

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,**  
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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.*

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