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**[4910-13]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR part 93**

**[Docket No. FAA-2007-29320]**

**Operating Limitations at John F. Kennedy International Airport**

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

**ACTION:** Extension to Order.

**SUMMARY:** This action extends the Order Limiting Operations at John F. Kennedy International Airport (JFK) published on January 18, 2008, and most recently extended March 26, 2014. The Order remains effective until October 27, 2018.

**DATES:** This action is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Requests may be submitted by mail to Slot Administration Office, AGC-240, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591, or by e-mail to: 7-awa-slotadmin@faa.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this Order 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:**

**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, 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**

From 1968, the FAA limited the number of arrivals and departures at JFK during the peak afternoon demand period (corresponding to transatlantic arrival and departure banks) through the implementation of the High Density Rule (HDR).<sup>1</sup> By statute enacted in April 2000, the HDR’s applicability to JFK operations terminated as of January 1, 2007.<sup>2</sup> Using AIR-21 exemptions and the HDR phase-out, U.S. air carriers serving JFK significantly increased their domestic scheduled operations throughout the day. This increase in operations resulted in significant congestion and delays that negatively impacted the National Airspace System (NAS). In January 2008, the FAA placed temporary limits on scheduled operations at JFK to mitigate persistent congestion and delays at the airport.<sup>3</sup> With a temporary schedule limit order in place, the FAA proposed a long-term rule that

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<sup>1</sup> 33 FR 17896 (Dec. 3, 1968). The FAA codified the rules for operating at high density traffic airports in 14 C.F.R. 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> 73 FR 3510 (Jan. 18, 2008), as amended by 73 FR 8737 (Feb. 14, 2008).

would limit the number of scheduled and unscheduled operations at JFK.<sup>4</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>5</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>6</sup> The FAA extended the January 18, 2008, Order placing temporary limits on scheduled operations at JFK on October 7, 2009,<sup>7</sup> on April 4, 2011,<sup>8</sup> on May 14, 2013,<sup>9</sup> and on March 26, 2014.<sup>10</sup>

Under the Order, as amended, the FAA (1) maintains the current hourly limits on 81 scheduled operations at JFK 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. Demand for access to JFK remains high and the average weekday hourly flights in the busiest morning, afternoon, and evening hours are generally consistent with the limits under this Order. The FAA has reviewed the on-time and other performance metrics in the peak May to August 2014 and 2015 months and found continuing improvements relative to the same period in 2007, even with runway construction at JFK in 2015.<sup>11</sup>

Without the operational limitations imposed by this Order, the FAA expects severe

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<sup>4</sup> 73 FR 29626 (May 21, 2008); Docket FAA-2008-0517.

<sup>5</sup> 73 FR 60544, amended by 73 FR 66516 (Nov. 10, 2008).

<sup>6</sup> 74 FR 52134 (Oct. 9, 2009).

<sup>7</sup> 74 FR 51650.

<sup>8</sup> 76 FR 18620.

<sup>9</sup> 78 FR 28276.

<sup>10</sup> 79FR 16854.

<sup>11</sup> Docket No. FAA-2007-25320 includes a copy of the MITRE analysis completed for the FAA.

congestion-related delays would occur at JFK and at other airports throughout the NAS. The FAA will continue to monitor performance and runway capacity at JFK to determine if changes are warranted.

On January 8, 2015, the DOT and FAA published a notice of proposed rulemaking “Slot Management and Transparency at LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport.”<sup>12</sup> The DOT and FAA proposed to replace the Orders limiting scheduled operations at JFK, limiting scheduled operations at Newark Liberty International Airport (EWR), and limiting scheduled and unscheduled operations at LaGuardia Airport (LGA) with a more permanent system for managing slots. The NPRM included certain proposed changes to how slots are currently managed in the New York City area in order to increase transparency and address issues considering anti-competitive behavior. Since the FAA and DOT first initiated this rulemaking effort there have been significant changes in circumstances affecting New York City area airports, including changes in competitive effects from ongoing industry consolidation, slot utilization and transfer behavior, and actual operational performance at the three airports. Furthermore, the FAA recently announced that slot controls are no longer needed at EWR (81 FR 19861). In light of the changes in market conditions and operational performance at the New York City area airports, the Department is withdrawing the NPRM by Federal Register notice published May 16, 2016 (81 FR 30218), to allow for further evaluation of these changes. Accordingly, the FAA has concluded it is necessary to extend the expiration date of this Order until October 27, 2018. This expiration date coincides with the extended expiration date for the Order limiting scheduled operations at LGA, as also extended by

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<sup>12</sup> 80 FR 1274.

action published in today's *Federal Register*.<sup>13</sup> 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. 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 JFK 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 JFK 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 JFK 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.

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<sup>13</sup> The FAA notes that the Order limiting scheduled operations at EWR will expire October 29, 2016; beginning on October 30, 2016, EWR is designated a Level 2 schedule-facilitated airport consistent with the FAA's action published in the Federal Register on April 6, 2016. *See id.*

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

3. This Order takes effect on March 30, 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 29, 2016.

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 JFK 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](mailto: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-AWASlotadmin@faa.gov](mailto: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. 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 JFK 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 time-frame 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 along with a listing of the Operating Authorizations and:

i. The dates within each applicable season it intends to commence and complete 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. 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 JFK.

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 18, 2016.

Daniel E. Smiley

Vice President,

System Operations Services

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