

from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

**Daniel E. Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. E6-3784 Filed 3-15-06; 8:45 am]

BILLING CODE 3190-W6-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Public Notice for Waiver of Aeronautical Land-Use Assurance; Gary/Chicago International Airport; Gary, IN

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of intent of waiver with respect to land.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from civilian aeronautical use to military aeronautical use and to authorize the lease of the airport property. The area is a twenty-five acre parcel located in the southwest quadrant of the airport south of Runway 12/30 and west of Runway 2/20. The land is vacant and is used as a stockpile area for various construction materials and was the former site of a Nike missile silo battery. The land had been transferred to the City of Gary in 1947 by Quitclaim Deed from the Reconstruction Finance Corporation as non-surplus property as defined by section 16 of the Federal Airport Act of 1946. Public Law 102-148, dated October 10, 1991 released the land from the section 16 restriction requiring Congressional action for land releases and authorized the FAA to administer land releases. There are no adverse impacts to the airport by allowing the airport to lease the property. The land is not needed for civilian aeronautical use and a Limited Army Aviation Support Facility helicopter base, which will be operated by the Indiana National Guard, will be constructed on the property. A Joint-Use Agreement will be negotiated between the Indiana National Guard and the airport that will address all fees, charges, and assessments for services such as snow removal, fire fighting and fueling. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and

Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

**DATES:** Comments must be received on or before April 17, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Gregory N. Sweeny, Airports Engineer, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone Number (847) 294-7526/Fax Number (847) 294-7046.

Documents reflecting this FAA action may be reviewed at this same location or at Gary/Chicago International Airport, Gary, Indiana.

**SUPPLEMENTARY INFORMATION:** Following is a legal description of the property located in Gary, Lake County, Indiana, and described as follows:

A parcel of land in the east half of section 35, Township 37 North, Range 9 West of the second principal meridian, in the City of Gary, Lake County, Indiana, being a part of those premises now commonly known as the Gary/Chicago International Airport, said parcel being more particularly described as follows: Commencing at a concrete monument at the center of said Section 35, thence South 89°49'11" East (all bearings in this description are based on the true bearing of North 55°49'59" West for the center line of Runway 12/30) along the east and west center line of said Section 35 a distance of 71.64 feet to a point; thence North 00°56'07" East a distance of 42.41 feet to the true point of beginning of the tract herein described; thence continuing North 00°56'07" East a distance of 545.92 feet to a point; thence North 44°07'06" East a distance of 375.73 feet to a point in a line which is 600.00 feet distant and parallel with the center line of Runway 12/30 aforesaid; thence South 55°49'59" East along said parallel line a distance of 860.84 feet to a point; thence South 29°28'52" East a distance of 349.36 feet to a point which is 625.00 feet distant and parallel with the center of Runway 2/20; thence South 21°11'05" West along said parallel line a distance of 754.45 feet to a point; thence North 68°45'22" West a distance of 419.05 feet to a point; thence South 77°38'14" West a distance of 134.67 feet to a point in a non-tangent circular curve concave to the west and having a radius of 1,061.90 feet and a chord bearing of North 33°05'02" West for a distance of 659.34 feet; thence northerly and northwesterly along said

curve an arc distance of 670.41 feet to the true point of beginning, and containing 25.01 acres, more or less, and subject to all easements and restrictions of record.

Issued in Des Plaines, Illinois on February 27, 2006.

**Larry H. Ladenforf,**

*Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 06-2489 Filed 3-15-06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2004-16944]

#### Operating Limitations at Chicago O'Hare International Airport

**ACTION:** Notice of order to show cause and request for information.

**SUMMARY:** The FAA has issued an order to show cause which solicits the views of interested persons on the FAA's tentative determination to extend through October 28, 2006, an August 18, 2004, order limiting the number of scheduled aircraft arrivals at O'Hare International Airport during peak operation hours. The text of the order to show cause is set forth in this notice.

**DATES:** Any written information that responds to the FAA's order to show cause must be submitted by March 22, 2006.

**ADDRESSES:** You may send comments [identified by Docket Number FAA-2004-16944] using any of the following methods:

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- *Fax:* 1-202-493-2251.
- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to <http://>

*dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* To read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 in the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Gerry Shakley, System Operations Services, Air Traffic Organization; Telephone: (202) 267-9424; E-mail: [gerry.shakley@faa.gov](mailto:gerry.shakley@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Order To Show Cause**

The Federal Aviation Administration's (FAA's) August 18, 2004, order limiting scheduled operations at O'Hare International Airport expires on April 1, 2006. The FAA has tentatively determined that it will extend the order through October 28, 2006. This order to show cause invites air carriers and other interested persons to submit comments in Docket No. FAA-2004-16944 on this proposal to extend the duration of the August 2004 order.

If the FAA were to allow the August 2004 order to expire as presently scheduled, the FAA anticipates a return of the congestion-related delays that precipitated the voluntary schedule reductions and adjustments reflected in the August 2004 order. The FAA has adopted a rule limiting unscheduled flights at O'Hare,<sup>1</sup> but it has applied no limits on scheduled flights at O'Hare, other than the August 2004 order. In a separate docket, the FAA solicited public comment on a proposed rule that would limit the number of scheduled arrivals at O'Hare.<sup>2</sup> The comment period for the proposed rule ended on May 24, and the FAA and the Office of the Secretary of Transportation have evaluated the comments filed in that proceeding and expect to issue a final rule shortly. It is not possible, however, to implement a final rule in time for the beginning of the summer scheduling season.<sup>3</sup> The FAA expects that the extension of the August 2004 order will permit the order's expiration to coincide with the effective date of the final rule.

The FAA's authority to extend the August 2004 order is the same as the

authority cited in that order. The FAA proposes to extend the August 2004 order under the agency's broad authority in 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

*Background*

On August 18, 2004, the FAA issued an order limiting the number of scheduled arrivals that air carriers conduct at O'Hare during peak hours. The August 2004 order followed a period during which O'Hare operated without any regulatory constraint on the number of aircraft operations, and O'Hare experienced significant congestion-related delay. According to the Bureau of Transportation Statistics, in November 2003, O'Hare ranked last among the nation's thirty-one major airports for on-time arrival performance, with on-time arrivals 57.26% of the time. O'Hare also ranked last in on-time departures in November 2003, yielding on-time departures 66.94% of the time. The data for December 2003 reflected a similar performance by O'Hare—ranking last with 60.06% of arrivals on time and 67.23% of departures on time. Despite the high proportion of delayed flights, when the air carriers published their January and February 2004 schedules in the Official Airline Guide, the schedules revealed that the air carriers intended to add still more flight operations to O'Hare's schedule.

In January 2004, the two air carriers conducting most of the scheduled operations at O'Hare—together accounting for about 88% of O'Hare's scheduled flights—agreed to a temporary 5% reduction of their proposed peak-hour schedules at the airport. When the voluntarily reduced schedules failed to reduce sufficiently O'Hare's congestion-related flight delays, the two air carriers agreed to a further 2.5% reduction of their scheduled peak-hour operations at O'Hare. The FAA captured the voluntary schedule reductions in FAA orders, and the orders were effective through October 30, 2004.

By the summer of 2004, it was apparent that the schedule reductions agreed to in the first half of the year, which were made by only two of the many air carriers conducting scheduled operations at O'Hare, were unlikely to be renewed after the orders expired on October 30, 2004. In the absence of a voluntary constraint, the industry's proposed schedules for November, as

reported in the preliminary Official Airline Guide in July 2004, indicated that the number of scheduled arrivals during several hours would approach or exceed O'Hare's highest possible arrival capacity. During one hour, the number of scheduled arrivals would have exceeded by 32% O'Hare's capacity under ideal conditions.

Therefore, the FAA invited all scheduled air carriers to an August 2004 scheduling reduction meeting to discuss overscheduling at O'Hare, voluntary schedule reductions, and retiming flights to less congested periods. The August 2004 meeting and subsequent negotiations led the FAA to issue the August 2004 order, which limited the number of scheduled arrivals conducted by U.S. and Canadian air carriers at O'Hare during peak operating hours. The order also defined opportunities for new entry and for growth by limited incumbent air carriers at O'Hare. The order took effect November 1, 2004, was previously extended on March 21 and October 2, 2005, and in the absence of a further extension, it will expire on April 1, 2006.

The flight limits implemented by the August 2004 order have been effective. Delays have decreased, and customers have seen improved on-time arrival performance as a result of the depeaked flight schedules. For the period from November 2004 through June 2005, the average minutes of arrival delay decreased by approximately 27% when compared to the same period last year. This level of delay reduction is somewhat better than the 20% reduction in delays that the FAA's computer modeling anticipated. We attribute this primarily to weather conditions that were more favorable than average and to certain peak hours in which the arrivals actually scheduled have been below the hourly limit adopted in the August 2004 order.

During the first 12 months that the order was in effect (November 2004 through October 2005), the average minutes of arrival delay at O'Hare have decreased by approximately 24 percent when compared to the same 12-month period the year before. The longer arrival delays lasting more than one hour have decreased by 28 percent. Overall, the on-time arrival performance at O'Hare has increased by almost 7 percentage points. As a result, O'Hare performed near the average for the rest of the National Airspace System (NAS), which is a dramatic improvement over the airport's bottom-tier performance during much of 2004. Performance since November 2005 declined by some measures due to the normal impact of winter weather on O'Hare and the NAS.

<sup>1</sup> 70 FR 39610 (July 8, 2005).

<sup>2</sup> 70 FR 15520 (Mar. 25, 2005).

<sup>3</sup> We note that carriers customarily use 90- to 120-day lead time in establishing their operating schedules.

However, we continue to show overall improvement compared to the same period before the schedule adjustments.

#### *Order To Show Cause*

The FAA has issued a notice of proposed rulemaking to address appropriate limitations on scheduled operations at O'Hare. The comment period for the proposed rule closed on May 24, and the FAA and the Office of the Secretary of Transportation are completing the rulemaking process. However, the FAA cannot implement a final rule sufficiently in advance of the August 2004 order's current expiration date.

To prevent a recurrence of overscheduling at O'Hare during the interim between the expiration of the August 2004 order on April 1, 2006, and the expected effective date of the rule, the FAA tentatively intends to extend the August 2004 order. The limits on arrivals and the allocation of arrival authority embodied in the August 2004 order reflect the FAA's agreements with U.S. and Canadian air carriers. As a result, maintaining the order through the summer scheduling season constitutes a reasonable approach to preventing unacceptable congestion and delays at O'Hare. In addition, we find that it is reasonable to match this proposed extension of the August 2004 order with the scheduling cycle for summer 2006. The August 2004 order, as extended, would expire on October 28, 2006.

Independence Air, which was assigned ten arrivals in the August 2004 order, ceased all operations at O'Hare on January 5, 2006. The August 2004 order does not include a mechanism to reallocate such unused capacity; however, it does not appear that the arrival authority assigned to Independence Air is excess capacity. The principal premise for the August 2004 order was the FAA's determination that O'Hare at present can accommodate 88 scheduled arrivals per hour in average meteorological conditions without triggering intolerable congestion-related delays. In negotiating the schedule adjustments among individual air carriers for the August 2004 order, however, several peak afternoon and evening hours received scheduled arrivals that exceed the agency's preferred limit of 88 scheduled arrivals per hour. Accordingly, the unused arrival times assigned to Independence Air under the order would offset the hours that were scheduled above the preferred limit, and we tentatively conclude that it is operationally beneficial not to reallocate

the arrival times formerly used by Independence Air at this time.

Accordingly, the FAA directs all interested persons to show cause why the FAA should not make final its tentative findings and tentative decision to extend the August 2004 order through October 28, 2006, by filing their written views in Docket No. FAA-2004-16944 on or before March 22, 2006. The FAA is not soliciting views on the issues separately under consideration in the proposed rulemaking. Therefore, any submissions to the current docket should be limited to the issue of extending the August 2004 order.

Issued in Washington, DC, on March 13, 2006.

**Rebecca Byers MacPherson,**

*Assistant Chief Counsel for Regulation.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Pipeline and Hazardous Materials Safety Administration**

[Docket No. PHMSA-04-18858; Notice 2]

#### **Pipeline Safety: Grant of Waiver; Duke Energy Gas Transmission Company**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Notice; Grant of Waiver.

**SUMMARY:** Duke Energy Gas Transmission Company (DEGT) petitioned the Pipeline and Hazardous Materials Safety Administration (PHMSA) for a waiver of compliance with 49 CFR 192.611, which requires natural gas pipeline operators to confirm or revise the maximum allowable operating pressure of a pipeline after a change in class location. DEGT requested the waiver for certain segments of its natural gas pipeline located in Tennessee and Kentucky that have changed, and for segments that may change from Class 1 to Class 2 in the future. Under the pipeline safety regulations, class location indicates the population density near a pipeline. As the population along a pipeline increases, the class location increases. DEGT proposed to conduct a set of alternative risk control activities, in lieu of pipe replacement or pressure reduction, on all the segments requested in the waiver.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In accordance with 49 U.S.C. 60126, PHMSA established the Risk

Management Demonstration Program (RMDP) in partnership with operators of natural gas and hazardous liquid pipeline facilities. The RMDP determines how risk management principles can be used to compliment and improve the existing Federal pipeline safety regulatory process. Under the RMDP, pipeline operators proposed risk management projects to demonstrate how a structured and formalized risk management process could enable a company to customize its safety program to allocate resources for its pipeline's particular risks, which would lead to an enhanced level of safety and environmental protection. DEGT and 11 other pipeline companies were selected as potential candidates for RMDP projects.<sup>1</sup> In evaluating DEGT as a RMDP candidate, PHMSA and DEGT engaged in a consultation process in which DEGT's safety practices and pipeline risk management program were scrutinized. During this consultation process, DEGT identified 21 sites where the class location had changed from Class 1 to Class 2 along the pipeline route of 2 compressor station discharges—1 located in Tennessee and the other in Kentucky. These segments include DEGT's 3 parallel natural gas pipelines, Lines 10, 15, and 25, which are part of its Texas Eastern Pipeline System.

While awaiting approval of its risk demonstration project, on October 5, 2000, DEGT requested a waiver of compliance from 49 CFR 192.611, for the 15 pipe segments located in Tennessee that had changed from Class 1 to Class 2. The Federal pipeline safety regulations at § 192.609 require a gas pipeline operator to complete a class location change study whenever they believe an increase in population density may have caused a change in class location as defined in § 192.5. If a new class location is confirmed, the operator is required to either reduce pressure or replace the pipe in compliance with § 192.611.

Section 192.5(a)(1) defines a "class location unit" as an onshore area extending 220 yards (200 meters) on either side of the centerline of any continuous one mile length of pipeline. The class location for any unit is determined according to the following criteria in § 192.5(b):

Class 1—an offshore area or 10 or fewer buildings intended for human occupancy;

<sup>1</sup> "Candidates for the Pipeline Risk Management Demonstration Program" (62 FR 143; July 25, 1997); "Pipeline Safety: Remaining Candidates for the Pipeline Risk Management Demonstration Program" (62 FR 197; October 10, 1997).