

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Authorization not used at least 80% of the time over the period authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except: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, DC, on October 1, 2009.

J. Randolph Babbitt,

Administrator, Federal Aviation Administration.

[FR Doc. E9-24118 Filed 10-2-09; 11:15 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2007-29320]

Operating Limitations at John F. Kennedy International Airport

ACTION: Notice of order extending and modifying the limitations on scheduled operations at John F. Kennedy International Airport.

SUMMARY: The FAA is amending the January 15, 2008, order limiting the number of scheduled aircraft operations at John F. Kennedy International Airport (JFK) during peak operating hours, as amended (January 2008 order).¹ The amendment extends the January 2008 order by approximately two years, through October 29, 2011. In addition, because the amendment extends the January 2008 order's duration, the amendment clarifies that the FAA will not allocate new or returned capacity under the order via the auction

¹ Order Limiting Scheduled Operations at John F. Kennedy International Airport, 73 FR 3,510 (Jan. 18, 2008); 73 FR 8,737 (Feb. 14, 2008)(amendment to order).

procedure that the order originally described.

If you wish to review the background documents or comments received in this proceeding, you may go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the electronic docket. You may also go to the U.S. Department of Transportation's Docket Operations in Room W12-140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

DATES: These amendments to the January 2008 order are effective immediately upon publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: James W. Tegtmeier, Associate Chief Counsel for the Air Traffic Organization; telephone—(202) 267-8323; e-mail—james.tegtmeier@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 5, 2009, the FAA published a notice that invited comments on its proposal to extend the January 2008 order limiting scheduled operations at JFK.² At the time, the January 2008 order was scheduled to expire on October 24, 2009. For the reasons described in the notice, it was unrealistic to expect a long-term rule to take effect and control the significant congestion-related delays that the FAA anticipated would occur at JFK if the January 2008 order were to expire as originally scheduled. Given the uncertainty over when a final rule would take effect and the impending expiration of the January 2008 order, the FAA proposed to extend the January 2008 order for approximately one year.

The FAA expected the one-year extension of the January 2008 order to serve as at least a partial bridge to the implementation of a long-term measure to control congestion and related delays at JFK. The FAA received written submissions on the proposal from nine commenters. The commenters include six scheduled carriers, two industry organizations, and the airport operator.

II. Summary and Analysis of the Comments

A. Amended Duration

Seven of the nine commenters express support for an extension of the January 2008 order to prevent a return of the congestion-related delays that passengers previously experienced at JFK. Although the FAA proposed an

extension of about one year, three carriers and one organizational commenter state that an extension of longer than one year is appropriate. While the specific observations and opinions of these four commenters differ, they variously assert that one year is not sufficient time either to create enough capacity at JFK to meet the demand or to finalize and implement a new rule to manage congestion at the airport.

The FAA proposed a one-year extension of the January 2008 order because the FAA never intended the order to serve as a long-term solution to congestion at JFK. From this perspective, using the minimum number of short-term extensions would offer the benefit of regular and public status reports on where the FAA stands in establishing a longer-term solution to overscheduling at JFK. As the commenters note, however, such short-term extensions may not best facilitate the long-term planning of some carriers that conduct, or hope to conduct, service at the airport. Accordingly, while the FAA does not agree that an indefinite extension is appropriate, the FAA will increase the duration of the present extension to about two years to accommodate carriers' longer term planning. The January 2008 order, as amended, will now expire on October 29, 2011. The reporting deadlines for carriers to return Operating Authorizations for all or part of a scheduling season in paragraph 9.b.i. are amended to reflect the longer duration of the order. These deadlines are also advanced by approximately two weeks to coincide with the deadlines in the International Air Transport Association's Worldwide Scheduling Guidelines.

B. Buy and Sell Authority

In light of the increased duration of the January 2008 order, five commenters question the ban on the purchase, sale, or long-term lease of the Operating Authorizations held by virtue of the original order. The commenters reason that the FAA included the ban as a result of the January 2008 order's short duration. The commenters perceive that extending the order increases the importance of a market mechanism that permits the sale and purchase of operating authority, which would facilitate competition and new entry, as well as leases for such authority that extend beyond the order's expiration date.

The FAA included in the January 2008 order the ability of carriers to trade or to lease Operating Authorizations to other carriers; however, the duration of

the trade or lease could not exceed the duration of the order.³ The commenters claim that relying on short-term trades and leases alone may become limiting as the January 2008 order remains effective over a significantly longer term. The proposed extension of the January 2008 order, however, specifically limited the comments to the proposed extension.⁴ The FAA intends to address long-term transfers of Operating Authorizations at some point in the future.

C. New Entrant and Limited Incumbent Opportunities

One carrier, Virgin America, Inc., observes that the January 2008 order originally provided limited opportunities for new entrant and limited incumbent carriers to initiate or to augment their scheduled operations at JFK. Virgin America offers that any extension of the order should include enhancements that could increase service at the airport from new entrant and limited incumbent carriers.

Virgin America is correct in noting that the extension of the January 2008 order merits a revisitation of the opportunities that are available at JFK for new entrant and limited incumbent carriers.⁵ There are currently several avenues for carriers to conduct scheduled service, to acquire Operating Authorizations, or to adjust the timing of their Operating Authorizations at JFK. First, the January 2008 order is effective daily from 6 a.m. until 10:59 p.m., local time, and carriers can schedule additional operations during the hours that the January 2008 order is not in effect. Second, subject to FAA written approval, a carrier can request a new Operating Authorization or a shift of an existing Operating Authorization in any half hour that the order is in effect. Third, all carriers have the opportunity to lease or trade Operating Authorizations for any period not exceeding the duration of the January 2008 order. Fourth, in the event that there is new capacity at JFK while the January 2008 order remains in effect, the order provides a mechanism under which carriers can bid on a leasehold interest in the new operations.

After the January 2008 order took effect, Congress enacted the Omnibus Appropriations Act of 2009. In part, this statute precluded the use of appropriated funds to take any action involving the scheduling of airline operations if the action also involves the

³ 73 FR at 3,516 (ordering paragraphs seven and eight)

⁴ 74 FR at 27,060 ("any submission to the current docket should be limited to the proposed extension of the January 2008 order").

⁵ 73 FR at 3,514.

² 74 FR 27,059.

auctioning of permission to conduct airline operations at an airport.⁶ Because this language could be construed to preclude the FAA from eliciting bids from carriers to acquire a leasehold interest in newly available capacity, which is listed as the fourth alternative in the preceding paragraph, the FAA is withdrawing that provision, effective immediately.

Accordingly, the ordering paragraphs of the January 2008 order are hereby amended as follows:

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.

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 expires at 11:59 p.m., Eastern Time, on October 29, 2011.

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, 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 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

⁶Omnibus Appropriations Act, 2009, Public Law 111-8, § 5, div. I, tit. I, § 115, 123 Stat. 524, 921-22.

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, DC, on October 1, 2009.

J. Randolph Babbitt,

Administrator, Federal Aviation Administration.

[FR Doc. E9-24121 Filed 10-2-09; 11:15 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2006-25755]

Operating Limitations at LaGuardia Airport

ACTION: Notice of Order Extending the Limitations on Operations at LaGuardia Airport.

SUMMARY: The FAA is amending the December 13, 2006, order limiting the number of operations at LaGuardia Airport (LGA) during peak operating hours, as amended (December 2006 order).¹ The current amendment

extends the December 2006 order by approximately two years, through October 29, 2011.

If you wish to review the background documents or comments received in this proceeding, you may go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the electronic docket. You may also go to the U.S. Department of Transportation's Docket Operations in Room W12-140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

DATES: These amendments to the December 2006 order are effective immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

James W. Tegtmeier, Associate Chief Counsel for the Air Traffic Organization; telephone—(202) 267-8323; e-mail—james.tegtmeier@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 17, 2009, the FAA published a notice that invited comments on its proposal to extend the December 2006 order limiting operations at LGA.² At the time, the December 2006 order was scheduled to expire on October 24, 2009. For the reasons described in the notice, it was unrealistic to expect a long-term rule to take effect and control the significant congestion-related delays that the FAA anticipated would occur at LGA if the December 2006 order were to expire as originally scheduled. Given the current uncertainty over when a final rule would take effect and the impending expiration of the December 2006 order, the FAA proposed to extend the December 2006 order for approximately one year.

The FAA expected the one-year extension to serve as at least a partial bridge to the implementation of a long-term measure to control congestion and related delays at LGA. The FAA received written submissions on the proposal from five commenters. The commenters include two scheduled carriers, two industry organizations, and the airport operator.

II. Summary and Analysis of the Comments

A. Amended Duration

Four of the five commenters express support for an extension of the December 2006 order to prevent a return of the congestion-related delays that passengers previously experienced at

LGA. Although the FAA proposed an extension of about one year, two of the commenters state that an extension of longer than one year is appropriate. These commenters assert that one year is not sufficient time to finalize and to implement a new rule to manage congestion at the airport.

The FAA proposed a one-year extension of the December 2006 order because the FAA never intended the order to serve as a long-term solution to congestion at LGA. From this perspective, using the minimum number of short-term extensions would offer the benefit of regular and public status reports on where the FAA stands in establishing a longer-term solution to overscheduling at LGA. As the commenters note, however, such short-term extensions may not best facilitate the long-term planning of some carriers that conduct, or hope to conduct, service at the airport. Accordingly, while the FAA does not agree that an indefinite extension is appropriate, the FAA will increase the duration of the present extension to about two years to accommodate carriers' longer term planning. The December 2006 order will now expire on October 29, 2011.

B. Buy and Sell Authority

In light of the increased duration of the December 2006 order, three commenters question the ban on the purchase, sale, or long-term lease of the Operating Authorizations held by virtue of the original order. The commenters reason that the FAA included the ban as a result of the December 2006 order's intended short duration. The commenters perceive that extending the order increases the importance of a market mechanism that permits the sale and purchase of operating authority, which would facilitate competition and new entry, as well as leases for such authority that extend beyond the order's expiration date.

The FAA included in the December 2006 order the ability of carriers to trade or to lease Operating Authorizations to other carriers; however, the duration of the trade or lease could not exceed the duration of the order.³ The commenters claim that relying on short-term trades and leases alone may become limiting as the December 2006 order remains effective over a significantly longer term. The proposed extension of the December 2006 order, however, specifically limited the comments to the proposed extension.⁴ The FAA intends

¹ Operating Limitations at New York LaGuardia Airport, 71 FR 77,854 (Dec. 27, 2006); 72 FR 63,224 (Nov. 8, 2007) (transfer, minimum usage, and withdrawal amendments); 72 FR 48,428 (Aug. 19, 2008) (reducing the reservations available for unscheduled operations); 74 FR 845 (Jan. 8, 2009) (extending the expiration date of the December 2006 order until October 24, 2009); 74 FR 2,646 (Jan. 15, 2009) (reducing the peak-hour cap on scheduled operations to 71).

² 74 FR 28,772.

³ 72 FR at 63,227 (ordering paragraph five).

⁴ 74 FR at 28,774 ("any submission to the current docket should be limited to the proposed extension of the December 2006 order").