



[4910-13]

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 [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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 S.W., Washington, DC 20591; telephone: (202) 385-7073; facsimile: (202) 385-7433; email: patricia.bynum@faa.gov.

For legal questions concerning this Order contact: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue S.W., Washington,

DC 20591; telephone: (202) 267-7143; facsimile: (202) 267-7971; email:
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/; 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, S.W., 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.¹ 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

¹ 73 FR 29550 (May 21, 2008).

number of scheduled and unscheduled operations at EWR.² 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, 2008.³ That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.⁴ The FAA further extended the May 21, 2008, Order placing temporary limits on scheduled operations at EWR on October 7, 2009,⁵ and on April 4, 2011.⁶

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

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

³ 73 FR 60544, amended by 73 FR 66516 (Nov. 10, 2008).

⁴ 74 FR 52134 (Oct. 9, 2009).

⁵ 74 FR 51648.

⁶ 76 FR 18618.

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, 2014. This expiration date coincides with the expiration dates for the Orders limiting scheduled operations at JFK and LGA, 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

The Order, as amended, is recited below in its entirety.

1. This Order assigns operating authority to conduct an arrival or a departure at EWR during the affected hours to the U.S. air carrier or foreign air carrier identified in the appendix to this Order. The FAA will not assign operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135.

This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at EWR as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same designator code as such a carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such a carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to EWR while this Order is in effect.

c. The Chief Counsel of the FAA, in consultation with the Vice President, System Operations Services, is the final decisionmaker for determinations under this Order.

2. This Order governs scheduled arrivals and departures at EWR from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

3. This Order takes effect at 6 a.m., Eastern Time, on June 20, 2008, 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.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103 and 40113, we hereby order that:

a. No U.S. air carrier or foreign air carrier initiating or conducting scheduled or regularly conducted commercial service at EWR may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as provided in the appendix to this Order, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

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

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour within that period. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure that is not listed in the appendix to this Order. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267-7277 or e-mail *7-AWA-Slotadmin@faa.gov*, and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph seven.

7. For the duration of this Order, a carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. 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 e-mail *7-AWA-Slotadmin@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. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at EWR after this order expires.

8. A carrier may not buy, sell, trade, or transfer an Operating Authorization, except as described in paragraph seven.

9. 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.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the period authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

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

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

b. Each 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 and for each Operating Authorization, along with a listing of the Operating Authorizations and:

i. The dates within each applicable season on which it intends to commence and to cease scheduled operations.

A. For each winter scheduling season, the report must be received by the FAA no later than August 15 during the preceding summer.

B. For each summer scheduling season, the report must be received by the FAA no later than January 15 during the preceding winter.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season.

B. No later than January 15 for the winter scheduling season.

iii. A final report of the completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the Operating Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status for the next applicable scheduling season under paragraph 9.

11. If the FAA determines that an involuntary 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 carrier from which it was taken, provided that the carrier continues to operate scheduled service at EWR.

12. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to \$25,000 for every day that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to \$10,000 for every day that it violates the limits set forth in this 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 this Order.

13. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, D.C. on May 9, 2013.

Marc L. Warren
Acting Chief Counsel

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