

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Pueblo Memorial Airport, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Pueblo, CO [Modified]

Pueblo Memorial Airport, CO
(Lat. 38°17'21" N., long. 104°29'48" W.)

That airspace extending upward from 700 feet above the surface within 21.8-mile radius of the Pueblo Memorial Airport, and within the 28.8-mile radius of Pueblo Memorial Airport clockwise between the 070° and 133° bearing from the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 38°30'00" N., on the east by V–169, on the south by V–210, on the west by a line from lat. 37°38'00" N., long. 105°00'02" W.; to lat. 38°09'25" N., long. 105°08'06" W.; to lat. 38°05'51" N., long. 105°30'49" W.; to lat. 38°10'00" N., long. 105°33'02" W.; to lat. 38°30'00" N., long. 105°33'02" W.; that airspace extending upward from 13,700 feet MSL bounded by a line beginning at lat. 38°09'25" N., long. 105°08'06" W.; to lat. 37°38'00" N., long. 105°00'02" W.; to lat. 37°34'00" N., long. 105°12'02" W.; to lat. 38°05'51" N., long. 105°30'49" W.; thence to point of beginning, excluding that airspace within Federal airways and the Colorado Springs, CO, Class E airspace area.

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Issued in Seattle, Washington, on September 25, 2009.

Robert E. Henry,

*Acting Manager, Operations Support Group,
Western Service Center.*

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2006–25709; Amendment No. 93–92]

RIN 2120–AJ49

Congestion Management Rule for LaGuardia Airport

AGENCY: Federal Aviation Administration (FAA).

ACTION: Final rule; rescission.

SUMMARY: The FAA is rescinding the final rule *Congestion Management Rule for LaGuardia Airport*. The final rule established procedures to address congestion in the New York City area by assigning slots at LaGuardia Airport (LaGuardia), assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum

usage, requiring reservations for unscheduled operations, and withdrawal for operational need. The rule was scheduled to sunset in ten years.

DATES: *Effective Date:* October 9, 2009.
FOR FURTHER INFORMATION CONTACT: For questions concerning this rulemaking, contact: Molly W. Smith, Office of Aviation Policy and Plans, APO–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3275; e-mail molly.w.smith@faa.gov. For legal questions concerning this rulemaking, contact: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073; e-mail rebecca.macpherson@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use that the FAA deems necessary for its safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

I. Background

The final rule *Congestion Management Rule for LaGuardia Airport* was published in the **Federal Register** on October 10, 2008 (73 FR 60574) (2008 final rule). The final rule established procedures to address congestion in the New York City area by assigning slots for scheduled services at LaGuardia Airport (LaGuardia), assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum slot usage, withdrawal of slots for operational need, and requiring reservations for unscheduled operations. The rule was scheduled to sunset in ten years and added to the Code of Federal Regulations December 9, 2008. The rulemaking was highly controversial. The final rule was challenged by several parties before it could take effect. On December 8, 2008, the United States Court of Appeals for the District of Columbia Circuit stayed the rule. On January 22, 2009, the ATA requested the Secretary of Transportation, Ray LaHood, withdraw

the final rule in light of the court's stay. While the regulations were incorporated into the Code of Federal Regulations, due to the courts ruling, they had no force and effect.

On March 11, 2009, the President signed Public Law 111-8, Omnibus Appropriations Act, 2009. That legislation provides several departments within the executive branch, including the Department of Transportation, with the funds to operate until the end of this fiscal year. That legislation also contains a provision in Division I, section 115 that prohibits the Secretary of Transportation from promulgating regulations or taking any action regarding the scheduling of airline operations that involve auctioning rights or permission to conduct airline operations at such an airport or withdrawing a right or permission to conduct operations at such an airport (except when the withdrawal is for operational reasons or pursuant to the terms or conditions of such operating right or permission). The prohibition is limited to this fiscal year.

At present, operations at LaGuardia remain limited by order at 71 scheduled operations and three unscheduled operations per hour until October 2009.¹ The FAA published a proposal on June 17, 2009 to extend this order until October 2010 while the agency considers its options with regard to managing congestion at the airport on a longer-term basis (74 FR 28772). Options under consideration would provide a means for carriers to either commence or expand operations at the airport, thereby introducing more competition and service options to benefit the traveling public.

On May 14, 2009 the FAA published a notice proposing to rescind the 2008 final rule citing the impact of the Omnibus Appropriations Act on the rule and the state of the economy in general. The comment period closed June 15, 2009. The FAA received five sets of comments, all of which supported rescission of the rule.

For the reasons stated in the NPRM, the FAA has decided to rescind the 2008 final rule effective immediately. The FAA has determined that good cause exists for implementing this rule immediately. As discussed above, the rule has been stayed by court action and has not been implemented. Accordingly, no further action is required by the regulated parties and delaying the

effective date serves no useful purpose. The agency will consider its options with regard to managing congestion at the airport in ways that provide a means for carriers either to commence or expand operations at the airport in future rulemaking.

II. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 4 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandate Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation). The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million.

The FAA conducted all of these analyses when it originally issued the 2008 final rule. The agency has determined the rescission does not require any further economic analysis. Practically speaking, due to the rescission, the status quo remains in effect, and neither costs nor benefits anticipated by the final rule will accrue. Likewise, the paperwork burden anticipated under the 2008 final rule will not be imposed on any parties. The FAA has already determined that the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Rescission of the 2008 final rule likewise imposes no such burden. As the rescission of the rule does not impose any standard on any party, the FAA has assessed the potential effect of this rescission and determined that it will impose no costs on international entities and thus have a no trade impact. Nor will the rescission impose a Federal mandate that may result in an expenditure of

\$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, and the requirements of Title II of the Unfunded Mandate Reform Act of 1995 do not apply.

The rescission of the 2008 final rule is a "significant regulatory action" under Executive Order 12866 and is "significant" as defined in DOT's Regulatory Policies and Procedures. Accordingly, it has been reviewed by DOT and OMB.

Executive Order 13132, Federalism

The FAA has analyzed this rescission under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" identifies FAA actions that are normally categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA previously determined that the final rule qualified for the categorical exclusions identified in paragraph 312d "Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking and issuance of Final Rules) covering administration or procedural requirements (does not include Air Traffic procedures; specific Air traffic procedures that are categorically excluded are identified under paragraph 311 of this Order)" and paragraph 312f, "Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment." It has further been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental review is required. The FAA documented this categorical exclusion determination. A copy of the determination and underlying documents has been included in the Docket for the rule. The FAA has determined that the rescission of the 2008 final rule also qualifies for a categorical exclusion since it will have no impact on the environment.

¹ *Operating Limitations at New York LaGuardia Airport* (LaGuardia Order), December 27, 2006 (71 FR 77854), as amended November 8, 2007 (72 FR 63224), August 19, 2008 (73 FR 48248), January 8, 2009 (74 FR 845), and January 15, 2009 (74 FR 2646).

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this rescission under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order because while a "significant regulatory action" under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents 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 can also get 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 docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this rescission from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (air), Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

Subpart C—[Removed and Reserved]

■ 2. Remove and reserve Subpart C of Part 93.

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

J. Randolph Babbitt,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2008-0517; Notice No. 93-93]

RIN 2120-AJ48

Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA).

ACTION: Final rule; rescission.

SUMMARY: The FAA is rescinding the final rule *Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport*. The final rule established procedures to address congestion in the New York City area by assigning slots for scheduled services at John F. Kennedy (JFK) and Newark Liberty (Newark) International Airports, assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum usage, requiring reservations for unscheduled operations, and withdrawal for operational need. The rule was scheduled to sunset in ten years.

DATES: *Effective Date:* October 9, 2009.

FOR FURTHER INFORMATION CONTACT: For questions concerning this rulemaking, contact: Molly W. Smith, Office of Aviation Policy and Plans, APO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3275; e-mail

molly.w.smith@faa.gov. For legal questions concerning this rulemaking, contact: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3073; e-mail rebecca.macpherson@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United

States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use that the FAA deems necessary for its safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of thenavigable airspace.

I. Background

The final rule *Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport* was published in the **Federal Register** on October 10, 2008 (73 FR 60544) (2008 final rule). The 2008 final rule established procedures to address congestion in the New York City area by assigning slots at John F. Kennedy (JFK) and Newark Liberty (Newark) International Airports, assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum slot usage, withdrawal of slots for operational need, and requiring reservations for unscheduled operations. The rule was scheduled to sunset in ten years and added to the Code of Federal Regulations December 9, 2008. The rulemaking was highly controversial. The final rule was challenged by several parties before it could take effect. On December 8, 2008, the United States Court of Appeals for the District of Columbia Circuit stayed the rule. On January 22, 2009, the ATA requested the Secretary of Transportation, Ray LaHood, withdraw the final rule in light of the court's stay. While the regulations were incorporated into the Code of Federal Regulations, due to the courts ruling, they had no force and effect.

On March 11, 2009, the President signed Public Law 111-8, Omnibus Appropriations Act, 2009. That legislation provides several departments within the executive branch, including the Department of Transportation, with the funds to operate until the end of this fiscal year. That legislation also contains a provision in Division I, section 115 that prohibits the Secretary of Transportation from promulgating regulations or taking any action regarding the scheduling of airline operations that involve auctioning rights or permission to conduct airline operations at such an airport or withdrawing a right or permission to conduct operations at such an airport (except when the withdrawal is for operational reasons or pursuant to the