

affiliates,” under 13 CFR 121.104(a). These transactions are commonly referred to as interaffiliate transactions. The intent of this exclusion is to avoid counting the same receipts twice when determining the size of a particular concern. This Statement of Policy explains how SBA will apply the exclusion.

Recent SBA size determinations and decisions of the Office of Hearings and Appeals have limited the exclusion by applying it only to transactions between affiliates that are eligible to file a consolidated tax return. This interpretation has been supported by reference to a parenthetical that was included with section 121.104(a) from 1996 to 2004, providing that the exclusion would apply to interaffiliate amounts “(if also excluded from gross or total income on a consolidated return filed with the IRS). . . .” 13 CFR 121.104(a)(1) (1996); 61 FR 3280 (Jan. 31, 1996). While this parenthetical was in place, SBA excluded only those interaffiliate transactions that were also excluded from consolidated tax returns filed by a concern and its affiliate. This policy necessarily required that the transaction occur between two firms that filed consolidated returns.

SBA deleted the parenthetical in 2004. In the preamble to the final rule issued May 21, 2004, SBA stated that it was deleting the parenthetical because “[w]hether a consolidated return is filed should have no bearing on whether properly documented interaffiliate transactions are excluded from annual receipts.” 69 FR 29192, 29196 (May 21, 2004). Thus, since May 2004, the regulation has provided for an exclusion from receipts for “proceeds from transactions between a concern and its domestic or foreign affiliates.” 13 CFR 121.104(a). The regulation does not include a limitation on the types of affiliates for which interaffiliate transactions can be excluded, and in no way ties the exclusion to a concern’s ability to file a consolidated tax return with the identified affiliate.

SBA believes that the current regulatory language is clear on its face. It specifically excludes all proceeds from transactions between a concern and its affiliates, without limitation. Moreover, the regulatory history supports the position that the exclusion for interaffiliate transactions is available regardless of the manner of affiliation between a concern and its affiliate. SBA recognized that excluding interaffiliate transactions only when they are identified on a consolidated tax return often perpetuated the double-counting of receipts. By saying that “[w]hether a consolidated return is filed should have

no bearing on whether properly documented interaffiliate transactions are excluded from annual receipts,” SBA did not mean to imply that a concern and its affiliate must be able to file a consolidated tax return in order to receive the exclusion from double-counting interaffiliate transactions. Conversely, SBA was attempting to make clear that it did not support the practice of double-counting receipts between affiliates generally.

Because the regulatory text does not contain a restriction, a regulatory change is not necessary. SBA will consider comments submitted regarding this policy.

Statement of Policy

SBA will not restrict the exclusion for interaffiliate transactions to transactions between a concern and a firm with which it could file a consolidated tax return. The exclusion for interaffiliate transactions may be applied to interaffiliate transactions between a concern and a firm with which it is affiliated under the principles in 13 CFR 121.103. Where SBA is conducting a size determination, SBA requires that exclusions claimed under section 121.104(a) be specifically identified by the concern whose size is at issue and be properly documented. This policy is effective immediately.

Dated: May 18, 2016.

Maria Contreras-Sweet,
Administrator.

[FR Doc. 2016–12260 Filed 5–23–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2008–0221]

Change of Newark Liberty International Airport (EWR) Designation; Notification of Availability of Final CATEX Declaration and Supporting Material

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of availability.

SUMMARY: This action announces the placement in the docket of the final documented categorical exclusion (the signed CATEX declaration and final Attachment A: *Environmental Review of Proposed Change of Operating Authorization Requirement at Newark Liberty International Airport*) for the redesignation of Newark Liberty

International Airport (EWR) as a Level 2 schedule-facilitated airport.

DATES: May 24, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–6462; email susan.pfingstler@faa.gov.

SUPPLEMENTARY INFORMATION: On April 6, 2016, the FAA published the “Change of Newark Liberty International Airport (EWR) Designation” document in order to redesignate Newark Liberty International Airport as a Level 2 schedule-facilitated airport under the International Air Transport Association Worldwide Slot Guidelines effective for the winter 2016 scheduling season, which begins on October 30, 2016.¹

On April 5, 2016, the FAA posted a copy of a draft of Env Rev Attach A in the docket associated with the April 6, 2016 document. The FAA has corrected this action by posting the final CATEX documents (the signed CATEX declaration and final Attachment A: *Environmental Review of Proposed Change of Operating Authorization Requirement at Newark Liberty International Airport*) to the docket.

Issued in Washington, DC, on May 18, 2016.

Lorelei Peter,

Assistant Chief Counsel for Regulations.

[FR Doc. 2016–12252 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

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 May 24, 2016.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office,

¹ 81 FR 19861.

AGC-240, Office of the Chief Counsel, 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: Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-6462; email 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/; 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

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).¹ By statute enacted in April 2000, the HDR's applicability to JFK operations terminated as of January 1, 2007.² 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.³

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

With a temporary schedule limit order in place, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at JFK.⁴ 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, 2008.⁵ That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.⁶ The FAA extended the January 18, 2008, Order placing temporary limits on scheduled operations at JFK on October 7, 2009,⁷ on April 4, 2011,⁸ on May 14, 2013,⁹ and on March 26, 2014.¹⁰

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 2015.¹¹ 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 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

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

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

⁶ 74 FR 52134 (Oct. 9, 2009).

⁷ 74 FR 51650.

⁸ 76 FR 18620.

⁹ 78 FR 28276.

¹⁰ 79FR 16854.

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

Transparency at LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport."¹² 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 action published in today's **Federal Register**.¹³ 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

¹² 80 FR 1274.

¹³ 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.*

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 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 email 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 email 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, DC on May 18, 2016.

Daniel E. Smiley,

Vice President, System Operations Services.

[FR Doc. 2016-12221 Filed 5-23-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31073; Amdt. No. 3693]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 24, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 24, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590-0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedure Standards Branch (AFS-420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, and 8260-15B when required by an entry on 8260-15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff

Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.