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[4910-13]

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 93**

**Change of Newark Liberty International Airport (EWR) Designation**

**Docket No.:** FAA-2008-0221

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Change of Newark Liberty International Airport (EWR) Designation.

**SUMMARY:** This document announces that the FAA will designate Newark Liberty International Airport (EWR) as a Level 2, schedule-facilitated airport under the International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG) effective for the Winter 2016 scheduling season, which begins on October 30, 2016. The FAA has determined this designation is necessary based on an updated demand and capacity analysis of the airport. The current FAA Order designating EWR as a Level 3, slot-controlled airport will expire on October 29, 2016.

**DATES:** This designation takes effect on October 30, 2016.

**ADDRESSES:** Requests may be submitted by mail to Slot Administration Office, AGC-220 Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202-267-7277; or by e-mail to: 7-AWA-slotadmin@faa.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions contact: Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-6462; e-mail susan.pfingstler@faa.gov.

**SUPPLEMENTARY INFORMATION:****Background**

By Order dated May 21, 2008, the FAA placed temporary limits on scheduled operations at EWR to mitigate congestion and delays at the airport.<sup>1</sup> The Order addressed the FAA's concern about a spillover effect in the summer 2008 scheduling season resulting from the Agency's Order limiting operations at John F. Kennedy International Airport (JFK), which took effect in March 2008.<sup>2</sup>

Under the EWR Order, the FAA (1) established hourly limits of 81 scheduled operations during the peak period; (2) imposed an 80 percent minimum usage requirement for Operating Authorizations (OAs or slots) with defined exceptions; (3) provided a mechanism for withdrawal of OAs for FAA operational reasons; (4) established procedures to allocate withdrawn, surrendered, or unallocated OAs; and, (5) allowed for trades and leases of OAs for consideration for the duration of the Order.

On January 8, 2015, the Department of Transportation (DOT) and FAA issued the Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport Notice of Proposed Rulemaking (NPRM).<sup>3</sup> The DOT and FAA are currently reviewing the comments received on the NPRM and considering the impacts of the EWR Level 2 designation on the rulemaking.

Based on the FAA's review of operational performance, demand, and capacity discussed in this document, Level 3 slot controls are no longer warranted for EWR. Rather, the FAA will transition EWR to a Level 2, schedule-facilitated airport, starting with the Winter 2016 scheduling season. In addition, the FAA also has updated the performance,

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<sup>1</sup> 73 FR 29550 (May 21, 2008).

<sup>2</sup> 73 FR 3510 (Jan. 18, 2008).

<sup>3</sup> 80 FR 1274

demand, and capacity analyses for JFK and LGA and has determined that Level 3 slot-controlled restrictions remain necessary for these airports. Therefore, through separate notices published in the Federal Register, the FAA will be extending the JFK and LGA Orders until October 27, 2018.

This document confirms the EWR Order will expire on October 29, 2016. A copy of this document will be placed in Docket FAA-2008-0221. As explained herein, the FAA is designating EWR as a Level 2 airport effective October 30, 2016. As further explained in this document, the FAA has conducted a screening for potential impacts to noise and air emissions as a result of this change in designation at EWR and has determined that the proposed action does not have the potential to cause a significant impact.

#### **Capacity and Operational Performance Review**

The FAA regularly reviews operational performance and demand at the New York City area airports as part of ongoing efforts to improve the efficiency of the air traffic control system. Section 413 of the FAA Modernization and Reform Act, Pub. L. No. 112-95, 126 Stat. 11 (Feb. 14, 2012), requires the FAA to take actions to ensure that aircraft operations of air carriers do not exceed the hourly maximum departure and arrival rate established by the Administrator for such operations. The FAA reviews data on actual operations, including the number of hourly and daily air traffic operations, runway capacity and utilization, aircraft fleet mix, scheduled and unscheduled demand, on-time performance relative to schedule, the number and duration of flight arrival and departure delays, airfield or other capacity changes, and air traffic control procedures.

On an annual basis since adopting the 2008 Order, the FAA has performed analyses to compare and contrast operational and performance data for each year subsequent to the

peak 2007 summer scheduling season to identify operational and performance trends. Such analyses have consistently placed particular emphasis on the May through August months since this period includes the peak summer demand. The on-time performance and delay metrics at EWR show significant improvements during such peak periods of demand. For example, on-time gate arrivals at EWR have increased by about 11 percentage points when comparing May through August 2015 to the same period in 2007.<sup>4</sup> On-time gate departures improved by approximately three percentage points. The mean arrival and departure delays are down by about 33 percent, and the delays greater than 60 minutes are down by 37 percent for arrivals and 38 percent for departures.

The FAA recently modeled the summer 2015 demand against summer 2015 runway capacity and then compared the results to the delay profile that was the basis for the 2008 Order. Operations in 2015 were down by 8 percent, total minutes of arrival delays went from 16,100 to 10,100 for a 37 percent decrease, mean arrival delays decreased from 24.0 minutes to 16.3 minutes, and mean departure delays from 18.0 minutes to 14.2 minutes.<sup>5</sup>

The FAA also reviewed scheduled flights at EWR over the last few years. Scheduled demand was routinely below the 81 hourly scheduling limits in the Order, even during the busiest early morning, afternoon, and evening hours. For example, in the 3 p.m. through 8:59 p.m. local hours, weekday scheduled demand in the May-August period averaged 71 flights per hour in 2011, 74 flights per hour in 2013, and 72 flights per hour in 2015.<sup>6</sup> Early

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<sup>4</sup> On-time gate arrivals have a gate arrival delay of less than 15 minutes. The gate arrival delay is the difference in minutes between the actual time the aircraft arrives at the gate and the scheduled gate arrival time.

<sup>5</sup> A copy of the MITRE summary of performance comparing 2015 and 2007 has been placed in the dockets for the EWR Order (Docket No. FAA-2008-0221), JFK Order (Docket No. FAA-2007-29320), LGA Order (Docket No. FAA-2006-25755) and the Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport NPRM (Docket No. FAA-2014-1073).

<sup>6</sup> There are a few additional flights by carriers such as FedEx and UPS that are allocated slots and do not publish schedules in the FAA's Innovata schedule database.

summer 2016 schedules reflect similar demand patterns. At the same time, the FAA denied requests for new flights as slots are allocated up to the scheduling limits. Carriers are generally maintaining historic slots and meeting the minimum usage rules under the Order; therefore, weekday slots in peak hours do not regularly revert to the FAA for reallocation. The result is scheduled demand that is well below the FAA scheduling limits and runway capacity at the airport to handle additional flights. This is unlike other FAA slot-controlled airports, which have significantly fewer differences between the number of allocated slots and the scheduled demand, especially in peak periods.

### **FAA Level 2 Determination and Planned Schedule Review**

In light of the FAA's demand and capacity analysis at EWR, the FAA has determined that EWR does not warrant a Level 3 designation. The FAA's analysis demonstrates that runway capacity exists for additional operations. However, under a Level 3 designation, the FAA must deny requests from carriers to add or retime operations based on allocated slots rather than scheduled and actual operations, provided the carrier satisfies the minimum slot usage requirements. Further, the FAA simply cannot increase the scheduling limits to compensate for slots that are under-scheduled but meet the minimum usage rules, as this would require the FAA to determine that additional capacity exists for operations above the current scheduling limits.

The FAA also considered whether EWR should be re-designated as a Level 1 airport since EWR operated for many years without scheduling limits while nearby JFK and LGA were slot controlled. During this time, EWR provided access to the New York City area and, while delays were high compared to other airports, overall demand was generally consistent with runway capacity. However, there are practical limitations to the number of additional

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flights that EWR can accept from a runway and airport facilities perspective. Moreover, we expect there will be significant demand for access to EWR, given its location and that the JFK and LGA airports will remain slot-controlled airports. Thus, the FAA has determined that the Level 2 schedule facilitation process and its related principles of voluntary cooperation will best balance the anticipated demand with the practical limitations on the number of additional flights possible at EWR. Following the effective date of the Level 2 designation, the FAA will continue to review whether Level 2 is appropriate or whether other action might be needed. The FAA does not expect to make any airport level changes based on short-term airline schedule plans or resulting delays.

Consistent with existing FAA practice for schedule facilitation at Level 2 airports, under the Level 2 designation at EWR, the FAA will request and review airline schedules for the 6 a.m. to 10:59 p.m. period and either approve the request or work with carriers to achieve schedule adjustments as needed to avoid exceeding the airport's capacity. The success of Level 2 schedule facilitation procedures depends upon a number of factors delineated in the WSG. The FAA will apply the priorities for schedule facilitation outlined in the WSG. In particular, priority will be given to carriers based on actual approved schedules and operations conducted in the previous corresponding season over new demand for the same timings.

Additionally, although there is some runway capacity available at EWR, approval of new or retimed operations must avoid significant scheduled peaking and allow for recovery to avoid causing a consistent level of unacceptable delay, which could necessitate a return to Level 3. The FAA intends, if necessary, to deny schedule submissions that exceed the declared airport runway capacity and to offer alternative times to carriers. The WSG

recognizes that some carriers might operate at times without approval from the airport's schedule facilitator. Consistent with the WSG, carriers would not receive historic status for such flights if the airport level changes from Level 2 to Level 3.

Finally, while the FAA is responsible for managing the airport's runway capacity, there are terminal, gate, and other operational factors that may require schedule adjustments. The FAA recognizes that the entry at EWR has been limited by runway slot availability for the last 8 years and new entry and growth by incumbent carriers is expected. The Port Authority of New York and New Jersey (Port Authority) currently reviews schedules for international passenger flights operating at Terminal B. A carrier must separately obtain approval from the Port Authority for Terminal B flights and request runway slots from the FAA under the current Level 3 designation Order. After the effective date for the Level 2 designation, carriers would continue to work with the Port Authority to synchronize with the relevant terminals and gates at EWR to the extent practicable. Under existing practice, the FAA regularly works with the Port Authority and carriers to reconcile differences between available terminal/gate and runway times. The FAA expects this process to continue under the Level 2 designation based on impacts to the availability of facilities. This necessary de-conflicting of carriers' requested terminal/gate and runway schedules is likely to be most significant in the initial transition from Level 3 to Level 2 in the Winter 2016 and Summer 2017 seasons.

### **Environmental Considerations**

The FAA conducted an environmental screening for potential impacts to noise and air emissions relative to the change of the EWR designation from Level 3 to Level 2. Based on the screening, the FAA has determined that this action may be categorically excluded

from further environmental analysis according to FAA Order 1050.1, "Environmental Impacts: Policies and Procedures," paragraph 5-6.6.f. Specifically, paragraph 5-6.6.f states that "Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment)" are categorically excluded from further environmental review.

The FAA conducted noise screening of the proposed action using Area Equivalent Method and determined that the action does not have the potential to cause a significant impact on noise levels of noise sensitive areas. In addition, the FAA conducted an analysis of air emissions using Aviation Environmental Design Tool and determined that the action does not have the potential to cause a significant impact on air quality or a violation of Federal, state, tribal, or local air quality standards under the Clean Air Act, 42 U.S.C. §§ 7401-7671q. Therefore, implementation of the airport level change is not expected to result in significant adverse impacts to the human environment. The implementation of this action is not expected to result in any extraordinary circumstances in accordance with FAA Order 1050.1. A copy of the categorical exclusion has been placed in the docket associated with this action.

#### **Future Operational Demand and Performance Reviews**

The FAA will continue to regularly review and monitor performance at EWR, as well as carrier compliance with FAA-approved schedules. The FAA will continue to review data on actual operations, including the number of hourly and daily air traffic operations, runway capacity and utilization, aircraft fleet mix, scheduled and unscheduled demand, on-time performance relative to schedule, the number and duration of flight arrival and departure delays, airfield or other capacity changes, and air traffic control procedures. The

FAA will publish a notice in April, 2016 announcing the schedule submission deadline and the declared runway capacity limits for the Winter 2016 scheduling season.

The FAA expects that delays at EWR will increase over current levels as flights are added, but an incremental increase in delays would not necessarily mean the FAA would revert to Level 3. The FAA's objective while working with carriers under the Level 2 process is to appropriately balance and maximize the use of the available runway capacity at EWR while maintaining an acceptable level of delay.

Issued in Washington, D.C. on April 1, 2016.

Daniel E. Smiley  
Acting Vice President, System Operations Services  
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