

for the District of Columbia Circuit prior to the rule's December 9, 2008 effective date. The FAA is currently soliciting comments on a proposal to rescind the final rule. 74 FR 22714 (May 14, 2009). As a result of the FAA's reconsideration of the rule, the court is holding in abeyance the briefing schedule in the rule's associated litigation.

In light of the events that have transpired since the January 2008 order took effect, it is now unlikely that the FAA will have an effective final rule on the January 2008 order's original expiration date. In the absence of the FAA's extension of the order, the FAA anticipates a return of the congestion-related delays that precipitated the voluntary schedule reductions and adjustments reflected in the January 2008 order. The hourly capacity at JFK has not increased significantly since the order took effect last spring. Because the demand for operations at New York-area airports remains high, the FAA has determined that an extension of the January 2008 order appears to be appropriate while the FAA identifies the appropriate long-term solution to congestion at JFK.

Order to Show Cause: To prevent a recurrence of overscheduling at JFK during the interim between the expiration of the January 2008 order on October 24, 2009, and the effective date of a replacement rule, the FAA tentatively intends to extend the January 2008 order. The limit on scheduled operations that is embodied in the order reflects the FAA's agreements with U.S. and foreign air carriers. As a result, maintaining the order for an additional, finite period constitutes a reasonable approach to preventing unacceptable congestion and delays at JFK until a long-term measure is implemented. The January 2008 order, as extended, would expire on October 30, 2010.

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 January 2008 order through October 30, 2010, by filing their written views in Docket FAA-2007-29320. The FAA does not intend this request for the views of interested persons to address any issues related to the existing final rule or any future congestion management rule. Therefore, any submission to the current docket should be limited to the proposed extension of the January 2008 order.

Issued in Washington, DC, on May 29, 2009.

Rebecca MacPherson,

Assistant Chief Counsel for Regulations.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

[Docket No. FAA-2008-0221]

Operating Limitations at Newark Liberty International Airport

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

SUMMARY: The FAA is issuing an order to show cause, which solicits the views of interested persons on the FAA's tentative determination to extend through October 30, 2010, the May 15, 2008 order limiting the number of scheduled aircraft arrivals at Newark Liberty International Airport during peak operating 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 June 19, 2009.

ADDRESSES: You may submit written information, identified by docket number FAA-2008-0221, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments by mail to Docket Operations, U.S. Department of Transportation, M-30, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Persons wishing to receive confirmation of receipt of their written submission should include a self-addressed stamped postcard.

- *Hand Delivery:* Deliver comments to Docket Operations in Room W12-140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Facsimile:* Fax comments to the docket operations personnel at 202-493-2251.

Privacy: We will post all comments that we receive, without change, at <http://www.regulations.gov>, including any personal information that you provide. Using the search function of the docket website, anyone can find and read the electronic form of all comments

in any of our dockets, including the name of the individual sending the comment or signing the comment on behalf of an association, business, labor union, or other entity or organization. You may review the DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477-78 (April 11, 2000), or you may find it at <http://docketsinfo.dot.gov>.

Reviewing the Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket; or go to Docket Operations in Room W12-140 on the ground floor of the West Building 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: James W. Tegtmeier, Associate Chief Counsel for the Air Traffic Organization; telephone—(202) 267-8323; e-mail—james.tegtmeier@faa.gov.

SUPPLEMENTARY INFORMATION:

Order To Show Cause

The Federal Aviation Administration (FAA) has tentatively determined that it will extend through October 30, 2010, the FAA's May 15, 2008 order limiting scheduled operations at Newark Liberty International Airport (EWR) (May 2008 order).¹ This order to show cause invites air carriers and other interested persons to submit comments in Docket FAA-2008-0221 on this proposal to extend the duration of the May 2008 order.²

The May 2008 order followed a period of elevated, congestion-related delays at the New York area's three commercial airports, culminating in the FAA's issuance of an order limiting scheduled operations at JFK in January 2008. To prevent new flights from moving to EWR, which was already prone to delays and scheduled near or above its average hourly runway capacity during many peak hours, the FAA engaged the U.S. and foreign air carriers serving EWR to reduce the number of scheduled operations during peak hours and to move operations to less congested hours. The May 2008 order captured the agreed upon schedules and limited the number of scheduled operations conducted by U.S. and foreign air

¹ Order Limiting Scheduled Operations at Newark Liberty International Airport, 73 FR 29,550 (May 21, 2008).

² The FAA is separately accepting comments on a proposal to extend the January 15, 2008 order limiting scheduled operations at John F. Kennedy Liberty International Airport (JFK). The public may file or review documents related to the JFK order in Docket FAA-2007-29320.

carriers at EWR during peak operating hours. The order took effect June 20, 2008, and in the absence of an extension, it will expire on October 24, 2009.

The FAA established the order's October 2009 expiration date to permit time to promulgate a final rule that would control congestion at EWR, and the FAA adopted a final rule to manage congestion at EWR that would have continued operational limits at the airport beyond October 2009. 73 FR 60544 (Oct. 10, 2008). However, the rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit prior to the rule's December 9, 2008 effective date. The FAA is currently soliciting comments on a proposal to rescind the final rule. 74 FR 22714 (May 14, 2009). As a result of the FAA's reconsideration of the rule, the court is holding in abeyance the briefing schedule in the rule's associated litigation.

In light of the events that have transpired since the May 2008 order took effect, it is now unlikely that the FAA will have an effective final rule on the May 2008 order's original expiration date. In the absence of the FAA's extension of the order, the FAA anticipates a return of the congestion-related delays that precipitated the voluntary schedule reductions and adjustments reflected in the May 2008 order. The hourly capacity at EWR has not increased significantly since the order took effect late last spring. Because the demand for operations at New York-area airports remains high, the FAA has determined that an extension of the May 2008 order appears to be appropriate while the FAA identifies the appropriate long-term solution to congestion at EWR.

Order To Show Cause:

To prevent a recurrence of overscheduling at EWR during the interim between the expiration of the May 2008 order on October 24, 2009, and the effective date of a rule, the FAA tentatively intends to extend the May 2008 order. The limit on scheduled operations that is embodied in the order reflects the FAA's agreements with U.S. and foreign air carriers. As a result, maintaining the order for an additional, finite period constitutes a reasonable approach to preventing unacceptable congestion and delays at EWR until a longer term measure is implemented. The May 2008 order, as extended, would expire on October 30, 2010.

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 May 2008 order through October 30, 2010, by filing their written

views in Docket FAA-2008-0221. The FAA does not intend this request for the views of interested persons to address any issues related to the existing final rule or any future congestion management rule. Therefore, any submission to the current docket should be limited to the proposed extension of the May 2008 order.

Issued in Washington, DC, on May 29, 2009.

Rebecca MacPherson,

Assistant Chief Counsel for Regulations.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

BNSF Railway

[Docket Number FRA-2008-0032]

The BNSF Railway (BNSF) seeks a waiver of compliance from certain provisions of 49 CFR Part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment*. Specifically, they are requesting a waiver from the requirements for performing the single car air brake test as prescribed in 49 CFR 232.305(b)(2), "A railroad shall perform a single car air brake test on a car when * * * a car is on a shop or repair track, as defined in 232.303(a), for any reason and has not received a single car air brake test within the previous 12-month period."

BNSF requests that the single car air brake tests be waived for the replacement of wheels, as this would allow for the efficient systemwide removal and replacement of damaged wheels to include high-impact wheels. BNSF would like to perform these repairs in-train on cars in yards across their system without having to perform a single car air brake test on such cars. BNSF contends this practice would be consistent with the regulatory exception provided in 49 CFR 232.303(a)(2), which states that wheel change-outs on intermodal loading ramps are not

defined as "major repairs," and therefore excepts such intermodal ramps from the definition of a shop or repair track, which excepts such wheel change-outs from single car air brake tests.

BNSF further contends that the removal and replacement of wheels does not affect the brake system and believes that subjecting these cars to single car air brake requirements is unnecessary. BNSF states that by granting this request, they will be able to process more wheel change-outs, thereby increasing the ability to make these safety improvements. BNSF does not believe that granting this waiver will have an adverse effect on the safety of railroad operations.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2008-0032) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the