

different classes of recreational UAS pilots. Another individual requested the FAA create specific aircraft type ratings for remote pilots. However, the airmen training and certification issues raised by these comments are beyond the scope of this policy, which is limited to the process for type certification.

I. Requests for the FAA To Withdraw the Policy

An anonymous commenter opposed the policy and stated it will stifle innovation, limit recreation, and unnecessarily intrude on personal freedoms. Fifteen individual commenters opposed the policy based on concerns it would overburden hobbyists and negatively impact the model aircraft community. The FAA infers that these commenters would like the FAA to withdraw the policy. This policy will not burden or negatively impact a person conducting limited recreational operations with a small unmanned aircraft under 49 U.S.C. 44809, because type certification is not required for these operations. For other UAS, type certification may be required, depending on the weight of the UAS, the purpose of the operations, and the operating rules to which the UAS is subject. This policy provides a timely and flexible type certification process to ensure that a UAS design complies with appropriate safety standards.

J. Requests for an Extension of the Comment Period

Two individual commenters requested that the FAA extend the comment period in order to solicit additional input and define additional requirements. These comments noted that the comment period for this notice overlapped with the comment period for the FAA's proposed rulemaking on remote identification of UAS (84 FR 72438, December 31, 2019). The FAA has considered the request and determined that 30 days provided an appropriate time for comment on the proposed policy, as sufficient feedback on the policy was provided by the public during the comment period.

K. Comments on Other FAA Rules

Some commenters expressed concerns about the FAA's proposed remote identification rule. Other commenters stated opposition to FAA's rules for small UAS in part 107. DJI Technology, Inc., commented on operations and associated waivers under part 107. Because these comments concern FAA rulemakings on other issues, they are outside the scope of this policy.

L. Other Out of Scope Comments

Two commenters requested the FAA address UAS-related products (3-D printed parts, test benches). DJI Technology, Inc., requested that the FAA revise its regulations to allow American companies to manufacture UAS at facilities outside the United States. An individual commenter requested that the FAA revise 14 CFR 21.25(a)(1) to allow UAS as a special purpose operation for issuance of a restricted category type certificate. These comments are outside the scope of this policy, which specifies a process for establishing airworthiness standards for type certification of certain UAS.

The FAA also received and reviewed several comments that were very general, stated the commenter's viewpoint without a suggestion specific to the policy, or did not make a request the FAA can act on. These comments are outside the scope of this policy.

Policy

The FAA has determined that some UAS may be type certificated as a "special class" of aircraft under § 21.17(b). The FAA will issue type certificates for UAS with no occupants onboard under the process in § 21.17(b). However, the FAA may still issue type certificates under § 21.17(a) for airplane and rotorcraft UAS designs where the airworthiness standards in part 23, 25, 27 or 29, respectively, are appropriate for the certification basis. This policy applies only to the procedures for the type certification of UAS, and is not intended to establish policy impacting other FAA rules pertaining to unmanned aircraft, such as operations, pilot certification, or maintenance.

The FAA will seek public comment on the particularized airworthiness criteria for each applicant as certification standards for this new special class evolve. Once generally applicable standards are identified, the FAA may conduct rulemaking.

The FAA's part 107 rulemaking on small UAS was only the first step in the FAA's plan to integrate UAS into the NAS. Many long-term activities are required for full integration of present and future UAS operations, which will include the delivery of packages and transportation of people. The UAS affected by this policy will include those used for package delivery. Future FAA activity, through either further policy or rulemaking, will address type certification for UAS carrying occupants.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any

way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Issued in Kansas City, Missouri, on August 11, 2020.

Pat Mullen,

Manager, Small Airplane Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

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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 September 18, 2020.

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.

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; email 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/; 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

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.¹ By statute enacted in April 2000, the HDR's applicability to LGA operations terminated as of January 1, 2007.²

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.³ This Order was amended on November 8, 2007, and August 19, 2008.⁴ 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, 2018.⁵

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.⁶ 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.⁷ 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 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.⁸ 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).⁹

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.¹⁰ 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 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

¹ 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.

² 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).

³ 71 FR 77854.

⁴ 72 FR 63224; 73 FR 48428.

⁵ 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.

⁶ 74 FR 2646 (Jan. 15, 2009).

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

⁸ 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.

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

¹⁰ See discussion of “Current Issues” in 2018 JFK Order, 83 FR at 46865, and LGA Order, 83 FR at 47065.

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 email 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:¹¹

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

¹¹ 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.

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, DC, on August 18, 2020.

Virginia Boyle,

Deputy Vice President, System Operations Services.

[FR Doc. 2020–18400 Filed 9–17–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2007–29320]

Operating Limitations at John F. Kennedy International Airport

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

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 on September 17, 2018. The Order remains effective until October 29, 2022.

DATES: This action is effective on September 18, 2020.

ADDRESSES: Requests may be submitted by mail to 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.

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

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

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(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 SW, 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 historically limited the number of arrivals and departures at JFK through the implementation of the High Density Rule (HDR).¹ By statute enacted in April 2000, operations were added at JFK through provisions permitting exemptions for new entrant carriers and flights to small and non-hub airports.² The HDR's applicability to JFK operations terminated as of January 1, 2007.³ With the AIR–21 exemptions and the HDR phase-out, some air carriers serving JFK significantly increased their scheduled operations throughout the day and retimed existing flights. This resulted in scheduled demand in peak hours that exceeded the airport's capacity and caused significant congestion and delay. In January 2008, the FAA placed temporary limits on scheduled operations at JFK to mitigate persistent congestion and delays at the airport.⁴ The FAA extended the January 18, 2008, Order placing temporary limits on scheduled operations at JFK on October 7, 2009, April 4, 2011, May 14, 2013, March 26, 2014, May 24, 2016, as corrected June 21, 2016, and on September 17, 2018.⁵

Under the Order, as amended, the FAA (1) maintains the current hourly limits of 81 scheduled operations at JFK during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs)⁶ 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. Based upon experience from the 2018–2020 period, demand for access to JFK remains high and multiple new entrant and other incumbent airlines have been waitlisted for new peak period operations and retiming existing flights to higher demand hours. Many of these airlines were on a waitlist for several scheduling seasons. The average hourly flights and allocated slots in the busiest hours were generally at the limits under this Order.

The FAA has reviewed the on-time and other performance metrics for the past two years in the peak months—May to August 2018 and 2019—and generally found continuing improvements relative to the same peak period in 2008. Year over year trends show a modest decrease in performance overall largely due to the closure of Runway 13L/31R for construction in 2019.⁷ 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 would occur at JFK and at other airports throughout the National Airspace System (NAS) as flights are added or retimed into peak periods at JFK. The FAA will continue to monitor demand, performance, and runway capacity at JFK, including the effects of the COVID–19 public health emergency, to determine if changes are warranted during the effective period of this Order.⁸ The FAA, in coordination with the Office of the Secretary of Transportation (OST), will also continue to consider potential rulemaking to codify policies for slot-controlled airports.

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.⁹

⁷ Docket No. FAA–2007–29320 includes a copy of the MITRE analysis completed for the FAA.

⁸ 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.

⁹ See discussion of “Current Issues” in 2018 JFK Order, 83 FR at 46865, and 2018 LGA Order, 83 FR at 47065.

¹ 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.

² 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).

³ *Id.*

⁴ 73 FR 3510 (Jan. 18, 2008), as amended by 73 FR 8737 (Feb. 14, 2008).

⁵ 74 FR 51650; 76 FR 18620; 78 FR 28276; 79 FR 16854; 81 FR 32636; 81 FR 40167; 83 FR 46865.

⁶ Also referred to herein as “slots.”