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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2007-29320]

#### Operating Limitations at John F. Kennedy International Airport; Notice of Order

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

**ACTION:** Notice of Order.

**SUMMARY:** The Federal Aviation Administration (FAA) is amending the Order Limiting Scheduled Operations at John F. Kennedy International Airport that published in the **Federal Register** on January 18, 2008. This amendment corrects technical errors in the Order. Specifically, this amendment clarifies that the use-or-lose provisions of the Order will mirror the IATA Worldwide Scheduling Guidelines; changes the office within the FAA responsible for handling appeals from the Air Traffic Organization to the Office of the Chief Counsel; and provides for a five-day notification period in the event a carrier transfers an operation within a marketing code for irregular operations. This document also clarifies several aspects of the Order without substantively changing the applicable requirements.

**FOR FURTHER INFORMATION CONTACT:**

Rebecca MacPherson, Assistant Chief Counsel for Regulations, Office of the Chief Counsel, AGC-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073.

**SUPPLEMENTARY INFORMATION:** On January 18, 2008 the FAA published the *Order Limiting Scheduled Operations at John F. Kennedy International Airport (JFK)* (Order) in the **Federal Register** (73 FR 3510). The Order establishes a temporary limitation on the number of scheduled operations at JFK. The Acting Administrator of the FAA issued the order as a result of a persistent number of flights above capacity at JFK during the peak operating hours. The FAA intends the Order, as amended today, to relieve the substantial inconvenience to

the traveling public caused by excessive congestion-related flight delays at the airport, which magnify as they spread through the National Airspace System. Among other things, the order will reduce the average length of delays and provide for a more efficient use of the nation's airspace. The order takes effect at 6 a.m., Eastern Time, on March 30, 2008, and will expire at 11:59 p.m., Eastern Time, on October 24, 2009. The limits apply to all air carrier and foreign air carrier scheduled operations, excluding helicopters, from 6 a.m., Eastern Time, through 10:59 p.m., Eastern Time.

This amendment corrects technical errors in the Order. Specifically, this amendment clarifies that the use-or-lose provisions of the Order will mirror the IATA Worldwide Scheduling Guidelines (WSG); changes the office within the FAA responsible for handling appeals from the Air Traffic Organization to the Office of the Chief Counsel; and provides for a five-day notification period in the event a carrier transfers an operation within a marketing code for irregular operations. This document also clarifies several aspects of the Order without substantively changing the applicable requirements.

#### Changes to the Order

##### *Use-or-Lose Provisions*

As noted in the preamble to the Order published in January 2008, the FAA will calculate use-or-lose based on the WSG. The use-or-lose provision articulated in the Order largely mirrored the approach we have historically taken under the High Density Rule (HDR)<sup>1</sup> and the orders limiting operations at Chicago O'Hare International Airport (ORD) and LaGuardia Airport (LGA). The requirement articulated in the Order was in error, and the language in paragraph nine of the Order has been amended to reflect the agency's intent.

Under a strict seasonal use-or-lose provision, an operation that did not commence until June, or ended in September, would be returned to the slot coordinator for reallocation for the following summer season because the slot would not be used at least 80% of the time. The WSG protects seasonal or newly initiated service by allowing the carrier to declare in advance the stop and start dates of service.

Under the WSG, carriers are required to inform the coordinator of their intended summer and winter operations by January 31 and August 31, respectively. Any operations not

declared by these dates are surrendered and are not given historical status for the subsequent applicable scheduling season. However, they also are not counted against a carrier's slot holdings when determining use-or-lose. Thus, if a carrier were to advise the FAA that it would commence operations on June 1, 2008 and cease those operations on August 31, the only timeframe for determining use-or-lose would be June 1 through August 31, even though the summer scheduling season runs from March 30 to October 25. Assuming the carrier conducted enough flights under an Operating Authorization (OA) in the June through August timeframe to receive historical recognition, it would be given the OA for summer 2009 from June 1 through August 31.

The FAA believes this approach has merit. A strict seasonal use-or-lose policy would require carriers to operate flights on the shoulders of a scheduling season just to assure they would not lose the related OA. This unnecessary service would have the effect of increasing congestion during the spring and fall.

Accordingly, we are amending the Order to specify that for purposes of use-or-lose and historical allocation for subsequent seasons, carriers must tell the FAA when a particular operation will start and stop. Because it is too late to meet the submission date specified in the WSG for summer 2008, carriers who wish to have less than the entire summer season subject to the use-or-lose provision must report usage for this upcoming summer by February 29, 2008. Carriers are encouraged to submit information on all service scheduled for summer 2009 by February 29, to assist the FAA in finalizing schedules as soon as possible. Notification to the FAA for winter 2008/2009 and summer 2009 schedules will follow the WSG. For purposes of the winter 2008/2009 scheduling season, historic usage rights will be determined by the appendix to the Order since there were no capacity restraints at JFK in the 2007 winter scheduling season. The FAA will receive initial schedule requests for the winter 2008/2009 scheduling season by the May 15 deadline and coordinate with carriers at the June 2008 IATA Schedules Conference.

Paragraph nine of the Order also requires carriers to report on usage within 14 days for every two-month reporting period. Since the WSG use-or-lose requirement applies to an entire scheduling season, there is no need for carriers to report to the FAA every two months. That requirement has been changed. First, the FAA does not believe it needs reports every two months. One

<sup>1</sup> 14 CFR part 93, subpart K.

option would be for the FAA to merely require a report be filed at the end of the scheduling season. However, the coordination process for allocating OAs for the following season begins approximately six weeks before the end of the season. The beginning of this coordination process requires the coordinator to notify carriers of tentative historical allocations. The FAA needs to know a carrier's usage rate before it can provide even a tentative historical allocation. Accordingly, the FAA has decided to replace the bimonthly reporting requirement with a requirement that carriers provide an interim report approximately two months before the end of the scheduling season, and a final report at the end of the season.

Some carriers have requested that they be allowed 30 days to submit their reports rather than 14. As discussed in the preamble to the Order published in January 2008, OAs are allocated on a daily basis, and the use-or-lose requirements apply separately to each day in the week that a carrier conducts a specific operation. Under the HDR, the use-or-lose provisions applied to a specific operation for which a slot had been allocated regardless of how many days a week the slot was used.

While the FAA does not believe a seasonal reporting requirement is significantly more burdensome than a bi-monthly requirement, we acknowledge that the determination of use-or-lose based on a daily OA allowance, rather than the weekly allowance contemplated under past use-or-lose regimes, means that a carrier could have to account for up to seven times as many OAs as it would under the requirements in the HDR and the ORD and LGA orders. Accordingly, we believe it is reasonable to extend the period for submitting a final usage report from 14 days to 30.

Because carriers may choose to initiate operations after the commencement of a scheduling season, or cease operations prior to the end of the season, there may be some available capacity in the shoulder periods of both the summer and winter scheduling seasons. In general, the FAA believes not reallocating this capacity is beneficial because it should result in further delay reductions. However, the FAA also recognizes that some of this capacity could be reintroduced into the system without significantly impacting delay. The agency also realizes that a carrier may have a short-term need to conduct operations during these time periods. Accordingly, a carrier may request that the FAA allow it to temporarily operate a flight at a time

period where there is some newly available capacity. Paragraph 10 has been amended to reflect this possibility. The FAA retains full discretion to determine whether to allow these additional operations. In addition, these operations will not be afforded historical status when determining OAs for the next applicable season. Any longer-term capacity returned by virtue of the Order's use-or-lose provisions would be reallocated for the next applicable season via an auction procedure.

The Appendix to the Order shows allocations based on a peak week in August 2007. Many carriers, especially foreign flag carriers, have provided the FAA with information on dates of operation either with the initial schedule submission at the IATA Schedules Conference or in subsequent schedule requests. The FAA has previously acted on that information and the Appendix is not meant to supersede any prior confirmations that carriers may have received. Most domestic operators have not specified seasonal adjustments in their requests. Once carriers have told us when they expect to operate flights for purposes of use-or-lose and historical allocation, the FAA will update the allocation records to reflect actual anticipated operations. Carriers seeking confirmation of their allocation may contact the slot office directly. However, schedules previously confirmed by the FAA do not require reconfirmation.

#### *Appeal of Decisions*

Paragraph 1c of the Order originally specified that the FAA Vice President, System Operations Services, is the final decision-maker for determinations regarding the assignment of an OA to conduct an arrival or departure at JFK during the affected hours. This provision was designed to address clerical errors or other adjustments to the Appendix to the order. However, the FAA realizes that there would be other decisions that a carrier may wish to appeal to the FAA. Because these issues would likely relate to a legal interpretation by the Office of the Chief Counsel rather than a purely operational issue, the FAA has decided the Chief Counsel should be the final decision-maker for all appeals to the agency under the Order. In addition, since the Office of the Chief Counsel handled all appeals under the HDR, it has the greatest experience in this area. Obviously, the operational arms of the FAA would be consulted on all matters under appeal. Paragraph 1c of the Order has been amended accordingly.

#### *Transaction Paperwork for Irregular Operations*

Paragraph seven of the Order addresses the transfer of OAs, including day-of-transfers among carriers under the same marketing control to address irregular operations. The Order originally specified that the FAA must be informed of these transactions within three days (72 hours). This provision was intended to mirror the comparable provision in the LGA Order. That order was amended to extend the reporting requirement to five days (72 FR 63224, November 8, 2007). As the FAA intended to mirror the existing requirement at LGA, paragraph seven has been changed to specify that the FAA must be notified of same day transfers within five days.

#### **Clarification of the Order**

##### *OA Management*

The FAA has received questions regarding the management of OAs in 15 or 30-minute increments. The appendix to the Order allocates OAs in 15-minute increments. However, the FAA will track arrivals and departures in 30-minute intervals.

##### *Codeshare Partners*

Some carriers have indicated that the requirement under the Order that OAs be held by the operating carrier rather than the marketing carrier is inconsistent with common practice internationally. The FAA continues to believe that the OAs should actually be held by the operator actually conducting the flight. This position is consistent with how we have handled slots under the HDR and arrival and operations authorizations at ORD and LGA.

#### **The Amended Order**

Because this amendment merely corrects technical errors and provides further clarification, the FAA is not seeking public comment on the changes. For the convenience of the affected parties, the Order is recited below in its entirety.

With respect to scheduled flight operations at JFK, it is ordered that:

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 carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such 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 decision-maker 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 24, 2009.

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 carriers or foreign air carriers initiating or conducting scheduled or regularly conducted commercial service to 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. A carrier may lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of this Order. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 26707277 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.

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 the summer 2008 scheduling season, the report must be received by the FAA no later than February 29, 2008, unless the carrier intends to

utilize its Operating Authorizations for the entire scheduling season.

B. For the winter 2008/2009 scheduling season, the report must be received by the FAA no later than August 31, 2008.

C. For the summer 2009 scheduling season, the report must be received by the FAA no later than January 31, 2009.

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 unallocated 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 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 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 February 8, 2008.

**Kerry B. Long,**

*Chief Counsel, Federal Aviation Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Transit Administration

#### Environmental Impact Statement: Tappan Zee Bridge/I-287 Corridor Between Suffern, NY (Rockland County) and Port Chester, NY (Westchester County)

**AGENCIES:** Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), United States Department of Transportation (DOT).

**ACTION:** Revised Notice of Intent.

**SUMMARY:** The FHWA and FTA are jointly issuing this Revised Notice of Intent (NOI) to advise the public of modifications to the environmental review process for the Tappan Zee Bridge/I-287 Corridor Environmental Impact Statement (EIS). These revisions include the intent of FHWA and FTA to use a tiered process to facilitate project decision-making, and the intent of FHWA and FTA to utilize the environmental review provisions afforded under Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The EIS will build upon the extensive alternatives analysis, environmental and technical studies and public comments and outreach conducted to date, which are available online at the project's Web site ([www.tzbsite.com](http://www.tzbsite.com)). This NOI revises the NOI that was published in the **Federal Register** on December 23, 2002.

The proposed tiering approach will allow the joint lead agencies to focus on both broad overall corridor issues in a Tier 1 transit analysis of general alignment and mode choice while simultaneously assessing site specific impacts, costs and mitigation measures in a Tier 2 bridge and highway analysis. The scope of analysis in the Tier 1 and Tier 2 will be appropriate to the level of detail necessary for those documents and will receive input from the public and reviewing agencies. The intent of the joint lead agencies is for the Tier 1 and Tier 2 analyses to be developed

concurrently in order to maximize the efficiencies and potential for multimodal solutions.

The Tier 1 transit analysis will provide the basis for a corridor level decision on transit mode(s), alignment(s), and logical termini within the Corridor and sufficient detail of impact assessments and preliminary engineering to allow the Tier 2 highway and bridge elements to proceed to final design and construction. Because the transportation needs of the corridor require a multimodal solution, the highway, bridge, and transit elements are intricately tied to one another and require iterative and concurrent development, analysis and consideration up to the decision on mode and alignment. Once the transit mode and alignment decisions are made, the analysis can focus on the needs of the corridor which includes the structural needs of the existing Tappan Zee Bridge and associated highway network, while preserving the transit corridor within the existing right of way.

Additional purposes of this revised NOI are to:

- Advise the public of lead agency roles.
- Outline how the provisions of SAFETEA-LU Section 6002 will be met.
- Update interested parties regarding the current approach to preparing the EIS.
- Provide updated information on the proposed project, purpose and need for the project, and range of alternatives.
- Re-invite participation in the EIS process, including comments on the refined scope of the EIS proposed in this notice.
- Announce the dates, times and locations of upcoming scoping update meetings.

#### FOR FURTHER INFORMATION CONTACT:

Michael P. Anderson, Project Director, NYSDOT, 660 White Plains Road, Suite 340, Tarrytown, NY 10591, Telephone: (914) 358-0600; or Willet Schraft, Senior Operations Engineer, FHWA, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, NY 12207, Telephone: (518) 431-4125; or Donald Burns, Senior Planner, FTA, One Bowling Green, Room 429, New York, NY 10004, Telephone: (212) 668-2170.

**SUPPLEMENTARY INFORMATION:** On December 23, 2002, the FHWA and FTA, in cooperation with the New York State Thruway Authority (NYSTA) and the Metro-North Railroad, a subsidiary of the Metropolitan Transportation Authority (MTA/MNR) issued a Notice

of Intent to prepare an Alternatives Analysis (AA) and an Environmental Impact Statement (EIS) for the I-287 Corridor in Westchester and Rockland Counties, NY (FR Volume 67, No. 246). Extensive AA public involvement activity has been conducted since publication of that NOI such that a revised tiered approach is warranted. Of considerable note, is that the New York State Department of Transportation (NYSDOT) has become a sponsoring agency and taken on the role of lead State project manager. As a sponsoring agency, NYSDOT, as well as NYSTA and MTA/MNR, are considered Joint Lead Agencies for the project under SAFETEA-LU.

#### 1. Scoping

In January 2003, after the December 2002 NOI was published, three scoping meetings were held: one in Westchester County; one in Rockland County; and one in Orange County. Public and agency comments received during those scoping meetings have been incorporated into the AA. As a result of the initial scoping process which included a Level 1 and Level 2 alternatives screening process, the alternatives have been reduced from 150 alternative elements to six alternatives. As a result of the changes in the project conditions and approach that have precipitated the issuance of this revised NOI, scoping update meetings will be conducted to obtain current comments on the scope of the EIS. To assist interested parties in formulating their comments, a scoping informational packet will be prepared and made available upon request from the NYSDOT representative identified above or online at the project's Web site ([www.tzbsite.com](http://www.tzbsite.com)). The scoping packet will include the project's purpose and need, goals and objectives, range of alternatives, environmental issues that will be addressed during the course of the study and the public and agency coordination plan, pursuant to SAFETEA-LU. In addition, the scoping packet will include the evaluation criteria that will be used to conduct a third level ("Level 3") alternatives screening process, which will further analyze the remaining alternatives.

In early 2008, three additional public scoping update meetings will be conducted, one each in Westchester, Rockland and Orange Counties, to solicit additional public comments on the scope of the EIS. Each meeting will run from 4 to 9 p.m. and consist of an informal open house setting and two formal presentations. Formal presentations will be made at 5 p.m. and again at 7 p.m. After each presentation,