

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 Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled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 October 1, 2009.

**J. Randolph Babbitt,**

*Administrator, Federal Aviation Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2006-25755]

#### Operating Limitations at LaGuardia Airport

**ACTION:** Notice of Order Extending the Limitations on Operations at LaGuardia Airport.

**SUMMARY:** The FAA is amending the December 13, 2006, order limiting the number of operations at LaGuardia Airport (LGA) during peak operating hours, as amended (December 2006 order).<sup>1</sup> The current amendment

<sup>1</sup> Operating Limitations at New York LaGuardia Airport, 71 FR 77,854 (Dec. 27, 2006); 72 FR 63,224 (Nov. 8, 2007) (transfer, minimum usage, and withdrawal amendments); 72 FR 48,428 (Aug. 19, 2008) (reducing the reservations available for unscheduled operations); 74 FR 845 (Jan. 8, 2009) (extending the expiration date of the December 2006 order until October 24, 2009); 74 FR 2,646 (Jan. 15, 2009) (reducing the peak-hour cap on scheduled operations to 71).

extends the December 2006 order by approximately two years, through October 29, 2011.

If you wish to review the background documents or comments received in this proceeding, you may go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the electronic docket. You may also go to the U.S. Department of Transportation's 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.

**DATES:** These amendments to the December 2006 order are effective immediately upon publication in the **Federal Register**.

**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](mailto:james.tegtmeier@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On June 17, 2009, the FAA published a notice that invited comments on its proposal to extend the December 2006 order limiting operations at LGA.<sup>2</sup> At the time, the December 2006 order was scheduled to expire on October 24, 2009. For the reasons described in the notice, it was unrealistic to expect a long-term rule to take effect and control the significant congestion-related delays that the FAA anticipated would occur at LGA if the December 2006 order were to expire as originally scheduled. Given the current uncertainty over when a final rule would take effect and the impending expiration of the December 2006 order, the FAA proposed to extend the December 2006 order for approximately one year.

The FAA expected the one-year extension to serve as at least a partial bridge to the implementation of a long-term measure to control congestion and related delays at LGA. The FAA received written submissions on the proposal from five commenters. The commenters include two scheduled carriers, two industry organizations, and the airport operator.

##### II. Summary and Analysis of the Comments

###### A. Amended Duration

Four of the five commenters express support for an extension of the December 2006 order to prevent a return of the congestion-related delays that passengers previously experienced at

LGA. Although the FAA proposed an extension of about one year, two of the commenters state that an extension of longer than one year is appropriate. These commenters assert that one year is not sufficient time to finalize and to implement a new rule to manage congestion at the airport.

The FAA proposed a one-year extension of the December 2006 order because the FAA never intended the order to serve as a long-term solution to congestion at LGA. From this perspective, using the minimum number of short-term extensions would offer the benefit of regular and public status reports on where the FAA stands in establishing a longer-term solution to overscheduling at LGA. As the commenters note, however, such short-term extensions may not best facilitate the long-term planning of some carriers that conduct, or hope to conduct, service at the airport. Accordingly, while the FAA does not agree that an indefinite extension is appropriate, the FAA will increase the duration of the present extension to about two years to accommodate carriers' longer term planning. The December 2006 order will now expire on October 29, 2011.

###### B. Buy and Sell Authority

In light of the increased duration of the December 2006 order, three commenters question the ban on the purchase, sale, or long-term lease of the Operating Authorizations held by virtue of the original order. The commenters reason that the FAA included the ban as a result of the December 2006 order's intended short duration. The commenters perceive that extending the order increases the importance of a market mechanism that permits the sale and purchase of operating authority, which would facilitate competition and new entry, as well as leases for such authority that extend beyond the order's expiration date.

The FAA included in the December 2006 order the ability of carriers to trade or to lease Operating Authorizations to other carriers; however, the duration of the trade or lease could not exceed the duration of the order.<sup>3</sup> The commenters claim that relying on short-term trades and leases alone may become limiting as the December 2006 order remains effective over a significantly longer term. The proposed extension of the December 2006 order, however, specifically limited the comments to the proposed extension.<sup>4</sup> The FAA intends

<sup>3</sup> 72 FR at 63,227 (ordering paragraph five).

<sup>4</sup> 74 FR at 28,774 ("any submission to the current docket should be limited to the proposed extension of the December 2006 order").

<sup>2</sup> 74 FR 28,772.

to address long-term transfers of Operating Authorizations at some point in the future.

Accordingly, the ordering paragraphs of the December 2006 order are hereby amended as follows:

#### A. Scheduled Operations

With respect to scheduled operations at LaGuardia:

1. The final Order governs scheduled arrivals and departures, except helicopters, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday, and from 12 noon through 9:59 p.m., Eastern Time, Sunday. Seventy-one (71) Operating Authorizations are available per hour and will be assigned by the FAA on a 30-minute basis. The FAA will permit additional, existing operations above this threshold; however, the FAA will retire Operating Authorizations that are surrendered to the FAA, withdrawn for non-use, or unassigned during each affected hour until the number of Operating Authorizations in that hour reaches seventy-one (71).

2. The final Order takes effect on January 1, 2007, and will expire on October 29, 2011.

3. The FAA will assign operating authority to conduct an arrival or a departure at LaGuardia during the affected hours to the air carrier that holds equivalent slot or slot exemption authority under the High Density Rule or FAA slot exemption rules as of January 1, 2007; to the primary marketing air carrier in the case of AIR-21 small hub/nonhub airport slot exemptions; or to the air carrier operating the flights as of January 1, 2007, in the case of a slot held by a non-carrier. The FAA will not assign operating authority under the final Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority under 14 CFR part 121, 129, or 135. The Chief Counsel of the FAA will be the final decisionmaker regarding the initial assignment of Operating Authorizations.

4. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

5. For the duration of this order, an air carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing 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 each carrier. The FAA must confirm and approve these transactions in

writing prior to the effective date of the transaction. However, the FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation. This post-transfer approval is limited to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at LGA after the order expires.

6. Each air 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 actually operated for each day of the two-month reporting period within 14 days after the last day of the two-month reporting period beginning January 1 and every two months thereafter. Any Operating Authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA except:

a. The FAA will treat as used any Operating Authorization held by an air carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

b. The FAA will treat as used any Operating Authorization obtained by an air carrier through a lottery under paragraph seven for the first 120 days after allocation in the lottery.

c. The Administrator of the FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the air carrier and which affects carrier operations for a period of five consecutive days or more.

7. In the event that Operating Authorizations are withdrawn for nonuse, surrendered to the FAA, or are unassigned, the FAA will determine whether any of the available Operating Authorizations should be reallocated. If so, the FAA will conduct a lottery using the provisions specified under 14 CFR 93.225. The FAA may retime an Operating Authorization prior to reallocation in order to address operational needs. When the final Order expires, any Operating Authorizations reassigned under this paragraph, except those assigned to new entrants or limited incumbents, will revert to the FAA for reallocation according to the reallocation mechanism prescribed in the final rule that succeeds the final Order.

8. If the FAA determines that an involuntary 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 air carrier from which it was taken, provided that the air carrier continues to operate scheduled service at LaGuardia.

9. The FAA will enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). An air carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, would be liable for a civil penalty of up to \$25,000 for every day that it violates the limits set forth in the final Order. An air carrier that is a small business as defined in the Small Business Act would be liable for a civil penalty of up to \$10,000 for every day that it violates the limits set forth in the final 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 the final Order.

#### B. *Unscheduled Operations*<sup>5</sup>

With respect to unscheduled flight operations at LaGuardia, the FAA adopts the following:

1. The final Order applies to all operators of unscheduled flights, except helicopter operations, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.

2. The final Order takes effect on January 1, 2007, and will expire on October 29, 2011.

3. No person may operate an aircraft other than a helicopter to or from LaGuardia unless the operator has received, for that unscheduled operation, a reservation that is assigned

<sup>5</sup> Unscheduled operations are operations other than those regularly conducted by an air carrier between LaGuardia and another service point. Unscheduled operations include general aviation, public aircraft, military, charter, ferry, and positioning flights. Helicopter operations are excluded from the reservation requirement. Reservations for unscheduled flights operating under visual flight rules (VFR) are granted when the aircraft receives clearance from air traffic control to land at or depart LaGuardia. Reservations for unscheduled VFR flights are not included in the limits for unscheduled operators.

by the David J. Hurley Air Traffic Control System Command Center's Airport Reservation Office (ARO). Additional information on procedures for obtaining a reservation will be available via the Internet at <http://www.fly.faa.gov/ecvrs>.

4. Three (3) reservations are available per hour for unscheduled operations at LaGuardia. The ARO will assign reservations on a 30-minute basis.

5. The ARO receives and processes all reservation requests. Reservations are assigned on a "first-come, first-served" basis, determined as of the time that the ARO receives the request. A cancellation of any reservation that will not be used as assigned is required.

6. Filing a request for a reservation does not constitute the filing of an instrument flight rules (IFR) flight plan, as separately required by regulation. After the reservation is obtained, an IFR flight plan can be filed. The IFR flight plan must include the reservation number in the "remarks" section.

7. Air Traffic Control will accommodate declared emergencies without regard to reservations. Nonemergency flights in direct support of national security, law enforcement, military aircraft operations, or public use aircraft operations will be accommodated above the reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate reservation for such flights are available via the Internet at <http://www.fly.faa.gov/ecvrs>.

8. Notwithstanding the limits in paragraph four, if the Air Traffic Organization determines that air traffic control, weather, and capacity conditions are favorable and significant delay is not likely, the FAA can accommodate additional reservations over a specified period. Unused Operating Authorizations can also be temporarily made available for unscheduled operations. Reservations

for additional operations are obtained through the ARO.

9. Reservations cannot be bought, sold, or leased.

Issued in Washington, DC, on October 1, 2009.

**J. Randolph Babbitt,**

*Administrator, Federal Aviation Administration.*

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**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**Vessel Self-Designations**

**AGENCY:** U.S. Department of Transportation, Maritime Administration.

**ACTION:** Notice.

**SUMMARY:** On September 4, 2009, the United States Department of Agriculture (USDA), the United States Department of Transportation's Maritime Administration (MARAD), and the United States Agency for International Development (USAID) entered into a Memorandum of Understanding (MOU) regarding the proper implementation of the Cargo Preference Act (CPA). That MOU, inter alia, establishes procedures and standards by which owners and operators of oceangoing cargo ships may seek to designate each of their vessels as either a dry bulk carrier or a dry cargo liner, according to specified service-based criteria. This Notice both announces that MARAD has received such self-designation applications for particular vessels from their owners and operators, and invites comments thereon from interested parties. MARAD will thereafter consider all the information submitted in support of a requested self-designation and other evidence in the record in reaching its own decision on the appropriate vessel classification.

**DATES:** Comments are due on October 19, 2009.

**Background**

The CPA requires that federal agencies take "necessary and practicable" steps to ensure that privately-owned U.S.-flag vessels transport at least 50 percent of the gross tonnage of cargo sponsored under Federal programs "(computed separately for dry bulk carriers, dry cargo liners, and tankers) \* \* \* to the extent such vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas." 46 U.S.C. 55305(b). An additional 25 percent of gross tonnage of certain food assistance programs is to be transported in accordance with the requirements of 46 U.S.C. 55314.

The MOU referenced above, as well as an accompanying explanatory notice, were published by MARAD in the **Federal Register** on September 15, 2009. The MOU adopts standards and procedures to be used to classify the vessels transporting preference cargo. This Notice marks the first use of those standards and procedures. Owners and operators of the vessels listed below have submitted applications to self-designate their ships as either dry bulk vessels or as dry cargo liners. Each vessel has been assigned a separate docket containing the materials submitted. Interested persons are invited to submit comments regarding these vessels to the appropriate docket no later than 5 p.m. EDT on October 19, 2009. Commentators are advised to address their comments to the service-based criteria listed in the September 15 **Federal Register** notice that will determine the ultimate classification of each vessel.

**APPLICATIONS TO SELF-DESIGNATE**

Docket	Owner/Operator	Vessel
MARAD-2009-0093	U.S. United Ocean Serv.	M/VSheila McDevitt.
MARAD-2009-0097	U.S. United Ocean Serv.	M/VMary Ann Hudson.
MARAD-2009-0094	Liberty Maritime Corp	M/VLiberty Eagle.
MARAD-2009-0095	Liberty Maritime Corp	M/VLiberty Glory.
MARAD-2009-0096	Liberty Maritime Corp	M/VLiberty Grace.
MARAD-2009-0098	APL Maritime Limited	APL Ireland.
MARAD-2009-0099	APL Maritime Limited	APL New York.
MARAD-2009-0100	APL Maritime Limited	APL Arabia.
MARAD-2009-0101	APL Maritime Limited	APL Virginia.
MARAD-2009-0102	APL Maritime Limited	APL Egypt.
MARAD-2009-0103	APL Maritime Limited	APL Jade.
MARAD-2009-0104	APL Maritime Limited	APL Japan.
MARAD-2009-0105	APL Maritime Limited	APL Pearl.
MARAD-2009-0106	APL Maritime Limited	APL Cyprine.