

FOR FURTHER INFORMATION CONTACT: Please contact Chair of U.S.-Egypt S&T Joint Board William Lawrence, Office of Science and Technology Cooperation, Bureau of Oceans, Environment and Science, U.S. Department of State at (202) 663-2619 or *e-mail*: LawrenceWA@state.gov.

Dated: October 23, 2008.

Robert S. Senseney,

Acting Director, Office of Science and Technology Cooperation, Bureau of Oceans, Environment and Science, Department of State.

[FR Doc. E8-25932 Filed 10-29-08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held December 4, 2008, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol, Columbia II Ballroom, 550 C Street, SW., Corner of 6th & C Streets, SW., Washington, DC 20024. (*Via Metro: L'Enfant Plaza Station, Use 7th & Maryland Exit*).

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
 - Assessment of New York 77 Initiatives.
 - FAA Airspace Management Program Review.
 - NextGen Integration and Implementation.
 - Closing Plenary (Other Business, Establish 2009 Meeting Schedule, ATMAC Member Discussion, Adjourn).
- Attendance is open to the interested public but limited to space availability.

With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the “**FOR FURTHER INFORMATION CONTACT**” section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 24, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8-25939 Filed 10-29-08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2008-0629]

Operating Limitations for Unscheduled Operations at John F. Kennedy International Airport and Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of Comments to Proposed Order.

SUMMARY: On July 17, 2008, the FAA issued a proposed order requesting written views on the FAA's tentative determination to temporarily limit unscheduled aircraft operations at John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR). The temporary limit was intended to supplement previously issued FAA orders limiting scheduled operations at both airports by addressing congestion related delays that would otherwise occur pending the ongoing rulemaking action for JFK and EWR. This disposition of comments explains the FAA's rationale for not presently adopting the proposed order and discusses the comments received in response to the proposed order.

ADDRESSES: To read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket. Alternatively, go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this disposition of comments contact: Gerry Shakley, System Operations Services, Air Traffic Organization; *telephone*: (202) 267-9424; *facsimile*: (202) 267-7277; *e-mail*: gerry.shakley@faa.gov. For

legal questions concerning this disposition of comments contact: Rebecca B. MacPherson, Office of the Chief Counsel, Federal Aviation Administration; *telephone*: (202) 267-7240; *facsimile*: (202) 267-7971; *e-mail*: rebecca.macpherson@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.

Discussion of Written Submissions and the Final Order

The FAA published the Notice of Proposed Order, “Operating Limitations for Unscheduled Operations at John F. Kennedy International Airport and Newark Liberty International Airport,” on July 17, 2008. The FAA concludes that it is unnecessary to issue a final order because the limits proposed are imposed by a final rule, “Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport,” (“Final Rule”) issued on October 10, 2008.¹ However, if the Final Rule is rendered ineffective for any reason, the FAA may adopt the proposed order as final without an opportunity for further comment. Accordingly, the comments to the proposed order are discussed below.

The Notice requested comments on several aspects of the proposed order, as well as any general comments. The comment period closed on July 28, 2008. The FAA received one comment during the comment period and eleven additional comments after the closing date. These comments are from interested parties including airlines, all-cargo air carriers, a public charter operator, and industry organizations. Several commenters generally support the FAA's goal of reducing congestion at the New York area airports, and three commenters support the proposal in its entirety. Commenters opposing the

¹ 73 FR 60544.

proposed order contend that it fails to address the nature of charter, business, and general aviation operations and the effect of the proposed order on those segments of the aviation industry. Comments to the Notice are addressed below by topic. The FAA also received seven comments in response to “Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport”² regarding unscheduled operations that raised substantially the same issues and are discussed below.

All-Cargo Operations

The comments submitted by the Cargo Airline Association (CAA) best summarize the concerns of all-cargo air carriers. CAA contends that the proposed order will have a serious, adverse impact on all-cargo carriers, arguing that, although most operations are conducted during nighttime hours, these carriers cannot always plan in advance to meet service demands during congested hours. All-cargo carriers frequently conduct unscheduled operations on short notice, and many guarantee service by a time certain. Because of these combined circumstances, a failure to obtain a required reservation may result in liability to the shipper. CAA believes that reservations will not be available for last minute operations, which it argues constitutes an unfair and unlawful discrimination against all-cargo carriers and other unscheduled operations. Additionally, CAA contends that because of the nature of the all-cargo industry segment, it is not practical to use other area airports for unscheduled operations. One all-cargo carrier claims that the proposed order will preclude it from competing as an “ad-hoc charter operator” because its operations often are planned two hours in advance.

CAA suggests that all-cargo carriers be treated similarly to military and public aircraft, and aircraft operating under contracts with the Department of Defense or the United States Postal Service to carry mail, because of the “mission-critical all-cargo business model.” Under this treatment, all-cargo carriers would be subject to the order and would need a reservation, but they would be given preferential treatment. Another all-cargo carrier requests that a number of reservations be allocated to allow all-cargo operations on an as-needed basis.

The purpose of the reservation system is to allow for unscheduled operations, and the number of reservations available

should accommodate operations in the desired hour of operation or in surrounding hours. It is impractical to allocate a certain number of reservations for last minute operations when the carriers themselves cannot identify when these operations will be needed.

Unscheduled operations can be accommodated under the Final Rule if operators are flexible in their arrival and departure times. Based on data from FAA’s Enhanced Traffic Management System (ETMS) for the year ended May 31, 2008, most unscheduled flights can be accommodated in visual meteorological conditions or through capacity in an adjacent hour (one hour on either side of the actual hour of operation in the data). The ETMS data shows that fewer than one flight per day on average would be affected by the Final Rule at each airport, where there is insufficient capacity in the adjacent two hours to handle excess demand. Based on this data, with minor accommodations in flight plans, unscheduled operators should be able to obtain reservations and operate without incurring additional costs. However, if an operator cannot obtain a reservation for its preferred time, its planned flight times may need to be revised because of the limited available reservations. This is similar to the burden borne by scheduled operators that conduct flights during available reservation times.

Private Charter and Business Aviation

The National Air Carrier Association (NACA) contends that the proposed order unfairly targets a segment of the industry, unscheduled operations, that does not contribute significantly to the capacity constraints at the airports. Additionally, because of the nature of their business, these carriers cannot plan operations 72 hours in advance, and reservations may be unavailable at the last minute when they are needed to perform contractual obligations.

As discussed above, unscheduled operations can be accommodated under the Final Rule if operators are flexible in their arrival and departure times. Additionally, the FAA believes that general aviation demand and a segment of flights conducted as business and private charters can be accommodated within regional capacity.

Number of Reservations and Applicable Hours

NACA argues that the use of calendar year 2007 as a baseline is inappropriate because only LaGuardia was operating under an administrative order limiting the number of hourly operations. NACA further argues that with all three major New York airports operating under

limitations, there is no alternative for unscheduled operations.

CAA contends that the FAA failed to disclose detailed information related to its analysis of unscheduled operations, including what types of operations comprise the baseline and at what time of day or night those operations occurred. The CAA contends that meaningful comment to the proposed order or analysis of possible alternatives cannot be made without this detailed information.

The FAA understands CAA’s and NACA’s concerns. However, the analysis of impact on JFK and EWR in the final regulatory evaluation for the Final Rule (contained in docket number FAA–2008–0517) assumed that the reservation restrictions were in place for the year ended May 31, 2008.³ (See “Availability of Rulemaking Documents” section for information on how to access the docket.) Therefore, that analysis should reflect the conditions at the three major New York airports after the Final Rule becomes effective. Additionally, that analysis considered all operations during the slot-controlled hours, as indicated in the proposal. Unscheduled demand included operations that were not allocated Operating Authorizations under the FAA’s order for scheduled flights. More detailed information regarding the exact times or type of operation would not change the net effect of the reservation system because the reservation system does not distinguish between the various types of unscheduled operations.

The Aircraft Owners and Pilots Association (AOPA) argues that a reservation system for visual flight rules (VFR) operations is not justified because air traffic control permits these operations only when weather and traffic conditions allow. AOPA also argues that the proposed order ignores recent announcements by airlines to reduce capacity and the effect of that reduced capacity on the congestion at JFK and EWR. AOPA contends that the proposed order unfairly burdens general aviation operators at JFK and EWR.

The FAA appreciates AOPA’s concerns, but the Final Rule permits additional operations when capacity exists and significant delays are not expected. A reservation system for additional VFR operations maintains an equitable and orderly mechanism for allowing additional traffic at JFK and

³ The FAA recently reduced the number of available hourly reservations at LaGuardia to reflect historic usage and in recognition that additional operations at LaGuardia would further increase delays and congestion in the region. 73 FR 48428 (Aug. 19, 2008).

² Docket No. FAA–2008–0517.

EWR and provides greater opportunity to plan for airport demand. Additionally, although airlines may reduce capacity in the short term, many of the temporary reductions are in less congested hours. Moreover, it is important to have a comprehensive, long-term system in place to manage congestion and future growth at these airports. The FAA intends to use its authority under the Final Rule to provide reservations for unscheduled operations when reservations set aside for scheduled operations are not expected to be used, when capacity exists in the system, and when events or other local circumstances warrant special consideration. The FAA believes the flexibility to add reservations in positive operating conditions could allow greater access by general aviation and other unscheduled operations without the risks of having to implement restrictions later in the day.

Use of Reservations for Alternate Diversion Flights

NACA argues that the entire reservation allocation process will encourage individual carriers to hoard unscheduled reservations to protect their operations and then fail to use those reservations, especially for those awarded for alternate diversion scenarios. NACA contends that the proposed order encourages this behavior because there is no accountability for failure to use the reservation.

The FAA appreciates NACA's concerns regarding operators obtaining reservations and failing to use them. There are limited reservations, and operators should not hoard or fail to cancel unneeded ones because of the impact on other operators. The FAA did not propose a penalty for failing to use a reservation. However, the FAA will monitor reservations and actual operations to determine if abuse occurs and will work with individual operators to eliminate any abusive behavior. The final rule for JFK and EWR does not contain a requirement to obtain a reservation when filing flight plans listing those airports as alternates because such a requirement would result in unnecessary reservations that would remain unused in most cases. A reservation requirement applies only to actual operations at the airports, except in the case of a declared emergency. The FAA understands that there may be other safety or operational justifications that could dictate the use of an alternate airport. However, this is not expected to occur on a regular basis, and the FAA would consider the individual circumstances as part of any enforcement proceeding.

Delta and Continental suggest that the FAA eliminate all unscheduled operations during the peak hours to maximize the efficiency of the airports.

The FAA considered these comments but believes that the Final Rule strikes the appropriate balance between the operational needs of the various users of the airports.

Cost-Benefit Analysis of Limitations on Unscheduled Operations

NetJets contends that the economic analysis for limiting unscheduled operations did not demonstrate any congestion reduction benefit or properly quantify the costs to aircraft operators. Without this analysis, NetJets contends there is no evidence that the proposed limitations are justified, and the public has had no opportunity to comment on this justification.

The economic analysis addressed the costs and benefits of implementing the comprehensive congestion management plan and includes limits on unscheduled operations. Because all operations contribute to the congestion and delay problems at JFK and EWR, the solution must incorporate limitations on all operations. Under the Final Rule, scheduled operations bear the majority of the operational reduction. Even though unscheduled operations, which are a small fraction of the total operations at JFK and EWR, are not the root cause of the congestion and delay, the current situation where demand outstrips supply means that the addition of even one operation can have a disproportionate effect on congestion and delay. Accordingly, these limitations on unscheduled operations are part of the comprehensive plan to reduce congestion and delay.

Periodic Review of Orders

NACA requests the FAA to review the necessity of limitations on unscheduled operations on a semi-annual basis in conjunction with the submission of summer and winter flight schedules to ensure that all operators may share in any additional capacity.

The FAA agrees that available airport capacity could potentially be used by unscheduled operators. The Final Rule provides for additional reservations when weather and capacity conditions allow, which includes decreased demand by scheduled operators. Additionally the Air Traffic Organization, primarily through the Air Traffic Control System Command Center, constantly reviews demand at JFK and EWR, and will respond accordingly to changes in capacity by adding reservations that do not result in significant delay.

Issued in Washington, DC on October 23, 2008.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, San Bernardino, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of withdrawal.

SUMMARY: The FHWA is providing this notice to advise the public that the California Department of Transportation (Caltrans) is withdrawing the Notice of Intent (NOI) published in the **Federal Register** (Vol. 71, No. 128) on Wednesday, July 5, 2006. That notice addressed the intent to prepare an Environmental Impact Statement (EIS) for the proposed U.S. 395 Realignment Freeway/Expressway project on U.S. 395 from Interstate 15 (I-15/U.S. 395 interchange) to Farmington Road. The original NOI was published by FHWA. Pursuant to 23 U.S.C. 327, environmental responsibilities for this project have been assigned to Caltrans.

FOR FURTHER INFORMATION CONTACT: Boniface Udotor, Senior Environmental Planner, California Department of Transportation, 464 West 4th Street, 6th Floor, MS823, San Bernardino, California 92401-1400; telephone (909) 388-1387.

SUPPLEMENTARY INFORMATION: Caltrans, District 8, will stop further studies of this proposed project to realign U.S. 395. The project is currently undergoing re-scoping for project modifications. The corridor, which was to be evaluated, was located on either side of existing U.S. 395 and to the west of existing U.S. 395. The proposed 45-mile project was to include studies within the communities of Oak Hills, Hesperia, Victorville, Adelanto and unincorporated areas of San Bernardino County.

(Catalog of Federal Domestic Assistance: Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on federal programs and activities apply to this program.)

Issued on: October 24, 2008.

Nancy E. Bobb,

Director, State Programs.

[FR Doc. E8-25889 Filed 10-29-08; 8:45 am]

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