

Dated: July 30, 2007.

**Mark W. Skolnicki,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2006-25755]

### Operating Limitations at New York LaGuardia Airport; Proposed Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Proposed amendments and request for comments.

**SUMMARY:** The Federal Aviation Administration (FAA) has tentatively determined that it will be necessary to amend the December 12, 2006, order that places temporary limitations on flight operations at New York's LaGuardia Airport (LaGuardia).

**FOR FURTHER INFORMATION CONTACT:** Komal Jain, Regulations Division, Office of the Chief Counsel; Telephone: (202) 267-3073; E-mail: [komal.jain@faa.gov](mailto:komal.jain@faa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Proposed Amendments to Order

The Federal Aviation Administration (FAA) proposes to modify its December 12, 2006, order (the Order) that temporarily limits flight operations at New York's LaGuardia Airport (LaGuardia), pending its promulgation of a long-term regulation to manage congestion at the airport. We propose to (1) provide an approval process for Operating Authorization (OA) transfers for day-of carrier substitutions; (2) amend provisions affecting the 80 percent minimum-use requirement by adding a waiver for holiday periods and providing the Administrator greater discretion to suspend the requirement under certain conditions; and (3) provide a mechanism for withdrawal of OAs for FAA operational reasons. These proposed amendments would not affect unscheduled operations.

The FAA invites air carriers and other interested persons to submit written comments on this proposal by no later than September 6, 2007 in Docket FAA-2006-25755. We will give full consideration to comments received before we issue a final modification to the Order. You may send comments using any of the following methods:

*DOT Docket Web Site:* Go to <http://dms.dot.gov> and follow the instructions

for sending your comments electronically.

*Mail:* U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590.

*Fax:* (202) 493-2251.

*Hand Delivery:* West Building, Ground Floor, Room W12-140, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

#### I. Background

Due to LaGuardia's limited runway capacity, the airport cannot accommodate the number of flights that airlines would like to operate without causing significant congestion. The FAA has long limited the number of arrivals and departures at LaGuardia during peak demand periods through the promulgation and implementation of the High Density Rule (HDR).<sup>1</sup> By statute enacted in April 2000, the HDR's applicability to LaGuardia operations terminated as of January 1, 2007.<sup>2</sup> On August 29, 2006, the FAA published a notice of proposed rulemaking (NPRM) in anticipation of the HDR's expiration (71 FR 51360). In the NPRM, the agency proposed another congestion management program for LaGuardia, which, among other things, proposed to continue to limit the number of scheduled and unscheduled operations at LaGuardia. Because the rulemaking was not completed before January 1, 2007, the FAA, after notice and comment, adopted interim operational limitations on LaGuardia flights through the Order (71 FR 77854; Dec. 27, 2006). Without the limits contained in the Order, the FAA projected that severe congestion-related delays would occur as a result of excessive demand at LaGuardia, leading to delays both at LaGuardia and at other airports throughout the National Airspace System (NAS).

When the FAA issued the Order, we (1) maintained hourly limits at 75 scheduled and six unscheduled operations at LaGuardia from 6 a.m. through 9:59 p.m., Eastern time, Monday through Friday, and from noon through 9:59 p.m., Eastern time on Sundays; (2) imposed an 80 percent minimum usage requirement for OAs; (3) provided for a lottery to reallocate withdrawn, surrendered or unallocated OAs; and (4) allowed for trades and

leases of OAs for consideration for the duration of the Order.

#### II. Proposed Amendments

The Order, which took effect on January 1, 2007, is a temporary measure while the FAA completes its final rule (Rule) to manage congestion at LaGuardia. The agency is in the process of reviewing comments received on the NPRM, but the review is not complete. Until the Rule becomes effective, we propose several amendments to the Order to improve the administration of the congestion management program at LaGuardia.

The FAA's authority to limit the number of flight operations at LaGuardia is an essential component of the FAA's statutory responsibilities. The FAA holds broad authority under 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

#### Secondary Market: Approval Process

Some air carriers with affiliated or regional carrier flights expressed concerns about the burden associated with obtaining prior approval from the FAA for OA transfers when making day-of carrier substitutions. Due to the around-the-clock nature of an airline's operations, and the real-time nature of operational logistics, it is not unusual for an air carrier to make day-of flight service substitutions from one carrier to another. The FAA recognizes that advance approval of an OA transfer is not always possible, in part because the FAA Slot Administration Office is not open 24 hours a day. Therefore, we propose to amend the Order to permit a transfer request to be submitted for FAA approval up to 72-hours after the actual operation. In order to support the request for the post-transfer approval, the FAA would require flight information, including flight number, origin, destination and scheduled time of operation.

The FAA is not prepared to eliminate entirely the requirement that we receive advance notice of OA transfers. The initial scheduling decisions are normally made with sufficient time to obtain the requisite approval, even in the case of common ownership and affiliated carriers. The FAA proposes to limit post-transaction approvals to unplanned, day-of operational schedule changes between commonly owned or affiliated carriers under the same marketing control, and we are seeking

<sup>1</sup> See 49 CFR part 93, subpart K.

<sup>2</sup> Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. 106-181 (April 5, 2000), 49 U.S.C. 41715(a)(2).

comment on whether the transfer provisions should be revised to recognize these operational issues and whether the procedure outlined meets carrier needs.

#### *Minimum Usage Requirements and Waivers*

##### *Holiday Waiver*

On January 9, 2007, the Air Transport Association (ATA) submitted a petition for an amendment to the Order related to the minimum usage requirement.<sup>3</sup> ATA noted that the Order contains no provision to address the “predictable drop-off in operations on and immediately after certain holidays.” By contrast, ATA noted that the HDR and the governing rules for O’Hare state “the FAA will treat as used any slot held by a carrier at a High Density Traffic Airport on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.”

ATA is correct in its conclusion that the FAA inadvertently omitted a holiday waiver provision under the Order. The FAA proposes to correct that omission and include a holiday waiver under this proposed amendment.

##### *Start-up Waiver*

The FAA recognizes that carriers obtaining an OA in a lottery would require time prior to its use to market the flights and arrange for aircraft, crew, gate, and terminal availability. Most carriers have indicated in past proceedings for LaGuardia that 120 days provides sufficient planning time. Therefore, the FAA proposes to adopt a waiver of the minimum usage requirements for 120 days after an OA is allocated in a lottery. A similar start-up waiver is not warranted when an OA is leased or transferred because carriers should consider the usage requirements in their discussions.

##### *Administrator’s Waiver Authority*

Under the Order, the FAA Administrator can “waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 5 consecutive days or more.” We propose the Administrator be given greater discretion to issue a waiver if the impact of a particular event is five consecutive days versus the duration of the event existing for more than five days. This recognizes that carrier operations may require several days to return to normal after significant disruptions to service; for example,

aircraft and crew may need to be repositioned. We believe this proposed amendment allows carriers and the FAA, in its administration of the congestion management program at LaGuardia, greater latitude and flexibility to deal with unpredictable conditions; while still maintaining the integrity and purpose of the usage requirement.

##### *Reversion and Withdrawal of Operating Authorizations*

As the FAA has indicated in various proceedings related to capacity-constrained airports, operating authority is subject to absolute FAA control. The FAA may reduce flight operations at an airport in order to meet operational needs or to recognize reductions in available airport capacity. The Order currently does not provide a process for the FAA to reduce the number of OAs should that become necessary. The FAA proposes to use a weighted lottery system if we determine that OAs need to be withdrawn or temporarily suspended.

Under this weighted lottery proposal, all air carriers holding OAs at the airport would be included. The FAA will use weights when establishing the air carrier rank order for OA selections. For example, if an air carrier has a weight equal to seven, the carrier’s name will be placed seven times in a random draw. Once we have completed this process for all lottery participants, a representative of the FAA will begin drawing names. Although there is a possibility that any air carrier participating in the lottery could be chosen first in the rank order, carriers with greater operations at LaGuardia would have higher odds of being selected. Using a random drawing to establish a carrier rank order, carriers would relinquish two OAs in each sequence until the FAA’s reduced level of operations by half-hour or hour, as appropriate, has been achieved. Withdrawal would not be made from any carrier if the result would reduce its holdings below 20 OAs on any weekday. For these purposes, the FAA would consider commonly owned and affiliated carriers to be single air carriers. The FAA would provide at least 45 days’ notice unless otherwise required by operational needs. Any OA that is withdrawn or temporarily suspended would, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at LaGuardia.

### **III. Proposed Amendment to the Order**

#### *A. Scheduled Operations*

With respect to scheduled operations at LaGuardia, the FAA proposes the following amendments to ordering paragraphs:

5. An air carrier can lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of the Order. Notice of a trade or lease under this paragraph would 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 would approve transfers between carriers under the same marketing control up to 72-hours after the actual operation. This post-transfer approval would be limited to accommodate operational disruptions that occur on the same day of the scheduled operation.

6. Each air carrier holding an Operating Authorization would 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 would be withdrawn by the FAA except:

The FAA would 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.

The FAA would treat as used any Operating Authorization obtained by an air carrier through a lottery under paragraph 7 for the first 120 days after allocation in the lottery.

The Administrator of the FAA could 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.

[The following paragraph would be inserted as ordering paragraph 8, and existing paragraph 8 would be renumbered as ordering paragraph 9].

8. If the FAA determines that a reduction in the number of allocated Operating Authorizations is required to

<sup>3</sup> See Docket FAA-2006-25755.

meet operational needs, such as reduced airport capacity, the FAA would conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. Withdrawal would not be made from any air carrier if the result would reduce their holdings below 20 Operating Authorizations on any weekday. The FAA would provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended would, 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.

#### IV. Request for Comments

The FAA invites all interested persons to submit written comments on the proposals described in this Order by filing their written views in Docket FAA-2006-25755 on or before September 6, 2007.

Issued in Washington, DC on August 2, 2007.

**Kerry B. Long,**  
Chief Counsel.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Baton Rouge Metropolitan Airport; Baton Rouge, LA

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Greater Baton Rouge Airport District for Baton Rouge Metropolitan Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Baton Rouge Metropolitan Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before January 25, 2008.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps and of the start of its

review of the associated noise compatibility program is July 30, 2007. The public comment period ends September 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lance Key, Federal Aviation Administration, ASW-615, 2601 Meacham Blvd, Fort Worth, TX 76137-4298; telephone number 817-222-5681. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Baton Rouge Metropolitan Airport are in compliance with applicable requirements of Part 150, effective July 30, 2007. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 25, 2008. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Greater Baton Rouge Airport District submitted to the FAA on May 14, 2007, noise exposure maps, descriptions and other documentation that were produced during the Baton Rouge Metropolitan Airport's Part 150 Study, May 2005-May 2007. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be

approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Greater Baton Rouge Airport District. The specific documentation determined to constitute the noise exposure maps includes the following from the May 2007 14 CFR Part 150 Noise Study: Figure A, 2006 Noise Exposure Map (Existing); Figure B, 2011 Noise Exposure Map (Future); Figure 1-3, Existing and Planned Airport Facilities; Table 1-2, Actual and Forecast Aircraft Operations; Figure 1-4, Generalized Existing Land Use Map; Figure 1-5, Generalized Existing Zoning Map; Table 2-2, Average Daily Aircraft Operations by Type, Time of Day, and Stage Length (2006); Table 2-3, Average Daily Aircraft Operations by Type, Time of Day, and Stage Length (2011); Table 2-4, Runway Utilization by Aircraft Type; Figure 2-1, Generalized Flight Tracks; Table 2-5, Flight Track Utilization by Aircraft Category (2006 and 2011); Table 2-6, Noise Exposure Impacts (1991, 2006, 2011); Figure 3-1, Single Arrival/Departure Noise Contours, Figure 3-2, Potential Noise Abatement Departure Turns, Appendix E, Coordination, Consultation and Public Involvement and Appendix F, Public Hearing. The FAA has determined that these maps for Baton Rouge Metropolitan Airport are in compliance with applicable requirements. This determination is effective on July 30, 2007. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part