasons to China. Likewise, a license is required for items controlled for NP1 reasons to Macau, a special administrative region of China. Prior to this rule, neither China nor Macau were subject to NP2 reasons for control. However, pursuant to § 744.21, some items controlled for NP2 reasons and listed in supplement no. 2 to part 744 require a license when destined to a 'military end use' or a 'military end user' in China.

In addition to list-based license requirements for nuclear-related dual-use items, BIS implements end use and end user controls to restrict the export, reexport, and transfer (in-country) of items to or within China and Macau for nuclear nonproliferation and certain maritime nuclear propulsion reasons. Pursuant to § 744.2 of the EAR, a license is required for the export, reexport, or transfer (in-country) to or within China and Macau when there is "knowledge" (as that term is defined in part 772 of the EAR) that the item will be used directly or indirectly in nuclear explosive activities, unsafeguarded nuclear activities, or safeguarded or unsafeguarded nuclear fuel cycle activities. In addition, pursuant to § 744.5 of the EAR, a license is required for the export, reexport, or transfer (in-country) to or within China and Macau when there is "knowledge" the item is for use in a maritime nuclear propulsion project. These provisions are not affected by this final rule.

Recent U.S. Government Reaction to and Analysis of Chinese Nuclear Activities

BIS has added entities in China to the Entity List for reasons related to military modernization and nuclear weapons. As one example, on June 5, 2020, BIS added to the Entity List ten entities