



[4910-13]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 93

[Docket No.: FAA-2006-25755]

### Operating Limitations at New York LaGuardia Airport

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

**ACTION:** Extension to order.

**SUMMARY:** This action extends the Order Limiting Operations at New York LaGuardia Airport (LGA) published on December 27, 2006, as most recently extended September 18, 2018. The Order remains effective until October 29, 2022.

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

**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](mailto:7-awa-slotadmin@faa.gov).

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this Order contact: Bonnie Dragotto, Regulations Division, FAA Office of the Chief Counsel, AGC-250, Room 916N, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3808; e-mail [Bonnie.Dragotto@faa.gov](mailto:Bonnie.Dragotto@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**

The FAA has historically limited the number of arrivals and departures at LGA during peak demand periods through the implementation of the High Density Rule (HDR), to address constraints based on LGA's limited runway capacity.<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>

The FAA issued an Order on December 27, 2006, adopting temporary limits pending the completion of rulemaking to address long term limits and related policies.<sup>3</sup> This Order was amended on November 8, 2007, and August 19, 2008.<sup>4</sup> The FAA extended the December 27, 2006, Order placing temporary limits on operations at LGA, as amended, on October 7, 2009, April 4, 2011, May 14, 2013, March 27, 2014, May 25, 2016, and September 18, 2018.<sup>5</sup>

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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 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 77854.

<sup>4</sup> 72 FR 63224; 73 FR 48428.

Under the Order for LGA, as amended, the FAA (1) maintains the current hourly limits on scheduled and unscheduled 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. Based upon experience from the 2018-2020 period, runway capacity at LGA remains limited, while demand for access to LGA remains high. In 2009, the FAA reduced the scheduling limits under this Order from 75 operations per hour to 71 per hour in order to provide an opportunity to improve operations.<sup>6</sup> The FAA did not require a reduction of historic slots to reach the new hourly limits. Instead, historic allocations were honored. However, slots voluntarily returned or withdrawn per the terms of the Order are not reallocated if the hourly totals exceed the revised 71 hourly scheduling limit. As a result of this historic “grand-fathering,” between 72 and 75 slots remain authorized in most slot-controlled hours.

The FAA has reviewed the on-time and other performance metrics in the peak May to August 2018 and 2019 months and found declining performance in several metrics relative to the same period in 2008 and year over year.<sup>7</sup> The FAA has determined that the operational limitations imposed by this Order remain necessary. Notwithstanding the disruption caused by the COVID-19 public health emergency, the duration of which is uncertain, without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays due to the anticipated demand for new

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<sup>5</sup> 74 FR 51653; 76 FR 18616, amended by 77 FR 30585 (May 23, 2012); 78 FR 28278; 79 FR 17222; 81 FR 33126; and, 83 FR 47065.

<sup>6</sup> 74 FR 2646 (Jan. 15, 2009).

<sup>7</sup> A copy of the supporting MITRE analysis has been submitted to FAA Docket No. FAA-2006-25755.

operations and the retiming of existing flights into more desirable hours. During the effective period of this Order, the FAA will continue to monitor demand, performance, and runway capacity at LGA, including the effects of the COVID-19 public health emergency, to determine if changes are warranted.<sup>8</sup> The FAA, in coordination with the Office of the Secretary of Transportation (OST), will continue to consider potential rulemaking in the future to codify the slot management policies at LGA, and also at John F. Kennedy International Airport (JFK).<sup>9</sup>

### **Pending Issues**

In the FAA's 2018 actions extending the JFK and LGA Orders, the FAA noted that it has received specific proposals for policy changes that would necessitate amending the Orders.<sup>10</sup> Consideration of these issues is ongoing. Accordingly, the FAA is extending the expiration date of this Order until October 29, 2022. This expiration date coincides with the extended expiration date for the Order limiting scheduled operations at JFK, as also published elsewhere in this issue of the Federal Register. This LGA action incorporates ministerial changes to the terms of the Order concerning internal FAA process, removing an obsolete provision concerning the final decision-maker in paragraph A3, and adding a comprehensive provision concerning the final decision-maker under the Order at new paragraphs A9 and B10. This action also adds a provision for revocation and amendment at new paragraphs A10 and B11 consistent with the terms of the JFK Order, and makes other minor edits to improve readability.

The FAA finds that notice and comment procedures under 5 U.S.C. 553(b) are impracticable, unnecessary, and contrary to the public interest, as carriers have begun planning schedules for the winter

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<sup>8</sup> The limited waiver of the minimum slot usage requirement for JFK and LGA airports published on March 16, 2020, 85 FR 15018, and extended on April 17, 2020, 85 FR 21500, remains in effect through October 24, 2020.

<sup>9</sup> Operating Limitations at John F. Kennedy International Airport. 73 FR 3510 (Jan. 18, 2008), as amended.

<sup>10</sup> See discussion of "Current Issues" in 2018 JFK Order, 83 FR at 46865, and LGA Order, 83 FR at 47065.

2020/2021 season and no substantive changes are included in this action. For these reasons, the FAA also finds that it is impracticable and contrary to the public interest to delay the effective date of this action under 5 U.S.C. 553(d).

### **The Amended Order**

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

#### **A. Scheduled Operations**

With respect to scheduled operations at LaGuardia:

1. The Order governs scheduled arrivals and departures 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. 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 Order took effect on January 1, 2007, and will expire on October 29, 2022.
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/non-hub 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 Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and with operating authority from FAA under 14 CFR part 121, 129 or 135.

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 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. 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, are 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.

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 Vice President, System Operations Services, in coordination with the Chief Counsel of the FAA, is the final decision maker for determinations under this Order.

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

#### B. Unscheduled Operations:<sup>11</sup>

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<sup>11</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, irregular charter, ferry, and positioning flights. Regularly conducted commercial flights require an Operating Authorization and may not use unscheduled operation reservations. Helicopter operations are excluded from the reservation requirement. Unscheduled flights operating under visual flight rules (VFR) may be accommodated by the local air traffic control facilities and are not included in the hourly limits.

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

1. The 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 Order took effect on January 1, 2007, and will expire on October 29, 2022.
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), or for unscheduled visual flight rule operations, received clearance from ATC. Additional information on procedures for obtaining a reservation is available via the Internet at <http://www.fly.faa.gov/ecvrs>.
4. Three (3) reservations are available per hour for unscheduled operations at 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 is 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 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.

10. The Vice President, System Operations Services, in coordination with the Chief Counsel of the FAA, is the final decision maker for determinations under this Order.

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

#### C. Enforcement

The FAA may enforce the Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). The FAA or Department of Justice also could file a civil action in U.S. District Court, under 49 U.S.C. 46106 or 46107, respectively, seeking to enjoin any carrier from violating the terms of the Order.

Issued in Washington, D.C. on August 18, 2020.

Virginia Boyle,  
Deputy Vice President,  
System Operations Services.

[FR Doc. 2020-18400 Filed: 9/17/2020 8:45 am; Publication Date: 9/18/2020]