

or on application by any carrier for good cause shown.

Issued in Washington, DC on May 9, 2013.

**Marc L. Warren,**

*Acting Chief Counsel.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2006-25755]

#### Operating Limitations at New York LaGuardia Airport

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

**ACTION:** Notice of Extension to Order.

**SUMMARY:** This action amends the Order Limiting Operations at New York LaGuardia Airport (LGA) that published on December 27, 2006, and was amended on November 8, 2007, August 19, 2008, October 7, 2009, April 4, 2011, and May 23, 2012. The Order remains effective until the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 24, 2014.

**DATES:** This amendment is effective on May 14, 2013.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this Order contact: Patricia Bynum, Surface Operations Office, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 385-7073; facsimile: (202) 385-7433; email: [patricia.bynum@faa.gov](mailto:patricia.bynum@faa.gov).

For legal questions concerning this Order contact: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-7143; facsimile: (202) 267-7971; email: [rob.hawks@faa.gov](mailto:rob.hawks@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);

(2) Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or

(3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You also may obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

#### Background

Due to LGA's limited runway capacity, the airport cannot accommodate the number of flights that airlines and others would like to operate without causing significant congestion. The FAA has long limited the number of arrivals and departures at LGA during peak demand periods through the implementation of the High Density Rule (HDR).<sup>1</sup> By statute enacted in April 2000, the HDR's applicability to LGA operations terminated as of January 1, 2007.<sup>2</sup>

In anticipation of the HDR's expiration, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at LGA.<sup>3</sup> The FAA issued an Order on December 27, 2006, adopting temporary limits pending the completion of the rulemaking.<sup>4</sup> This Order was amended on November 8, 2007, and August 19, 2008.<sup>5</sup> On October 10, 2008, the FAA published the Congestion Management Rule for LaGuardia Airport, which would have become effective on December 9, 2008.<sup>6</sup> That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.<sup>7</sup> The FAA further extended the December 27, 2006, Order placing temporary limits on operations at LGA, as amended, on October 7, 2009,<sup>8</sup> and on April 4, 2011.<sup>9</sup>

Under the Order, as amended, the FAA (1) Maintains the current hourly

limits on scheduled (71) and unscheduled (three) operations at LGA during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs) with defined exceptions; (3) provides a mechanism for withdrawal of OAs for FAA operational reasons; (4) provides for a lottery to reallocate withdrawn, surrendered, or unallocated OAs; and (5) allows for trades and leases of OAs for consideration for the duration of the Order. The reasons for issuing the Order have not changed appreciably since it was implemented. Without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays would occur at LGA and at other airports throughout the National Airspace System (NAS).

The FAA is engaged in an effort to implement a long-term rule at LGA, John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR). The FAA is developing a notice of proposed rulemaking for Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120-AJ89), which currently is under review. At this time, the FAA unable to predict the date on which that rule would become effective. Accordingly, the FAA has concluded it is necessary to extend the expiration date of this Order until the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 24, 2014. This expiration date coincides with the expiration dates for the Orders limiting scheduled operations at JFK and EWR, as also amended by notices in today's **Federal Register**. No amendments other than the expiration date have been made to this Order.

The FAA finds that notice and comment procedures under 5 U.S.C. section 553(b) are impracticable and contrary to the public interest. The FAA further finds that good cause exists to make this Order effective in less than 30 days.

#### The Amended Order

In consideration of the foregoing, the Order, as amended, is recited below in its entirety:

##### A. Scheduled Operations

With respect to scheduled operations at LaGuardia:

1. The final Order governs scheduled arrivals and departures at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from

<sup>1</sup> 33 FR 17896 (Dec. 3, 1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K. The HDR required carriers to hold a reservation, which came to be known as a "slot," for each takeoff or landing under instrument flight rules at the high density traffic airports.

<sup>2</sup> Aviation Investment and Reform Act for the 21st Century (AIR-21), Public Law 106-181 (Apr. 5, 2000), 49 U.S.C. 41715(a)(2).

<sup>3</sup> 71 FR 51360 (August 29, 2006); Docket FAA-2006-25709. The FAA subsequently published a Supplemental Notice of Proposed Rulemaking, 73 FR 20846 (Apr. 17, 2008).

<sup>4</sup> 71 FR 77854.

<sup>5</sup> 72 FR 63224; 73 FR 48428.

<sup>6</sup> 73 FR 60574, amended by 73 FR 66517 (Nov. 10, 2008).

<sup>7</sup> 74 FR 52132 (Oct. 9, 2009).

<sup>8</sup> 74 FR 51653.

<sup>9</sup> 76 FR 18616, amended by 77 FR 30585 (May 23, 2012).

12 noon through 9:59 p.m., Eastern Time, Sunday. Seventy-one (71) Operating Authorizations are available per hour and will be assigned by the FAA on a 30-minute basis. The FAA will permit additional, existing operations above this threshold; however, the FAA will retire Operating Authorizations that are surrendered to the FAA, withdrawn for non-use, or unassigned during each affected hour until the number of Operating Authorizations in that hour reaches seventy-one (71).

2. The final Order takes effect on January 1, 2007, and will expire when the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 24, 2014.

3. The FAA will assign operating authority to conduct an arrival or a departure at LaGuardia during the affected hours to the air carrier that holds equivalent slot or slot exemption authority under the High Density Rule of FAA slot exemption rules as of January 1, 2007; to the primary marketing air carrier in the case of AIR-21 small hub/nonhub airport slot exemptions; or to the air carrier operating the flights as of January 1, 2007, in the case of a slot held by a non carrier. The FAA will not assign operating authority under the final Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority under 14 CFR part 121, 129 or 135. The Chief Counsel of the FAA will be the final decision maker regarding the initial assignment of Operating Authorizations.

4. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

5. An air carrier may lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of the Order. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267-7277 or email 7-AWASlotadmin@faa.gov, and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. However, the FAA will approve transfers between carriers under the same marketing control up to 5 business days after the actual operation. This post-transfer approval is limited to accommodate operational

disruptions that occur on the same day of the scheduled operation.

6. Each air carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations actually operated for each day of the two-month reporting period within 14 days after the last day of the two-month reporting period beginning January 1 and every two months thereafter. Any Operating Authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA except:

A. The FAA will treat as used any Operating Authorization held by an air carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

B. The FAA will treat as used any Operating Authorization obtained by an air carrier through a lottery under paragraph 7 for the first 120 days after allocation in the lottery.

C. The Administrator of the FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the air carrier and which affects carrier operations for a period of five consecutive days or more.

7. In the event that Operating Authorizations are withdrawn for nonuse, surrendered to the FAA or are unassigned, the FAA will determine whether any of the available Operating Authorizations should be reallocated. If so, the FAA will conduct a lottery using the provisions specified under 14 CFR 93.225. The FAA may retime an Operating Authorization prior to reallocation in order to address operational needs. When the final Order expires, any Operating Authorizations reassigned under this paragraph, except those assigned to new entrants or limited incumbents, will revert to the FAA for reallocation according to the reallocation mechanism prescribed in the final rule that succeeds the final Order.

8. If the FAA determines that a reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily

suspended will, if reallocated, be reallocated to the air carrier from which it was taken, provided that the air carrier continues to operate scheduled service at LaGuardia.

9. The FAA will enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). An air carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, would be liable for a civil penalty of up to \$25,000 for every day that it violates the limits set forth in the final Order. An air carrier that is a small business as defined in the Small Business Act would be liable for a civil penalty of up to \$10,000 for every day that it violates the limits set forth in the final Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of the final Order.

#### *B. Unscheduled Operations*<sup>10</sup>

With respect to unscheduled flight operations at LaGuardia, the FAA adopts the following:

1. The final order applies to all operators of unscheduled flights, except helicopter operations, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.

2. The final Order takes effect on January 1, 2007, and will expire when the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 24, 2014.

3. No person can operate an aircraft other than a helicopter to or from LaGuardia unless the operator has received, for that unscheduled operation, a reservation that is assigned by the David J. Hurley Air Traffic Control System Command Center's Airport Reservation Office (ARO). Additional information on procedures for obtaining a reservation will be available via the Internet at <http://www.fly.faa.gov/ecvrs>.

4. Three (3) reservations are available per hour for unscheduled operations at

<sup>10</sup> Unscheduled operations are operations other than those regularly conducted by an air carrier between LaGuardia and another service point. Unscheduled operations include general aviation, public aircraft, military, charter, ferry, and positioning flights. Helicopter operations are excluded from the reservation requirement. Reservations for unscheduled flights operating under visual flight rules (VFR) are granted when the aircraft receives clearance from air traffic control to land or depart LaGuardia. Reservations for unscheduled VFR flights are not included in the limits for unscheduled operators.

LaGuardia. The ARO will assign reservations on a 30-minute basis.

5. The ARO receives and processes all reservation requests. Reservations are assigned on a "first-come, first-served" basis, determined as of the time that the ARO receives the request. A cancellation of any reservation that will not be used as assigned would be required.

6. Filing a request for a reservation does not constitute the filing of an instrument flight rules (IFR) flight plan, as separately required by regulation. After the reservation is obtained, an IFR flight plan can be filed. The IFR flight plan must include the reservation number in the "remarks" section.

7. Air Traffic Control will accommodate declared emergencies without regard to reservations. Nonemergency flights in direct support of national security, law enforcement, military aircraft operations, or public use aircraft operations will be accommodated above the reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate reservation for such flights are available via the Internet at <http://www.fly.faa.gov/ecvrs>.

8. Notwithstanding the limits in paragraph 4, if the Air Traffic Organization determines that air traffic control, weather, and capacity conditions are favorable and significant delay is not likely, the FAA can accommodate additional reservations over a specific period. Unused operating authorizations can also be temporarily made available for unscheduled operations. Reservations for additional operations are obtained through the ARO.

9. Reservations cannot be bought, sold, or leased.

Issued in Washington, DC, on May 9, 2013.

**Marc L. Warren,**  
Acting Chief Counsel.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2008-0221]

### Operating Limitations at Newark Liberty International Airport

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

**ACTION:** Notice of Extension to Order.

**SUMMARY:** This action amends the Order Limiting Operations at Newark Liberty

International Airport (EWR) that published on May 21, 2008, and was amended on October 7, 2009, and April 4, 2011. The Order remains effective until the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 24, 2014.

**DATES:** This amendment is effective on May 14, 2013.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this Order contact: Patricia Bynum, Surface Operations Office, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 385-7073; facsimile: (202) 385-7433; email: [patricia.bynum@faa.gov](mailto:patricia.bynum@faa.gov).

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You also may obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

#### Background

EWR has become one of the most delay-prone airports in the country. In 2007, demand during peak hours approached or exceeded the average runway capacity, resulting in significant volume-related delays. In May 2008, the FAA placed temporary limits on scheduled operations at EWR to mitigate persistent congestion and delays at the airport.<sup>1</sup> This Order also mitigated FAA's concern about a spillover effect resulting from limiting operations at

John F. Kennedy International Airport (JFK). With a temporary schedule limit order in place, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at EWR.<sup>2</sup> On October 10, 2008, the FAA published the Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport, which would have become effective on December 9, 2008.<sup>3</sup> That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.<sup>4</sup> The FAA further extended the May 21, 2008, Order placing temporary limits on scheduled operations at EWR on October 7, 2009,<sup>5</sup> and on April 4, 2011.<sup>6</sup>

Under the Order, as amended, the FAA (1) maintains the current hourly limits on 81 scheduled operations at EWR during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs) with defined exceptions; (3) provides a mechanism for withdrawal of OAs for FAA operational reasons; (4) establishes procedures to allocate withdrawn, surrendered, or unallocated OAs; and (5) allows for trades and leases of OAs for consideration for the duration of the Order. The reasons for issuing the Order have not changed appreciably since it was implemented. Without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays would occur at EWR and at other airports throughout the National Airspace System (NAS).

The FAA is engaged in an effort to implement a long-term rule at LaGuardia Airport (LGA), JFK, and EWR. The FAA is developing a notice of proposed rulemaking for Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120-AJ89), which currently is under review. At this time, the FAA is unable to predict the date on which that rule would become effective. Accordingly, the FAA has concluded it is necessary to extend the expiration date of this Order until the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 24,

<sup>2</sup> 73 FR 29626 (May 21, 2008); Docket FAA-2008-0517.

<sup>3</sup> 73 FR 60544, amended by 73 FR 66516 (Nov. 10, 2008).

<sup>4</sup> 74 FR 52134 (Oct. 9, 2009).

<sup>5</sup> 74 FR 51648.

<sup>6</sup> 76 FR 18618.

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