



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
National Policy

**ORDER
1110.148**

9/25/07

SUBJ: New York Aviation Rulemaking Committee

- 1. Purpose of This Order.** This order constitutes the charter for the New York Aviation Rulemaking Committee (NYARC) that is designated and established pursuant to the Administrator's authority under 49 USC 106(p)(5).
- 2. Distribution.** This order is distributed at the director level in Washington headquarters and throughout the Office of the Assistant Administrator for Aviation Policy, Planning, and Environment.
- 3. Where Can I Find This Order?** You can find this order on My FAA website: https://employees.faa.gov/tools_resources/orders_notices/
- 4. Background.** The Administrator has determined that it is appropriate to create an Aviation Rulemaking Committee to explore various options, including market based mechanisms, for addressing airspace congestion in the New York area.
- 5. Objectives and Scope.** The NYARC will serve as a forum for interaction among officials of the Department of Transportation (DOT) and FAA, the Port Authority of New York and New Jersey, representatives of air carriers operating to and from LaGuardia Airport, John F. Kennedy International Airport, Newark International Airport, Teterboro Airport, and other interested parties as determined by the Chair. The committee will be assigned specific tasks by the Chair.
- 6. Duties.** The NYARC shall meet to explore market based mechanisms and other options for addressing airspace congestion in the New York area, and then provide advice, information and recommendations to the Administrator and the Secretary of Transportation in a form to be determined by the Chair.
- 7. Organization and Administration.**
 - a. The Administrator designates the General Counsel of the Department of Transportation as the Chair of the committee. The Chair:
 - (1) Determines when meetings are required and where they will be held.
 - (2) Arranges notification to all committee members of the time and place for any meeting.
 - (3) Formulates an agenda for each meeting and conducts the meeting.
 - (4) Establishes subcommittees, if required, and determines membership of subcommittees.

b. The Administrator may designate a Vice-Chair, Executive Director, and other support to the committee, as necessary.

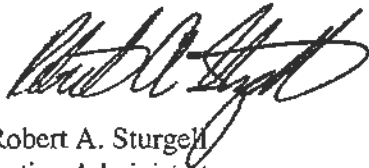
c. The committee is not required to keep minutes, but may elect to do so.

7. Compensation. Non-Government representatives serve without Government compensation and bear all costs related to their participation on the committee.

8. Public Participation. Unless otherwise decided by the Chair, all meetings of the committee shall be closed. Interested persons wishing to attend a meeting who are not members of the committee must request and receive approval in advance of the meeting from the Chair.

9. Availability of Records. Subject to the conditions of the Freedom of Information Act, 5 U.S.C. Section 522, records, report, agendas, working papers, and other documents that are made available to or prepared for or by the committee shall be available for public inspection and copying at the FAA Office of Rulemaking, 800 Independence Avenue, SW., Washington, D.C. 20591. Fees shall be charged for information furnished to the public in accordance with the fee schedule published in part 7 of title 49, Code of Federal Regulations.

10. Effective Date and Duration. This committee is effective on September 27, 2007. The committee shall remain in existence until December 10, 2007, unless sooner terminated or extended by the Administrator.



Robert A. Sturgeon
Acting Administrator

NEW YORK AVIATION RULEMAKING COMMITTEE

REPORT

December 13, 2007

TABLE OF CONTENTS

Introduction	1
Report Summary	2
Working Group 1 — Operational/Infrastructure Improvements, New York Airspace Czar, General Aviation, and Voluntary Reductions	7
Working Group 2 — Auctions, Congestion Pricing, and Aircraft Gauge.....	27
Working Group 3 — Gate Utilization and Perimeter Rule	43
Working Group 4 — Priority Air Traffic Preferences.....	60
Working Group 5 — IATA Scheduling Guidelines/ Other Administrative	65
Appendix A —New York ARC Organizational Documents	A-1
New York ARC Charter	A-1
Charter to Extend the New York ARC.....	A-3
Appendix B — List of ARC and Working Group Members	B-1
ARC Member-Participant List	B-1
Working Group Roster.....	B-7
Appendix C — Attachments Related to Working Group 1 Report.....	C-1
List of 77.....	C-1
Appendix D — Attachments Related to Working Group 2 Report.....	D-1
Gibson, Dunn & Crutcher LLP Memorandum to ATA.....	D-1
ACAA Memorandum to Working Group 2	D-9
Appendix E — Attachments Related to Working Group 3 Report	E-1
Comments from American Airlines Regarding the Proposed PANYNJ LaGuardia Gate Leasing Policy	E-1
Graphs from American Airlines Showing the Change in Flight Operations at the NY Area Airports from 2004 to 2007	E-16
Appendix F — Attachments Related to Working Group 4 Report	F-1
Priority Air Traffic Preferences.....	F-1
Air Traffic Procedures “First Come First Served”	F-4
Air Carrier Association of America Memorandum	F-5
Appendix G — Attachments Related to Working Group 5 Report.....	G-1
Schedule Compression by Fair Allocation Methods.....	G-1
Air Carrier Association of America NY ARC Recommendations	G-9
Additional Statement of Foreign Carriers on Working Group 5 (Air France, British Airways, Lufthansa)	G-13
Comments of AirTran Airways on IATA Scheduling Guidelines	G-14

Comments of Midwest Airlines and Alaska Airlines	G-17
Comments of NACA on IATA Scheduling Guidelines	G-20
Air Carrier Association of America Letter to DJ Gribbin	G-23
United Airlines Letter to Rebecca MacPherson.....	G-26
A Competitive Analysis of an Industry in Transition (Gerchick-Murphy Report).....	G-28
Letter from Virgin America, Inc., to D.J. Gribbin.....	G-34
Appendix H — General Comments.....	H-1
Aircraft Owners and Pilots Association Letter to DOT Secretary.....	H-1
E-mail Message from David Stempler to DJ Gribbin and Nancy LoBue.....	H-6
Regional Airline Association NY ARC Comments.....	H-11

INTRODUCTION

BACKGROUND

The summer of 2007 was one of the worst for flight delays. Three-quarters of the flight delays nationwide last summer were generated from the air congestion surrounding New York. In response to these delays, President Bush directed Department of Transportation (DOT) Secretary Peters to provide him with recommendations for dealing with air congestion in the New York region by the end of the year.

On September 27, 2007, Secretary Peters chartered a New York Aviation Rulemaking Committee (ARC) to help us understand what options are available and how any changes to current policy would affect the airlines and airports as they serve the traveling public. Members of the ARC included officials from the Office of the Secretary of Transportation, the Federal Aviation Administration (FAA), the Port Authority of New York and New Jersey, the State of New York, airlines, consumer groups, and other interested parties.

SCOPE OF THIS REPORT

The purpose of the ARC was to explore ideas and to ensure any action undertaken by the Federal Government would be fully-informed and avoid unintended consequences. The ARC was not a negotiated rulemaking process, nor was the goal to reach a consensus around a specific proposal or to provide specific recommendations. The ARC had three objectives: (1) to reduce congestion, (2) to allocate efficiently the scarce capacity of the New York area airports, and (3) to minimize disruption associated with implementing any of the suggested improvements.

Early in the process, the ARC members agreed to create working groups to explore and refine specific policy ideas. The five working groups are listed below:

- Working Group 1: Operational/Infrastructure Improvement – New York Airspace Czar, General Aviation, Voluntary Reductions
- Working Group 2: Auctions, Congestion Pricing, and Aircraft Gauge
- Working Group 3: Gate Utilization and Perimeter Rule
- Working Group 4: Priority Aviation Traffic Preferences
- Working Group 5: IATA Scheduling Guidelines; Other Administrative Options

This report provides a summary of the ideas discussed by the working groups and an analysis of the benefits and downsides of the policy actions that can be taken. Each working group's summary is contained within a separate chapter. The supporting information for each working group's summary and general relevant information is in the appendixes.

REPORT SUMMARY

The following report summary highlights the key points of each of the New York ARC working group reports.

Working Group 1: Operational/Infrastructure Improvement — New York Airspace Czar, General Aviation, Voluntary Reductions

Working Group 1 was tasked with looking at operational and infrastructure improvements that would reduce delay in the New York metropolitan area, as well as the possibility of establishing a position that would oversee enhancements for the New York area, commonly referred to as the “New York Czar.” As a result of this tasking, Working Group 1 researched current initiatives proposed by both the FAA and industry. Among these initiatives is the “Technical Committee Report, Delay Reduction Task Force by the Port Authority,” dated September 18, 2007. This report contains a list of 74 items recommended for consideration and implementation in the New York area. As followup to this report, additional work was done concerning operational improvements, eventually bringing the number to 77 items (see appendix C to this report).

Working Group 1 reviewed the priorities in the list of 77 items and determined that the items fall under five categories: (1) efficient airport surface movement, (2) departure efficiency, (3) arrival efficiency, (4) regional airspace efficiency, and (5) technology. Of the list of 77 items, 18 are underway and are expected to be complete or nearly complete by summer 2008. Working Group 1 also identified some key items to focus on within the list of 77; namely, excessive spacing on final, runway/taxiway improvements, a second J80 departure route, and surface management systems. The Working Group 1 report provides more details about each of these items.

The appointment of a New York Czar also was discussed. The person acting as the czar would be granted sufficient authority to facilitate strategic traffic flow management initiatives within the Northeast. Working Group 1 discussed the benefits and downsides of a czar. Appointment of a czar could be beneficial in that the person would be a single point of accountability and could sidestep the bureaucratic process. The FAA is currently considering whether to appoint a manager to facilitate movement in the New York region.

Working Group 2 — Auctions, Congestion Pricing, and Aircraft Gauge

The focus of Working Group 2 was to look at congestion pricing and auctions at the major New York airports as a means to reduce congestion and efficiently allocate the scarce airspace.

Many members of Working Group 2 expressed strong concerns about the application of congestion pricing or auctions as a primary method to allocate airport capacity at New York airports. There was concern that a congestion pricing or auction system would cause disruption to the market and may not be effective in moving flights out of peak times. In addition, if not properly structured, these market-based mechanisms may not

recognize investments made by airlines at airports and could deter future airline investment. Working Group 2 members also highlighted the significant difference in their views between auctioning existing capacity versus new capacity.

While concerns were raised with congestion pricing and auctions, some participants expressed the view that these approaches could be beneficial in an aviation context. These market-based mechanisms could allocate a scarce resource in an economically-efficient manner and would be less prescriptive and bureaucratic than an administrative rule. While consumers pay higher prices in a congested market — in terms of either wait times, higher prices due to slot controls, or pricing — with the last option, consumers might have a choice in avoiding higher prices. Pricing mechanisms could affect business decisions, such as the types and frequency of aircraft using the airports. Furthermore, pricing would create a revenue stream that could be used for aviation investments.

Working Group 2 also identified a number of policy issues to be considered when using congestion pricing or auctions. These issues include the competition provided by new entrants, small community service, international operations, general aviation (GA), use of revenues, the duration of the slots, and the type of auction to be used (blind versus transparent). Members noted that application of public policy exceptions would undermine the benefits of a market-based approach.

Working Group 3 — Gate Utilization and Perimeter Rule

Working Group 3 was tasked with reviewing the Port Authority's gate management proposal for LaGuardia Airport (LaGuardia) and the US Airways' proposal to eliminate or revise the perimeter rule at LaGuardia.

Gate Utilization Proposal. Earlier this year, the Port Authority proposed a system under which the FAA would retain the existing cap of 75 scheduled hourly operations at LaGuardia; however, the Port Authority, rather than the FAA, would allocate the 75 scheduled hourly operations. Under its proposal, the Port Authority would reallocate gate reservations annually, using three different methods: (1) use it or lose it; (2) aircraft seat size; and (3) reallocation to promote competition. The gate reservations would be revenue-neutral to the Port Authority and would include a set aside for small community service. The Port Authority believes the proposal could match optimal aircraft size to gate positions, monitor gate usage, and reallocate a percentage of gate reservations to promote airline competition.

Working Group 3 weighed the pros and cons of the Port Authority's proposal. On the pro side, the proposal could enhance the efficient utilization of gates, maximize passenger throughput, and facilitate opportunities for competition. On the con side, the proposal could replace Federal protections and procedures with local controls, replace individual market-based decisions on optimal seat size with Port Authority recommendations, and adversely impact airline business opportunities out of LaGuardia. Working Group 3 also debated what legal authority exists for the Port Authority's gate leasing proposal.

Perimeter Rule. The Port Authority’s perimeter rule prohibits incoming and outgoing flights that exceed 1,500 miles, except on Saturdays, when the ban is lifted, and on flights to Denver, which have grandfather rights. US Airways presented a proposal that would create exemptions to the perimeter rule. The proposal would allow either two or two and a half slots to be exchanged for each flight operated to and from a point beyond the 1,500-mile perimeter. Additionally, the US Airways proposal would cap the number of beyond-perimeter flights to protect small community service and would include an upgauging requirement.

Some in Working Group 3 believe that the proposal to modify the perimeter rule would reduce the number of flights, increase the number of average seats per departure, increase passenger throughput, and improve the efficiency of LaGuardia. Others in the group expressed concern that the proposal might not have a meaningful impact on flight delays, could result in the loss of service to small communities, and could result in increased separation requirements, potentially generating more congestion.

Working Group 4 — Priority Aviation Traffic Preferences

The focus of Working Group 4 was to reevaluate the practices by which the FAA allocates and assigns priority in the management of air traffic to see if different priorities could lead to better outcomes. Specifically, the group explored if and how the “first-come, first-served” policy could be modified to improve overall capacity utilization of the air traffic control (ATC) system during times of congestion. Working Group 4 explored three specific areas: (1) setting aside specific capacity allocations to aircraft that meet technical criteria in order to increase aircraft throughput; (2) assigning priorities to flights in advance of traffic flow management delay programs; and (3) restricting access at certain times to scheduled commercial operations only.

Setting aside specific capacity allocations to aircraft that meet technical criteria in order to increase aircraft throughput. This concept would set aside specific capacity allocations — in space or time — for aircraft that meet certain technical criteria. The idea is that if a section of airspace or a runway end were restricted to specially-equipped aircraft, more operations in total could be accommodated. Many in the group thought that if total capacity or throughput were to be increased as a result of the set aside for equipped aircraft, this solution would be beneficial. Some in the group did express concerns, including that the set aside should be temporary (limited to congested periods) and should not permanently eliminate access for aircraft that are not equipped. Also, it is unknown whether there are technically feasible opportunities for specific equipage to actually increase the capacity.

Assigning priorities to flights in advance of traffic flow management delay programs. Under this concept, priorities would be assigned to flights in advance and then these priorities would be used in issuing delay times to aircraft inbound to New York during a traffic flow management program. If an airline has more than one flight inbound to New York, they could swap within their set of arrivals to suit their priorities. If an airline cannot make use of an assigned arrival time, there would be limited opportunities for anonymous transfer of times between airlines in the slot substitution program. During

times of decreased capacity, the automation algorithm used for issuing delay times could consider other priorities, such as the largest aircraft (as a proxy for the most number of passengers) or airline-designated priorities.

On the positive side, this proposal could increase schedule certainty for the designated priority flights; would give priority to larger aircraft during delays, which could reduce overall passenger-delay minutes; and could increase total passenger throughput in the New York area. On the negative side, this proposal would make a Government-imposed policy choice on aircraft size, could result in decreased service to smaller communities, and could be difficult to implement for aircraft already in the air or on the airport surface.

Restricting access at certain times to scheduled commercial operations only. This concept would limit access to New York regional airspace during congested periods to scheduled commercial operations only. During congested periods, the FAA would identify constrained airspace and implement an airspace flow program effective for all unscheduled, noncommercial operations. Impacted operators would have the option of routing around the constrained area(s) or changing the time of their flight.

Working Group 4 had various views of how implementing this proposal would affect congestion and delays in the New York area. If GA operations do conflict with commercial operations, this proposal could maximize commercial passenger throughput, which yields the greatest benefit to the most people. However, there might be only a minimal impact on congestion by eliminating noncommercial operations, because they only account for a small number of operations at the three commercial airports in the New York area. Additionally, maximizing scheduled commercial operations at the expense of other operations may not represent the most economically-efficient outcome.

Working Group 5 — IATA Scheduling Guidelines, Other Administrative Options

Working Group 5 focused on the International Air Transport Association (IATA) Worldwide Scheduling Guidelines as a possible solution for managing congested airports in the New York area. The Worldwide Scheduling Guidelines provide a detailed framework for managing airport capacity issues and are designed to prevent excessive airport congestion and delays. Twice a year, IATA hosts a conference comprised of IATA and non-IATA airlines, as well as airport coordinators and schedule facilitators, to provide a forum for the parties to discuss slot timing allocations and schedule adjustments necessary to conform to airport capacity limitations.

Working Group 5 discussed the benefits of having scheduled landing and takeoff rights allocated under an administrative allocation scheme at the New York area airports, with broad support for adoption of the IATA Worldwide Scheduling Guidelines when congestion and delays reach an unsustainable level.

Many in Working Group 5 supported adopting the IATA Worldwide Scheduling Guidelines with little or no change. They argued that coupling the Worldwide Scheduling Guidelines with a rule permitting the sale or lease of slots in a secondary market would provide a market-based mechanism for slot allocation that promotes the

efficient allocation of scarce resources. In their view, the guidelines offer a fair, transparent, and nondiscriminatory mechanism for allocating scarce airport capacity in a manner consistent with U.S. obligations under air services agreements with other countries and the rules applicable to U.S. air carriers at congested airports abroad. They also noted a system based on historic rights allows for network stability and predictability and would allow airlines to efficiently schedule flights and the flying public to better plan travel. It also recognizes the billions of dollars of investment in infrastructure (both on and off the airport property), market development, aircraft, and employment that holders of historic rights have made.

However, some members of Working Group 5 also identified a number of reasons why the IATA Worldwide Scheduling Guidelines should not be adopted without some critical changes. They believe wholesale adoption of a system based on historic rights would favor incumbents at the expense of new entrants, which would be at odds with precedent under the High Density Rule allocation program and would not maximize consumer benefits. Access via a secondary market alone can be very difficult, particularly if incumbents are unwilling to make available and convey an adequate number of desirable slots at reasonable prices. Additionally, the IATA Worldwide Scheduling Guidelines have never been used in the United States to allocate domestic traffic.

Working Group 5 also developed a summary of how key elements of the IATA Worldwide Scheduling Guidelines might be adopted, and discussed the benefits and downsides to these approaches. The key elements are discussed in detail in the report.

WORKING GROUP 1 — OPERATIONAL/INFRASTRUCTURE IMPROVEMENTS, NEW YORK AIRSPACE CZAR, GENERAL AVIATION, AND VOLUNTARY REDUCTIONS

SUMMARY

Introduction

Working Group 1 was tasked with looking at operational and infrastructure improvements that would minimize delay in the New York metropolitan area, as well as the possibility of implementing a position that would oversee enhancements for the New York area, commonly known as the “New York Czar.”

As a result of this tasking, Working Group 1 researched current initiatives proposed by both the FAA and industry. The Port Authority of New York and New Jersey (Port Authority) published a report dated December 6, 2007, titled, “Technical Committee Report, Delay Reduction Task Force.” That report contained 74 items recommended for consideration and/or implementation in the New York area. As followup to that report, additional work was done, eventually bringing the number to 77+ items (see appendix C to this report.).

Other work continues under the FAA, in conjunction with industry, to identify short-term initiatives to improve the efficiency in the New York area.

Process

Working Group 1 reviewed the proposals put forth and determined that the items suggested by those groups contained appropriate and significant challenges that could result in significant savings to industry and a more efficient use of the National Airspace System (NAS). Because of the large number of initiatives suggested by outside workgroups, Working Group 1 determined a priority to accomplish a number of items contained in the material. As a result, several items were presented to the greater ARC for consideration, including those listed below. A more detailed paper on each subject is included in this report.

Operational Priorities

Working Group 1 reviewed the priorities in the “list of 77+” and determined the items fall under five categories:

- More efficient airport surface movement
- Increased departure efficiency
- Increased arrival efficiency
- Improved regional airspace efficiency
- Improved technology

Working Group 1 cited high priority items under each category (report included). A number of these items are underway and are expected to be complete or near complete by summer 2008. These items include the following:

Number 1: Reduce excessive spacing on final. Briefings are being conducted in the higher activity TRACONS in the country.

Number 2: Eliminate passback restrictions for destinations 700 miles or more.

Number 4: SWAP escape routes through Canada during severe weather events.

Number 5: Conditional holding patterns in terminal airspace to allow for more efficient holding of arrival aircraft. This initiative is still under consideration and may not be complete before summer 2008.

Number 6: Tower reroutes, enabling towers to use precoordinated reroutes for select high delay/priority flights awaiting departure.

Number 7: Enhancements to the departure position "PIT" in the New York ARTCC, which allows towers to depart aircraft without coordination when specific routes are not impacted by weather, without individual coordination.

Number 8: The use of J70 as a westbound departure route, rather than an arrival route during periods of high delay caused by weather.

Number 9: The development of a reliever, or parallel route for J80 departures during severe weather events.

Number 11: The establishment of an ultra high sector above New York sectors 9 and 10 to relieve complexity.

Number 12: Accessing J134/J149 over ELIOT to allow relief to westbound flights during severe weather events.

Number 13: Moving J79 arrivals to the east to help reduce congestion over the MERIT departure fix. There is some concern, however, that there may be some impediments associated with a safety review that may be necessary.

Number 14: Resectorizing New York Center sector 73 to reduce complexity.

Number 15: Moving overflights in New York Center sector 34 to allow traffic departing to the north less encumbrance. There is some concern, however, that there may be some impediments associated with a safety review that may be necessary.

Number 37: Simultaneous ILS approaches on runway 31L and 31R at John F. Kennedy International Airport (JFK).

Number 39: Develop procedures to use JFK runway 31L departures with LaGuardia on Coney departure climbs.

Number 45: Newark Liberty International Airport (Newark) runway 4R-29 waiver to allow reduced spacing on crossing runways.

Number 46: Simultaneous visual approaches to 4L at Newark.

Number 47: Deconflict Newark arrivals over SHAFF from 0000-0600 local, allowing higher altitudes for international traffic from the north during low demand periods.

Excessive Spacing on Final

Because of a change in focus around operational errors, spacing on final has increased to ensure errors are not charged against air traffic controllers. This increase does not necessarily result in improved safety on the final approach course. As a result of this change, the FAA is taking steps to ensure focus on both safety and efficiency by providing briefings to the workforce at the larger activity approach controls in the country. Working Group 1 believes further consideration should be given to separation standards and a goal of -10/+15% should be set for all aircraft operating on final approach courses.

Runway/Taxiway Improvements

The majority of the airports in the New York metropolitan area have achieved their golden anniversary. When these airports were designed originally, the aircraft operating had different performance characteristics than those in use today. This fact, coupled with the higher activity levels, has resulted in a number of inefficiencies that can be addressed with infrastructure improvements. The two largest issues that need to be addressed are the lack of high-speed taxiways available for landing aircraft to exit the runway quickly and the multiple cases of displaced landing thresholds, limiting the amount of runway available. Additional runway departure points at runway ends would also increase departure efficiency.

This report includes suggested improvements, such as removing displaced thresholds for runways 13R, 22R, 31L, and 31R at JFK, and possible high-speed taxiway placement. Consideration should also be given to creating “holding areas” on the ground for those aircraft that have pushed back from the gate but will be delayed for departure.

A Second J80

This airway provides access for aircraft arriving and departing the Northeast. Traffic using this airway predictably incur delay because of its high usage. Working Group 1 concurs with standing recommendations to implement additional access for these aircraft, roughly paralleling the existing J80. Modeling indicates significant delay can be mitigated annually.

Surface Management Systems

One of the most challenging situations within which both industry and air traffic operate is a lack of information about ground positioning of aircraft on the surface. This information gap is as a result of the lack of use of existing technology. Surface management systems provide real time management of airport operations through use of integrated information sharing among operators, airport authorities, and the FAA. Working Group 1 believes the implementation of ASDE-X schedules in the New York area should be accelerated.

New York Czar

A large portion of the aviation community has expressed concern over the inability to implement changes in a more timely manner. Some suggest that the current structure of the FAA does not permit the flexibility and speed needed to achieve success. Coordination across lines of business is inhibited as a result of a difference in priorities and the availability of resources.

Working Group 1 suggests that an individual be responsible for ensuring changes occur in a timely manner. This individual should receive the support necessary to be successful across all lines of business and should report directly to the Air Traffic Organization's Chief Operating Officer. A parallel process should be evaluated that includes industry and the FAA in the process. There is some concern about how industry will be involved and who will prioritize required work.

Summary

After careful consideration of the initiatives reviewed, Working Group 1 believes that the items listed should be given more focus so that they may be implemented in the near term. However, all of the 77 items reviewed, as well as several other RNAV-related items, should be managed and implemented within the existing working groups.

OPERATIONAL PRIORITIES

Background

Last year, the region's three major airports — JFK, LaGuardia, and Newark — handled more than 104 million passengers and 2.7 million tons of cargo. The combined impact of aviation operations, airport investment, and tourism generated almost half a million jobs, \$20.5 billion in wages, and more than \$57 billion in annual economic activity. In recent years, flight delays have plagued the U.S. aviation system, posing a threat to our nation's economic growth and prosperity. In the first quarter 2007, the DOT reported the worst flight delays in 13 years. Nationally, 2007 is expected to be the worst year for flight delays in aviation history.¹

Beyond the hardship airline passengers have been forced to endure, the problem of flight delays imposes serious costs on the economy. Each year, Americans lose over \$9 billion in productivity from flight delays. The problem of flight delays is especially acute in the New York metropolitan area. JFK, LaGuardia, and Newark have consistently ranked among the nation's worst in ontime performance. From January to September 2007, only 57 percent of flights at Newark arrived on time, the worst in the nation. LaGuardia and JFK ranked second and third worst, with ontime arrival rates of 58 percent and 59 percent respectively.²

¹ [Flight Delay Task Force Report](#), Summary of Recommendations, 12/6/07

² [Flight Delay Task Force Report](#), Summary of Recommendations, 12/6/07

How were the operational priorities determined?

FAA System Ops System Review

In the fall of 2006, the FAA convened the annual “System Review” meeting, which included industry technical experts. At this meeting, the group developed a list of operational improvements that could be implemented in less than a year. Several of the initiatives, such as improvements in how routes in severe weather are processed by towers, were implemented at a limited level. Work continued on these delay reduction initiatives, mostly focused on impacts during severe weather events.

FAA/Customer New York Operations Meeting

In March 2007, the FAA held a meeting at Headquarters, which was attended by the FAA Deputy Administrator, airline customers, and the Port Authority. At this meeting, the attendees agreed to create individual lists of potential actions to address delays at New York airports. Those lists would be collated and reviewed for near-term initiatives targeted at efficiency gains and delay reduction at the New York area airports. These initiatives were meant to be a prioritized list of items that could be completed within 12 months. The collated FAA list (Short-Term Initiatives) was finalized, item coordination was completed, and tasking/tracking of these items was implemented. The industry group was briefed on progress at the monthly S2K meetings.

Northeast Airspace Work Group

Following the success of the Florida Airspace changes made to alleviate the delays at Fort Lauderdale/Hollywood International Airport and South Florida airports, another group determined that targeting small changes to the airspace could deliver substantial benefits. They developed a list of changes that could be implemented within 12 to 18 months. An example is the second west departure route (J80) out of the New York area.

Port Authority — The Flight Delay Task Force

In July 2007, the Chairman and Executive Director of the Port Authority convened a high-level group of influential and interested stakeholders in our region’s aviation system to focus on the burgeoning problem of flight delays. The group was asked to develop recommendations for mitigating congestion and reducing flight delays, as well as to propose recommendations for improving the customer experience during extensive flight delays. This resulted in a list of 74 suggested initiatives aimed at reducing delay and increasing airspace efficiency. Over the course of time, additional items have been added to this list, with 77 being the generally accepted number.

New York ARC

After the Port Authority announced the formation of the Flight Delay Task Force in July 2007, the Federal Government initiated efforts on several fronts aimed at reducing flight delays. In summer 2007, U.S. Secretary of Transportation Mary Peters established a task force of high-ranking DOT and FAA personnel to develop a plan to address aviation congestion in the New York metropolitan area and to improve customer

satisfaction overall. In September 2007, President Bush directed the DOT to develop a plan to alleviate congestion and reduce delays in the New York area. Secretary Peters subsequently announced the formation of the ARC to explore various strategies.

Overview of ARC Working Group 1 Operational Priorities Categories

The ARC was divided into five working groups. Working Group 1 organized and categorized the list of 77 initiatives that had been captured from the previous groups. The items were then prioritized based on anticipated benefits. Those categories are listed below:

Category 1 – More Efficient Airport Surface Movement

Items included—

- 57: Install ASDE–X with Data Distribution Box (for airline and FAA access) at Newark and JFK in 2008
- (Unnumbered): Equipment should be installed in New York ARTCC and New York TRACON
- (Unnumbered): Standardize future deployments
- (Unnumbered): Infrastructure improvements

Category 2 – Increased Departure Efficiency

Items included—

- 3: AFP for high volume
- 4: SWAP routes through Canada
- 6: Tower reroutes (SWAP)
- 7: ZNY Pit enhancements
- 8: J70 as a departure route
- 9: 2nd J80 westbound
- 11: Establish ZNY ultra high above 9/10
- 12*: J134/J149 via ELIOT
- 13: BOS arrivals east out of ZNY56
- 14: ZNY redesign: 27, 73, 91, 93
- 15: Shift over flights in ZNY34
- 16: Simultaneous Newark/JFK departures
- 17: Stack departure fixes
- 18: Add third north gate route with RNAV
- 21: J146 as a departure route (SWAP)

* Indicates item complete.

- 39: JFK 31L departures with LaGuardia CONEY climbs
- 51: RNAV departure procedure Newark runway 22 to LANNA/PARKE/BIGGY
- 52: Top LaGuardia ILS 13 arrivals with Newark runway 4 departures

Category 3 – Increased Arrival Capacity

Items included—

- 1*: Reduce excessive spacing on final
- 37*: Simultaneous ILS approaches JFK 31L/R
- 42: Develop JFK CRDAs to 31L/22L
- 45: Newark 4R/29 waiver (reducing spacing on crossing runway operations)
- 46*: Simultaneous VAPs EWR 4L
- 49: RNAV transition to Newark runway 29
- 50: RNAV STAR from SHAFF/PHLBO to Newark runway 11

Category 4 – Improved Regional Airspace Efficiency

Items included—

- 2*: Eliminate pass back restrictions beyond 500 miles
- 5: Conditional holding patterns in N90
- 24: Accelerate airspace redesign (phase 1 and 2)
- 32: Develop RNAV procedures to reduce spacing requirements
- 47*: De-conflict Newark SHAFF arrivals (00-06)

Category 5 – Improved technology

Items included:

- 58: Refine/develop Route Availability Planning Tool (RAPT)
- (Unnumbered): Accelerate the National Change Plan (NCP) to ensure flight plans filed by nonscheduled operators are made available to ETMS as soon as they're filed

What happens to the remaining items?

- Continue work in established workgroups
- Ensure tracking of progress, milestones, and accomplishments

EXCESSIVE SPACING ON FINAL

Background

The FAA, being a safety culture, embarked on a data collection exercise (audit) over 2 years ago to use automated measuring techniques that report spacing down to the 1/10 of a mile on the radar display. This degree of precision actually exceeds the controller's visual acuity. The audit identified over 200 technical violations of the separation standards at New York TRACON alone, none of which compromised safety or presented a collision hazard.

The results of this exercise negatively affected the efficiency of the system, because controllers responded with additional buffering mileage above the separation minima to avoid the consequences of a separation loss. This additional buffering had a measurable effect on throughput and additional impacts down line in the system with extensive airborne holding, diversions, and the like.

Current Situation

Excessive spacing on final today only exists as a means to reduce operational errors on the final approach course. This excessive spacing (buffering) does not increase safety; in fact, it can sometimes be tied directly to inefficiencies elsewhere in the system.

Well-established, predictable airport acceptance rates are no longer reliable because of the additional spacing. This lack of reliability has resulted in the increased probability of go-arounds, no-notice holding, increased vectoring, sector overload, and operational errors. Airports are operating at less than optimum capacity (reduced throughput), which increases miles flown, fuel burned, and CO₂ emissions.

Aircraft operators, airports, and passengers have incurred considerable cost without realizing any increase in safety. Fiscal year 2007 was the most delayed year in the history of our aviation system. New York area airports accounted for more than 40 percent of all delays, yet traffic levels at LaGuardia and Newark airports have actually decreased. Excessive spacing on final approach and initial departure is responsible for much of the increased delay.

Future Steps

To help the controller workforce deliver the safest and most efficient service possible, FAA's Air Traffic Organization (ATO) created the Proximity Event (PE) whereby a separation loss of 10 percent or less is not classified as an error. Establishing a safety and performance standard, that is, 10 percent below to 10 percent to 15 percent above minimum separation, would provide a tolerance envelope that ensures safety and maximizes efficiency. The standard would also identify clear and measurable performance expectations to employees.

A loss of separation below the envelope should be approached in a more positive and preventive manner. Every effort should be made to encourage the reporting of potentially unsafe situations and practices, to identify causal factors, prevent future occurrences, and to identify and correct performance deficiencies. The implementation of a safety reporting system for controllers is a critical component of restoring confidence by controllers and managers in the system, where there would be no actions of a punitive nature unless the loss of separation was intentional or the result of negligence.

Future steps to extend the PE criteria, using technology, to certain wake turbulence events needs to be pursued because many times an error is charged and, like in the previous examples, no increased risk was experienced, and unnecessary delay was incurred.

RUNWAY/TAXIWAY IMPROVEMENTS

Background

All of the airports in the New York metropolitan area are over 50 years old. They were first designed when there were few standards, and the size of the typical operating aircraft was significantly smaller than it is today. As modern aircraft grew in size and speed, there were new standards added to airports to accommodate the larger wingspans and to add increased levels of safety. As these new design standards were built into the airports, some of the available pavement and flexibility the controllers had to shuffle aircraft was lost. As airspace became more congested, this flexibility became more important to maintain throughput, especially on poor weather days.

To improve the throughput of aircraft on the runways, a careful analysis should be undertaken to define areas where runway occupancy times can be reduced. There are opportunities to improve the ability to sequence aircraft at runway ends to expedite departures. There are also a variety of improvements that can add to the overall efficiency of moving aircraft on the surface of the airport and add to passenger comfort. All these concepts should be developed to ensure maximum efficiency can be delivered by the airport infrastructure.

Runway Improvement Concepts

The first area of improvement should be designs to improve airport throughput. Currently only three of eight arrival runways at JFK qualify for reduced spacing on final approach (2.5 versus 3.0 mile spacing). There needs to be analysis to improve this capability on all landing runways. Some suggestions to facilitate improved arrival throughput include removing runway displacement and building high-speed runway exits.

Displaced arrival thresholds can create inefficiencies for mixed use (arrivals and departures) and can lead to undesirable runway exit points. Case in point, when a departure is placed in position on JFK Runway 31L, the preceding arrival flies an additional mile to touchdown. The succeeding arrival gap must take the disparate thresholds into account for spacing. To solve this situation, Working Group 1 suggests removing displaced thresholds for JFK runways 13R, 22R, 31L, and 31R.

High-speed exit taxiways are also crucial to reduce runway occupancy times. High-speed taxiways allow pilots to exit the runway at a higher rate of speed than a standard 90-degree turnoff. This faster exit shortens the time the landing aircraft remains on the runway, allowing for multiple arrival and departure use or a reduced space for the following aircraft in some conditions. To facilitate this operation, we suggest adding high-speed exits (in coordination with removed displacement) to allow minimum runway occupancy for all runways. Three high-speed exits for each arrival runway appear to be the norm. We suggest the same interval of 4,500, 6,500, and 8,500 feet for each runway. Standardizing turn-off points enables consistent pilot expectations and performance.

Multiple departure points at runway ends also enable greater flexibility to controllers to sequence the departing aircraft at the end of the runway, and not a few miles earlier as is the case today on some runway ends. This flexibility allows for controllers to shuffle aircraft as situations dictate — for example, if the lead aircraft is not quite ready to go or if the departure spacing restrictions change. Added flexibility at the departure end maximizes the departure throughput. Dallas/Fort Worth International Airport (DFW) has many efficient departure ends at its runways (see figure 1), and we recommend similar access points be designed for JFK runways 31L, 22R, 4L and 13R, and Newark runway 22R.

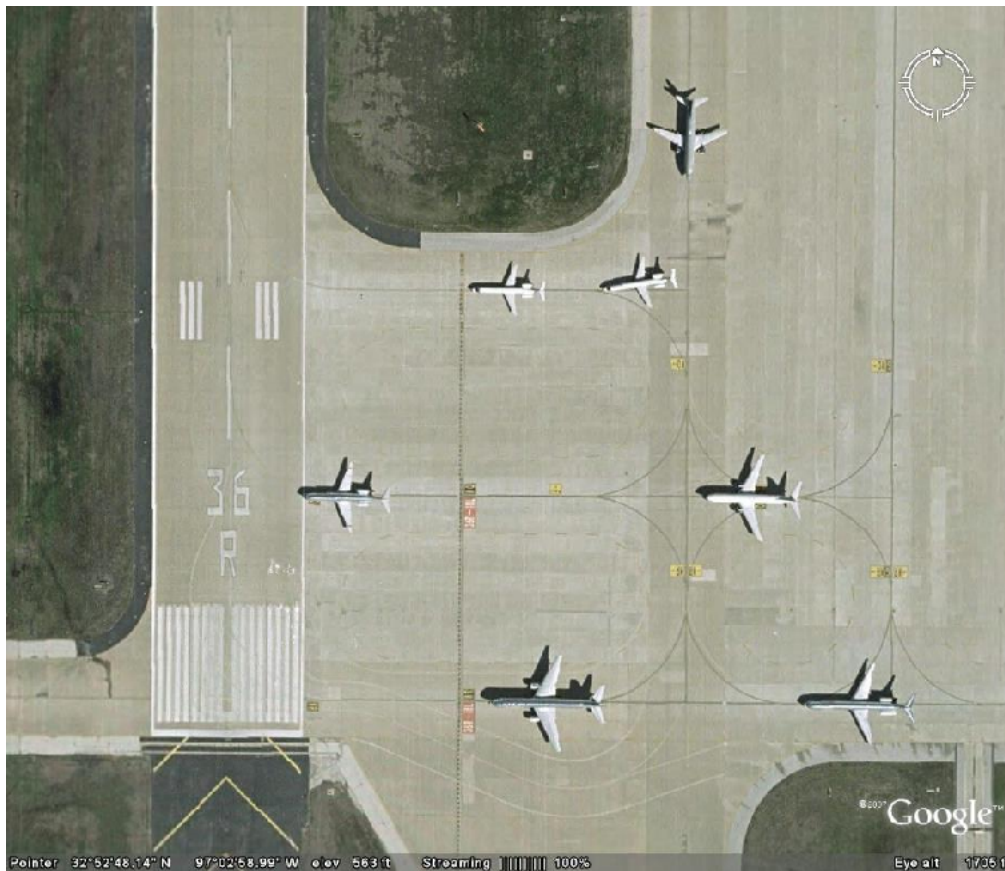


Figure 1 — DFW Multiple Runway Entrance Points

Additional taxiways can enhance the operation of the airport by facilitating the movement of aircraft on the surface, or by providing areas to hold aircraft off gates, especially those where air carriers can access their aircraft. Newark Liberty has an area known as the ballpark that works well for this type of operation. JFK and LaGuardia need similar areas as well. Working Group 1 suggests adding an area for this purpose at the current hangar 12 location at JFK and at LaGuardia. Gaining extra pavement at the existing employee parking site behind the Marine Air Terminal could also have valuable benefit as additional aeronautical pavement.

Additional taxiways at JFK to move aircraft around the airfield will also enhance operations on the airfield and facilitate movement to and from runway ends. Examples of these taxiway improvements include a full length parallel taxiway south of runway 13R/31L (see figure 2A), and a connecting taxiway that joins taxiway B to YA (see figure 2B), which reduces complexity and improves access to runways 22R and 31L.

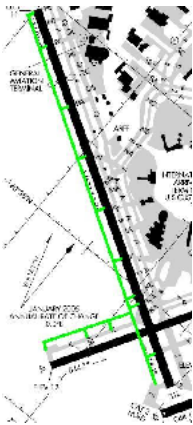


Figure 2A — JFK Parallel Taxiway

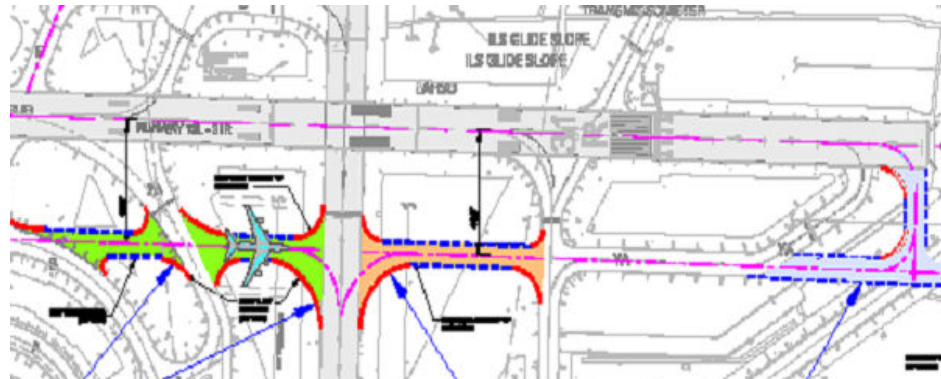


Figure 2B — JFK Taxiway B to YA connector

Summary

While there are many priorities placed on an airfield, the focus should be on ways to improve the throughput and reduce delays. Some of the suggestions above will help move more aircraft on and off the airfield each hour, improving the delay situation and benefiting passengers. As changes come to the industry, we need to be cognizant of the changes to be made to the airfields to keep pace with the increase in demand and search for new ways to increase airport throughput, even if only incrementally. New pavement, while a significant capital cost, can aid in reducing delays if it is carefully designed. Thorough coordination with all stakeholders is required to ensure full benefits are achieved.

SECOND J80

Background

J80 has been identified by other working groups as the most delayed airway in our airway route system today. This reputation is earned by its high utilization as a major east-west airway by those flying to/from the Boston, New York, Philadelphia, and Washington, DC, metropolitan airports. Although there are other initiatives to improve airway availability and utilization, the J80 initiative continues to be one of the most supported proposals to reduce delays.

Although the proposal has been referred to as the 2nd J80 or Parallel J80, it is envisioned as a 2nd airway that will follow a similar east-west track as the current J80 and could use RNAV waypoints and current RNAV technology to define its lateral path.

Concerns/known open items with 2nd J80

- Currently, there is some design work required allowing transition onto the 2nd J80.
- Continued design work is required at Indianapolis Center, Cleveland Center, and Chicago Center to manage the added traffic accommodated on the 2nd J80.

Positives

- Potential savings of \$2.8 million/annual based on minutes of delay saved³.
- Increased capacity on the most heavily used east-west route out of the New York, Philadelphia, and Washington, DC, metropolitan areas.
- Reduces delays at numerous airports.
- Established broad industry and FAA support exist:
 - Developed and recommended by the RTCA AWG.
 - Gained favorable consensus with other working groups.
 - Number one initiative in Working Group 1.

Full Benefit

Although the benefits of a 2nd J80 airway strongly suggest that it warrants implementation, increased benefit and capacity also may be realized if the New York Center ultra high sector 11 initiatives are implemented, allowing increased utilization of both the 2nd and current J80.

³ Preliminary Results, RTCA AWG Study, subject to change.

SURFACE MANAGEMENT

Overview

In today's environment, the airlines and ATC operate within their respective silos as it relates to flight preparation and airport movements. The airline has little information on ATC intentions and the FAA has even less information, other than the filed flight plan, of the user's intentions.

Airline ramp tower personnel and operations centers make numerous business-related decisions when they plan, coordinate, and adjust as necessary gate assignments, catering, fueling, passenger loading, ramp movements, and other parameters that affect their respective operations. In addition to these tactical decisions, the ramp tower often has to consider aircraft assignments and crewmember sequences as a couple of the most essential pieces of the puzzle. These critical variables are important during normal operations, but have increased significance during off-schedule operations when they actually become the limiting factors. Figure 3 uses JFK as an example of how uncoordinated surface movements can cause delays.

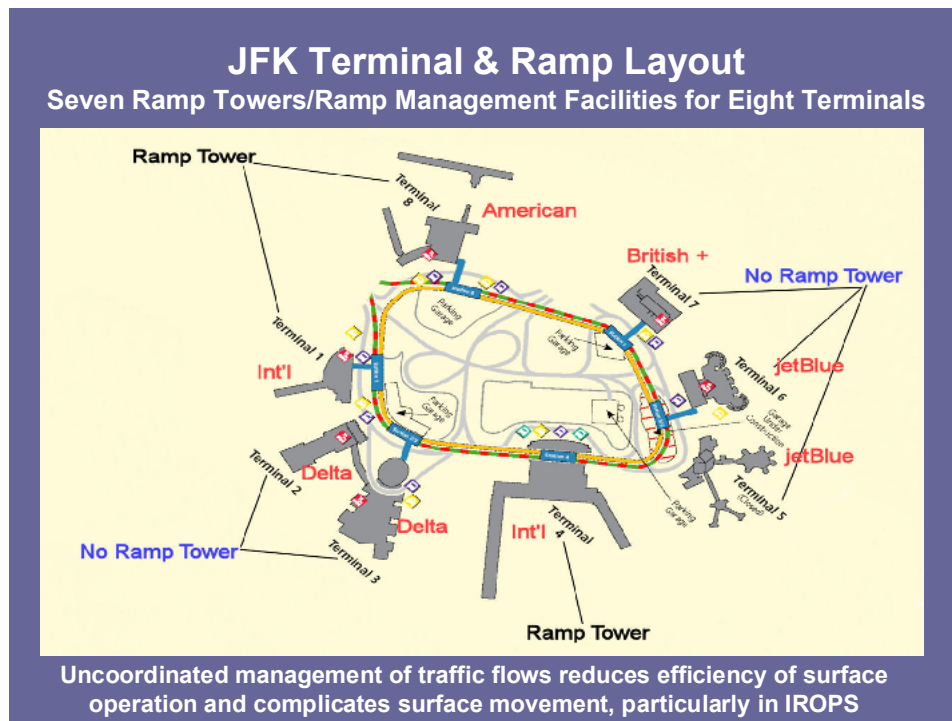


Figure 3 — JFK Terminal and Ramp Layout

ATC has the responsibility of meeting various traffic management initiatives, such as most efficient runway sequence, actual real-time operational demand, and use of “penalty boxes.” These critical variables are important during normal operations, but have increased significance during off-schedule operations when they actually become the limiting factors. Today, ATC and traffic managers are blind to the surface situation and often make poor decisions based on inaccurate or untimely information. The current system of surface management, or lack thereof, fails to provide either the airlines or ATC an opportunity to avoid delays.

Possible Solution

Surface management systems provide coordinated real-time management of airport surface operations through a process that is based on integrated information sharing between operators, ATC, and the airport authorities. In other words, a NET-CENTRIC airport information system would help to improve surface management. Use of surface management systems would provide a more efficient operation as well as the ability to perform a post-event analysis to improve future operations.

A surface management solution would allow us to improve the operation significantly and reduce delays by—

- Providing the right information to the right people, at the right time
 - High quality surveillance
 - Rapid update
 - Real-time and historical analyses capability
 - Web-based architecture that will support distribution to a geographically-dispersed user base (for example, ramp towers, airport operations offices, ATC, traffic management units and FAA Command Center)
- Facilitating common situational awareness that enables airports, users, operators, and ATC to optimize—
 - Gate occupancy
 - Departure taxi sequence and flows
 - Arrival taxi sequence and flows
 - Pushback sequence as required
 - Deicing sequence
 - Leveraging of available resources
- Having the capability to measure performance and build metrics.

An optimum surface management system requires airline and user data that can be interpolated into useful information when combined with the movement area surveillance that ASDE-X provides when enhanced with non-movement area (gates, ramp, aprons) surveillance as well. A common platform for every site would assist in reducing the interface costs associated with data exchange for all parties. It is understood that proprietary information supplied by each entity should be protected and not available to outside vendors to ensure business interests are not compromised.

The airlines require significant experience and training to qualify for a position at the ramp towers. Intimate knowledge of airline operations and infrastructure plays a huge role in the overall success of each ramp tower. To add this expertise to the existing expertise of tower controllers would provide a significant interchange of awareness and understanding leading to significant gains in efficiency, fuel burn, and associated emissions.

Commonly Asked Questions

- 1. Do all airlines/operators at an airport have to participate? – No**
 - a. Major air carriers are needed. The more participation the better.
 - b. Willingness to share and contribute data is a requirement to participate in the work groups listed under No. 3.

- 2. How soon can it be implemented? – 6 to 9 months**
 - a. ASDE-X schedule – JFK has an accelerated ASDE-X schedule and consideration should be given to accelerating Newark.
 - b. Airline interfaces – major air carrier IT contributions to gain interfaces and install software. Each airline can determine software available:
 - i. Vendor commercial products and services – for example, Aerobahn
 - ii. NASA SMS
 - iii. In-house

- 3. What should be the vehicle for implementation? – Two groups of joint FAA/user/airport personnel.**
 - a. Technical Group – determines IT interfaces.
 - b. Procedures Group – determines usage and decisionmaking processes.

- 4. What surveillance sources are normally needed?**
 - a. ASDE-X surface surveillance enhanced with additional sensors to provide surveillance of gates, ramps, aprons in addition to runways and taxiways.
 - b. SMA – TRACON Radar and scratch pad information.
 - c. ASDI.
 - d. TMA, when available.

5. What are the difficulties of implementation?

- a. Timeline conformance of all IT tasks by all concerned.
- b. Software and interface conformance – common displays are not needed but data exchange must interface.
- c. FAA letters of agreement for data protection – unless commercial services are used, FAA requires multiple letters of agreement by all parties.
- d. Airport Authority involvement – new level of involvement.
- e. Lease agreements with property owners for remote sensor installations.

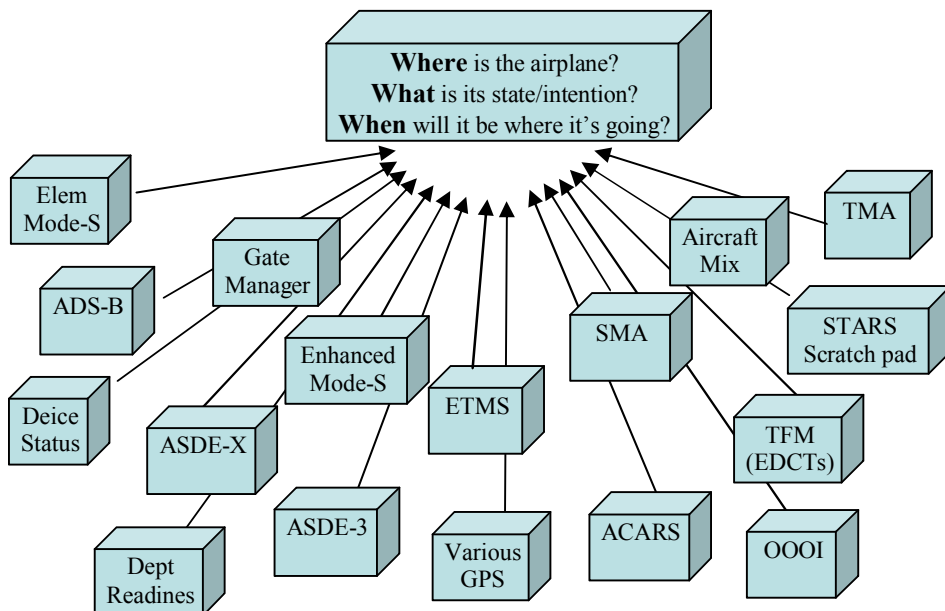
6. Surface Management facilitates Net Centric Command and Control of an airport. What might this architecture look like?

- a. Both on and off gate estimated times of arrival are extremely important in proper planning.
- b. Runway end optimum sequencing enhances capacity.
- c. Conformance to traffic management initiatives enables the capturing of capacity.
- d. Data streams allow greater analysis and development of procedures and infrastructure.

7. Once a surface management system has been implemented, what challenges remain?

- a. System support 24/7.
- b. Tower-to-user interface upgrades.
 - i. Upgrades and changes to the system on both ends (tower and operator)
 - ii. Changes or upgrades to the procedures employed
- c. Addition of new operators and gate complexes and changes to existing ones.

Multitude of Inputs to Command & Control



Definition

The collaborative net-centric management of airport activities, including but not limited to aircraft movement, through a process of integrated information sharing (user, service provider, airport authorities, etc.), real-time surveillance, and jointly established procedures tailored to the specific airport operations that result in the safest and most efficient operational decisionmaking.

Pros

1. Real-time situational awareness by all operations personnel yields—
 - a. Safety
 - b. Efficiency
 - c. Command and control
2. Taxi time reduction through better decisionmaking and processes yields
 - a. Fuel efficiency
 - b. Reduced emissions
 - c. Better management of deice operations/queues
3. Net-centric info availability provides information required to enhance system decisionmaking for unusual events-less “wing it”
4. Better service to the customer
 - a. Service provider to user
 - b. User to end state customer
 - c. Airport authority to user and service provider
5. Better identification of problems and inefficiencies
 - a. Denotes infrastructure changes needed
 - b. Root cause identification
 - c. Solutions address core issues
6. Improved ramp tower product to ATCT
7. Better CFR response by airport facilities
8. Multi-lateral receives multiple inputs
 - a. ADS-B
 - b. GPS
9. Users have transparent influence on FAA decisions to improve their operation.
10. Capability for Web-based distribution environment available to authorized, geographically-dispersed users.

11. Capability for data storage, retrieval, and archiving of the surface including actual position, identification, replay, and reporting capability yields long-term efficiencies in surface operations.
12. Ability to upgrade software on an annual or semi-annual basis provides a continuous state-of-the-art system capability.

Cons

1. Cost
 - a. Data distribution unit required
 - b. Software required to turn the data into usable information
 - c. Additional sensors to cover ramps, gates, deice pads, and specified GSE roadways
 - d. On-going IT support need – 24/7
 - e. Display and software equipment
 - f. Possible aircraft equipment changes on “classic” aircraft
 - g. User adaptation of feed into current systems
 - h. Need to upgrade surveillance hardware on an ongoing basis, not to exceed 5-year cycle
 - i. Variable lease costs for sensor (RU) locations
2. Identification of aircraft transponder issues is very difficult
3. Training required
 - a. Pilot to stop “squat” feature
 - b. All personnel to use the system
 - c. On established processes
4. Trust and relationship paradigms need breaking
 - a. Competitive issues
5. Net-centric decisions require—
 - a. More work/thought
 - b. More establish processes
 - c. Increased communications
6. Different software by different users.
7. FAA process for degree of information sharing lacking.
8. Development for an end-state system lacking which reduces user commitment.
9. Cultural fear of the unknown: big brother impact on ATC and user operators.

NEW YORK CZAR

Background

This New York Czar proposal is based on recent successes within the Air Traffic Organization wherein a single individual/entity was granted sufficient authority to facilitate initiatives and implement much needed enhancements encountering little, if any, delay. The current structure within the ATO does not provide the level of speed and agility required to implement the initiatives identified in the New York ARC in a timely manner. The ATO's current structure seems to have greatly increased coordination across the different lines of business. There is concern that it has been inefficient and at times the structure seems to have been a direct impediment to making significant progress.

Specifically, the amount of time involved in reviewing, adjusting, and implementing most of the suggested initiatives, including the Port Authority's list of 77, the RTCA Short-Term Airspace initiatives, New York/New Jersey/Philadelphia airspace redesign, the ASDE-X Surface Management System, as well as others, presently require a tremendous amount of coordination, focus, and followup to attempt a timely and successful implementation. We believe a position should be established and designated as the focal point or czar for strategic traffic flow management initiatives within the Northeast.

New York Czar Duties

To be successful, this individual should receive the full backing and support from each of the ATO's vice presidents as well as their entire directorate level to ensure positive results in a much more expeditious manner. It is imperative that this position be given the necessary authority to cross all the lines of business to manage these critical processes and to expedite their implementation.

Consideration should be given to having this individual report directly to the ATO's Chief Operating Officer and be readily accountable to the ATO's Executive Council (EC) on all matters that deal with these strategic initiatives from inception through implementation and followup.

Working Group 1 would also like to see a process whereby a committee comprised of FAA/DOT employees and representatives from industry meet regularly to discuss necessary airspace enhancements. This group could assist in determining what changes may be necessary to enhance the implementation of initiatives aimed at relieving the problems encountered in the Northeast/New York area. Any recommendations or findings that come from this committee should be reported to the EC within 90 days.

Pros

- Single point of accountability.
- Sidestep bureaucratic process.

- General consensus within Working Group 1 for the concept.
- Encompasses all elements of ATO.
- Focused tasking regarding Northeast initiatives.
- Mandate of authority to engage all elements within the organization to implement identified initiatives within a specific timeframe.

Cons

- Scope of authority may need to go outside ATO.
- Does not address elements outside the FAA and/or DOT if their inclusion is a component of implementation.
- Must be careful not to allow scope to exceed parameters defined by an FAA appointment.

WORKING GROUP 2 — AUCTIONS, CONGESTION PRICING, AND AIRCRAFT GAUGE

INTRODUCTION

The focus of Working Group 2 was to look at the use of congestion pricing and auctions at the New York metro airports as a means to reduce congestion and efficiently allocate the scarce airspace.

Congestion pricing is one type of market-based mechanism that uses prices to moderate demand for limited arrival and departure capacity and to shift that demand from one time period to another. The goal of congestion pricing is to encourage efficient use of scarce resources at an airport by shifting a portion of the demand to periods when capacity is readily available. To accomplish this, congestion fees would be levied on operations and varied throughout the day according to demand for access to the airport. Consequently, the most congested periods of the day would have the highest congestion fees (for example, the congestion fee at 5:30 a.m. would be lower than the congestion fee at 5:30 p.m., which is a peak travel hour).

Auctions can be used to allocate a scarce resource by putting the scarce object up for sale or lease. In the aviation context, a fixed number of slots would be available for lease by aircraft operators. These operators would bid on prices in an auction for those slots. The auction stops when there are no new bids within a round (that is, the auction determines both the selling price and the purchaser of the slots in each of the time periods). Fixing the number of slots available would establish an upper limit on the amount of congestion and delay allowed. Auctions are intended to encourage the efficient use of airport slots and related facilities by allowing the market to set the clearing price for slots. New or existing capacity could be auctioned.

Working Group 2 suggests that it would be helpful to look at the pros and cons of congestion pricing or auctions in an airport-specific proposal for New York. The proposals set forth below do not represent the views of any member of the ARC. They were used as examples so that members of Working Group 2 could debate the specifics of pricing proposals. Many of the Working Group 2 members expressed strong concerns regarding application of congestion pricing or auctions as the primary means of allocating airport capacity.⁴

⁴ Working Group 2 did not intend to cover the entire universe of congestion pricing and auction schemes in this report.

STRAWMAN PROPOSALS FOR HOW CONGESTION PRICING AND AUCTIONS COULD BE IMPLEMENTED IN THE AVIATION CONTEXT

I. Hybrid Congestion Pricing/Auction Scenario

Mr. Frank Berardino, GRA, Inc., presented Working Group 2 with a hybrid congestion pricing/auction scenario to take account of some of the unique characteristics in the aviation context, including rivalry among firms. The proposal's key elements include the following:

- The FAA sets an optimal target of hourly operations.
- $X\%$ of Instrument Meteorological Condition (IMC) slots would be grandfathered to air carriers currently operating at the airport. Air carriers could swap, lease, or sell any of these grandfathered slots as they currently are able to do at slot-controlled airports.
- Access to an airport beyond $X\%$ of grandfathered IMC slots would be priced.
- The pricing of these slots would take place in a multi-round process:
 - 1) Prices would be set by an Independent Pricing Board whose sole responsibility is to reach target operations numbers.
 - 2) Airline schedules would be published Z days before the first flight. The Independent Pricing Board would set prices based on expected delay costs; airlines would then adjust schedules based on published congestion prices. Prices would be reset until the auction ends, as declared by the Independent Pricing Board.
 - 3) Air carriers are required to take or pay based on the schedule at end. Ending would be determined by the Independent Pricing Board.
 - 4) Air carriers may swap/sell access rights at any time with notification to the FAA.
 - 5) A minimum deposit would be required to participate on the initial schedule offered.
- The congestion pricing event would take place Y times annually—for example, the International Air Transport Association (IATA) scheduling events (twice a year). After the pricing event is over, new schedules would not be accepted until the next round of pricing opens (that is, at the next scheduling season).

- Consistent with DOT Competition Policy, to ensure physical access to airport facilities (for example, gates), and as a condition of participating in the pricing process, air carriers would have to agree to accommodate other operators at compensatory rates when gate capacity is not otherwise available (details to be defined).
- Congestion pricing revenues could be used for any number of things, such as—
 - Recycled to operators based on other fees paid (for example, landing fees, passenger facility charges).
 - To buy “historic” slots from air carriers, which would then be put into the market.
 - Held by a third party in an interest bearing account to pay for any approved runway capacity or complementary expansion projects at New York area airports.

As highlighted by Mr. Berardino, one benefit of this type of hybrid scenario would be that only a limited portion of airport capacity would be in the market initially – making the transition period much smoother than if all capacity were in the market at one time.

Options: *X%* of IMC slots that are grandfathered could be expanded so that all slots are grandfathered and just “new” capacity is priced. Alternatively, a low number of IMC slots could be grandfathered and a large portion of airport capacity could be priced.

The time period between pricing events could also be varied. For JFK, Mr. Berardino proposed that pricing events would take place twice a year based on scheduling seasons. Alternatively, pricing events could occur more or less frequently. The less frequently pricing events occur, the more auction-like this hybrid-scenario becomes.

II. Auction Scenario

Dr. Peter Cramton, University of Maryland, presented a summary of a proposal for how a slot-auction might work in New York. A summary of the auction design follows:

- The FAA sets an optimal target number of operations per hour. Slots would be auctioned.
- *X%* of slots would be auctioned per year (for example, 20% per year, so each slot has a 5-year life).
- Port Authority would work to provide facilities in sync with auction outcome. In the short term air carriers would need to be flexible with their ground facilities. However, over the long term, the Port Authority could aim to develop common-use facilities.

- The auction design suggested for the aviation application would have the following characteristics:
 - *Simultaneous* - All slots in the auction up for auction at the same time;
 - *Ascending clock* - Auctioneer announces prices and bidders respond with the quantity demanded at these prices. Prices increase on slots with excess demand. Auction ends when no excess demand remains; and
 - *Package bids* - Allows bidders to buy what they want given the prices. No risk of winning just part of what you need.

Options: The percentage of slots up for auction each year could vary, which would make the life-term of slots either longer or shorter than Dr. Cramton’s proposal.

Also, the number of slots for sale in the auction could be adjusted. For example, FAA could grandfather all historic slots at an airport and simply auction “new” capacity.

CONCERNS WITH USING CONGESTION PRICING OR AUCTIONS

Many Working Group 2 members raised concerns about the ability of congestion pricing or auctions to work in an aviation environment and the potential consequences of using them.

A summary of the challenges and concerns raised by Working Group 2 members follows:

- ***No proven track record in aviation*** – Auctions and Congestion Pricing have not been implemented on a broad scale at any U.S. airport. Boston’s Logan Airport has a congestion pricing policy on the books, however, the level of congestion necessary to “trigger” the use of this policy has not occurred. In addition, specific initiatives to implement congestion pricing and/or auctions at foreign airports have failed.

Further, many Working Group 2 members expressed strong skepticism that experience with auctions and congestion pricing in other industries could be used as a meaningful parallel for application of such measures in the airline industry. Participants pointed to unique aspects and complexities of airport and airline operations that distinguish aviation from other industries where auctions/congestion pricing may have been applied⁵. Additionally, there is

⁵ Congestion pricing models used for individuals and highways do not apply to the aviation network because networks work differently than individuals. Surface vehicles have optional routes to get from point A to point B. More often than not, they also involve a single decision made by an individual at a point in time. Automation of highway toll collections has also helped. In contrast, airlines generally are limited to one airport to serve a particular city and, as noted below, may be time-constrained by network considerations. This is true for both domestic and international flights to airports like Heathrow that are slot controlled.

concern that auctioning the capacity at the New York area airports does not take in to account the airspace congestion issues.

Working Group 2 members also noted that there is a significant risk involved in trying auctions or congestion pricing because the airlines cannot afford financially or operationally to fail next summer, given this past summer's performance and public reaction. It was noted that the ARC only had 10 weeks to work, and, despite several years of research on market mechanisms, a workable auction or congestion pricing solution for LaGuardia Airport has never been developed.

Many ARC members were concerned that revenue neutrality, as required under federal airport grant assurances, probably cannot be maintained at the fee levels necessary for auctions or congestion pricing to be effective in the New York area.

- **Government Tax** – One of the principal reasons articulated by many Working Group 2 members in opposition to market-based mechanisms is that the organizations that control airport and airspace access are both monopolies and, therefore, are themselves not market-based. For this reason, pricing of airport or airspace access as proposed would operate as a government tax, rather than a market price between two private entities.

Certain air carriers believe that congestion pricing or auctions do not address congestion, while an administrative cap does. In their view, these market mechanisms may deal with efficiency and allocation issues, but not congestion, so the market prices will amount to a significant tax on consumers.

- **Risk of Disruption** – One of the tenets of the ARC has been to minimize the amount of potential harm and disruption to consumers, airlines and other stakeholders. Even limited experiments with unproven techniques in the aviation industry environment could have serious negative consequences that could actually exacerbate delay and congestion in the New York region.

For congestion pricing to be effective, the right price for airport access must be established to achieve the desired level of operations without allowing available capacity to go unused. There is risk in that the prices must be set accurately because airlines are not able to quickly modify their routes since tickets are sold well in advance and ground facilities need to be in place at the airport (e.g., baggage handling, gates, etc.).

LaGuardia, the smallest of the three New York airports, handles nearly 30 million passengers annually and has 1,200 operations per day. Even a small disruption there could have a negative ripple effect across the national air transportation system.

NEXTOR says the same network arguments have been made in the spectrum and energy industries and market mechanisms have proven successful within a network context.

- ***International routes heavily dependent on connecting domestic passengers*** – Delta noted that it serves 33 international destinations out of JFK. These flights are not sustainable without the domestic feed at JFK. If Delta is forced to up-gauge or eliminate these feeder flights, it could make the routes nonviable because of increased costs. Delta also noted that international flight times are not always flexible. The same is true for Continental at Newark and other examples in the United States.

U.S. air carriers are concerned that if the DOT requires domestic air carriers to pay congestion fees for slots in New York airports, but then exempts foreign flag air carriers from paying for slots (because of bilateral agreements/Chicago Convention), U.S. air carriers will be competitively disadvantaged.

- ***International banks cannot be changed in many circumstances*** – There is a narrow window of time both to leave New York for European destinations and to depart European airports to arrive in New York the same day because of the European airports' slots rules and the North Atlantic Air Traffic Control track system. Congestion pricing and auctions may not affect decisions for some international destinations because there is no flexibility in those schedules. This is also true for important domestic spokes like New York, where even a slight shift in schedules can cause misconnection in hundreds of city pairs to/from New York, both domestically and internationally.
- ***Might violate U.S. Bilateral and Multilateral Agreements*** – Auction and congestion pricing schemes would likely violate US bilateral and multilateral aviation agreements because such charges are not cost-based. For example, congestion pricing and auction charges on foreign flag air carriers from EU countries would likely violate Article 12(2) of the US-EU Open Skies Agreement because the higher FAA ATC charges on users or higher airport fees on users (if imposed by the Port Authority) would exceed the full cost of providing the relevant ATC or airport services.
- ***Fails to recognize relationship between physical assets and investments*** – Congestion pricing and auctions presume to some extent that gates, hangars, and other physical assets at an airport are interchangeable. Many airlines have invested hundreds of millions, and even billions, of dollars in terminals, gates, hangars and other facilities and would lose their investment if their slots are withdrawn.

In addition, some airport infrastructure (gates, ticket counters, etc.) is controlled by one or more airlines or private entity at particular airports. If reallocation of operating rights is achieved through imposition of a pricing mechanism, there is no clear mechanism to ensure access of the “winning” air carrier to airport facilities controlled by the “loser.” Also, there is no clear mechanism to ensure that the “loser” is compensated for use of such facilities. Additionally, other air carriers may have operations granted but no leasehold. The prospect of such forced reallocations could have a significant dampening effect on air carrier incentives to make or support such investments in the future.

It was also raised in Working Group 2 that many airlines have paid for some slots by acquiring them on the secondary market or by acquiring another airline (or its assets). If they must reacquire them, whether by auction or congestion pricing, then they will have paid twice, with the prospect of having to pay for them again at some point in the future. However, this view is not held by all Working Group 2 members because the slots that were purchased at the New York area airports were subject to the High Density Rule. When that rule expired, all slots also expired.

- ***May deter incentive for airline investment*** – It was noted that airlines with a presence in New York, as well as others, recognize that the New York area is a congested market but they are still willing to invest to meet demand of travelers and shippers for domestic and international service. Congestion fees or auctions could chill the interest and/or wherewithal of airlines to continue to invest in equipment, facilities and personnel to meet consumer demand. Any public policy that had the effect, intended or not, of dampening demand in the region could undermine many of the economic benefits for the New York City area⁶.
- ***Cost to consumers*** – Auctions and congestion pricing could increase the monetary cost to travelers in the New York-metro area if, as is likely, airlines pass these market costs on to consumers. Congestion Pricing and auctions do not take in to account all four components to any congestion/delay proposals and assumes the consumers care most about delay. Only the market place can decide between competing effects to consumers of congestion, delay, airfares, and flight options. Therefore, the cost to consumers could include: (1) an increase in fares with no guarantee of delay reduction; (2) a loss of flights and service options; or (3) some combination of all of the above.
- ***Might eliminate incentive to increase capacity*** – There is concern among some members of Working Group 2 that implementing congestion pricing or auctions as the “fix” for delays will act as a disincentive to increase capacity and improve operational conditions. Further, local communities that are opposed to airport capacity expansion would argue that there is not a need to expand capacity, since the congestion problem has been solved.
- ***Potential Loss of Service to General Aviation (GA)*** – There is concern among some Working Group 2 members that implementing congestion pricing or auctions could limit GA access to the New York area airports.
- ***Potential Loss of Service to Small Communities*** – As the congestion price increases, service to small communities could decrease because there will be significant pressure on air carriers that lose slots to move slots currently used for small community service to larger, more lucrative markets. This would limit the opportunities of those in smaller communities to have reliable access

⁶http://www.panynj.gov/AboutthePortAuthority/PressCenter/PressReleases/PressRelease/Aviation_Economic_Impact.pdf

to the New York area and could also erode the hub structures formed at the New York area airports.

- ***“Economic Solution” might be laden with exemptions (e.g. small community carve-outs, GA etc)*** – Many Working Group 2 members have concerns that a congestion pricing or auction scenario would require so many exemptions to satisfy political imperatives that the underlying economic efficiencies could be reduced. The full range of potential exemptions cannot be anticipated. Such exemptions must be fully considered and undergo objective analysis for unintended consequences to operations or the competitive landscape prior to being granted. Since pricing scenarios are designed to reallocate flying from less to more “valuable” operations there was widespread agreement that service to/from small communities and general aviation service could suffer.

For example, service to small communities often does not support service on large aircraft, therefore without exemptions from congestion fees or auction prices, service to these communities may be reduced. DOT may also need to exempt a certain number of operations for general aviation and international operations. The more exemptions there are from the fees, the more expensive the remaining capacity will be because less of the scarce resource will be available. Many airlines believe that ultimately what this means is that the vast majority of air travelers will end up paying more to travel to, from or through New York without any commensurate benefit in operational efficiency or overall system performance.

- ***Economic Disruption*** – The uncertainty caused by congestion pricing and auctions to the service of air carriers in the New York area could cause economic damage to the airlines, Port Authority and industry. Both the airlines and the Port Authority have billions of dollars of debt and other financing tied to service levels and the disruption and uncertainty these methods could cause may mean economic disaster to the industry. Additionally, many air carriers have long term leases at the New York airports that have legal liability attached and congestion pricing and auctions could cause default on these leases and in the worst case, bankruptcy.
- ***Excessive cost and burden*** – Working Group 2 members also raised concerns that implementation of a congestion pricing or auction mechanism would entail substantial costs and burdens on the industry and the government. Depending on the details of the implementation, the mechanism could significantly impact current airline scheduling practices and require investment in significant new resources to manage the new mechanism. By contrast most air carriers are already familiar with the World Scheduling Guidelines (WSG) and have available technology and personnel to manage that system without significant additional investment. If an air carrier chooses to invest in a new management tool, there are many commercial tools available in the marketplace designed to manage slots under the WSG process.
- ***Business Model Selection*** – While the focus of Working Group 2 has been on the loss of small community service, mid-size markets also run the risk of service lost. Because communities such as Louisville, Columbus, and Pittsburgh demand high

frequency service, that service is provided on regional jets. Adding more seats in already crowded markets at the expense of smaller markets is not a solution to congestion and efficiency.

- ***Potential Unintended Route Consequences*** – If congestion pricing or auctions were implemented at an airport like JFK, it could eventually lead to a severe reduction in domestic operations. International operations generate more revenue and passengers than domestic operations and can afford to pay more per flight. This would benefit foreign flag air carriers, which operate hubs in their homeland and would not be impacted by a reduction of U.S. domestic feed.
- ***New entrant and Limited Incumbent Air Carrier Access*** – Some believe that market mechanisms could limit competition by effectively disenfranchising new entrants and limited incumbent air carriers, who often do not have the resources of the legacy air carriers to buy the slots necessary to remain viable and competitive.
- ***Lack of a reliever airport in New York region*** – Congestion pricing/auctions assumes that air carriers will alter their “behavior.” To the extent an air carrier cannot “afford” to fly to the airport, it will seek a reliever airport at which to offer service. Some believe that there are not viable reliever airports that air carriers can use and effectively serve the region because all three of the Port Authority airports are facing capacity constraints.

RESPONSES TO CONCERNS WITH USING MARKET-BASED MECHANISMS

To assist readers of this document to compare the potential pitfalls and benefits of using pricing to allocate airspace in the New York region, this section of the document highlights some of the benefits of pricing and then responds to the various arguments made in the section above in the same order they are made.

- ***Cost of Congestion*** – Working Group 2 members were concerned about the costs of congestion and the ability to address those costs in the short-term. While the FAA and the Port Authority have committed to accelerating improvements in the New York area, it is unlikely any additional capacity will significantly address congestion in the short-term. In fact, preliminary estimates indicate that even if all short-term improvements were made for JFK, delay times for 2008 would be double those of 2007 based on the additional flights planned. Pricing is being considered at New York area airports because those airports are extremely congested and there appears to be no short-term way to expand capacity to meet demand. Congestion is expensive. The New York City Comptroller has estimated that increased congestion costs travelers to New York City an additional \$187 million. Reducing congestion will produce system reliability and dramatic savings for consumers. Auctions or congestion pricing would control congestion and thereby address the costs of congestion.

- ***Addressing Scarcity*** – New York airports and airspace are scarce commodities. Scarcities can be addressed by having people wait in line (current approach), politically deciding who wins and who loses (slot controls), or pricing the scarcity and allowing the market to make allocations. While many Working Group 2 members raised a number of concerns about pricing, it is important to remember that other approaches to congestion (scarcity) have elements that raise concerns.
- ***Pricing Avoids Hazards of Congestion and Administrative Rule*** – Some Working Group 2 members noted that primary and secondary market pricing allows for greater flexibility in responding to market changes than administrative rules, such as the High Density Rule (HDR), because the government would not determine how 100% of the slots would be allocated (since the market would dictate which air carriers operate).
- ***Track record in aviation*** – Some members of Working Group 2 noted that congestion pricing has been used effectively in the United States. In fact, the Port Authority currently charges a nominal congestion fee. These fees were initially effective changing behavior by shifting much of the general aviation seeking to land at their airports other than the most congested airports.⁷

Working Group 2 agreed that the aviation industry was very complex and the dynamics at work are not exactly the same as other industries in which pricing has worked. However, some members of Working Group 2 did not agree that aviation was so unique that pricing was unworkable. It was noted that every private industry uses pricing as a mechanism to address demand. Even in aviation itself, ticket prices are adjusted based upon the supply of and demand for certain routes, with lower prices used to stimulate demand during specific times of the day.

- ***Government Tax*** – Working Group 2 discussed how the proceeds of pricing might be spent. The point was made that if they were deposited by the Port Authority or the FAA into a general revenue account, the proceeds would appear to be a tax. Concerns lessened if the proceeds were dedicated to expanding capacity and funding specific projects at the airports.
- ***Risk of Disruption*** – One of the tenets of the ARC was to avoid addressing congestion by a means that would be overly disruptive. Working Group 2 discussed that auctions, in an aviation context, could be less disruptive than congestion pricing because auctions have more stability in the quantity/assets being offered.
- ***Impact of Pricing on Business Models*** – Some Working Group 2 members expressed concern that pricing would favor or disfavor certain business models. Some members of Working Group 2 expressed concern that network air carriers would be able to spread the costs of pricing across more flights and as a result

⁷ One ARC member noted that there has been million of dollars of capital investment in the airport over the past decade and this may have been likely to influence GA as well.

point-to-point air carriers would be disadvantaged. Other members expressed concern that hubs air carriers would have to pay prices on more flights and that they would be disadvantaged. The point of pricing is to use the market to affect behavior and create a system in New York that is more efficient and has less congestion.

- ***International “banks” of operations cannot be changed in many circumstances*** – Working Group 2 members with international flights were concerned that pricing would be ineffective because those flights are so valuable that air carriers cannot afford to move them and are effectively a captive market. For this reason, non-international air carriers were concerned that they would not be able to afford a slot during peak times for international operations. Again, pricing will affect behavior and will change the market in New York to one that is more efficient. If there are policy concerns about domestic operations in such an environment, they can be addressed by other government actions. However, those actions would have their own impacts (*see Economic Solutions in the section “Concerns With Using Congestion Pricing or Auctions” on page 34 of this report*).
- ***US Bilateral and Multilateral Agreements*** – Working Group 2 members agreed that the adoption of any pricing needs to take into account international agreements. However, those actions would have their own impacts (*see Economic Solutions in the section “Concerns With Using Congestion Pricing or Auctions” on page 34 of this report*).
- ***Relationship between physical assets and slots*** – Working Group 2 members discussed the need to make sure that the rights to operate in the airspace were matched with the appropriate resources needed on the ground. If pricing is applied in New York, bidders will need to make arrangements for the appropriate surface infrastructure, just as they had to under non-auction schemes – including both the High Density Rule or the IATA allocation system. There were concerns that the amount of slots auctioned could make a difference.
- ***Relationship between pricing and prior investments*** – Many Working Group 2 members have made significant investments in the New York airports and concerns were raised that pricing would require them to pay twice to access the airports. It was suggested that any pricing mechanism include the ability to adequately compensate those air carriers who have invested in financing infrastructure and building networks.
- ***Incentive for airline investment*** – Working Group 2 discussed the lack of certainty pricing may create and the willingness of airlines to invest in airports. Pricing based on a limited life to the asset may change behavior in investment, but it will allow the market to determine what are the best investments. Pricing by the Port Authority could create a revenue stream that could be used for infrastructure investments, including projects that would avoid competitive issues of airlines having exclusive use of airport property. If done by the Federal Government, it could create a revenue stream that could help grow capacity, through faster

implementation of the Next Generation Air Transportation System. Some in the group are concerned that it raises additional complex issues.

- ***Cost to consumers*** – Many of Working Group 2 members expressed concern that pricing would increase costs to consumers. Some Working Group 2 members pointed out that pricing just makes the costs consumers already pay transparent and gives them the ability to avoid the higher costs by traveling during less congested periods. When scarcity exists, consumers pay higher costs. In the case of aviation, those costs are paid by in terms of wait times, higher fares due to slot controls, or as a result of pricing. Only the last option provides consumers the choice of avoiding higher prices.
- ***Eliminates incentive to increase capacity*** – Although FAA and the Port Authority have both agreed to focus on expanded capacity, some Working Group 2 members believe that implementing congestion pricing or auctions as the “fix” for delays will act as a disincentive to increase capacity and improve operational conditions. On the other hand, some Working Group 2 members noted that higher prices can also serve as an incentive to expand capacity since airlines will have a direct incentive to expand capacity so prices drop. It can be argued that the prospect of lower prices serve as a greater motivator than reduced wait times. If new capacity is priced, new capacity would be incentivized.
- ***Potential Loss of Service to Small Communities*** – Working Group 2 discussed small community service at some length. Some were concerned that pricing would drive less profitable but highly valued service from the airports. Others expressed concern that small community exemptions would distort the market and mitigate the policy benefits of pricing. One air carrier noted that congestion pricing or auctions may not reduce service for small communities if they have relatively high fares or the passenger flows contribute significantly to an airline’s larger network
- ***Excessive cost and burden*** – Some members of Working Group 2 considered including pricing as part of any World Scheduling Guideline regime that would be implemented in New York. Any pricing regime should be neither excessively costly or burdensome.
- ***Disruption, Business Model Selection and Potential Unintended Route Consequences*** – Some Working Group 2 members expressed concerns about the impact pricing will have on existing airline operations. Others noted that the inefficiency of current operations is one of the reasons to implement pricing. History has demonstrated repeatedly that market pricing will encourage innovation and drive efficiency.
- ***Lack of a reliever airport in New York region*** – The Port Authority has just purchased a lease for Stewart Airport for the express purpose of providing a reliever airport in the New York region. Pricing could help incentivize its use to help control congestion at the other New York airports.

POLICY ISSUES TO BE CONSIDERED WHEN USING AUCTIONS OR CONGESTION PRICING

Working Group 2 had several conversations regarding the policy implications of using auctions or congestion pricing. Many of these policy considerations are relevant to not only market clearing solutions, but also to administrative solutions. The primary issues for consideration are:

- ***New Entrant Air Carriers*** – In a slot-constrained environment new entrants and limited incumbents often have a difficult time obtaining slots to begin or expand service at the airport. On the other hand, some new entrant air carriers have successfully developed service over time at LaGuardia and JFK. In determining policies about new entrant air carriers, it is important that government policies are reevaluated regularly in light of evolving market and competitive realities.
 - It was pointed out that the Buy-Sell Rule had 5% of slots set aside, upon its establishment in 1985, for the purpose of providing new entrants and limited incumbents an initial base of slots to aid their entry in the market. When DOT granted 75 slot exemptions to JetBlue at JFK in 1999, it determined that exclusive reliance on the Buy-Sell Rule was not practical given the scope of proposed operations. In 1998, DOT granted America West 5 slots at O’Hare after the air carrier could not secure additional slots through the secondary market. And in 1997, DOT granted 21 slots to Frontier, ValuJet, and AirTran at LaGuardia, rejecting arguments from larger, incumbent air carriers that new entrants and limited incumbents should grow only through the Buy-Sell Rule.

Historically the government has not relied exclusively on secondary markets to preserve new entrant and limited incumbent access to slot controlled airports, citing concerns about barriers to competition.

- On the other hand, some air carriers assert that preferences for new entrants and limited incumbents in the HDR and associated legislation were enacted during a time when government policy was concerned with the ability of new entrant air carriers to compete effectively. However, the industry has experienced a dramatic change in structure that began in 2000 and is continuing. Today, the U.S. domestic airline industry is more competitive than at any time in history. Some Working Group 2 members submit that “hub fare premiums” which were a significant issue in the 1990s have been reduced. Low cost air carriers (LCC) now drive industry growth and fare levels. Network air carriers no longer dictate the terms of domestic competition. High levels of competition and the continuing evolution of the industry in favor of the LCC business model suggest that government intervention to assist new entrant and low cost air carriers may no longer be justified on the grounds of promoting competition.

- ***Small Community Service*** – As described in the section above, service to small communities is often on regional jets. A pricing scenario may make operations on such aircraft impractical (because the cost would only be spread among a few passengers). Therefore, service to these small cities may be at jeopardy. Under the High Density Rule Congress made carve-outs for service to small communities. Any solution for the New York area will likely need to consider whether provisions should be made for preserving service to small communities.
- ***International Operations*** – Some are concerned that if DOT requires them to pay congestion fees for slots in New York airports, but then exempts foreign flag air carriers from paying for slots (due to bilateral agreements/Chicago Convention), they will be competitively disadvantaged. On the other hand, foreign flag air carriers are concerned that slot auctions or congestion pricing schemes would violate U.S. bilateral and multilateral agreements.
- ***General Aviation*** – The ARC discussed the impact of general aviation on the New York airspace. While there was disagreement over the impact general aviation had on congestion, FAA data shows that nonscheduled, noncommercial operations are a very small percentage of the operations at JFK, LaGuardia, and Newark. In previous allocations at overscheduled or capacity constrained airports (O’Hare, JFK, LaGuardia, and Reagan National), a small number of slots has always been available to General Aviation. Some Working Group 2 members believe that nonscheduled, noncommercial operators must have access to all airports. Other members expressed concern that GA was an inefficient use of very scarce airspace, which has an effect on New York airports.
- ***Congestion Fee Revenues*** – Operators are concerned about where revenues from auctions or congestion pricing would go and how they would be used. If such policies were implemented, Working Group 2 members feel strongly that the revenue should be used for airport capacity expansion projects and aircraft equipment needed to realize the benefits of capacity-enhancing airspace management technology.
- ***Life of auction/congestion pricing slots*** – One of the issues involved in pricing is the term of the right granted the air carrier to use the airspace. Market-based concepts proposed in the ARC would only grant operating rights for a limited time. The LaGuardia NPRM proposed operating authorizations with a ten-year lifespan. Some members of Working Group 2 considered this to be overly disruptive and a radical departure from slot regulations internationally, which have always been based on the perpetual right to operate a flight so long as certain requirements (such as minimum usage) are consistently met. Other members of Working Group 2 considered limited terms to be an essential element in ensuring competitive access to airports.

- ***Auctions of New Capacity*** – Some Working Group 2 members wanted to make a clear distinction between auctions for allocating historic slots and “new” capacity. They noted that network interdependencies have not yet been formed on “new” slots and investments in airports and routes would be preserved if historic slots are not put up for auction. One clear advantage of this approach is that government would have an incentive to create capacity.

Other members commented that as additional capacity comes on-line and total hourly authorizations increase, restoration of historic rights should not come at the expense of low fare competition. Defining “new capacity” may become controversial since some incumbent airlines have reduced schedules at one or more New York area airport. Meanwhile, new entrant and limited incumbents believe they should be allowed to draw slots from the unallocated pool.

- ***Vibrant Secondary Markets*** – Working Group 2 spent a fair amount of time discussing secondary markets in an administrative context and whether they represent a better market-based measure for aviation. Several Working Group 2 members agree that London’s Heathrow Airport has just recently seen an effective secondary market and could serve as a model. The key features of that secondary market that they believe make it successful are (i) an open market for the trading of slots with no limits on consideration; (ii) daily publication of all slot holdings; (iii) consistency with the IATA WSG; (iv) facilitation by an independent entity, Airport Coordination Limited (ACL), subject to approval and monitoring by the UK Government; and (v) no exemptions exist.

Other members do not agree that the Heathrow secondary market has provided meaningful opportunities for participation by new air carriers because there has been very little new entrant competition at Heathrow, with only two of 21 new entrants over the past five years holding sufficient slots to operate at least two daily roundtrip flights.

- ***“Blind” vs. Transparent Auctions and Secondary Markets*** – Some Working Group 2 members argued that there should be a “blind” market and assert that a truly “blind” auction and billboard mechanism, similar to those under the final rule on congestion and delay reduction at O’Hare, are essential ingredients of a successful auction system. Such provisions are necessary to decrease the likelihood smaller air carriers will be shut out of the process, particularly where a smaller air carrier hopes to directly compete with the incumbent slot holder. Other members express concerns that blind markets do not work because they do not easily allow for non-cash compensation and air carriers will resist giving up a slot unless they have some understanding of how that will affect competition.
- ***Other Potential Limitations on the Market*** – If an auction or congestion pricing scheme were adopted where historic rights are not grandfathered, there could be an impact on the airlines’ investment at the airport(s), causing them to default and pose a burden on the Port Authority finances.

- ***There is not a “one size fits all” solution for the New York area Airports*** – Some Working Group 2 members have pointed out that the characteristics of JFK, LaGuardia and Newark are different and a solution for one airport may not be appropriate for another airport. For example, the Port Authority notes that there is a different need at different airports to protect small community service.
- ***Legal Issues*** – Some Working Group 2 participants question the authority of the DOT to implement market-based mechanisms without new, express statutory authority. The Air Transport Association submitted a legal analysis that concludes the DOT does not have the necessary authority⁸. Other members believe DOT has statutory authority to implement an auction, including the authority to collect and dispose of auction proceeds.

In addition, IATA and foreign airlines have taken the position that pricing schemes based on resource scarcity rather than actual costs of providing airport and/or air traffic services would contravene bilateral agreements and the Chicago Convention. These legal issues would need resolved before taking action.

⁸ Memorandum dated November 14, 2007, from Theodore B. Olson, Gibson, Dunn & Crutcher to David A. Berg, Air Transport Association.

INTRODUCTION

Working Group 3 of the New York Airspace Aviation Rulemaking Committee (ARC) was tasked with reviewing The Port Authority of New York and New Jersey's (Port Authority) gate management proposal for LaGuardia and also considered the LaGuardia Perimeter Rule, as well as a proposal submitted by U.S. Airways to eliminate or revise the Perimeter Rule. The group held an initial meeting and a number of telephone conferences, and reviewed draft documents distributed by email to try to achieve consensus. While the group did not arrive at a common, consensus view on the major issues, the discussion developed detailed information and a list of issues for future consideration of the two proposals. The group report summarizes that information and comments made by Working Group 3 members.

ISSUES REGARDING THE PORT AUTHORITY'S LAGUARDIA PROPOSED GATE LEASING POLICY

Background

LaGuardia runway capacity cannot accommodate the number of flight operations to meet demand without significant congestion, resulting in delayed and cancelled flights at LaGuardia and at airports within the national airspace system whose flights serve LaGuardia. However, LaGuardia, has the ability to accommodate additional capacity, if throughput is maximized. The geographic and physical constraints of LaGuardia preclude the construction of increased runway capacity. As distinguished from JFK, the physical layout of LaGuardia is limited, and additional capacity at the airport is only possible if throughput is maximized. The FAA, under its statutory authority to regulate the use of the navigable airspace of the United States (§ 40103(b) of Title 49, United States Code (49 U.S.C.)), has limited the number of flight operations at LaGuardia. The FAA capped operations and allocated slots to air carriers serving the airport pursuant to the High Density Rule (HDR). (See subparts K and S to part 93 of title 14, code of Federal Regulations (14 CFR).) The HDR defines a slot as the "operational authority to conduct one instrument flight reservation landing or take-off operation each day during a specific hour or 30 minute period" (14 CFR § 93.213). Congress terminated the HDR at LaGuardia, effective January 1, 2007 (49 U.S.C. § 41715(a)(2)).

In December 2006, by Final Order, the FAA adopted temporary caps on flight operations at LaGuardia (Operating Limitations at New York LaGuardia Airport; Notice of Order (71 FR 77854; September 27, 2006)). These caps were intended to avoid severe congestion-related delays that would occur without a regulatory limit on flight operations. The Order also sought to maintain the status quo of flight operations at the airport, permitting 75 scheduled and 6 unscheduled flight operations per hour between 6:00 a.m. and 9:59 p.m., Eastern Time, Monday through Friday, and from 12:00 noon through 9:59 p.m., Eastern Time, on Sundays. Under the Order, the FAA assigned an operating authorization (OA) to conduct a scheduled arrival or departure at LaGuardia to the air carrier holding the equivalent slot or slot exemption authority. The Order requires each

air carrier to use its OA at least 80 percent of the time over a two-month period or the OA will be subject to withdrawal by the FAA. Further, the Order empowers the FAA to reallocate withdrawn, surrendered, or unassigned OAs by lottery.

On August 29, 2006, the FAA also proposed to retain limits on flight operations at LaGuardia, encourage service to LaGuardia using larger aircraft, and develop a system of temporary OAs to facilitate competition and provide a foundation for a possible eventual market-based approach to OA allocation (Notice No. 06-13, Congestion Management Rule for LaGuardia Airport; Notice of Proposed Rulemaking (71 FR 51360)). The FAA has not yet issued a final rule.

Port Authority of New York and New Jersey's Proposed Gate Leasing Policy

The Port Authority operates the three major commercial airports serving the New York City area, including LaGuardia. The Port Authority proposes a system under which the FAA would retain the cap of 75 scheduled hourly operations at LaGuardia, and the Port Authority would allocate the 75 scheduled hourly operations to air terminal gates. The Port Authority believes it could match optimal aircraft size to gate positions by monitoring gate usage and reallocating a percentage of gate reservations. Under its proposal, the Port Authority would allocate the operations through a system of gate reservations, assigning one gate reservation per hour at each of its 75 gate positions at LaGuardia. The Port Authority indicates that its gates are not uniform — meaning some gates may not accommodate larger aircraft and many of its terminals have gates and associated landside infrastructure of significantly different capacities. The Port Authority calls its proposal a “right-sizing” proposal in which aircraft are matched to gates and associated infrastructure.

Under its proposal, the Port Authority would reallocate gate reservations annually, using three different methods: (1) use it or lose it; (2) aircraft seat size; and (3) reallocation to promote competition. The use it or lose it policy would require that each gate reservation be used at least 90 percent of the time during a three month period, subject to recapture by the Port Authority. The aircraft seat size requirement would have the Port Authority, in consultation with the Gate Management Advisory Committee (composed of Port Authority officials and signatory airlines), establish a target activity level that is 80 percent of the average maximum number of seats per passenger aircraft for each gate position category, and would recapture gate reservations that were used below that target activity level. Under the annual reallocation policy, the Port Authority anticipates that it would recapture 3 percent of the gate reservations every three years (if not already reallocated as a result of methods 1 and 2 above) to be reallocated to the air carrier(s) proposing to use the largest aircraft in terms of seats, and in the event two or more interested air carriers propose the same size aircraft, preference would be given to a limited incumbent.

The Port Authority states that its proposal is not designed to enhance revenues. The Port Authority intends to negotiate the new gate leases as the existing leases come due.

The Port Authority also proposes 8.5 gate positions, amounting to 136 gate reservations, to be set aside for small community service subject to use it or lose it and to a target activity level of 40 seats. The Port Authority states that its proposal is evolving and that it would conform to the Department of Transportation's small community service objectives. In the past, the FAA has set the parameters for required small community service, and the Port Authority's proposal contemplates that the FAA would select the communities that would receive the small community service.

For purposes of the aircraft seat size and target activity level requirements, the Port Authority proposes three categories of average aircraft maximum seat size:

1. Category II aircraft (70 seats),
2. Category III aircraft (120 seats), and
3. Category IV aircraft (200 seats).

Category IV aircraft would be required at 21 gate positions (2 in CTB-A/B, 6 in CTB-C/D, 8 in East End Terminal, and 5 in Delta Terminal 3). Category III aircraft would be required at 39 gate positions (10 in CTB-A/B, 7 in CTB-C/D, 4 in Marine Air Terminal, 5 in East End Terminal, 8 in US Airways Shuttle, and 5 in Delta Terminal 3).

Category II aircraft would be required at 15 Gate Positions (2 in CTB-A/B, 9 in CTB-C/D, 2 in East End Terminal, and 2 in Delta Terminal 3).

On May 15, 2007, the FAA chief counsel, by letter, informed the Port Authority's director of the aviation department that the FAA has not acquiesced in the Port Authority's approach regarding gate utilization at LaGuardia and that the aviation industry should be aware that the Port Authority had not coordinated the gate leasing policy with either the FAA or the Office of the Secretary of the Department of Transportation. The letter went on to advise that the FAA would review the merits of the Port Authority's proposal to determine whether any legal obstacles, including but not limited to federal preemption, would preclude or require modification of the draft gate leasing policy.

The Port Authority states that its proposal was never intended to be anything beyond the starting point for a traditional airport operator-airline negotiation, and as such it was never contemplated that the proposal required federal review.

Member Comments in Response to the Port Authority's Proposed Gate Leasing Policy

Two air carrier associations and one air carrier oppose the Port Authority's proposed gate leasing policy.

One of the air carrier associations believes that there are a number of problems with the Port Authority's proposal, including violations of federal preemption, the Airline Deregulation Act, federal non-discrimination requirements, and federal rates and changes principles. Some of its member airlines are concerned that the financial results of the proposed gate leasing policy will be more costly to them than the current gate leases. It

also questions whether the Port Authority will assess on the airline lessee an additional valuation on the gate reservation itself, on top of the normal rates and charges assessed by the Port Authority. The association members question whether the Port Authority is actually regulating the airport, selling “slots” (under the name of gate reservations), and incorporating this value into the lease rate. They are also concerned with the potential ramifications of other airports adopting this type of gate leasing policy.

Some of the association’s member airlines also question whether the proposed gate leasing policy will truly be negotiated or just categorically imposed on the airlines. They are concerned about consequences of not agreeing to the new lease terms or the ability of their fleet to fit the assigned gate. The association questions whether the New York ARC is the appropriate forum to discuss gate leasing terms.

This air carrier association points out what it perceives to be major legal obstacles to a system they say transfers excessive powers to the Port Authority. It asserts that the proposed gate leasing policy—

- Functions as an airspace management system, which would be preempted by the FAA’s sole and exclusive authority over navigable airspace under 49 U.S.C. § 40103(b).
- Regulates routes and services, contrary to the preemption provision of the Airline Deregulation Act of 1978 (49 U.S.C. § 41713(b)(1)).
- Involves the Port Authority in airline scheduling decisions.
- Potentially generates excessive fees for the Port Authority (because of the bundling of the operating authorizations and gates), which the Port Authority could divert to non-airport uses to the detriment of the airlines. (The Port Authority is grandfathered from compliance with certain revenue use requirements under 49 U.S.C. § 47107(b)(2).)
- Potentially charges airlines for airspace use, thereby taxing airlines twice.
- Unjustly discriminates among air carriers by requiring different conditions of gate usage for the same class of air carriers that gives an advantage to air carriers operating at gates accommodating larger aircraft and discounts individual air carrier fleet mix, scheduling and flight crew issues, and other operational and financial considerations. (Reasonable, not unjustly discriminatory access to gates is required by 49 U.S.C. § 47107(a) and grant assurance No. 22.)
- Is onerous and arbitrary.
- Unjustly discriminates in favor of limited incumbents by recapturing 3 percent of gate reservations for reallocation to limited incumbents.

- Unjustly discriminates in favor of airlines providing service to small communities by exempting small community service from gate recapture provisions.
- Makes the Port Authority the de facto lessor of both gates and slots, raising the significant potential of a major revenue windfall for the Port Authority, which is exempt from diversion of revenue to off-airport projects.
- Lacks a safety need on the part of the Port Authority.
- Violates the Airline Deregulation Act because the commercial decision that the Port Authority seeks relates to airline prices and services.
- Is a pretext for dictating service and markets.
- Lacks an analysis of whether upgauging would increase the efficient use of air traffic capacity or terminal facilities.
- Lacks an acknowledgement that policy may not apply to some gates that are related to unit terminal facilities whose leases may not expire soon or are dependent on underlying bond issues.
- Unreasonably burdens air carriers by requiring desired levels of operation rather than negotiated levels based on actual operations.
- Lacks provisions for airline concurrence.

This association also states that there is no statutory authority that grants the Port Authority the right to impose its proposed gate leasing policy. It recommends that any consideration of the gate leasing proposal revoke the Port Authority's revenue diversion exemption and require the Port Authority to charge no more than fair and reasonable rates.

The other association opposing the Port Authority's proposed gate leasing policy, an association of regional air carriers, states that it believes the marketplace currently right-sizes the aircraft at LaGuardia. It further states that the airlines design their operations to fit the market, not the gates. This association asserts that the Port Authority should not substitute its approach for marketplace regulation because—

- The existing FAA rules for LaGuardia were implemented to manage airspace constraints. The gate leasing proposal does not address the original justification for the current operating constraints at LaGuardia.
- By forcing the use of types of equipment, there is a strong potential that service to many existing communities will be jeopardized.

- It should not be taken as a given that upgauging offers a public benefit. To the extent it results in fewer flights or substitution of long-haul flights for short-haul, it will reduce or eliminate service to some communities, large and small. It also presupposes that upgauging will reduce delays and congestion.

The air carrier that opposes the Port Authority's proposal claims that it—

- Regulates competition at LaGuardia under the guise of a legitimate function — congestion management for the FAA and facilities management for the Port Authority.
- Imposes a central planning mechanism to replace the free market.
- Imposes an unnecessarily complex and unworkable regulatory and operational regime on the industry.

This air carrier also states that neither the FAA nor the Port Authority have authority from Congress to supplant competitive market forces. It provides an extensive analysis showing that competition is thriving at LaGuardia and there is no economic need for the Port Authority's proposal.

This entire comment is provided in Appendix E to this report.

A different air carrier and air carrier association support the Port Authority's proposed gate leasing policy. The supporting air carrier states that it disagrees with much of the opposing air carrier association's legal analysis and criticism of the Port Authority's proposal. This air carrier states that it is common airport practice for the airport to exert control over gate usage and allocation and that the Port Authority proposal is not unusual.

This air carrier also stated:

- It believes the proposal is consistent with the goals of the New York ARC in terms of addressing congestion as well as promoting competition and improved utilization of scarce resources.
- The Port Authority proposal shares the same objectives as theoretical congestion pricing models, i.e. better utilization of scarce resources, though this proposal has basis in actual experience of multiple U.S. airports, large and small, where common-use requirements are applied to gates and other facilities in order to maximize efficiency, competition and consumer benefit.
- Congestion is both an airside and landside issue and must be considered together. The Port Authority proposal intends to link the two and create efficiencies that are entirely consistent with the FAA established limits on airspace operations.

The other air carrier association that supports the Port Authority's proposal states that it feels that the opposing air carrier association's response disregards the many benefits of the proposal. Furthermore, it believes that the FAA has the authority under 49 U.S.C. § 40103(b) to create specific regulations that would mandate certain usage requirements or to grant the Port Authority the power to manage flight activity at LaGuardia.

Pros and Cons of the Port Authority's Proposed Gate Leasing Policy

After discussing the Port Authority's proposed gate leasing policy, Working Group 3 compiled a list of pros and cons related to the proposed policy. The following list of pros and cons reflect comments offered by Working Group 3 members and, in some cases, the views of the Office of the Secretary of Transportation (OST) staff.

Pros

- Potentially enhances efficient utilization of gates;
- Potentially maximizes passenger throughput and promotes upgauging;
- Could be implemented in a manner transparent to airlines serving the airport;
- Potentially facilitates opportunities for competition, and contains provisions designed to accommodate new entrants;
- Avoids additional congestion and delays by adhering to the Federal cap on flight operations;
- Attempts to support utilization measures consistent with market demand.
- Designed to reflect airline investment in facilities.
- Allocation changes would be evolutionary, and should be minimally disruptive to airline schedules.

Cons

(Note: some 'cons' assume the gate allocation mechanism would replace federal allocation of operating rights rather than be used as a complementary overlay on a federal allocation.)

- Potentially replaces federal allocation procedures, which would be subject to public notice and comment, with local allocation;
- Potentially replaces individual airline marketplace decisions on optimal seat size at LaGuardia with committee recommendations;
- May adversely impact airline business opportunities and airline schedules out of LaGuardia;

- May not align local political considerations with federal policies and requirements with respect to interstate air transportation;
- Potential feasibility depends on termination or amendment of existing leases;
- May depend on an operating authorization hourly cap matching the number of LaGuardia gate and hardstand positions.
- If imposed by ordinance rather than negotiation, may raise issues of consistency with federal statutes relating to preemption, airline deregulation, and AIP grant assurances.
- Methodology for pricing of gate access is unclear.
- Could adversely impact existing airline investment in facilities.

ISSUES REGARDING THE LAGUARDIA PERIMETER RULE

Background

The Port Authority operates the three major commercial airports serving the New York City area: JFK, Newark, and LaGuardia. Under Port Authority stewardship, these airports have been operated as a unified system. Since the 1950s, the Port Authority has had a perimeter rule in effect at LaGuardia, the smallest of the three airports. Until 1984, the Perimeter Rule was informal and prohibited non-stop flights into or out of LaGuardia to or from points more than 2,000 miles from the airport. In 1984, following a study, the Port Authority instituted a formal 1,500-mile Perimeter Rule but grandfathered service to Denver, which is more than 1,600 miles from LaGuardia (and allows unrestricted beyond-perimeter flying on Saturday). In the past, the Port Authority has stated that it “believes that business travelers create considerably less airport congestion than vacationers” and instituted the Perimeter Rule “to encourage the use of LaGuardia by business people, who often make relatively short trips, and the use of Newark and Kennedy for vacation flights.”⁹

The perimeter rule is a local regulation adopted under the Port Authority’s proprietary authority, and has been upheld by the U.S. court of appeals. The Port Authority has no current plan to eliminate or revise the LaGuardia Perimeter Rule.

⁹ Delta Air Lines, Inc. v. Port Authority of New York and New Jersey, No. 87–333, U.S. Supreme Court, October 1987.

The Relationship Between the Perimeter Rule and Congestion Management

Because it is not clear whether any change to the Perimeter Rule would help to eliminate congestion at LaGuardia, most of the Working Group 3 participants have questioned the relevance of discussing the Perimeter Rule in an ARC focused on relieving congestion in the New York area airports in general, and at JFK in particular. However, the DOT noted the following reasons for including the Perimeter Rule in a congestion forum:

- A discussion of the Perimeter Rule is important if the ARC is to take a holistic approach to congestion in the New York region. Several ARC participants have argued that the region is like a balloon — when pressure is applied in one half, the other half expands.
- Eliminating or easing the Perimeter Rule could encourage upgauging, with the potential to increase passenger throughput without increasing operations. This in turn would result in more efficient utilization of a scarce resource.
- The Perimeter Rule inhibits airlines of all types serving more than one New York airport from optimizing their services to the New York region. This effect could be further exacerbated by either scheduling caps or other measures designed to reduce congestion in the New York region. For example, if schedule reductions (or other congestion management tools) are implemented at JFK, air carriers may not be able to adjust their services to the New York region as effectively as they could have in the absence of the Perimeter Rule because the Perimeter Rule limits the changes they can make to their service patterns.

The DOT would not support any change to the Perimeter Rule that would have an adverse effect on congestion at LaGuardia. The DOT would consider any and all operational effects of a proposed change to the Perimeter Rule, and any change considered would be structured to avoid adverse effects.

Consideration of the Elimination or Easing of the LaGuardia Perimeter Rule

Working Group 3 was tasked generally by the DOT with considering the idea of eliminating or revising the LaGuardia Perimeter Rule. The Port Authority participated on Working Group 3, but noted its position that the New York ARC was not an appropriate forum to discuss the Perimeter Rule. Working Group 3 also discussed a specific plan for revising the rule that U.S. Airways presented.

Working Group 3 Comments

Two air carriers and an air carrier association also oppose discussing the LaGuardia Perimeter Rule in the context of this ARC.

One of the air carriers states that the Perimeter Rule is neither the cause of, nor the solution to, the delays plaguing New York area airspace, and further states that before the HDR was repealed, the Perimeter Rule's existence did not result in unacceptable levels of congestion in New York. It attributes the recent decline in dependability at all three major New York airports to unfettered expansion at JFK after the HDR's slot restrictions

were eliminated. Therefore, this air carrier believes that it makes no sense to look to LaGuardia's Perimeter Rule to solve a problem caused by another source at another airport. The air carrier provided a set of graphs showing the change in flight operations at the New York area airports from 2004 to 2007, which are provided in Appendix E to this report.

This air carrier also states that some participants in the ARC have argued that the Perimeter Rule is relevant to the ARC because beyond-perimeter service would be operated with larger aircraft, thus increasing the average number of seats flown by aircraft operating at LaGuardia. The air carrier agrees that the average aircraft size at LaGuardia is partially a function of the nature of the markets served. However, it states that another cause for the decline in the number of seats per departure at LaGuardia is the recent growth of total seats at JFK, and believes that if schedule reductions at JFK are imposed, and slot controls reimposed on JFK, a natural byproduct will be increased aircraft size at LaGuardia. The air carrier recommends that the ARC focus on time-tested solutions to congestion, such as the IATA Worldwide Scheduling Guidelines, rather than what it believes to be complex and speculative proposals that are made for certain air carriers' competitive advantage.

Another air carrier states that it does not support changing the Perimeter Rule and believes that further consideration of the issue should be undertaken only if the proposed change can be shown to reduce the unacceptable level of delays that airline operations and customers experience at LaGuardia. In support of its position, this air carrier states the following:

- The FAA and Port Authority have stated that elimination of the Perimeter Rule would decrease the number of flights that could be operated at LaGuardia because long haul B-737 and A320 aircraft require special obstacle clearances, and increased B-757 operations would require enhanced separation standards.
- With LaGuardia currently experiencing significant delays, lifting the Perimeter Rule would make the situation worse.
- Beyond-perimeter flights would have to be funded from existing within-perimeter service, which suggests that those in favor of eliminating the rule admit that at least a portion of their current services are dispensable;
- Air carriers with surplus slots should not be given new ways to utilize them when the airport remains seriously delayed and when demand for within-perimeter services exceeds supply;
- If there currently are superfluous flights at LaGuardia, the FAA and DOT should identify them and decide whether the public interest would be better served by reallocating those slots to other air carriers or consolidating existing services on larger aircraft so the traveling public can enjoy meaningful delay reduction;

- Potential beyond-perimeter air carriers have multiple within-perimeter hubs that could access beyond-perimeter markets;
- The Perimeter Rule is the Port Authority's local rule, which was successfully defended against judicial challenge.

The opposing air carrier association believes that any proposals related to the Perimeter Rule should not be a part of the ARC. However, it states that if the Perimeter Rule is to be considered, it opposes the elimination of the Perimeter Rule for the following reasons:

- Eliminating the Perimeter Rule would not reduce congestion and delay, which is the goal of the ARC;
- Any actions taken must promote, rather than limit competition, and eliminating the Perimeter Rule would allow legacy air carriers to further dominate LaGuardia;
- Some air carriers state that eliminating the Perimeter Rule would allow them to fly larger aircraft at LaGuardia. However, those air carriers could fly larger aircraft now. Approximately 50 percent of existing operations at LaGuardia are operated by regional jets and many are to medium and large markets;
- Eliminating the Perimeter Rule would inhibit competition as it would only benefit a few air carriers;
- The ARC should focus first on addressing delay and congestion, and then on taking steps to enhance competition at LaGuardia (withdrawing and redistributing slots), before it considers Perimeter Rule actions.

A third air carrier that was not a member of Working Group 3 also opposes the ARC even looking into and exploring the merits of the LaGuardia Perimeter Rule, stating that it is something wholly separate from the stated mission of the ARC. This air carrier further states that the Perimeter Rule should be maintained and not repealed in whole or in part at LaGuardia until the numerous slot-holding air carriers are able to endure some competition. In addition, this air carrier states that it has been unable to obtain any slots at LaGuardia on the free market, and as the largest air carrier at JFK, it finds it disturbing that it cannot operate more than eight daily roundtrip flights at LaGuardia.

A different air carrier disagrees with the others and believes that a discussion of the Perimeter Rule should be part of the ARC because it addresses congestion management. This air carrier believes that repealing the Perimeter Rule will enhance competition at LaGuardia and throughout the New York region. This air carrier also responded specifically to comments made by the other air carriers and the air carrier association.

In response to the comment regarding the use of larger aircraft and increased separation standards, this air carrier states that certain aircraft types smaller than the B-757 should have no problem operating from LaGuardia to points beyond the Perimeter Rule in regards to obstacle clearance. [Note: FAA ATC staff indicated that some models of

smaller aircraft sometimes do require use of the nonstandard runway at certain loads and stage lengths, although this is the exception]. This air carrier further states that this is not a Perimeter Rule issue because airlines currently schedule aircraft types that have problems clearing certain obstacles requiring a non-standard operation at the airport today. It believes that changes to the Perimeter Rule could be structured to ensure that new operations are performed by capable aircraft only so that nonstandard operations do not increase over current levels. It also states that these smaller aircraft have no increased separation requirements so they would not be the cause of more congestion on the field and, when combined with the proposed requirement to use 2 slots (Alternate Perimeter Rule Proposal discussed below), could measurably reduce congestion on the field.

In response to the comment regarding funding of beyond-perimeter flights from existing within-perimeter service, this air carrier states that air carriers should not have artificial restrictions on their ability to operate to any point because such restrictions reduce airline management's ability to maximize utilization and efficiency. It further states that proposed capacity restraints at JFK make a change to the Perimeter Rule all the more imperative for airlines and consumers in 2008.

In response to the comment that air carriers with surplus slots should not be given new ways to utilize them while demand for within-perimeter services exceeds supply, this air carrier states that the ARC is about congestion management, including maximizing throughput, and not about adding new flights and further states that the Alternate Perimeter Rule Proposal (discussed below) maximizes potential throughput of passengers at the airport.

In response to the comment that potential beyond-perimeter air carriers have multiple within-perimeter hubs that can access beyond-perimeter markets, this air carrier states that not all air carriers can serve all points in their network from within-perimeter hubs because some air carriers have no hubs within the perimeter and other air carriers cannot link their international gateways on the West Coast with LaGuardia.

In response to the comment that the Perimeter Rule has been successfully defended against judicial challenge, this air carrier notes that even the Port Authority has acknowledged that the foundation upon which the Perimeter Rule was upheld has been eroded by changed circumstances.

In response to the comment that air carriers currently could fly larger aircraft at LaGuardia, this air carrier states that airline business models are not one-size-fits-all and merely stating that an airline could upgauge today ignores fundamental airline operating reality.

In response to the comment that eliminating the perimeter rule would inhibit competition as it would only benefit a few air carriers, this air carrier states that the repeal of the Wright Amendment was done even though it benefited only a few air carriers.

In response to the comment that the ARC should focus first on addressing delay and congestion, and then on taking steps to enhance competition at LaGuardia (withdrawing and redistributing slots), before it considers Perimeter Rule actions, this air carrier states that Alternate Perimeter Rule Proposal (discussed below) focuses on congestion and is also competition enhancing.

FAA Comments

The FAA's air traffic technical representative stated that there were a number of significant factors that would need to be considered with regard to operations and fleet mix, in order to determine the effect of a revision of the Perimeter Rule on airport delays, positive or negative. The rule itself has no effect on ATC, but use of certain aircraft for longer flights can require the need to use the non-standard runway for the traffic configuration in use. In some configurations, a departure on the non-standard runway can substantially delay other operations. With the preliminary information available, the FAA could not estimate whether there would be an increase in the number of aircraft requiring non-standard runway departures.

Pros and Cons of Eliminating or Easing the LaGuardia Perimeter Rule

The following list of pros and cons reflect comments offered by various Working Group 3 members and in some cases the views of OST staff, but do not represent the consensus of the group. Individual members have commented further on pros and cons in their separate comments below.

Pros

- Potentially increases the passenger throughput of the airport without increasing the number of aircraft operations by—
 - Maximizing utilization of a severely constrained public facility that is in high demand;
 - Increasing revenue for the airport because of the increased number of passengers;
 - Promoting upgauging so passenger growth does not remain stagnant.
- May reduce some demand for flights at JFK and/or EWR because some new route additions at LaGuardia may replace existing services at JFK or EWR;
- May produce a less constrained market by removing a regulatory barrier;
- For some air carriers, could ease the economic burden resulting from the current rule, which limits the choice of the markets that air carriers can serve;

- May align the policy goals of several government entities, which are not aligned under the current rule, including the following (OST comments):
 - The DOT/FAA NPRM on LaGuardia congestion initially favored upgauging to increase throughput, better matching demand with capacity, with a true market-based solution versus the current administrative regulation;
 - The Port Authority has completed an analysis on the infrastructure at LaGuardia and stated publicly that the facility can handle several million additional passengers per year;
 - Since 2000, other perimeter rules have been eased. For example, Congress has exempted 20 flights at DCA to beyond-perimeter cities and may include additional ones in the current reauthorization bill. In 2006, Congress and the local Dallas/Ft. Worth Metroplex officials agreed on the phasing out of restrictions at Dallas Love Field over the next several years.
- Potentially benefits consumers in the form of new and expanded air services from LaGuardia, and with competition with existing service offered at JFK and Newark.

Cons

- Could require increased separation requirements in some instances if there are no restrictions on the types of aircraft allowed to fly beyond the perimeter;
- Could reduce the number of flights that can be operated at LaGuardia;
- Could reduce service to some communities within the perimeter;
- Would duplicate service to well-served long-haul markets already offered at JFK and Newark (note that competition with service at JFK and Newark is listed as both a pro and a con);
- May require consideration of political issues, including concerns of smaller communities about loss of or reduction in flights from LaGuardia, particularly to and from upstate New York.
- May not increase competition, because easing or eliminating the Perimeter Rule could benefit some airlines more than others. Also, the availability of new markets, with no increase in airport capacity, does not address new entrant and limited incumbent air carrier access issues.

- Modifying the perimeter rule as discussed could negatively impact competition because only a few air carriers are in a position to operate to the West coast. One air carrier could add dozens of flights anywhere in the country, while most other air carriers could not add any flights outside the perimeter. Allowing one or two air carriers to add flights to anywhere in the country without first allowing limited incumbents to expand would take connecting traffic away from those air carriers that can do nothing to respond.
- No other perimeter rule has been modified as proposed by US Airways.
- Giving only one or two slots to a limited incumbent is not enough to promote competition.

U.S. Airways Alternate Perimeter Rule Proposal

As an alternative to simply eliminating the Perimeter Rule, U.S. Airways had approached the Port Authority with a proposal to revise the Perimeter Rule to allow flights beyond the perimeter. In furtherance of the discussion of the issue, U.S. Airways presented a version of its proposal to the group for consideration. It believes that its proposal addresses many of the concerns expressed by Working Group 3 members regarding the Perimeter Rule.

U.S. Airways presented a plan that would create exemptions to the LaGuardia Perimeter Rule, and represented that the proposed plan contained measures to—

- Allow all incumbent airlines the ability to participate;
- Address the issues of non-standard departures and separation issues by certain aircraft (although this would more likely need to be addressed by the FAA);
- Mitigate the effect on current nonstop service to small markets.

According to U.S. Airways, specifically, this alternate perimeter rule proposal would—

- Allow the use of two slots for each flight operated to/from a beyond-perimeter point with aircraft that weigh less than the B-757 (new entrants exempt);
- Allow the use of two and one-half (2.5) slots for each flight operated to/from a beyond-perimeter point for B-757s for separation issues (no wide-body aircraft permitted);
- Cap the number of beyond-perimeter flights allowed to protect small community service (new entrants exemption);
- Require air carriers flying beyond the perimeter to maintain nonstop service to all small- and non-hub markets that had service in 2007 for a minimum of 24 months;

- Require air carriers flying beyond the perimeter to provide existing service to large hubs with aircraft that average at least 90 seats and service to medium hubs with aircraft that average at least 70 seats (effective at 18 months from program start);
- Have no seat size requirement for flights to small- and non-hub markets.

U.S. Airways states that this alternative proposal would have the following benefits:

- Creates an estimated 10 to 12 percent reduction in departures – 130 fewer operations per day or approximately 10 fewer operation per hour during peak hours;
- Increases the average seats per departure by about 15 percent;
- Is available for all airlines;
- Increases passenger throughput for a more efficient use of the airport;
- Benefits the passengers with new nonstop destinations with less congestion;
- Small- and non-hub market service is guaranteed and enhanced with larger aircraft.

Member Comments in Response to the Alternate Perimeter Rule Proposal

Two air carriers responded to the Alternate Perimeter Rule Proposal. One air carrier notes that the proposal attempts to mitigate the adverse delay impacts of beyond-perimeter operations by requiring a reduction factor of 2.5 for 1 for 757 aircraft and 2 for 1 for other narrow-body aircraft. However, this air carrier is not sure whether this proposed reduction ratio would be sufficient to achieve a delay reduction benefit. Accordingly, it does not support this proposal without seeing modeling that shows delay reduction.

Another air carrier notes that while this proposed change to the Perimeter Rule would reduce the number of operations at LaGuardia, it is unclear whether it would have any meaningful impact on delays or congestion at New York airports. This air carrier reiterates that the Perimeter Rule is not the cause of the New York area airport delays, and further states that implementation of the alternate proposal could lead to an elimination of up to 10 operations per hour, which would result in a profound change in the nature of service offered at LaGuardia. It estimates that 10 existing operations per hour would be eliminated, while another 7 to 10 operations would be shifted to beyond-perimeter destinations, thereby potentially cancelling one-quarter of existing service to communities within the perimeter at LaGuardia. This air carrier states that whether such a change in the service at LaGuardia would be good or bad for the marketplace can be debated, but such a debate has no place within the context of an ARC that should be focused on delay reduction.

An air carrier association noted that it would not oppose an AIR-21-type approach to allow a limited number of beyond-perimeter flights at LaGuardia that would be distributed by the DOT without regard to who holds the most slots, because this would give all air carriers options to add service and would allow smaller air carriers to put some flights in place.

One other air carrier would not necessarily oppose a modification of the Perimeter Rule if analysis of the alternate proposal showed that it would reduce or at least not add to congestion. However, the proposal should be modified to provide that any air carrier participating in beyond perimeter flying would be required to trade 2 slots for one beyond perimeter operation as well a slot that would go into a lottery for New Entrant/Limited Incumbent air carriers or Incumbent air carriers not operating beyond the perimeter flights, with a requirement that the slots be utilized by aircraft larger than the current market average for LaGuardia (overall seats per departure) at the time of the lottery. The air carrier states that this secondary lottery would promote competition and improve the utilization of limited LaGuardia slots and facilities, would increase passenger throughput at the airport, and be beneficial to consumers.

The Port Authority states that it has been and continues to be open and willing to review technical data that would aid in a thoughtful discussion of the LaGuardia Perimeter Rule. However, the Port Authority states that the alternate proposal, as presented to the ARC, lacks a comprehensive technical analysis to substantiate its provisions and its effects on congestion, delays, and airport throughput. Accordingly, the Port Authority takes the position that the pros identified in this section have not been substantiated by adequate technical or economic analysis. The Port Authority also believes that the alternate proposal, rather than increase throughput, could decrease throughput at the airport because of the acknowledged requirement of increased separation of certain larger aircraft.

WORKING GROUP 4 — PRIORITY AIR TRAFFIC PREFERENCES

BACKGROUND

The first-come, first-serve principle of ATC priority has a long history. It does not lead to any conflicts when there is enough capacity for everyone. The principle is transparent and simple. However, when demand exceeds capacity and excess delay results as in New York in the summer of 2007, it may not lead to the most efficient public policy outcome in terms of airport or airspace utilization or overall passenger delay. Working Group 4 was assigned the task of reevaluating the practices by which we allocate and assign priority in the management of air traffic to see if different priorities could lead to more efficient outcomes that reduce passenger delay.

In recognition of this reality, the FAA and stakeholders have already taken some steps to ensure the best use of scarce airspace resources during periods of reduced capacity caused by weather or other factor(s). For instance, in collaborative decision making (CDM) used during ground delay programs (GDP) and airspace flow programs (AFP), FAA's command center rations clearances to airlines based on their prior published schedules and will not necessarily strictly adhere to first-come, first-serve principles. The airlines choose which of their flights will operate at what time within the reduced schedule. There is also limited trading between airlines in a slot credit substitution program. (Note: The "slots" created under a GDP or AFP are separate and distinct from High Density Rule slots.)

In March 2004, representatives from the Department of Transportation, the Federal Aviation Administration, airlines, business and general aviation met in a three day conference known as "Growth without Gridlock". The purpose of the conference was to develop practical solutions to ease delays. Most of the recommended solutions have been implemented and are now part of everyday operations. However, there were some potential solutions identified which have not yet been fully implemented. Specifically, participants in the conference agreed that "first-come, first-served" should be modified when necessary to improve overall capacity utilization during times of congestion. More advanced operating concepts such as express lanes and virtual thunderstorms were tested but never fully implemented. There were practical obstacles to their implementation, and focus and priority were given to implementing the items with immediate payoff¹⁰.

¹⁰ Apparently both items – express lanes and virtual thunderstorms – were experimented with during the summer of 2004. One issue cited with the express lane concept was "on-off ramps" – in other words, how to merge traffic into and out of the priority streams. Another issue cited with both programs was the duration – it was relatively easy to start the program and much harder to stop it. Operators disadvantaged by the programs felt the programs continued longer than necessary giving them more delay.

WORKING GROUP 4 DISCUSSION

The group discussed a number of issues and experiences associated with air traffic priorities, including the experiences with collaborative decision making, growth without gridlock, airspace flow programs, and precision runway monitors. For possible implementation in the New York area at this time, Working Group 4 explored three specific areas:

- 1) Setting aside specific capacity allocations to aircraft that meet technical criteria in order to increase aircraft throughput.
- 2) Assigning priorities to flights in advance of traffic flow management delay programs.
- 3) Restricting access at certain times to scheduled commercial operations only.

No specific recommendations for current implementation were agreed to by Working Group 4. Each of the three items is further explained below, and the nature of the pro and con arguments documented. Except for the first item (technology based priorities) there were diametrically opposed viewpoints expressed. The “pros and cons” below are opinions expressed by members of Working Group 4. Additional modeling should be undertaken to determine if enough capacity improvement or delay reduction could be achieved to be worth further investment in implementation.

One other item discussed by Working Group 4 was the issue of non-standard departures at LaGuardia. The issue is that some heavier aircraft may require a certain runway in order to take off safely; if they call for departure and are accommodated promptly at a time when a different runway is in use for other departures it can lead to a decrease in total takeoffs accommodated. Some Working Group 4 participants expressed concern that some air carriers elect to use equipment and procedures that necessitate the use of non-standard departures thus exacerbating delays and costs for other users and consumers. Working Group 4 referred that item to Working Group 1 for consideration.

1) Setting aside specific capacity allocations to aircraft that meet technical criteria in order to increase aircraft throughput.

This concept is to set aside specific capacity allocations – in space or time – for aircraft that meet certain technical criteria. The idea is that if a section of airspace, or a runway end, were restricted to specially equipped aircraft it may be able to accommodate more operations in total. An analogy was drawn to existing cases where Precision Runway Monitor utilization allows increased capacity¹¹.

There was general agreement in the group that if total capacity or throughput were to be increased as a result of the set aside for equipped aircraft, this would be a positive solution. Caveats were expressed: the set aside should be temporal (limited to congested periods) and should not permanently eliminate access for aircraft that are not equipped.

¹¹ Precision Runway Monitor (PRM) is an improved technology for approach and landing at an airport during times of reduced visibility. Pilots and controllers require special training in order to use this. PRM enables aircraft throughput to be maintained.

No one knows yet whether there are technically feasible opportunities for specific equipage to actually increase the realized capacity. One new technology, ADS-B, is being actively investigated by the FAA, to see if there would be benefits from an early implementation in New York. However, the ADS-B project is complex and even an accelerated implementation in New York probably would not create capacity benefits before 2010. Another area also being investigated is improved required navigational performance (RNP) to see if new procedures and increased precision could yield a capacity payoff into JFK or other New York area airports.

Pros

- May be an opportunity to boost capacity without new runways.
- Could accelerate equipage of U.S. fleet with certain NextGen capabilities that will also be used outside the New York area.
- Builds on work already underway for NextGen – not a brand-new idea.

Cons

- Could be costly to operators in terms of avionics, installation, and associated expenses.
- Could be costly to the FAA to accelerate technology, procedures and standards development from the current schedule.
- Efficacy would be reduced if foreign flag air carriers are not on-board.

Next Steps

- FAA to explore whether accelerated ADS-B implementation or an RNP 0.3 requirement along with new STAR/SID procedures in New York could result in increased number of operations.

2) *Priority assignments in advance*

Under this concept, priorities would be assigned to flights in advance and then these priorities would be used in issuing delay times to aircraft inbound to New York during a traffic flow management program. Currently when the FAA needs to hold flights inbound into New York due to capacity constraints, flights are kept roughly in the arrival order they had originally scheduled. This results in progressively longer delays throughout the day. If an airline has more than one flight inbound to New York, they can swap within their set of arrivals to suit their priorities. If an airline cannot make use of an assigned arrival time, there are limited opportunities for anonymous transfer of times between airlines in the slot substitution program. Business aircraft operators also participate in the collaborative decision making process. As traffic flow management programs play out, operational adjustments are made and there is not rigid adherence to the original priorities.

Two variants of imposed advance priority setting were discussed by Working Group 4: priority to the biggest aircraft (as a proxy for the most number of passengers), or airline designated priorities. Under either priority designation, airlines could still substitute within their own arrival times, and unused times could be assigned to other operators.

A specific proposal was made to set aside a certain number of flights into the New York area for each operator as delay-free or high-priority flights, for example one per hour per operator. Today, large operators have many opportunities to swap flights within their allocation to meet their priorities, but smaller operators cannot exercise the same flexibility. Airlines with multiple flights today optimize their arrivals within their set of flights before making any unused times available to other operators in the slot credit substitution program, and so this program is only of limited value.

Pros

- Would allow increased schedule certainty for the designated priority flights.
- Priority to larger aircraft in issuing delays could lead to lower overall passenger-delay minutes.
- Preference to larger aircraft would over time create incentives for airlines to schedule larger aircraft, increasing total passenger throughput in the New York area.
- Designated priority flights by air carrier would permit smaller operators to maintain some increased schedule integrity.
- Designated priority flights by air carrier would permit all operators to realize some increased certainty for specific flights.

Cons

- Over time, preferences for larger aircraft could result in decreased service to some smaller communities.
- Setting aside a specific number of priority flights per airline might result in a large number of designated flights – too many for these flights to actually exhibit better ontime performance.
- It would be difficult operationally to implement different priorities for aircraft already in the air or on the airport surface. Trying to implement the priorities might result in a loss of total throughput.

3) Restrict access to scheduled commercial operations

One participant presented a concept to limit access to New York regional airspace during congested periods to scheduled commercial operations only. During constrained periods (3:00 to 9:00 p.m. weekdays and selected holidays / special events), FAA should identify constrained airspace and implement an airspace flow program (AFP) effective for all unscheduled, noncommercial operations. Impacted operators would have the option of routing around the constrained area(s) or changing the time of their flight.

Working Group 4 did not agree on how or the extent to which implementing this concept would affect congestion and delays in the New York area. The airline concept cites TRACON and center operations and delays, noting there are many general aviation airports within the New York area. GA members asserted that they fly at different times into different places and therefore have little effect on delays. As evidence, they pointed

to the decline in GA operations in New York over the same period that airline delays have risen. They further contend that GA operators are already disadvantaged by commercial airlines, experiencing significant delays that are driven by the airline overscheduling. Further, the GA operators note that airspace is a public resource and restrictions should not be applied to those who do not create the congestion.

Variations

- Allow charter operations scheduled at least two weeks in advance access to the airspace on the same basis as scheduled airlines.
- Allow scheduled cargo operations access to the airspace on the same basis as scheduled airlines

Pros

- If GA operations do conflict with commercial operations, this proposal could maximize commercial passenger throughput which yields the greatest benefit to the most people. The notion here is that scheduled commercial services serve as mass transportation and the aggregate economic costs of delay to commercial operations are higher than for nonscheduled private operations.

Cons

- There might be only a minimal impact on congestion by eliminating noncommercial operations because they only account for a small number of operations at the three commercial airports.
- Maximizing scheduled commercial operations at the expense of other operations may not represent the most economically-efficient outcome. Business aviation serves individuals participating in time-critical economic activities.
- This could encourage GA operators to operate under visual flight rules (VFR) in marginal conditions in order to avoid the restrictions, reducing aviation safety.

INTRODUCTION

Working Group 5 largely agreed that scheduled landing and take-off rights should be allocated under an administrative allocation scheme at the New York area airports, with broad support for adoption of the International Air Transport Association (IATA) Worldwide Scheduling Guidelines. While this discussion assumes that an administrative allocation scheme will be imposed, the preference of all Working Group 5 members is for no artificial constraints in the market, with adequate capacity for all air carriers interested in flying to a particular airport. However, the near unanimous assessment of Working Group 5 was that a slot-based system with a vibrant secondary market was an effective, market-based means of allocation.

Recognizing that some level of constraint is likely necessary at the New York City airports, at least in the short term, most of Working Group 5 recommends the adoption of IATA's Worldwide Scheduling Guidelines at the New York/New Jersey area airports when congestion and delays reach an unsustainable level. One air carrier expressed opposition about adopting the Worldwide Scheduling Guidelines in its entirety, especially without expanded provision for new entrant access to congested airports. That air carrier went further and supported, in the context of any administrative allocation scheme, both a one-time and continuing withdrawal of slots or operating authorizations to accommodate new entrants or limited incumbents, and market-based means of allocating capacity, including slot auctions. Two other air carriers, while generally supportive of the Worldwide Scheduling Guidelines do not support its narrow definition of new entrant air carrier. To the extent the Department determines an administrative mechanism is needed, the air carrier opposed to the IATA system supports a scheme more akin to the High Density Rule (HDR) than to the Worldwide Scheduling Guidelines, because the guidelines, in its view, do not adequately provide opportunities for meaningful entry for new entrants

In order to apprise the Secretary of the array of issues involved in an administrative allocation scheme, the group has prepared suggested elements on how to implement the Worldwide Scheduling Guidelines. The discussion of these elements details the positions of respective members of Working Group 5 on issues where there is a lack of consensus. The positions of parties that disagree with or vary from the primary position of Working Group 5 are characterized as "other positions" and immediately follow the general discussion. Whether a particular air carrier's position on a specific issue is encompassed by the document's primary position may change throughout the document.

POSITION IN SUPPORT OF THE WORLDWIDE SCHEDULING GUIDELINES WITH LITTLE OR NO CHANGE

Most of Working Group 5 believes that the Worldwide Scheduling Guidelines provide the best option for managing congested airports in the New York/New Jersey area and elsewhere, should a need arise. The determination to set a cap would be based on a determination by the FAA, after consultation with interested parties, that a cap was appropriate.

- Following the criteria set forth in the *Worldwide Scheduling Guidelines* for moving from Level 1 (no restrictions) to Level 2 (voluntary restrictions) to Level 3 (mandatory restrictions or cap), would avoid the need to withdraw capacity at a particular airport because of excessive scheduling.
- When coupled with a rule permitting the sale or lease of slots in a secondary market, the guidelines offer a market-based mechanism for slot allocation that promotes the efficient allocation of scarce resources.
- The guidelines offer a fair and non-discriminatory mechanism for allocating scarce airport capacity in a manner consistent with U.S. obligations under air services agreements with other countries and the rules applicable to U.S. air carriers at congested airports abroad.
- A system based on historic rights allows for network stability and predictability and would allow airlines to efficiently schedule flights and the flying public to better plan travel. It also recognizes the billions of dollars of investment in infrastructure (both on and off the airport property), market development, aircraft, and employment that holders of historic rights have made. Finally, it would avoid discouraging future investments in the airport.
- The dynamic and flexible nature of the guidelines, designed to reflect and accommodate market and network complexities, is particularly beneficial.
- Finally, the adoption of a process that is consistently applied throughout the United States and well-understood by domestic and international air carriers is significant, particularly at a large international airport like JFK.

POSITION AGAINST THE ADOPTION OF THE WORLDWIDE SCHEDULING GUIDELINES ABSENT SIGNIFICANT CHANGES:

Other members of Working Group 5 are opposed to the wholesale adoption of the Worldwide Scheduling Guidelines for domestic traffic in the New York region, unless the Department adopts adequate provisions to permit multiple operations for new entrants and limited incumbents (defined as those holding 20 or fewer slots per day at a slot-controlled airport). One air carrier asserts that using the Worldwide Scheduling Guidelines to address new entrant and limited incumbent access departs from the pro-competitive principles of the Airline Deregulation Act, as well as long-standing Department precedent on airline capacity at constrained airports. This sentiment is shared in varying degrees by two other air carriers that were Working Group 5 members

and one association of air carriers, which, while not a member of Working Group 5, expressed its views in a letter directed toward the group.

- Wholesale adoption of a system based on “historic rights” would favor incumbents at the expense of new entrants, is at odds with precedent under the HDR allocation program, and would not maximize consumer benefits.
- Access via a secondary market alone can be very difficult, particularly if incumbents are unwilling to make available and convey an adequate number of desirable slots at reasonable prices. An air carrier notes that in several slot proceedings under the HDR, the Department awarded slots when it found that exclusive reliance on the secondary market was not practical given the applicants’ proposed scope of operations.
- The Worldwide Scheduling Guidelines have never been used in the U.S. to allocate domestic traffic, and may not offer adequate opportunities for new entrants and limited incumbents for obtaining slots in these key markets.
- Application of the guidelines in the United States must be specifically tailored to reflect the realities of competition in the world’s largest and most dynamic domestic commercial aviation market.

SUGGESTED ELEMENTS FOR FOLLOWING THE IATA WORLD SCHEDULING GUIDELINES

The Working Group 5 puts forth the following discussion of the key elements of the Worldwide Scheduling Guidelines and has attached a more detailed description of how the Worldwide Scheduling Guidelines could be adopted in practice, as well as specific comments submitted by members of Working Group 5 and the broader ARC.

Working Group 5 recognizes that both the Department of Transportation and Congress have expressed concerns that any allocation mechanism must be structured in such a manner as to address certain articulated public policy interests. Some of these policy goals are already contemplated by the Worldwide Scheduling Guidelines; others could be addressed by the U.S. through local rules.

Capacity Declaration

Primary Position — The Department should conduct an open consultation to determine what the industry believes to be an acceptable level of delay and the associated capacity level.

- Flexible capacity, differing caps by time period, with consideration for backlog, arrival and departure flow, chronic meteorological events and aircraft mix are recommended to better meter a stable delay rate throughout the day versus an average level of traffic at all hours of the day.

- Under the Worldwide Scheduling Guidelines, a slot takes into account the totality of available capacity at an airport. Thus, a determination of airspace capacity at an airport may not reconcile with the amount of available gates or terminal facilities. Since different entities control the airspace (FAA), the airport (the Port Authority of New York and New Jersey), and in some instances the terminal (e.g., Continental at Newark, US Airways at LaGuardia, and JetBlue, Air France, British Airways and Lufthansa at Kennedy), a tri-partite coordination among these interested parties, recommended in the form of a Coordination Committee with domestic and foreign flag air carrier participation, is required for a capacity number to accurately reflect an airport's actual capacity.

Other Position — The Port Authority is in the best position to coordinate among the air carriers and determine available landside capacity. Thus, it can coordinate with the FAA to determine the maximum available capacity at its airports.

Initial Distribution of Capacity

Primary Position — In general, Working Group 5 agreed that the initial distribution of capacity should be based on historic rights, as contemplated by the Worldwide Scheduling Guidelines. This represents both the fairest and most efficient allocation method and allows for the recognition of the billions of dollars invested by historic operators into the infrastructure, people and development of the airport and markets, including the purchase of slots on the secondary market or by acquisition of airlines.

Other Position — One air carrier argued that while there may be some need for an initial historic allocation of at least some portion of the available capacity so as not to disrupt service patterns, the practice contained within the Worldwide Scheduling Guidelines is unfairly biased in favor of incumbents and can result in a windfall for an incumbent air carrier that has quickly added a significant amount of service. This is because historic allocations are based solely on the level of an air carrier's operations in the immediately preceding season. This rapid growth represents no more of an added investment than the investment of an air carrier seeking to expand its operations at the airport. This problem is particularly acute at initial allocation. In addition, the "grandfathering" of slots fails to force incumbents to make economic decisions about the value of slots because they have often paid nothing for the slots. This disincentive undermines the efficiency of a secondary market.

Other Position — Another air carrier believes initial distribution of capacity should be based on historic rights. However, it believes those rights should be based on presence at the airport prior to the airport becoming overly congested so that those air carriers responsible for the over congestion are not rewarded.

New Entrants

Primary Position — The Worldwide Scheduling Guidelines reserve 50% of available capacity (on a per slot basis) for new entrants. The definition of a new entrant (fewer than 5 slots at the airport on any given day) permits new entrant access in a manner that Working Group 5, in general, believes is equitable. First, no new entrant can fly more than two round trip flights in a particular day and still be considered a new entrant.¹² Most of Working Group 5 believes the Worldwide Scheduling Guidelines' definition of new entrant is appropriate for application in the U.S. and recommend against the adoption of the historic limited incumbent concept that has only been used in the United States. They believe that:

- This definition is especially appropriate for international airports like JFK and Newark, which have over 60 and 21 foreign flag air carriers, respectively, most of which operate daily service to their home country market.
- The success of new entrants and low cost air carriers (LCC) throughout the world under the Worldwide Scheduling Guidelines demonstrates there is no need for an expanded definition of a new entrant. The domestic airline industry is more competitive than it has ever been with LCCs carrying 30 percent of domestic passengers and competing in markets that account for three of every four passengers. As such, fares have markedly decreased, including those at most network hubs. LCCs have shown solid financial performance and have actively participated in secondary markets under the HDR.
- The historic U.S. definitions of “new entrant” and “limited incumbent” had a dampening effect on the Buy-Sell Rule of the HDR once exemptions were introduced in 1995.
- This reasonably limited definition of a new entrant fosters a vibrant secondary market.¹³ To the extent an air carrier with a relatively small number of operations wants to grow, it could do so through the secondary market.
- The proposal to expand the definition of a new entrant, if applied equally to domestic and foreign flag air carriers, could undermine the Department's efforts to control congestion.

¹² Typically, a slot constrained airport managed under the Worldwide Scheduling Guidelines is slot controlled over a 24-hour period, even though the airport may not be congested during all hours of the day. This approach has never been adopted in the U.S., where the FAA has only constrained operations during congested periods of the day. Some accommodation of the new entrant definition may be required to address the U.S. model.

¹³ The Department adopted a similar approach in the Congestion and Delay Reduction at Chicago O'Hare International Airport Final Rule in 2006. In that rule, the FAA limited the preference for new entrants/limited incumbents in a lottery of new capacity to only the first two arrival authorizations per hour when the hourly limitation is able to increase from 88 to 89 or 90 after which a lottery, without preference or weight, will continue to allocate the remaining new capacity. This combined with the secondary market would in the Department's words allow “greater opportunity for smaller carriers to purchase or lease arrival privileges.” A limited definition of new entrants is essential to maintaining incentive in the marketplace for carriers to participate in the secondary market.

Other Position — Three air carriers with a limited presence at JFK believe the Department should adopt the historic limited incumbent concept that it used under the HDR, and that Congress affirmed and expanded upon by statute (i.e., an air carrier holding 20 or fewer slots per day). Among other reasons asserted by some or all of the air carriers in support of their view are:

- The IATA new entrant threshold of two daily roundtrips under the guidelines does not provide meaningful market entry opportunities, when an air carrier seeks to initiate service to a capacity-constrained airport. Two roundtrips might be sufficient for new international service by a foreign flag air carrier, but is insufficient for a U.S. domestic operator starting up operations at a major domestic airport.
- The adoption of the Worldwide Scheduling Guidelines in the New York region could harm consumers by potentially causing fares to rise, restricting capacity, and preventing service innovation such as the development of alternative service models (e.g., all first class type seating, coach service with unbundled fares), and impeding product innovation.
- One air carrier believes that the LCCs' overall share of the domestic market is irrelevant to the question of whether the Worldwide Scheduling Guidelines are an appropriate mechanism for granting access at capacity-constrained airports. Because many LCCs serve non-capacity constrained airports in the United States, generally avoiding high-density airports, their share of the overall domestic market provides no basis for determining whether new entrants and limited incumbents can continue to obtain meaningful access at airports such as JFK. Startup air carriers in the U.S. generally cannot afford to actively participate in a secondary market to the extent necessary to achieve significant frequencies in markets involving congested airports.
- This same air carrier believes that fare reductions in markets like LAX-SFO, JFK-SFO and others following new entry demonstrate the relative public benefits of adding one new slot to a new entrant versus reducing one of many frequencies to an incumbent air carrier. Pre-entry fares in these markets remained relatively high.

Other Position — Several air carriers generally disagree with expanding the definitions of a new entrant to the levels in the HDR, but would support an expanded definition of a new entrant consistent with that in the O'Hare rule (i.e., an air carrier conducting no more than 8 roundtrips a day) if following the Worldwide Scheduling Guidelines is deemed inappropriate.

Other Position — Two of the foreign flag air carriers support the use of the WSG new entrant definition, but note that any expansion under a local rule to include U.S. "limited incumbents" into the new entrant definition should not unfairly favor U.S. air carriers and treat foreign flag air carriers in a discriminatory manner.

Secondary Trading

Other Position — Most of Working Group 5 supports the creation of a secondary market for slots, which would create a market-based mechanism for new capacity allocation consistent with the Administration's desire to explore such mechanisms. The secondary market should not be thought of merely in terms of the actual sale of slots, but should also include leases or transfers of slots with or without consideration. In fact, most of the secondary market activity elsewhere is more directly attributable to leases and transfers rather than the outright sale of a slot. If the number of leases in the HDR were viewed as secondary transactions, the actual success of the secondary market under that program may appear more robust than generally assumed.

- Working Group 5 recognizes that the effectiveness of the secondary slot market has been criticized for two reasons, which led the FAA to require that secondary market transactions at O'Hare be conducted through an FAA-managed blind auction mechanism.
 - The first, the need for transparency so that all air carriers are aware of the availability of an arrival authorization and, ultimately of the terms and conditions of that transaction, is widely supported by Working Group 5. Accordingly, Working Group 5 recommends that local rules be considered to increase the transparency of slot sale or lease transactions, including for example, a requirement that slots available for sale or lease be publicly advertised through an FAA-sponsored forum prior to any sale or lease transaction.
 - The second concern, that absent a blind transaction, air carriers will collude or otherwise prevent entrance into or expansion at the airport by a competitor is one that Working Group 5 doubts is a real concern. The current secondary markets in the U.S. have been inhibited because of the uncertainty about the future structure and duration of regulatory regimes and because numerous slot exemptions provided by the government have eliminated incentives to purchase slots. As such, Working Group 5 believes that the latter issue may best be handled through monitoring rather than through the imposition of a blind market. The majority also points out that limiting transactions to cash consideration inhibits the market and that in some cases non-cash consideration may be valued more highly by the parties.
- Most of Working Group 5 agreed that the Department must not artificially create capacity in the form of exemptions in excess of the declared capacity parameters, undercutting the effectiveness of the secondary market and also degrading the airport's overall operating performance. Rather, the Department should allow the market to determine efficient use through secondary trading.

Other Position — Three air carriers with a limited presence at JFK argue that any secondary market must be accompanied by meaningful opportunities for new entrants to initiate or expand service where slots cannot realistically be obtained on the secondary market.

- Historic exemptions in the U.S. were based on a determination by the Department and Congress that access through the secondary market should not be the exclusive means to provide opportunities for new entrants and limited incumbents at capacity-constrained airports.
- If a sufficient number of well-timed slots are not made available to new entrants and limited incumbents, then a limited number of exemptions for this category of operator is necessary to ensure adequate competition without unduly increasing delays.
- One air carrier fully supports use of a blind auction, including a “billboard” mechanism, to avoid a situation in which incumbent air carriers refuse to deal with a new entrant LCC, particularly where a smaller air carrier intends to compete with the incumbent on the same route. A blind auction is also necessary to prevent collusion and market signaling between dominant incumbent air carriers.
- Another air carrier believes that since a secondary market alone is insufficient to ensure meaningful competition or access for new entrants, at a minimum, new entrants should be afforded this preferential access to available capacity.

Other Position — Two of the foreign flag air carriers are presently neutral or non-committal on this issue. They will consider the concept of secondary trading pending the completion of the ARC process and when more specifics are available as to how the secondary trading would be structured and managed in the U.S. market. These air carriers favor transparency and free markets, and could consider some form of “billboard” publication of available slots, provided it were for informational purposes only. One air carrier submits, however, that an FAA policy of granting slot exemptions and set-asides for U.S. new entrants/limited incumbents not only has the potential to dilute the effectiveness of a secondary market, but more importantly, would be inconsistent with the principles of fair and non-discriminatory treatment embodied in the Worldwide Scheduling Guidelines by favoring a small group of U.S. air carriers over foreign flag air carriers.

Other Position — One domestic air carrier notes that a blind market helps eliminate all perceptions and blocking of new entry at capacity controlled airports. That air carrier has aggressively attempted to penetrate the secondary market at LaGuardia and National, without success. It believes a blind auction would ensure access.

Service Level Restoration

Primary Position — Working Group 5 recommends that air carriers who have voluntarily reduced service or had slots confiscated for reasons other than their own underutilization should have those slots returned and services restored when new capacity becomes available and before any new capacity is allocated to parties who did not reduce regardless of any other considerations.¹⁴

Other Position — Three air carriers with a limited presence at JFK claim that new entrants and limited incumbents should be given priority over both restoration of slots (particularly if the air carrier built up its schedule in disregard for its congestion-inducing properties) and allocation to new incumbent air carriers or foreign flag air carriers. One of these air carriers agrees with the premise, but only to the extent that it believes that restoration should never diminish the 50% of available capacity afforded new entrants under the Worldwide Scheduling Guidelines.

Other Position — Three air carriers stated that air carriers that have substantially increased their schedules at a congested airport should not be given an advantage over those that have not. It would be perverse to give an express slot restoration priority to air carriers in direct proportion to their contribution to congestion at that airport. One of these air carriers also notes that the Worldwide Scheduling Guidelines do not guarantee any restoration to incumbent air carriers and that to the extent the majority of Working Group 5 supports restoration claims, such a scheme would essentially be a local rule.

Local Rules

Primary Position — Working Group 5 believes that local rules should not limit the use of specific slots based on particular characteristics of service, like aircraft size, citizenship of air carrier, or dedicated service to certain communities. Rather, legitimate policy goals should be addressed by prioritizing the allocation of new capacity; this could be done either as described in the Worldwide Scheduling Guidelines, or as local rules.

- In situations where local rules may be needed, they should be handled on an airport-by-airport basis to address unique market and operating characteristics of such facility and with a full industry consultation.
- Over utilization of local rules would dilute the effectiveness of the Worldwide Scheduling Guidelines and minimize incentives for air carriers to participate in the secondary market.

¹⁴ When the terminal collapsed at Paris' Charles de Gaulle airport in 2004, the airport's declared capacity was reduced to match the then available facilities. The Coordinator asked for carrier's assistance voluntarily reducing their schedules and moving to less congested times during the construction and promptly restored those carriers to their historic level when the airport was back to full capacity.

Other Position — One air carrier urged that any administrative mechanism include a policy that promotes new entrant and limited incumbent access to capacity-constrained airports, and, as is increasingly being considered in Europe and elsewhere, the environmental performance of the aircraft in terms of greenhouse gas emissions should be considered in the context of allocating newly created slots for takeoff and landing. This air carrier also believes consideration should be given to the size of the aircraft in the allocation of capacity at capacity-controlled airports.

Small Communities

Primary Position — Working Group 5 recognizes that the market dynamics of some airports may warrant setting aside a small portion of slots to ensure adequate service to small communities.

- Working Group 5 recommends that this issue be approached on an airport-by-airport basis and set-asides applied only when there is evidence that adequate small community service has been, or is on the verge of, being discontinued in the New York/New Jersey area.
- The overall small community analysis should be such that it does not dictate slots for specific markets, as with EAS, but rather that it preserves an allocation which air carriers may use in their own commercial judgment to serve any market listed as a qualifying airport in the Annual Passenger Enplanements at Commercial Airports as published annually on the FAA website.
- Working Group 5 recommends that a smooth process be established to address slot mobility and qualification when an airport's hub status changes and will need further discussion to define such process.
- Additionally, small community slots, where they exist, should be tradable in the secondary market in the same manner as all other slots, but would retain their small-community character, regardless of what air carrier holds them.
- Working Group 5 notes that, given the industry's current network air carrier business model, small community service at most airports may be adequate without government intervention. In fact, service to and from small communities through O'Hare has increased since the imposition of caps at that airport.

Other Position — In markets with multiple capacity constrained airports in close proximity, service to small communities can be addressed by service to the catchment area rather than by service to a particular airport.

Other Position — The nature of new entry at JFK and Newark is often different than at LaGuardia. Whereas a new entrant at LaGuardia needs to have multiple daily frequencies in a market to have any hope of establishing a market preference, most new entrants at JFK and Newark are seeking no more than a few daily roundtrip operations.

Other Position — Regional distribution or measurement of small community service must exclude LaGuardia as long as the perimeter rule remains in place at LaGuardia. The market distortions caused by the perimeter rule would only be further exacerbated if additional restrictions were placed on airline management's ability to select markets or consumers' ability to select the airport and air carrier that best meet their needs.

Other Position — Two of the foreign flag air carriers generally support the majority position subject to the reservation that any extensive small community service preference would favor U.S. air carriers exclusively and would in turn support the need for a foreign flag air carrier preference to avoid discriminatory treatment.

Paperwork Burden

Primary Position — Working Group 5 recognizes the Department's need to supply paperwork reduction estimates and guidance. As the Worldwide Scheduling Guidelines process is well documented and relatively stable, implementing them in the United States would allow for dynamic and continual market fluctuations without an undue paperwork burden on the air carriers.

- Additionally, uniform application at all airports in the U.S. that meet pre-set delay criteria would allow for ease of management for both the airlines and management and reduces the need for additional technological resources to keep up with unique, short-term slot regimes.
- Because the Worldwide Scheduling Guidelines allocate slots twice a year, there will be a greater need for FAA resources than under the HDR.

Use-or-Lose

Primary Position — The Worldwide Scheduling Guidelines impose a use-or-lose requirement based on 80% usage of a slot for each day of the week. Under the HDR the requirement was 80% over the course of a week. Working Group 5 believes the daily use-or-lose requirement is more stringent and has the effect of making more capacity available for reallocation.

Other Position — One air carrier agrees that the use-or-lose requirement in the HDR did not adequately ensure that adequate capacity was available for reallocation. While it does not believe that the methodology under the Worldwide Scheduling Guidelines would provide sufficient capacity to meet the needs of new entrants, it is willing to withhold judgment on whether the daily use-or-lose requirement is more efficient than the one used under the HDR.

Access to U.S. airports by foreign flag air carriers

Primary Position — The Worldwide Scheduling Guidelines treat all operations, domestic and international, operated by domestic or foreign flag air carriers, equivalently. The group generally believes that the Worldwide Scheduling Guidelines would allow for fair, non-discriminatory treatment by the United States, consistent with its bilateral obligations and consistent with the treatment U.S. air carriers receive abroad.

- The U.S. air carriers do not support foreign flag air carriers receiving preference simply for being parties to Open Sky bilateral agreements as U.S. air carriers do not receive this preferential treatment at foreign stations.
- The U.S. air carriers do not believe the United States is legally obligated to give foreign flag air carriers any preference at airports with operating constraints.
- U.S. and foreign flag air carriers both agree that local rules should be minimized as they reduce the effectiveness of the Worldwide Scheduling Guidelines in managing congestion.

Other Position — Foreign flag air carriers participating in Working Group 5 accept the Worldwide Scheduling Guidelines concept of equivalency, and believe that U.S. bilateral obligations can be met in the absence of local rules.

- These air carriers would oppose any local rule that prevents DOT/FAA from considering a variety of circumstances when awarding new slots at a congested airport, including the impact restrictions would have on U.S. bilateral agreements.
- They would consider seeking protection if a significant number of local rules providing protection to new entrants and service to small communities above what are already contained in the Worldwide Scheduling Guidelines were to make it difficult for foreign flag air carriers to:
 - Maintain their historic schedules and
 - Achieve the growth that was anticipated in existing bilateral agreements.

Other Position — According to one domestic air carrier, local rules could meet the specific needs of the U.S. domestic aviation industry and address important public policies such as competition, and should be adopted, as necessary, to meet these objectives.

Other Position — One foreign flag air carrier believes that U.S. bilateral obligations can be met by the adoption of the Worldwide Scheduling Guidelines without local rules. The addition of extensive local rules that favor U.S. air carriers exclusively would require some similar form of preference for foreign flag air carriers in order to meet the U.S. Government's obligations under its bilateral treaties.

Allocation of Capacity Through a Market Mechanism

Primary Position — Working Group 5 recognizes the Administration’s desire to introduce market mechanisms in the allocation process. Working Group 5 strongly believes that the adoption of caps pursuant to the Worldwide Scheduling Guidelines, along with a robust secondary market, will provide an effective market allocation mechanism that is preferable to congestion pricing and other mechanisms being discussed because it is not an experimental mechanism, but rather has been in use successfully at many airports around the world for many years. In addition, the majority of Working Group 5 is not convinced that the FAA currently has sufficient legislative authority to allocate via a market-based mechanism.

- **Initial Allocation** — Working Group 5 believes that air carriers’ investments related to building service at a particular airport, including investments in personnel, communities and aircraft and facilities, on or off the airport, which directly support airport operations, are the direct result of the “slots” having market value and developing such value through time. These significant investments must be recognized and accounted for in any future allocation scheme. Working Group 5 therefore believes that there should be no departure from the principle articulated in the guidelines, which dictate that initial allocation of slots be based upon historic use.
- **Allocation of New Capacity** — Working Group 5 discussed the notion of auctioning significant new capacity, such as may be generated with the opening of new runways. Several members of the group were open to further consideration of this concept provided that incumbent restoration takes priority. However the group believes this issue needs further practical and legal consideration, especially around equity and international ramifications, regardless of citizenship.

Other Position — One air carrier association and the foreign flag air carriers strongly oppose the introduction of a market mechanism for primary allocation citing multiple airports (AMS, MAD and NRT) that have brought on significant new capacity in the form of new runways and effectively allocated it via the industry best practices outlined in the Worldwide Scheduling Guidelines. In addition, they point out that introduction of a market mechanism in the U.S. may lead to a proliferation of such mechanisms globally, potentially to the detriment of U.S. air carriers, and would destabilize the international schedule clearance process.

Other Position — One foreign flag air carrier does not support auctions of any capacity, including new or returned capacity. It is particularly concerned that withdrawal of historic slots would raise significant property and discrimination issues.

Other Position — According to one domestic air carrier, new entrants (defined as an air carrier holding no more than 20 slots per day) should have a right of first selection of any new or returned capacity.

Other Position — Another domestic air carrier believes the Worldwide Scheduling Guidelines are unduly biased in favor of incumbents and would not provide new entrants with an adequate opportunity to gain entry at capacity-controlled airports in the United States based on experience with similar allocation schemes in the past. If adequate provision is not made for new entrants in an administrative allocation scheme, that air carrier supports the use of market mechanisms to assure new entry at these airports.

Application of *Worldwide Scheduling Guidelines* in the United States

Currently, 14th Edition, July 2007

Section 1: Determination to be a Coordinated Airport

- A. Capacity Limitation
 - 1. Operational Performance/Runway
 - a. Arrival and/or Departure delay criteria
 - b. FAA/DOT Performance Ranking
 - 2. Terminal Infrastructure Limitations
 - a. Lack of stand/gate availability
 - b. Passenger through-put congestion
- B. Expansion of capacity, in the short term, is highly improbable

Section 2: Definition of Slot

- A. Ability to use full infrastructure (e.g. no separate slots for runway and terminal as currently exists at ORD)
 - 1. This encompassing definition should include behind-the-scenes coordination between the FAA, Port Authority New York and New Jersey and terminal operators/managers so as to provide one single message from the coordinator to the air carrier approving all elements of the slot.
- B. Minimum of 30-minute slot window [U.S. recommendation, not part of WSG]

Section 3: Capacity Declaration

- A. Initial baseline capacity analysis conducted by FAA with open consultation including airport managing body, industry and related associations
- B. Capacity analysis updated and published twice yearly in advance of slot allocation for each scheduling season (summer and winter).
 - 1. All parties planning to operate to/from an airport (including passenger and cargo air carriers and general aviation) must submit requests for slots on a seasonal basis and be informed of any capacity changes before submission deadline.
- C. Coordination parameters should include ATC, runway, terminal throughput and stand constraints, where applicable, and be coordinated as a single allocation.

Section 4: Appointment of Coordinator

- A. Single national coordination group handling all slot controlled airports with specialist assigned to each airport
 - 1. Ideally, independence from any single interested party (e.g. airport managing body, airlines or government).
- B. Neutral, non-discriminatory, transparent

Section 5: Role of Airlines

- A. Scheduled (planned) flight details must be submitted to and approved by the coordinator via standard Slot Clearance Request (SCR) messages as per Chapter 6 of SSIM in advance of operation.
 - 1. Flight record details include flight numbers, effective and discontinue dates, equipment, seats, days of operation, origin/destination and previous/next airports (thru flights), arrival time, departure time and type of service.

Section 6: Role of Airports

- A. Ensure that initial capacity analyses are carried out and updated twice yearly in conformity with the two IATA scheduling periods.
- B. Pursue capacity enhancements
 - 1. Ensure that a reversion to Level 2 or Level 1 status can be achieved at the earliest opportunity.

Section 7: Role of Coordinator

- A. Allocate slots to airlines on the basis of established coordination parameters, using priority criteria and in a neutral, non-discriminatory and transparent way.
- B. Enforce slot usage on a seasonal basis.
 - 1. May require airlines to submit usage reports to the Coordinator.
 - 2. May require monthly reporting for proactive tracking and consultation if pro-rata performance is low.

Section 8: Initial Slot Allocation

- A. Historic Slots
 - 1. Historic slots must not be withdrawn from an airline as a means of providing for new entrants or any other category of aircraft operator. Confiscation of slots for any reason should be avoided, unless intentional abuse of the coordination system by an airline is proven.
- B. Priorities in Coordination
 - 1. Historical precedence
 - 2. Retiming of historic slots
 - 3. New entrants
 - a. An airline's request for a slot at an airport should have new entrant status provided that the airline, if the request were accepted, would hold fewer than 5 slots at that airport on that day.
 - b. Of the slots contained within the slot pool at the initial allocation, 50% must be allocated to new entrants, unless requests by new entrants are less than 50%.
 - c. Slot obtained with new entrant status must have been operated for more than two equivalent seasons before being transferred to another air carrier.
 - 4. Introduction of year round service

5. Additional criteria
 - a. Effective period of operation: longer period of operation has priority
 - b. Size and type of market: there is a requirement for a mixture of operations (domestic/regional/long-haul markets) at major airports to meet the demands of the public. This criteria could include, for example, a preference in favor of small community¹⁵ service where appropriate. [consistent with prevailing U.S. policy, not part of the WSG]
 - c. Competition
 - d. Curfews: priority should be given to the airline whose schedule is constrained by a curfew
 - e. Frequency of operation: higher frequency should not in itself imply higher priority
 - f. Local guidelines: must be approved by the Coordination Committee

Section 9: Use of Slots by Airlines

- A. Slot exchanges (one-for-one exchanges)
 1. Air carriers may exchange slots on a one-for-one basis for the purpose of conducting that operation in a different slot period.
 2. Written evidence of each air carrier's consent to the transaction must be provided to the Coordinator with the Coordinator approving the request after completing a feasibility check.
- B. Slot transfers (one-way)
- C. Shared operations
 3. In the case of joint, codesharing, or any other operations involving voluntary cooperation between airlines, only one of the participating airlines can apply for each required slot. Slots held by an airline may be used by (an) other participating airline(s) for their shared operation, provided that the designator of the airline whom the slots were originally allocated remains on the shared flight for coordination and monitoring purposes.

Section 10: Secondary Trading [U.S. recommendation, not in WSG]

- A. Slots from existing capacity may be bought, sold or leased only to air carriers for any consideration.
- B. New entrants may not sell, lease or otherwise transfer control of their slots within two years of assignment, except for one-for-one trades for operational retiming.
- C. The secondary market should be open equally to domestic and foreign flag passenger and cargo air carriers or general aviation operators who use the airport regularly.

¹⁵ Preferably as defined by the FAA's calendar year passenger activity for commercial service airports.

- D. Air carriers wishing to transfer, or acquire, slots must advise the Coordinator of the following details. In order to provide transparency, the Coordinator will publish this information on their website in a section clearly marked “Slot Transfers”.
 - 1. The name of the air carrier/general aviation operator,
 - 2. The historic slots available or the slot times required,
 - 3. The effective date range (seasons or permanent),
 - 4. The type of agreement sought (sale, lease, barter), and
 - 5. The period for which the transfer offer is valid.
- E. Once air carriers reach an agreement, the Coordinator should be advised and the following information will be published on the Coordinator’s website, after the Coordinator has checked the feasibility of the proposed transfer. No other details of the agreement between the airlines should be made public or published.
 - 1. The names of the air carriers/general aviation operators involved,
 - 2. The slot times transferred or exchanged, and
 - 3. The period of the agreement (e.g. date range, seasons, permanent)

Section 11: Capacity Utilization (Use-or-Lose)

- A. All slots should be utilized at least 80 percent over a scheduling season based on the slots held by an air carrier as of a specific date.
- B. Air carriers should receive a waiver to the utilization requirement of their slots as follows:
 - 1. Any slots held on Thanksgiving Day and the day after Thanksgiving and from Christmas Eve through the first Saturday in the new year will be counted as utilized. [consistent with prevailing U.S. policy, not part of the WSG]
 - 2. Unforeseeable and unavoidable circumstances outside the air carrier’s control leading to:
 - a. Grounding of the aircraft type generally used for the air service in question,
 - b. Closure of an airport or airspace,
 - c. Serious disturbance of operations at the airport concerned, including those slots at other airports related to routes which have been affected by such disturbance, during a substantial part of the relevant scheduling period;
 - 3. Interruption of air service due to action intended to affect those services which make it practically and/or technically impossible for the air carrier to carry out operations as planned.
- C. The utilization rule will apply equally to slots held by domestic as well as foreign flag air carriers.
- D. If the 80 percent usage cannot be demonstrated, the slots shall not be allocated to the air carrier as Historics and will be placed in the slot pool for re-allocation.

Section 12: Coordination Committees

- A. Coordination Committees should be established at all coordinated airports.
- B. Membership of these committees should be open to the airlines using the airport regularly, their representative organizations, the managing body of the airport, ATC authorities and representatives of general aviation using the airport regularly. FAA representatives and the Coordinator should be invited to the meetings of the Coordination Committee as observers.
- C. Each Coordination Committee should have a Terms of Reference including participation, organization (elections), tasks and frequency of meetings.
- D. The tasks of the Coordination Committee should include, but not be limited to, making proposals and advising the Coordinator or FAA on:
 - 1. Possibilities for increasing capacity,
 - 2. Coordination parameters,
 - 3. Methods of monitoring use of allocated slots,
 - 4. Local guidelines for the allocation or monitoring of slots,
 - 5. Improvements on traffic conditions, and
 - 6. Serious problems encountered by new entrants.
- E. The Coordination Committee should host an Annual General Meeting (AGM) open to all scheduled and unscheduled operators (including general aviation) including their representative associations, the airport managing body, the Coordinator, representatives from FAA/DOT and air traffic during which presentations are given on airport performance, coordination issues and airport/airspace projects.

Section 13: Slot Misuse

- A. Airlines must not intentionally operate services at a time significantly different from the allocated slots. Airlines that do so on a regular basis will not be entitled to historical precedence for either the times they operated or for the times allocated.
- B. An air carrier that is not a small business as defined in the Small Business Act 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 it violates the limits set forth in the final Order. [consistent with US policy, not part of WSG]
- C. For each airport that is coordinated, the Coordination Committee should ensure a Slot Performance Sub-Committee is established.
 - 1. In order to ensure that all airlines conform with procedures governing the use and availability of the runway, and operate to the slots allocated to them, slot performance sub-committees should be established by the Coordination Committees at the coordinated airports in support of the role of the Coordinator.
 - 2. The functions of the Sub-Committee should be to:
 - a. Analyze the slot performance of all airlines operating through the airport,
 - b. Identify any airline that regularly and intentionally abuses the procedures of slot allocation,

- c. Notify the airport managing body, Coordinator and FAA of such abuse,
 - d. Communicates with the airline concerned and seeks explanations of specific instances of apparent abuse,
 - e. If the responses to such requests are considered by the Sub-Committee to be inadequate or unreasonable, a set of disciplinary procedures may be recommended and initiated through the appropriate body,
 - f. If required to do so by airlines, may act as a mediator with the Coordinator in the event of differences of interpretation on slot performance.
3. Membership in the Slot Performance Sub-Committee should include:
- a. The airport managing body provides the Chairman and the Secretary for the Sub-Committee,
 - b. The airlines operating at the airport provide representatives with scheduling experience from two or three airlines carrying different types of traffic who are members of the Coordination Committee,
 - c. The Coordinator attends the meeting as an advisor, and
 - d. The inclusion of an ATC representative.
4. Meetings should be held at least quarterly, or as required.

NEW YORK ARC CHARTER

ORDER

SUBJ: NEW YORK AVIATION RULEMAKING COMMITTEE

1. PURPOSE. This order constitutes the charter for the New York Aviation Rulemaking Committee (NYARC) that is designated and established pursuant to the Administrator's authority under 49 USC 106(p)(5).
2. DISTRIBUTION. This order is distributed at the director level in Washington headquarters and throughout the Office of the Assistant Administrator for Aviation Policy, Planning, and Environment.
3. BACKGROUND. The Administrator has determined that it is appropriate to create an Aviation Rulemaking Committee to explore various options, including market based mechanisms, for addressing airspace congestion in the New York area.
4. OBJECTIVES AND SCOPE. The NYARC will serve as a forum for interaction among officials of the Department of Transportation (DOT) and FAA, the Port Authority of New York and New Jersey, representatives of air carriers operating to and from LaGuardia Airport, John F. Kennedy International Airport, Newark International Airport, Teterboro Airport, and other interested parties as determined by the Chair. The committee will be assigned specific tasks by the Chair.
5. DUTIES. The NYARC shall meet to explore market based mechanisms and other options for addressing airspace congestion in the New York area, and then provide advice, information and recommendations to the Administrator and the Secretary of Transportation in a form to be determined by the Chair.
6. ORGANIZATION AND ADMINISTRATION.
 - a. The Administrator designates the General Counsel of the Department of Transportation as the Chair of the committee. The Chair:
 - (1) Determines when meetings are required and where they will be held.
 - (2) Arranges notification to all committee members of the time and place for any meeting.
 - (3) Formulates an agenda for each meeting and conducts the meeting.
 - (4) Establishes subcommittees, if required, and determines membership of subcommittees.

- 2-

b. The Administrator may designate a Vice-Chair, Executive Director, and other support to the committee, as necessary.

c. The committee is not required to keep minutes, but may elect to do so.

7. COMPENSATION. Non-Government representatives serve without Government compensation and bear all costs related to their participation on the committee.

8. PUBLIC PARTICIPATION. Unless otherwise decided by the Chair, all meetings of the committee shall be closed. Interested persons wishing to attend a meeting who are not members of the committee must request and receive approval in advance of the meeting from the Chair.

9. AVAILABILITY OF RECORDS. Subject to the conditions of the Freedom of Information Act, 5 U.S. C. Section 522, records, report, agendas, working papers, and other documents that are made available to or prepared for or by the committee shall be available for public inspection and copying at the FAA Office of Rulemaking, 800 Independence Avenue, SW., Washington, D.C. 20591. Fees shall be charged for information furnished to the public in accordance with the fee schedule published in part 7 of title 49, Code of Federal Regulations.

10. EFFECTIVE DATE AND DURATION. This committee is effective on September 27, 2007. The committee shall remain in existence until December 10, 2007, unless sooner terminated or extended by the Administrator.



Robert A. Sturgell
Acting Administrator

September 25, 2007

CHARTER TO EXTEND THE NEW YORK ARC

ORDER

SUBJ: EXTENSION OF THE NEW YORK AVIATION RULEMAKING COMMITTEE

1. PURPOSE. This order extends the New York Aviation Rulemaking Committee that was designated and established pursuant to the Administrator's authority under 49 USC 106(p)(5).
2. DISTRIBUTION. This order is distributed at the director level in Washington headquarters and throughout the Office of the Associate Administrator for Regulation and Certification.
3. BACKGROUND. In accordance with the September 27, 2007 Order that chartered the New York Aviation Rulemaking Committee, the Acting Administrator hereby extends the duration of the Committee to December 24, 2007.
4. DUTIES. The Chairman of the Committee retains all previous authority, and may reconvene the Committee, either in whole or in part.
5. PUBLIC INTEREST. The extension of the New York Aviation Rulemaking Committee is determined to be in the public interest in connection with the performance of duties imposed on FAA by law.
6. EFFECTIVE DATE AND DURATION. This extension is effective immediately. The committee shall remain in existence until December 24, 2007, unless terminated or extended by the Administrator.



Robert A. Sturgell
Acting Administrator

December 10, 2007

APPENDIX B — LIST OF ARC AND WORKING GROUP MEMBERS

ARC MEMBER-PARTICIPANT LIST

Affiliation/Organization	Name	ARC Designation
DOT	D.J. Gribbin	Chair
FAA	Nancy LoBue	Vice Chair
ABX Air	Jim O'Grady	
ABX Air	Robert J. Morgenfeld	
Air Canada	Rob Reid	
Air Canada	Volker Wackernagel	
Air Canada	Jim Jakes	
Air Canada	Doug Scott	
Air Carrier Association of America	Ed Faberman	
Air Carrier Association of America	Christine Freund	
Air France	Jacques Malot	
Air France	Joan Gabel	
Air France (Silverberg, Goldman & Bikoff)	Michael Goldman	
Air Transport Association	Jim May	
Air Transport Association	David Berg	
Air Transport Association	Sharon Pinkerton	
Air Transport Association	Paul McGraw	
Air Transport Association	Basil Barimo	
Air Travelers Association	David Stempler	
Airports Council International- North America	Debby McElroy	
AirTran Airways	Kevin P. Healy	
AirTran Airways	Greg Christopher	
AirTran Airways	Phil Mullis	
Alaska Airlines	Kevin Finan	
Alaska Airlines	Megan Lawrence	
Alaska Airlines	Keith Loveless	
Alaska Airlines (Squire, Sanders, and Dempsey)	Connie O'Keefe	

Affiliation/Organization	Name	ARC Designation
American Airlines	Walter Aue	
American Airlines	Jeff Ogar	
American Airlines	Michael Wascom	
American Airlines	Diana Walke	
American Airlines	George Kypreos	
AOPA	Randy Kenagy	
AOPA	Andrew V. Cebula	
British Airways	Paul C. Jasinski	
British Airways	Steve Clark	
British Airways	James B. Blaney	
Business Travel Coalition	Kevin Mitchell	
Continental Airlines	Rebecca Cox	
Continental Airlines	Tracy Lee	
Continental Airlines	Larry Kellner	
Continental Airlines	Hershel I. Kamen	
Continental Airlines	Greg Hart	
Continental Airlines	Glenn Morse	
Delta Air Lines	Glen Hauenstein	
Delta Air Lines	Joe Kolshak	
Delta Air Lines	Scott Yohe	
Delta Air Lines	Bob Cortelyou	
Delta Air Lines	J. Scott McClain	
Delta Air Lines	Sametta C. Barnett	
DHL	Wolfgang Pordzik	
DHL	Ian Taylor	
DHL	Stephen Dolan	
DOT	Nicolle Fleury	
DOT	Jacqueline Stratton	
DOT	Andy Steinberg	
DOT	Michael Reynolds	
DOT	Naveen Rao	
DOT	Tyler Duvall	

Affiliation/Organization	Name	ARC Designation
DOT	Robert Dehaan	
DOT	Jana Weir	
DOT	Sam Podberesky	
DOT	Brian Turmail	
DOT	Katherine Stusrud	
DOT	Christopher Mandel	
DOT	Susan McDermott	
DOT	Paul Smith	
DOT	John Kiser	
DOT	Steven Hatley	
DOT	Brett Jortland	
DOT	Kevin Schlemmer	
DOT	Todd Homan	
DOT	David Foss	
DOT OST	Eric Gabler	
DOT OST	Nancy Kessler	
DOT OST	Dayton Lehman	
DOT OST	Brian Swanson	
FAA	Mike Sammartino	
FAA	Ellen King	
FAA	Dan Murphy	
FAA	David Bennett	
FAA	Dan Elwell	
FAA	Molly W. Smith	
FAA	Claudett Wiggins	
FAA	Morgen MacDonald	
FAA	Bobby Sturgell	
FAA	Cecilia Harley	
FAA	Jeffrey Wharff	
FAA	Louise Maillett	
FAA	Catherine Lang	
FAA	Megan Rosia	

Affiliation/Organization	Name	ARC Designation
FAA	Rochelle Claypoole	
FAA	Nancy Kalinowski	
FAA	Jon Cross	
FAA	Leo Prusak	
FAA	Carmine Gallo	
FAA AGC	Kerry B. Long	
FAA AGC-2	James W. Whitlow	
FAA AGC-200	Rebecca MacPherson	
FAA AGC-40	James Tegtmeier	
FAA APO	Nan Shellabarger	
FAA ATO	Brian Meehan	
FAA ATO	Gerry Shakley	
FedEx	Steve Vail	
FedEx Express	James R. Parker	
FedEx Express	J. Mark Hansen	
IATA	Doug Lavin	
IATA	Peter Cerda	
IATA	Juan Catala	
IATA	Cyriel Kronenburg	
JetBlue	Joe Bertapelle	
JetBlue	Robert Land	
Lufthansa	Natalie Hartman	
Lufthansa	David Thomas	
Lufthansa	Arthur Molins	
Lufthansa	Fred Blumer	
Midwest Airlines	Greg Aretakis	
Midwest Airlines	Scott R. Dickson	
Midwest Airlines (Silverberg, Goldman & Bikoff)	Robert P. Silverberg	
MITRE	William Swedish	
MITRE	George H. Solomos	
NACA	Tom Zoeller	
NACA	Paul Doell	

Affiliation/Organization	Name	ARC Designation
NBAA	Steve Brown	
NBAA	Lisa Piccione	
NetJets	Richard Smith	
NetJets (Hogan & Hartson)	Ted Ellett	
New York Department of Transportation	Astrid Glynn	
Northwest Airlines	Dennis Newman	
Northwest Airlines	Alexander Van der Bellen	
Northwest Airlines	Robert Muhs	
Northwest Airlines	Lorne Cass	
Northwest Airlines	Jennifer Sayre	
PAI	Peggy A. Swalve	
Port Authority of NY and NJ	Bill DeCota	
Port Authority of NY and NJ	Patty Clark	
Port Authority of NY and NJ	Tom Bock	
Port Authority of NY and NJ	Bradley Rubinstein	
RAA	Roger Cohen	
RAA	Scott Foose	
Southwest Airlines	Leslie Abbott	
Southwest Airlines	Bob Kneisley	
State of New York	Michael Wojnar	
U.S. Airways	Doug Parker	
U.S. Airways	C. A. Howlett	
U.S. Airways	Howard Kass	
U.S. Airways	Tom Chapman	
U.S. Airways	David Seymour	
U.S. Airways	Andrew Nocella	
U.S. DOJ	Michael Billiel	
U.S. DOJ	Will Gillespie	
United Airlines	Julie Oettinger	
United Airlines	Michele Boyce	
University of Maryland	Mike Ball	
University of Maryland	Dave Lovell	

Affiliation/Organization	Name	ARC Designation
UPS	Bob Bergman	
UPS	Tim Stull	
Virgin America	Brian Clark	
Virgin America	Becky Weber	
Virgin America	David Pflieger	
Virgin America	Robecta Ma	
Virgin America	Scott Humphrey	
Virgin America	Adam Green	
Virgin America (Pillsbury Winthrop Shaw Pittman)	Jonathon Foglia	
Virgin America (Pillsbury Winthrop Shaw Pittman)	Kenneth P. Quinn	
Virgin America (Whitmer & Worrall)	Rudy Barry	
Virgin America (Whitmer & Worrall)	Martin Whitmer	

WORKING GROUP ROSTER

Working Group 1 - Operational/Infrastructure Improvements, NY Airspace Czar, General Aviation, Voluntary Reductions

Working Group Chair - FAA

Mike Sammartino

ABX Air	Bob Morgenfeld
Air Canada	Jim Jakes
Air Travelers Association	David Stempler
Airports Council International-North America	Deborah McElroy
AirTran Airways	Kevin Healy; Phil Mullis
American Airlines	George Kypreos
AOPA	Randy Kenagy
ATA	Sharon Pinkerton
Business Travel Coalition	Kevin Mitchell
Continental Airlines	Hershel Kamen
Delta Air Lines	Scott Yohe
DHL	Wolfgang Pordzik
FedEx	Steve Vail
IATA	Peter Cerda
JetBlue	Joseph Bertapelle
Lufthansa	David Thomas
National Air Carrier Association	Thomas Zoeller
National Business Aviation Association	Steve Brown
NetJets	Ted Ellett; Richard Smith
New York Department of Transportation	Astrid Glynn
Northwest Airlines	Alexander Van Der Bellen; Lorne Cass
Port Authority of NY/NJ	Patty Clark; Tom Bock
United	Tim Matuszewski
Univ. Maryland	Dave Lovell

Working Group 1 - Operational/Infrastructure Improvements, NY Airspace Czar, General Aviation, Voluntary Reductions

UPS	Tim Stull
US Airways	David Seymour; Tom Chapman
Virgin America	David Pflieger; Scott Humphrey

Working Group 2 - Auctions, Congestion Pricing, and Aircraft Gauge

Working Group Chair - DOT

DJ Gribbin

Air Canada	Rob Reid
Air Carrier Association of America	Edward Faberman
Air France	Joan Gabel
Air Travelers Association	David Stempler
Airports Council International-North America	Deborah McElroy
AirTran Airways	Kevin Healy; Phil Mullis
Alaska Airlines	Kevin Finan; Connie O'Keefe
American Airlines	Diana Walke
ATA	Sharon Pinkerton
British Airways	Steve Clark
Business Travel Coalition	Kevin Mitchell
Continental Airlines	Hershel Kamen
DHL	Wolfgang Pordzik; Ian Taylor; Stephen Dolan

Working Group 2 - Auctions, Congestion Pricing, and Aircraft Gauge

DOT	Todd Homan; Christopher Mandel; Kevin Schlemmer; Brian Swanson; Steven Hatley Nancy Kessler
FedEx	Mark Hansen
IATA	Cyriel Kronenburg
JetBlue	Robert Land
Lufthansa	David Thomas
Midwest Airlines	Greg Aretakis
National Air Carrier Association	Thomas Zoeller
National Business Aviation Association	Steve Brown
NetJets	Ted Ellett; Richard Smith
New York Department of Transportation	Astrid Glynn
Port Authority of NY/NJ	Patty Clark
RAA	Roger Cohen
United	Michele Boyce
Univ. Maryland	Dave Lovell
UPS	Tim Stull
US Airways	Andrew Nocella
Virgin America	Brian Clark; Adam Green

Working Group 3 - Gate Utilization and Perimeter Rule

Working Group Co-Chair - DOT	Mike Reynolds
Working Group Co-Chair - FAA	Dave Bennett
Air Canada	Rob Reid
Air Carrier Association of America	Edward Faberman
Air Travelers Association	David Stempler

Working Group 3 - Gate Utilization and Perimeter Rule

AirTran Airways	Kevin Healy
Alaska Airlines	Kevin Finan; Connie O'Keefe
American Airlines	Diana Walke
ATA	Sharon Pinkerton
DOT	Todd Homan; Christopher Mandel; Kevin Schlemmer; Brian Swanson
Midwest Airlines	Nancy Kessler
National Air Carrier Association	Greg Aretakis
New York Department of Transportation	Thomas Zoeller
Northwest Airlines	Astrid Glynn
Port Authority of NY/NJ	Alexander Van Der Bellen
RAA	Patty Clark
US Airways	Roger Cohen Andrew Nocella

Working Group 4 - Priority Air Traffic Preferences

Working Group Chair - DOT	Mike Reynolds
Air Canada	Jim Jakes
Air Carrier Association of America	Edward Faberman
Air Transport Association	Sharon Pinkerton
Air Travelers Association	David Stempler
Airports Council International-North America	Deborah McElroy
AirTran Airways	Kevin Healy; Phil Mullis
American Airlines	George Kypreos
AOPA	Randy Kenagy
British Airways	Steve Clark
Continental Airlines	Hershel Kamen

Working Group 4 - Priority Air Traffic Preferences

Delta Air Lines	Scott Yohe
DHL	Wolfgang Pordzik
DOT	Todd Homan; Christopher Mandel; Kevin Schlemmer; Brian Swanson
FedEx	Steve Vail
JetBlue	Joseph Bertapelle
Lufthansa	Arthur Molins
National Business Aviation Association	Steve Brown
NetJets	Ted Ellett; Richard Smith
New York Department of Transportation	Astrid Glynn
Northwest Airlines	Lorne Cass
Port Authority of NY/NJ	Patty Clark
RAA	Roger Cohen
Southwest Airlines	Leslie Abbott
United	Tim Matuszewski
US Airways	David Seymour
Virgin America	David Pflieger; Scott Humphrey

Working Group 5 - IATA Scheduling Guidelines/Other Administrative

Working Group Chair - FAA	Rebecca MacPherson
Air France	Joan Gabel
Air Transport Association	Sharon Pinkerton
Air Travelers Association	David Stempler
Alaska Airlines	Kevin Finan; Connie O'Keefe
American Airlines	Diana Walke
British Airways	Steve Clark

Working Group 5 - IATA Scheduling Guidelines/Other Administrative

Business Travel Coalition	Kevin Mitchell
Continental Airlines	Hershel Kamen
Delta Air Lines	Scott Yohe
DOT	Michael Reynolds
FAA	Molly W. Smith
FedEx	Mark Hansen
IATA	Juan Catala
JetBlue	Robert Land
Lufthansa	Arthur Molins
Midwest Airlines	Greg Aretakis
Port Authority of NY/NJ	Patty Clark
United	Michele Boyce
Univ. Maryland	Dave Lovell
UPS	Tim Stull
US Airways	Howard Kass
Virgin America	David Pflieger; Scott Humphrey

APPENDIX C — ATTACHMENTS RELATED TO WORKING GROUP1 REPORT

LIST OF 77

#	General	Notes
AIRSPACE INITIATIVES		
Procedural		
1	Reduce Excessive Spacing on Final Approach - adhere to standards, continue to look at ways of improving safety and increasing throughput with final compression studies	Ensure that excessive space on Final Approach is eliminated, and improve arrival efficiency.
2	Eliminate pass back restrictions to NY area airports for Destinations 500 miles or more	Departure restrictions to airports over 500 miles often lead to wasted space in the departure queue as controllers often have to wait to release aircraft. Eliminating this airport restrictions and allowing enroute controllers to build in the spacing would improve airport efficiency
3	Airspace Flow Program (AFP) Utilization in High volume/Delay triggers	Utilize the automation in AFP to improve enroute throughput and space aircraft to allow delayed airports access to the enroute stream
4	SWAP Escape Route for NY dep, north to CAN routes(NRS waypoints, SWAP Tactical)	Develop an additional route for Severe Weather through northgate utilizing Navigational Reference System waypoints to access the Canadian (CAN) Routes
5	Conditional Airspace holding Patterns in N90--ARD-RBV-CAMN	Develop procedures to allow NY TRACON conditionally to work holding patterns at Yardley, Robbinsville, and Camrn. This will allow the TRACON to empty the pattern quickly and immediately when traffic conditions permit, thus reducing coordination and delays.
6	Tower Reroutes - SWAP CDRs, J75 Offloads to fix balance	Develop pre-coordinated re-routes for select high delay/priority flights staged in departure queue that towers can implement without additional coordination
7	ZNY pit Enhancements (silent clearances)	During Severe Weather conditions, NY Air Route Traffic Control Center will develop procedures to allow towers to launch aircraft without coordination when their specific routes are unaffected by weather
8	J70 test - use J70 as westbound dept route instead of arrival route under certain conditions.	Develop procedures with NY Center to allow use of J70 (normally TEB & JFK arrival route) for westbound departures when delays are exacerbated by weather (tactical re-route)

#	General	Notes
9	2nd J80 Additional Westbound Departure Route North of J80	Establish an additional westbound route north of J80 to reduce volume on the most used westbound route from NY/PHL. (This is tentatively planned for spring 2008 and included as part of ZNY sector 9 & 10 resectorization)
10	Hyper-Binns resectorization	Resector positions in NY Center to segregate arrival and departure flows, reduce complexity and improve capacity.
11	Establish at ZNY new Ultra Hi sector overlying sectors 9, 10	This new position will allow for an additional J80 and improve capacity and reduce complexity and controller workload
12	Accessing J134/J149 from ELIOT	This will provide access to additional westbound routes from the NY/PHL metro area allowing for better fix balancing and reducing delays to access J80
13	Moving BOS Arrival Route to East out of ZNY Sector 56	This initiative will reduce complexity between arrivals and departures in Sector 56 at NY Center and improve departure throughput, Military Airspace proposal
14	Redesign ZNY sectors 27,73,91,93	This initiative will improve throughput by reducing complexity and segregating arrival and departure positions. It will not require any additional sectors.
15	Shifting overflights in ZNY Sector 34	Shifting overflights to allow unrestricted climbs by NY departures will improve sector capacity by reducing aircraft interactions and complexity.
16	Simultaneous Departure runways at EWR & JFK Daily	Utilize multiple runways to depart traffic simultaneously to improve throughput.
17	Stack Dept fixes to expedite departures	Allow for piggyback departure altitudes at outbound fixes to improve capacity, rather than requiring traffic be in-trail
18	Add 3rd Northgate route w/ RNAV and segregate away from MIT routes (ORD, DTW)	Add additional route for ORD and DTW traffic to allow other unrestricted destinations to flow freely on existing routes.
19	Develop RNAV route for DCA & BWI traffic to segregate from Biggy route	Develop separate route for DC area traffic from NY/PHL area to reduce complexity and reduce departure restrictions
20	Develop RNAV route for IAD arrivals from ZBW to segregate Parke Departures	Similar to above, this will segregate arrivals from departures on the same route and improve throughput
21	Develop procedures to use J146 for Departures instead of arrivals in SWAP	Similar to J70 initiative this will use the LGA arrival route for departures from NY & PHL during certain Severe Weather conditions (tactical use)

#	General	Notes
22	Advance Random Routes East program to reduce international dept delays	Similar to a procedure for eastbound traffic, agreements need to be established with international air traffic service providers to allow random routes in the eastbound direction to segregate traffic and reduce departure restrictions. FAA working with NAV Canada
23	Develop Controller Based Safety Program similar to airline safety program to allow controllers to identify safety issues without fear of reprimand.	If safety is the #1 goal the FAA needs to identify ways to improve system without punishing controllers for inadvertent errors.
24	Accelerate NY/NJ/PHL Airspace Redesign Implementation, including RTCA Near-Term Initiatives. Begin expedited planning and funding of NYICC	speed-up the implementation of the Airspace Redesign projects, deliver short term items immediately and begin the planning for delivering the NYICC
25	Reclassify B757-300 and other B757's with MTOW of 255,000 lbs or greater as a B757 not as a heavy jet aircraft.	This will reduce spacing between certain B757 aircraft and improve capacity. Standards call for all aircraft above 250,000 lbs. to be classified as heavyjets with increased spacing requirements. A B757 has a lesser spacing requirements
26	Develop procedures for efficient use of visual approaches	Improve throughput in VMC
27	Eliminate in-trial restrictions when EDCTs in place	Improve efficiency and improve GDP performance
28	Segregate departures by fix (to the extent practical) through remote staging and develop intersection departure procedures to facilitate SWAP operations	Facilitates SWAP departures - however requires areas to hold aircraft with access to runways
29	Develop standard throughput rates based on weather and actual aircraft types	Eliminate subjectivity to throughput rates
30	Analyze staffing in towers to determine if additional staff will improve capabilities	Improve operational capability in towers
31	Develop initiative with the National Weather Service to improve convective forecasting - develop CCFP with greater granularity	Improved forecasting is the key to better weather planning
32	Develop RNAV RNP Procedures to reduce spacing requirements - SAAAR, Sids, STARs	Utilize new precise navigation systems to reduce spacing
TEB		
33	Add RNAV fixes west and north of WANES to facilitate use of the VOR DME A approach to TEB. A complete RNAV Visual or RNAV approach with descent guidance is needed.	Utilize RNAV to improve use and consistency of VOR/DME A track to TEB, to deconflict arrivals with EWR Traffic

#	General	Notes
34	Develop procedures to consistently utilize RNAV Runway 6 to deconflict EWR traffic	RNAV 6 approach to TEB allows EWR & TEB to operate independently. Current procedures allow limited use of this approach. Procedures need to be developed to more consistently use the RNAV 6 approach to TEB
35	Develop additional RNAV procedures to deconflict TEB & MMU from EWR traffic	New RNAV designs and procedures to operate TEB & MMU independently from EWR
36	Develop RNAV "transitions" or CVFPs to deconflict traffic flows and reduce noise impacts.	Similar to 24B above. All TEB proposals can be grouped under RNAV development
JFK		
37	Simultaneous ILS Approaches on 31L and 31R at JFK	Enhances arrival throughput - N90 training issue currently in progress
38	Increased use of alternate departure Runway at JFK by expanding fixes available	Expand the departure fixes allowed use of secondary departure runway (usually 31L) - White/Wavey Shuffle
39	Develop procedures to utilize JFK 31L departures with LGA on Coney Climbs	This will increase the use of 31L at JFK and allow LGA Coney climbs which will increase departure throughput at both airports. Restrictions have been in place with slower climbing aircraft (B727) but newer aircraft can easily make climb restrictions
40	Develop procedures to utilize JFK 31R and 22L arrivals via CRDA	Allow crossing runway simultaneous arrivals with the use of CRDA procedures - requires wake turbulence analysis
41	Develop JFK 13R arrivals and 22R departures waiver	Allow departures from 22R at JFK while arrivals land 13R. Reduces amount of separation required between operations to realistic levels while maintaining safety.
42	Develop 31L and 22L CRDA procedures	Allows for multiple arrival runways and 4-runway concept
LGA		
43	Develop non-conflicting RNAV approach into JRB	In IFR weather helicopters often fly LGA ILS until clear of clouds, reducing airport capacity. An RNAV approach into Wall St. Heliport will resolve this and deconflict traffic
44	Develop RNAV transition to LOC 31 approach or overlay vector pattern for LOC 31 approach with RNAV waypoints	Reducing controller complexity and improving final approach path consistency will improve airport throughput
EWR		
45	EWR 4R-29 Waiver - Allow reduced spacing on crossing runway operations	Similar to JFK waiver, this procedures allows arrivals to Runway 29 while landing Runway 4R. Aircraft are spaced to ensure safety and operations are enhanced.

#	General	Notes
46	Simultaneous Visual Approaches to 4L at EWR	Increased arrival capacity by allowing overflow arrivals to 4L.
47	Deconflict EWR arrivals over SHAFF (12am-6am time dependent)	This allows for higher arrival altitudes for international traffic from the north during low demand times
48	Caribbean Tactical Reroutes to Manage EWR Arrival Banks	Re-routes Caribbean arrivals to better control EWR final approach while landing Runway 4R - tactical operation
49	Establish an RNAV visual approach procedure to EWR runway 29 to have a repeatable, stabilized approach path. From both north and south approaches	Allows for more consistent spacing and improves ability to land 29 while other aircraft land 4R or 22L. This is being developed by N90 and FAA RNAV office
50	Develop RNAV STAR from SHAFF/PHLBO to runway 11 at EWR	Segregates Runway 11 arrivals from other traffic and makes them easily identifiable to controllers
51	Develop RNAV Departure Procedure from EWR runway 22 to LANNA, PARKE and BIGGY	Facilitate departures and reduce controller workload
52	Develop a climb off EWR RWY 4 to top LGA arrivals when LGA ILS RWY 13 is in use	Reduce impact of 13 ILS at LGA on TEB and EWR Traffic
53	Develop RNAV/Chartered Visual to Runway 22R to eliminate use of VFR GDP	Allow some overflow arrivals to Runway 22R and reduce controller workload reducing need for Ground delays programs in good weather
54	Develop Converging Runway Display Aid (CRDA) procedures for use in Visual conditions for Runway 11/22 and 4/11 (w/no Land and hold short restrictions)	Develop procedures to allow for non-conflicting overflow arrivals
55	Develop procedures for Visual approaches to 22L with tower side-step to 22R in visual conditions	Similar to RNAV to 22R - eliminate VFR GDP
Technological		
56	Develop PRM (ADS-B/Multi-Lat)/SOIA or RPAT type procedures for parallel approaches to EWR 4L/R and 22L/R for use in MVMC.	Longer range project to allow for landing on parallel runways in less than visual conditions
57	Install ground surveillance systems (ASDE-X with Data Distribution Box for airline & FAA Access) at EWR & JFK in 2008	COA announced plan to install system at EWR and FAA accelerating ASDE-X installation at JFK - need to accelerate effort to extent practical
58	Further refine and develop RAPT(Root availability planning tool) to improve predictability capabilities	In FAA budget, being worked
59	Datalink real-time weather data and forecast to cockpit	Longer-term initiative
60	Utilize ADS-B to improve traffic flows and reduce spacing -	Reduced spacing based on more precise surveillance equipment

#	General	Notes
61	Digital Non-voice communications - data link	Next-Gen
62	Develop Net-Centric airport where ALL operational information both user, airport, and FAA is in one source with all entities operating off the net-centric system - reroutes, gate, ready status, etc.	Shared data to all parties - may be do-able in shorter timeframe
63	Develop 4-D flight tracks to improve traffic flows and runway sequencing - Suggest expansion of Traffic Management Advisor (TMA) to additional airports/runways.	Expansion of existing programs - enhance data to reduce delays and improve throughput
64	Install terminal multi-lateration capability/leverage investment in ASDE-X and related ground surface management systems to provide high update surveillance capability in advance of ADS-B mandate.	Utilize ground surveillance systems to improve operations both in air and on ground through new procedures designed to take advantage of improved surveillance capability.
65	Accelerate LAAS/GBAS *(ground based augmentation system) installation for EWR/TEB	Mid-term navigation improvements
Capital		
66	Develop Closely spaced Dependent ILS Approaches (STL Procedures) 1.5 nm diagonal separation behind like types or smaller at EWR. Allow procedure in certain weather conditions regardless of type - e.g. 15 kt crosswind with heavy outside.	Procedures to increase arrival flow to parallel runways, requires change in thresholds
67	Provide aircraft holding pad at end of taxiway P & Q near JFK Runway 13R	Being considered for JFK 13R rehab project in 2009
68	Add additional airside pavement at JFK for deicing and SWAP - Hanger 12 site	Additional pavement needs to be added to PA Capital plan
69	Add multiple access points to runway ends (similar to DFW) All airports	Pavement needs similar to above
70	Evaluate obstacles impacting EWR Runway 29 takeoff weights and initiate removal.	Longer term initiative
71	Evaluate obstacles impacting LGA Runway 13 takeoff weights and develop plan for removal	Long term capital planning
72	Uncouple Runway 4R and runway 29 at EWR.	Requires discussion - Shortens runway - Work through Customer Forum
73	Install ODALS or other specialized lighting system for EWR Runway 11	Capital cost - engineering feasibility required
74	Deploy Air Traffic Control Tower simulators to EWR, JFK, LGA for reduce training time and improve safety	Improve training capability of tower staff - Speed training of new controllers
75	Taxiway improvements - LGA	Improve ability to stage and store aircraft

#	General	Notes
76	LGA ALSF-2 installation - Runway 22	Provides ability to obtain CAT II approach to runway 22
77	JFK additional taxiway improvements (Taxiway B to 22L 31R, etc)	Increase runway use flexibility

GIBSON, DUNN & CRUTCHER LLP MEMORANDUM TO ATA

GIBSON, DUNN & CRUTCHER LLP

November 14, 2007

C 04536-00003

MEMORANDUM

TO: David A. Berg, Esq.
Air Transport Association of America, Inc.

FROM: Theodore B. Olson

RE: Congestion Pricing and Slot Auctions at JFK and LGA

This memorandum analyzes whether the Federal Aviation Administration (“FAA”) or the Port Authority of New York and New Jersey (“PANYNJ”) is authorized to implement congestion pricing or slot auctions at New York airports. Part I summarizes the regulatory mechanisms that have traditionally been used to address airport congestion, as well as the new regulatory approaches being considered. Part II examines the FAA’s authority to impose congestion pricing or slot auctions at John F. Kennedy International Airport (“JFK”) and LaGuardia Airport (“LGA”), and concludes that Congress has not authorized the FAA to implement such measures. Part III considers whether the PANYNJ could impose congestion pricing or slot auctions. It concludes that federal law would preempt such measures, and that the imposition of congestion pricing and slot auctions would also be unreasonable. The memorandum therefore concludes that, under the current statutory and regulatory framework, neither the FAA nor the PANYNJ possesses the authority to impose congestion pricing or slot auctions.

I. Background

Congestion at New York City’s JFK and LGA airports has long been a cause of concern for airlines, the federal government, and the PANYNJ, which operates both airports. Historically, the FAA addressed flight delays at high volume airports by capping the volume of aircraft operations during peak periods of the day through a High Density Traffic Airports Rule (“HDR”). *See* 14 C.F.R. pt. 93, subpart K. The HDR required aircraft to have a reservation, or “slot,” in order to operate during peak periods of the day. 71 Fed. Reg. 51,361 (Aug. 29, 2006) (describing the background of the HDR at LGA). In 2000, however, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century, which phased out the HDR at three airports, including JFK and LGA. 49 U.S.C. § 41715. Since that time, congestion levels at those airports have increased, as have passenger delays. 71 Fed. Reg. at 51,361.

In considering measures to reduce congestion at New York City’s airports, the FAA has recently focused on market-based mechanisms—most notably, congestion pricing and slot auctions—to allocate the airports’ limited resources. 71 Fed. Reg. at 51,631-32. Under the congestion pricing mechanism, the FAA (or the PANYNJ) would require aircraft to pay substantially higher takeoff and landing fees to operate during peak periods in order to discourage aircraft from operating during those times. Under the slot auction mechanism, the

GIBSON, DUNN & CRUTCHER LLP

FAA (or the PANYNJ) would auction a limited number of slots to airlines seeking to operate during peak periods, with the highest bidders receiving those slots.

Whether or not congestion pricing and slot auctions would successfully reduce congestion at New York airports, neither mechanism can be lawfully imposed by the FAA or the PANYNJ.

II. The FAA Lacks The Authority To Implement Congestion Pricing Or Slot Auctions At JFK And LGA

Although the FAA possesses the authority to impose restrictions on navigable airspace, the agency has itself acknowledged that invoking this authority to impose congestion pricing or slot auctions would violate constitutional and statutory requirements.

Congress has granted the FAA authority to impose restrictions on navigable airspace by regulation or order. *See* 49 U.S.C. § 40103(b)(1) (authorizing the FAA to “develop plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace”). The authority granted by this provision extends to “protecting individuals and property on the ground.” *Id.* § 40103(b)(2)(B). As noted, the FAA has exercised this authority in the past to limit the number of takeoffs and landings at certain high-volume airports through an IADR. *See* 14 C.F.R. § 93.123 (1973).

The FAA’s statutory authority does not extend, however, to establishing airport landing fees, which “has been left by Congress to local action.” *New England Legal Found. v. Mass. Port Auth.*, 883 F.2d 157, 172 (1st Cir. 1989) (“*Massport*”). Although the Department of Transportation (“DOT”) is authorized under certain circumstances to determine whether locally imposed landing fees are reasonable (49 U.S.C. § 47129(a)(1)), there is no statutory provision authorizing the DOT to set the actual level of those fees.

It would be unconstitutional for the FAA to invoke its general power to regulate the airspace as a basis for imposing congestion pricing or slot auctions because only Congress possesses the authority to implement such measures in the absence of a clear delegation from Congress. Under Article I of the Constitution, Congress is the “sole organ for levying taxes.” *Nat’l Cable Television Ass’n v. United States*, 415 U.S. 336, 340 (1974). The Supreme Court has recognized that assessments intended “to discourage [an] activity . . . are in the nature of ‘taxes’ which under our constitutional regime are traditionally levied by Congress.” *Id.* at 341. Congestion pricing and slot auctions are classic taxes because these measures are designed to discourage takeoffs and landings during peak periods by making operations during those times more expensive.

Congress may, of course, delegate its taxing authority to agencies, “so long as Congress provides an administrative agency with standards guiding its actions such that a court could ascertain whether the will of Congress has been obeyed.” *Skinner v. Mid-Am. Pipeline Co.*, 490 U.S. 212, 218 (1989) (internal quotation marks omitted). In order to satisfy separation-of-powers requirements, Congress must “clearly delineate[] the general policy, the public agency which is to apply it, and the boundaries of th[e] delegated authority.” *Id.* at 219 (quoting *Am. Power & Light Co. v. SEC.*, 329 U.S. 90, 105 (1946)). The only general authority, however, that

GIBSON, DUNN & CRUTCHER LLP

Congress has delegated to the FAA with respect to taxes or fees is the power delegated to all federal agencies in the Independent Offices Appropriations Act (“IOAA”), 31 U.S.C. § 9701.¹ In *National Cable*, the Supreme Court narrowly interpreted the IOAA to authorize only the assessment of fees on individuals who obtain special benefits from licenses or services provided by an agency, not the levying of taxes. 415 U.S. at 336; *Fed. Power Comm’n v. New England Power Co.*, 415 U.S. 345, 349 (1974) (holding that fees are valid under the IOAA if the agency levies “specific charges for specific services to specific individuals or companies”). Because congestion pricing and slot auctions are taxes designed “to discourage [an] activity” (*Nat’l Cable*, 415 U.S. at 341), rather than fees for a license or service provided by the FAA, the IOAA does not authorize the FAA to implement these measures.

Furthermore, even if congestion pricing and slot auctions were considered “fees,” the IOAA still would not authorize their imposition. The IOAA requires that fees imposed by agencies be based upon, among other things, the “cost to the Government.” 31 U.S.C. § 9701(b)(2)(A). Fees must therefore reflect “a reasonable approximation of the attributable costs which the [agency] identifies as being expended to the benefit of the recipient.” *Nat’l Cable Television Ass’n v. FCC*, 554 F.2d 1094, 1106 (D.C. Cir. 1976); *see also Neb. Trails Council v. Surface Transp. Bd.*, 120 F.3d 901, 903 (8th Cir. 1997) (charges assessed under the IOAA “must be fair and based on the Government’s costs, the value of the service or thing to the recipient, the public policy or interest being served, and other relevant facts”). Because congestion pricing and slot auctions are based on the market value of the slots and policy judgments concerning incentives and disincentives, rather than on the cost to the government of providing such slots, these measures are not authorized under the IOAA.²

The FAA itself has recognized as recently as last year that it lacks the power to implement congestion pricing or slot auctions. The agency explained that “legislation would be necessary to employ market-based approaches such as auctions or congestion pricing at LaGuardia because the FAA currently does not have the statutory authority to assess market-clearing charges for a landing or departure authorization.” 71 Fed. Reg. 51,360, 51,362 (Aug. 29, 2006) (emphasis added); *see also id.* at 51,363 (“The FAA currently does not have full

¹ The FAA’s power to manage the airspace does not include the authority to impose taxes (or fees) as a means of implementing that authority. *See* 49 U.S.C. § 40103(b)(1). Congressional delegations of taxing authority must be “clear[.]” (*Skinner*, 490 U.S. at 224), and the text of Section 40103 makes absolutely no mention of the authority to impose taxes (or fees). Moreover, Congress’s authorization of passenger facility fees in 49 U.S.C. § 40117 does not authorize the type or amount of congestion pricing fees that would be necessary to effectively reduce airport operations during peak periods. *See* 49 U.S.C. § 40117 (the DOT may authorize airports to charge fees of between \$1.00 and \$4.50 per paying passenger to “finance an eligible airport-related project”).

² Moreover, because the FAA lacks statutory authority to impose congestion pricing or slot auctions, the agency’s expenditure of funds on those efforts would violate the Anti-Deficiency Act, which prohibits the government from spending money in the absence of a federal appropriation. *See* 31 U.S.C. § 1341(a)(1).

GIBSON, DUNN & CRUTCHER LLP

legislative authority to employ [auctions or congestion pricing] at LaGuardia or at other airports Consequently, we are seeking the legislative authority to conduct auctions or congestion pricing.”).

In light of the absence of statutory authorization, and the restrictions imposed on the FAA by the constitutional separation of powers and the IOAA, any attempt by the FAA to impose congestion pricing or slot auctions at JFK or LGA would be contrary to both federal constitutional and statutory requirements.³

III. The PANYNJ Lacks The Authority To Impose Congestion Pricing Or Slot Auctions At JFK And LGA

Like the FAA, the PANYNJ is prohibited by federal law from implementing congestion pricing or slot auctions at JFK and LGA.

A. Federal Law Preempts State Laws That Impose Congestion Pricing Or Slot Auctions

There are several legal impediments to the PANYNJ’s implementation of congestion pricing or slot auctions at its airports. As a threshold matter, federal law would preempt a PANYNJ measure imposing such market-based mechanisms.

In the Airline Deregulation Act of 1978, Congress expressly provided that “a State . . . or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of a law related to a price, route, or service of an air carrier.” 49 U.S.C. § 41713(b)(1); *see also Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992) (the purpose of this provision was “[t]o ensure that the States would not undo federal deregulation with regulation of their own”). The Supreme Court has construed this preemption provision to encompass state laws “having a connection with, or reference to, airline rates, routes, or services.” *Am. Airlines v. Wolens*, 513 U.S. 219, 223 (1995) (internal quotation marks omitted). Heightened fees imposed on airlines to land at airports during certain times of the day unquestionably “hav[e] a connection with . . . airline ‘rates, routes, or services.’”⁴

³ The FAA may not circumvent these constitutional and statutory restrictions by directing the PANYNJ to conduct auctions or establish congestion pricing. An agency cannot do indirectly what it cannot do directly. *Cf. Massport*, 883 F.2d at 173-74. Nor can the FAA attempt an end-run around these restrictions by contracting with the PANYNJ for the imposition of congestion pricing or slot auctions at JFK and LGA. Although 49 U.S.C. § 106(f)(6) grants the FAA the general authority to enter into contracts “as may be necessary to carry out [its] functions,” measures that would be unconstitutional if implemented by the FAA directly cannot be “necessary to carry out [the FAA’s] functions.”

⁴ The *Wolens* Court’s preemption analysis was based on 49 U.S.C. App. § 1305, which was the original codification of current 49 U.S.C. § 41713. Title 49 was revised and recodified by Pub. L. No. 103-272, 108 Stat. 745 (1994). Although the text of the two statutes is slightly

[Footnote continued on next page]

GIBSON, DUNN & CRUTCHER LLP

Section 41713(b)(1) would therefore preempt any PANYNJ measure imposing congestion pricing or slot auctions, unless that measure fell within the statute's proprietary powers exception, which preserves a State's authority to "carry[] out its proprietary powers and rights." 49 U.S.C. § 41713(b)(3). Courts considering this exception have consistently emphasized that the role of airport proprietors is "extremely limited." *Arapahoe County Pub. Airport Auth. v. FAA*, 242 F.3d 1213, 1222 (10th Cir. 2001); *British Airways Bd. v. PANYNJ*, 564 F.2d 1002, 1010 (2d Cir. 1977).

The First Circuit has squarely concluded that the proprietary powers exception does not apply to landing fees imposed to ease airport congestion. In *New England Legal Foundation v. Massachusetts Port Authority*, 883 F.2d 157 (1st Cir. 1989), the court held that federal law preempted a landing fee scheme imposed by the Massachusetts Port Authority ("Massport") at Logan Airport. The challenged landing fees were based on aircraft weight, and the fee structure resulted in drastically higher fees for smaller aircraft, but lower fees for larger ones. *Id.* at 159. The court explained that, although the proprietary powers exception "allows local authorities to operate airports as proprietors, this grant is not unlimited and is subject to curbing if it transgresses into the general field reserved for federal interest." *Id.* at 173. Because the landing fee structure appeared to be an effort to "modify conduct (e.g., control air traffic) rather than to recover operational costs," the court concluded that the proprietary powers exception was inapplicable and that the fees were preempted. *Id.* at 174.

The proprietary powers exception therefore does not encompass airports' efforts to impose congestion pricing and slot auctions. As the First Circuit recognized in *Massport*, although landing fees designed to defray operational costs are proprietary in nature, airport operators are prohibited from using such fees to regulate and control air traffic—a function that resides exclusively with the FAA. 49 U.S.C. § 40103(b); *see also Massport*, 883 F.2d at 173 (explaining that because Massport could not enact a direct regulation establishing the times when landings could occur, it could not accomplish that objective indirectly by imposing congestion fees designed to have the same effect). Because the primary purpose of congestion pricing and slot auctions at LGA and JFK would be to discourage airlines from scheduling takeoffs and landings during peak periods, such measures would transcend the PANYNJ's proprietary powers and would be preempted by federal law.⁵

[Footnote continued from previous page]

different, the textual revisions were not intended to result in substantive changes to the law (*id.* at 745), and interpretations of the earlier codification therefore apply with equal force to the current codification. *Cf. W. Pac. R.R. Corp. v. W. Pac. R.R. Co.*, 345 U.S. 247, 255 (1953).

⁵ *Western Air Lines Inc. v. PANYNJ*, 658 F. Supp. 952 (S.D.N.Y. 1986), *aff'd*, 817 F.2d 222 (2d Cir. 1987), is not to the contrary. That decision upheld the PANYNJ's implementation of a perimeter rule at LGA, which prohibited nonstop operations in excess of 1,500 miles from the airport. In endorsing PANYNJ's proprietary right to limit the flights that could land at LGA, the court did not conclude that the use of congestion pricing or other market-based mechanisms to address congestion issues is also a component of an airport owner's proprietary powers.

GIBSON, DUNN & CRUTCHER LLP

B. The Anti-Head Tax Act And Other Federal Statutes Prevent The PANYNJ From Implementing Congestion Pricing And Slot Auctions

In addition to being preempted, the PANYNJ's imposition of congestion pricing and slot auctions would also violate several provisions of federal law.

The Anti-Head Tax Act permits publicly owned airports to collect only reasonable landing fees and charges. *See* 49 U.S.C. § 40116(e)(2) (a State or political subdivision of a State may collect “reasonable . . . landing [fees] and other service charges from aircraft operators for using airport facilities of an airport owned or operated by that State or subdivision”).⁶ Similarly, the Airport and Airway Improvements Act of 1982 requires an airport that receives federal grant money or land to provide assurances that it “will be available for public use on reasonable conditions and without unjust discrimination.” 49 U.S.C. § 47107(a)(1); *see also id.* § 47101(a)(12) (“It is the policy of the United States that airport fees, rates, and charges must be reasonable”). This provision has “been interpreted to include a requirement that the airport’s fees be reasonable.” *Air Transp. Ass’n of Am. v. DOT*, 119 F.3d 38, 39 (D.C. Cir. 1997); *see also Massport*, 883 F.2d at 169 (explaining that “reasonable” fees must “fairly and rationally reflect[] the cost to users that are comparably situated,” and thus must be “founded upon a principled, non-arbitrary basis”).

As directed by Congress in 49 U.S.C. § 47129, the Secretary of Transportation issued a “Final Policy Regarding Airport Rates and Charges” in 1996, which set forth the standards that the Secretary would use in determining “whether an airport fee is reasonable.” 49 U.S.C. § 47129(b)(2).⁷ The Final Policy mandates that, in order to be reasonable, “[r]evenues from fees imposed for use of the airfield . . . may not exceed the costs to the airport proprietor of providing airfield services . . . unless otherwise agreed to by the affected aeronautical users.” 61 Fed. Reg. 31,994, 32,019 (June 21, 1996); *see also id.* at 32,021 (“[i]n establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for purposes for which airport revenues may be spent under 49 U.S.C. § 47107(b)(1)”). To be reasonable, a fee assessed by an airport must therefore be revenue neutral.

The PANYNJ could not lawfully impose congestion pricing or slot auctions because, in order to reduce the number of flights during peak hours of the day, the PANYNJ would need to increase takeoff and landing fees so substantially—and decrease the number of available slots so

⁶ Although the First Circuit held in *Massport* that congestion fees were “outside the scope” of the Anti-Head Tax Act (883 F.2d at 170), the Supreme Court has since held that “[l]anding fees, terminal charges, and other airport user fees . . . fit the [Anti-Head Tax Act’s] description.” *Nw. Airlines v. County of Kent*, 510 U.S. 355, 365 (1994).

⁷ Although termed a “Final Policy,” this promulgation is “clearly” an agency rule. *Air Transp. Ass’n of Am.*, 119 F.3d at 40 n.3. Portions of the Final Policy were invalidated by the D.C. Circuit, but the parts relevant to the validity of congestion pricing and slot auctions remain in force. *See id.* at 45.

GIBSON, DUNN & CRUTCHER LLP

significantly that the measures would inevitably fail to be revenue neutral. The PANYNJ has itself acknowledged the substantial revenues that it would receive from the imposition of congestion pricing and slot auctions in its 2001 submission to the FAA regarding capacity management options at LGA. 66 Fed. Reg. 31,731, 31,741-48 (June 12, 2001). The first option proposed by the PANYNJ was the imposition of congestion fees on flights landing during peak hours of the day in order to decrease demand for use of the airfield during those hours. The second option was to allocate a fixed number of authorized operations through use of an auction among competing airlines. The PANYNJ asserted that the “primary purpose” of implementing the congestion pricing or slot auction procedures would be “to allocate the scarce resources available at LGA efficiently, not to generate additional revenue.” *Id.* at 31,743. It nevertheless forecast that these mechanisms would create between \$130 million and \$550 million per year in additional revenue. *Id.* at 31,745. This revenue estimate was based on the level of fees required to reduce operations to the desired level during peak periods (*i.e.*, approximately 78 operations per peak hour).⁸

The PANYNJ’s 2001 proposal demonstrates that, to have the desired effect on the volume of operations during peak periods, the imposition of congestion pricing or slot auctions could not be revenue neutral. Indeed, the FAA’s comments regarding the 2001 proposal recognize that “for a market-based approach to be effective in allocating scarce resources at LGA, the revenue generated would *far exceed* the amount collected by traditional airport charges.” 66 Fed. Reg. at 31,737 (emphasis added); *see also id.* at 31,738 (“The generation of revenue in excess of the airport’s traditional cost base raises several policy questions for the FAA.”).

The use of congestion pricing and slot auctions to generate revenues that exceed the cost of airfield services and assets is not reasonable under the Anti-Head Tax Act, the Airport and Airway Improvements Act, or the Secretary’s Final Policy, and is therefore foreclosed by federal law.⁹

⁸ Moreover, the PANYNJ’s 2001 proposal assumed that the market-based mechanisms would be instituted at LGA alone. Revenues could total more than \$1 billion if the PANYNJ also implemented such mechanisms at JFK and generated a comparable amount of revenue at that airport as at LGA.

⁹ Although not addressed in this memorandum, congestion pricing and slot auctions may also constitute an abuse of the PANYNJ’s monopoly power. *See N.Y. Airlines v. Dukes County*, 623 F. Supp. 1435, 1452 (D. Mass. 1985) (“[t]he fact that [an airport] may adopt rules and regulations to insure the safety of the public is not sufficient evidence of authority to engage in anticompetitive conduct”).

GIBSON, DUNN & CRUTCHER LLP

IV. Conclusion

Neither the FAA nor the PANYNJ possesses the authority to impose congestion pricing or slot auctions at LGA and JFK. A court would invalidate any attempt to do so as contrary to federal constitutional and statutory requirements.

ACAA MEMORANDUM TO WORKING GROUP 2



1776 K Street, N.W., 9th Floor, Washington, DC 20006
(202) 719-7420 (Telephone) (202) 719-7049 (Facsimile)
Ed Faberman, Executive Director

www.aaal.com

MEMORANDUM

TO: Working Group 2

FROM: Edward P. Faberman, Executive Director

DATE: November 30, 2007

SUBJECT: ARC Working Group 2 – Congestion Pricing and Auctions

The ACAA reiterates the need for specific provisions dealing with new entrants and limited incumbents in any congestion pricing or auction program. Without carve-outs allowing these smaller carriers to enter airports, grow, and compete, the level of competition will fall and consumers and the entire industry will suffer.

Before an auction or congestion pricing system is implemented, some operating authorizations should be distributed to small carriers so that they are not so disproportionately outmatched by the legacy carriers. Providing these slots to carriers with limited operations will prevent them from being completely blocked from expansion.

The draft report repeats the false statement that secondary markets there “have not been very effective” because new entrant and limited incumbent carriers were “given slots for free” at LaGuardia and O’Hare. This statement should be removed. First, all carriers were provided slots at O’Hare and LaGuardia “for free.” Some slots were purchased, but all carriers have “free” slots. Since buy-sell was implemented, only a small number of slots have been sold. Some were included in larger purchases or from a carrier filing for bankruptcy or dropping service. Secondary markets have not increased competition.

If auctions are chosen as the preferred method of slot allocation, a blind auction system should be created so all carriers have full opportunities to obtain, purchase or lease slots. A blind auction involving anonymous bidders will prevent dominant carriers from continuing their reign over slots. Such a mechanism is absolutely necessary to reestablish a fair playing field for airlines involved in slot transfers and will allow true competition

to return to the New York area airports. Blind auctions also benefit the public interest, as they ensure that slots/operating authorizations will continually come available and provide access to many different holders.

The draft report also states that a secondary market would be an effective vehicle for carriers to swap, lease and sell slots, even without carve-outs for new entrant and limited incumbent carriers. This is absolutely incorrect. Time and again the ACAA has emphasized that incumbent carriers rarely sell or lease slots to limited incumbents because maintaining market power and excluding competition is so important to them. As the Department of Justice has stated, incumbents with market power “will always have an incentive to outbid an equally efficient entrant for any slots offered.” The Department commented:

“Indeed, an incumbent with market power may well be able to outbid a more efficient entrant, simply because maintaining market power is more profitable than entering a competitive market...once a potential buyer’s identity is known to the seller, the seller has every incentive to seek out an incumbent airline that would be willing to offer more money to maintain its market power than the entrant would be willing to apply to erode it.”¹

Carriers cannot be allowed to control who they sell their slots to. As the Department of Justice noted, using a blind auction mechanism and concealing the identity of bidders will prevent incumbent carriers from being able to make sales decisions based on a bidder’s identity. This will eventually end the dominance over operating authorizations and will spread control and ownership more equally among all airlines.

Additionally, in order for the auctions to be fair, the bids must be weighted according to how many operating authorizations the carrier already holds. By inflating the bid of small carriers, they will have a better chance to actually obtain the operating authorizations they desire rather than continually being outbid by legacy carriers with greater resources. However, the weighting formula must be significant enough so as to truly assist those carriers with less than 30 operating authorizations.

¹ Comments of the United States Department of Justice regarding the Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of Lottery Allocation, Docket No. FAA-2001-9854, p.6.

**COMMENTS FROM AMERICAN AIRLINES REGARDING THE PROPOSED PANYNJ
LAGUARDIA GATE LEASING POLICY**

**Comments of American Airlines
Proposed PANYNJ LaGuardia Gate Leasing Policy
New York Aviation Rulemaking Committee
Working Group 3
November 27, 2007**

The Port Authority has proposed a gate leasing policy for LaGuardia as an alternative to the regulatory scheme proposed by the FAA in 2006 (71 Fed. Reg. 51360, 8/29/06).¹ However, while the two plans have some differences, they are identical at their core – both would effectively regulate competition at LaGuardia under the guise of a legitimate function (congestion management for the FAA, facilities management for the Port). While American strongly supports efforts to reduce delays at airports like LaGuardia, congestion management does not require competition to be replaced by central planning. Accordingly, American opposes the Port’s proposal.

I. Background

The Port has proposed a system under which the LaGuardia would continue to be capped at 75 scheduled hourly operations through gate leases allocated by the Port rather than the FAA. The Port believes it could manage the allocation of capacity at LaGuardia more effectively than the FAA because it could match aircraft sizes to gate positions, monitor gate usage, and confiscate/reallocate a percentage of gate reservations each year to create an artificial level of turnover. The Port would allocate the operations through a system of Gate Reservations, assigning one Gate Reservation per hour at each of its 75 Gate Positions at LGA. The Port indicates that its gates are not uniform, some may not

¹ American has stated previously that it will not support any proposal that is not part of a larger and more comprehensive solution to congestion in the New York region generally.

accommodate larger aircraft, and many of its terminals have gates of significantly different sizes.

The Port would reallocate gate reservations annually, using three different methods: use/lose; aircraft seat size; and forced confiscation. The use/lose policy would require that each Gate Reservation be used at least 90% of the time during a three month period. The aircraft seat size requirement would require compliance with a Target Activity Level of 80% of the average maximum number of seats per passenger aircraft for each Gate Position Category. A carrier's failure to meet the use/lose or Target Activity Level requirements would result in the Port reclaiming Gate Reservations. If this turnover – along with any buy/sell – did not result in a sufficient level of turnover over a three year period, the Port would also be allowed to confiscate Gate Reservations from incumbents to distribute to new entrants and limited incumbents for the sole purpose of regulating competition.

II. Competition Is Not Broken At LaGuardia – There Is No Need (Or Statutory Authority) To Fix It

Free market competition need not be impaired by delay reduction and congestion management mechanisms. Despite that fact, the Port's proposal (like the LGA NPRM) would impose a central planning mechanism to replace the free market that has served consumers well over the last three decades. While some regulation of capacity-constrained airports like LaGuardia is necessary, Congress has not given the FAA or the Port a blanket license to supplant competitive market forces. Specifically, Congress has directed the FAA to place “maximum reliance on competitive market forces and on actual and potential competition” (49 U.S.C. § 40101(a)(6)) (emphasis added). The

proposed rule fails to meet that standard. The FAA cannot cede this statutory authority to allow the Port to manage flight activity at LaGuardia through a local leasing policy.

Moreover, even if the Port had the authority to regulate competition at LaGuardia, it is unclear how anyone can conclude that there is a need to do so. Despite slot limitations under the HDR, competition at LaGuardia – and New York City as a whole – is extremely robust. American and other airlines have invested in developing comprehensive networks at LaGuardia. Continental operates a hub on the other side of Manhattan at Newark. Low cost competitors abound in New York, with US Airways, AirTran, ATA Airlines, Frontier and JetBlue at LaGuardia, JetBlue at JFK, Southwest at Islip and JetBlue and AirTran at Newburgh. LaGuardia is less concentrated than neighboring Newark or other comparable airports like Baltimore-Washington, Washington-Reagan or Oakland. For New York City's three major airports as a whole, market concentration is even lower. As a result of this vibrant competition, fares to and from LaGuardia and New York City are competitive. Despite limits on operations, load factors are no higher at LaGuardia than at other airports.

Perhaps the only element of competition that does not work well at LaGuardia is the secondary market for HDR slots. Yet this is not the fault of incumbents; rather, AIR-21 largely eliminated the value of HDR slots to new entrants and limited incumbents by making slots available to them for free. This should be no surprise, as no rational airline would pay a competitor for a slot that it could get from the government for free. The FAA should focus on working with airlines and the Port to maximize LaGuardia's ability to support operations and to manage those operations in a way that minimizes delays and congestion. The free market will – and does – take care of the rest.

A. Competition – Not Regulation – Should Govern Capacity At LaGuardia Absent Evidence That Free Markets Are Unable To Achieve An Efficient Result

In 1978, Congress decided that the regulation of domestic airline competition led to inefficiency – with consumers bearing the burden of higher fares and fewer choices. In the nearly 30 years since the Airline Deregulation Act was enacted, the results for airlines have often been harsh. Names like Eastern, Braniff and Pan Am have disappeared from the marketplace. Even airlines that have survived have had difficulty; only one of the remaining pre-deregulation network carriers – American – has avoided bankruptcy. There is simply no more competitive industry in the U.S. than commercial aviation – and New York City is one of the most competitive markets in the country.

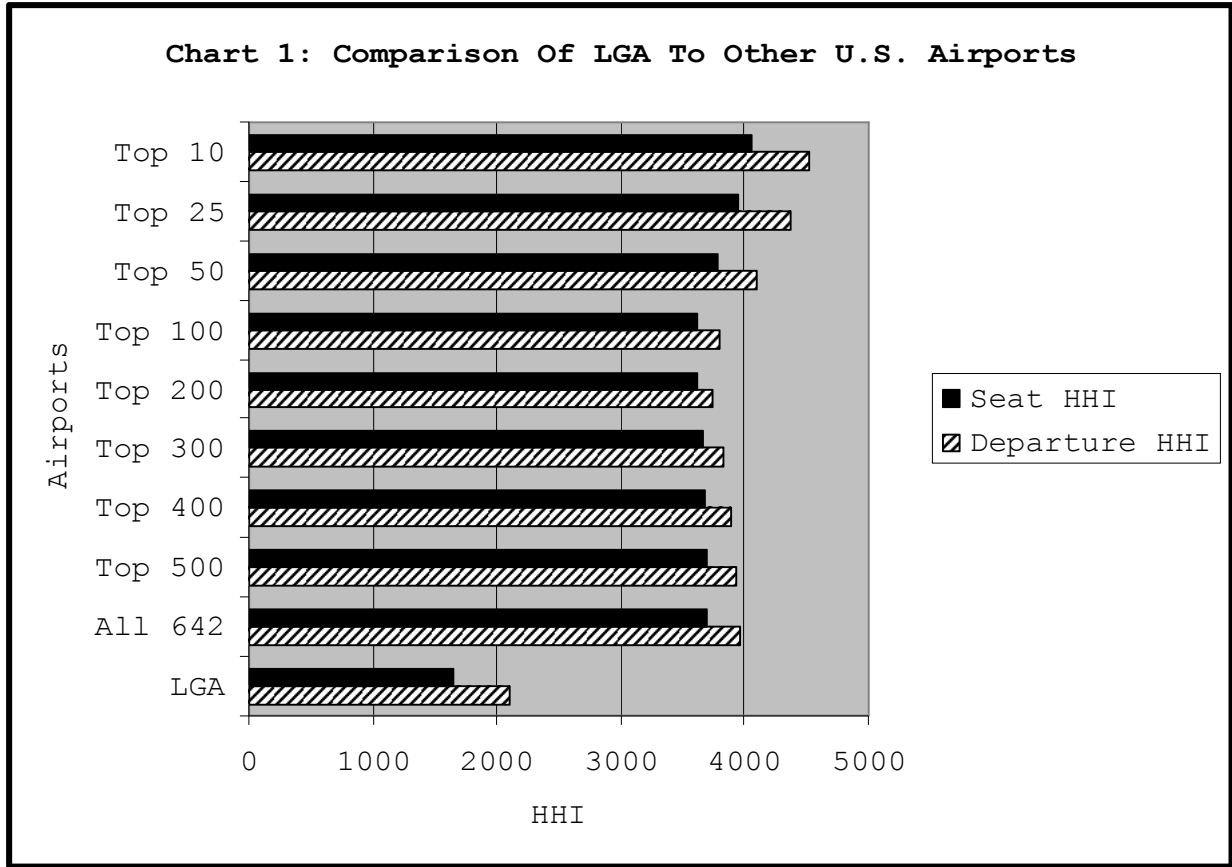
The New York market is so large that it supports scheduled service at three separate major airports – LaGuardia, JFK and Newark. The New York City metropolitan area is also served by regional airports like MacArthur (ISP) on Long Island and Stewart (SWF) in Newburgh. At LaGuardia, consumers can choose among 13 carriers – including three comprehensive and competing networks operated by US Airways, American and Delta. While runway capacity may be a scarce commodity at LaGuardia, consumer choice most definitely is not. Using the government’s standard measure of concentration – the Herfindahl-Hirschman Index (“HHI”) – LaGuardia is not concentrated (measured by departures or seats) compared to its New York City neighbors:

TABLE 1: Airport Concentrations In The New York City Area

Airport	Herfindahl-Hirschman Index	
	Departure HHI	Seat HHI
ISP	6257	8456
EWR	5352	4579
SWF	3223	2805
LGA	2104	1651
JFK	1887	1401
NYC (3)	1466	1210
NYC (5)	1409	1158

(Source: OAG Schedule-October 2006, T-100-2005)

As Table 1 shows, LaGuardia’s HHI is only 1651 when measured by seats. By this measure, LaGuardia is less concentrated than comparable airports like Oakland (4396), Baltimore-Washington (3229) or Washington-Reagan (2454), and is only slightly higher than Orange County (1499). Chart 1 (based on OAG data) shows where LaGuardia ranks in comparison to all airports in the U.S.:



By any measure of airport concentration, LaGuardia ranks well below the average.

Given these figures, it is clear that competition is alive and well at LaGuardia.

B. Fares And Load Factors At LaGuardia Are Consistent With Healthy Deregulated Competition

While it is true that there is more demand for LaGuardia operations than the airport can accommodate, it does not follow that consumer demand is not being met. If LaGuardia were suffering from market failure, one would expect to see higher than normal fares and load factors, as consumers bid prices up for an inefficiently low number of seats. Yet neither fares nor load factors at LaGuardia are higher than those at Newark, JFK or other East Coast airports. Tables 2 and 3 below illustrate this fact:

TABLE 2: Fare Comparison – LGA vs. Other East Coast Airports

							LGA Higher / (Lower) than Other Airport				
	BOS	DCA	EWR	JFK	LGA	PHL	LGA	LGA	LGA	LGA	LGA
							vs. BOS	vs. DCA	vs. EWR	vs. JFK	vs. PHL
ATL	\$125	\$140	\$129	\$135	\$134	\$140	\$9	(\$6)	\$5	(\$1)	(\$5)
BGR	\$240	n/a	\$189	n/a	\$174	\$202	(\$66)		(\$15)		(\$27)
BNA	\$113	\$148	\$210	\$157	\$165	\$153	\$53	\$18	(\$45)	\$8	\$12
BTV	\$184	\$101	\$138	\$74	\$109	\$188	(\$75)	\$8	(\$29)	\$35	(\$79)
BUF	\$180	\$119	\$115	\$72	\$80	\$286	(\$100)	(\$39)	(\$35)	\$8	(\$206)
CAE	n/a	\$180	\$164	n/a	\$113	\$227		(\$67)	(\$52)		(\$114)
CLE	\$103	\$136	\$156	\$108	\$120	\$231	\$17	(\$16)	(\$37)	\$11	(\$111)
CVG	\$162	\$199	\$194	\$158	\$178	\$195	\$16	(\$22)	(\$17)	\$20	(\$17)
DEN	\$157	\$155	\$195	\$132	\$172	\$168	\$15	\$17	(\$23)	\$40	\$4
DFW	\$198	\$200	\$230	\$181	\$206	\$216	\$8	\$6	(\$24)	\$25	(\$10)
FLL	\$94	\$102	\$128	\$100	\$97	\$99	\$2	(\$5)	(\$32)	(\$3)	(\$3)
GRR	n/a	\$118	\$204	n/a	\$136	n/a		\$18	(\$68)		
IAH	\$194	\$194	\$231	\$181	\$225	\$147	\$31	\$31	(\$6)	\$43	\$78
LEX	n/a	\$160	\$187	n/a	\$167	n/a		\$6	(\$20)		
MCI	\$127	\$140	\$217	n/a	\$152	\$148	\$25	\$12	(\$65)		\$4
MCO	\$90	\$136	\$124	\$100	\$95	\$101	\$4	(\$41)	(\$29)	(\$5)	(\$7)
MDW	\$102	\$89	\$120	n/a	\$112	\$93	\$9	\$22	(\$8)		\$19
MHT	n/a	\$87	\$220	\$21	\$181	\$44		\$94	(\$40)	\$159	\$137
MIA	\$121	\$133	\$138	\$117	\$124	\$113	\$3	(\$9)	(\$14)	\$7	\$11
MKE	\$142	\$139	\$153	n/a	\$148	\$126	\$7	\$10	(\$5)		\$22
MSP	\$203	\$200	\$245	\$121	\$231	\$197	\$28	\$31	(\$14)	\$111	\$34
ORF	\$88	\$234	\$219	\$138	\$183	\$314	\$95	(\$51)	(\$36)	\$45	(\$131)
PBI	\$99	\$134	\$137	\$102	\$100	\$102	\$2	(\$34)	(\$37)	(\$2)	(\$2)
PIT	\$192	\$351	\$233	\$163	\$245	\$105	\$52	(\$106)	\$12	\$82	\$139
PVD	n/a	\$85	\$233	\$116	\$227	\$43		\$142	(\$7)	\$111	\$184
ROC	\$149	\$115	\$168	\$67	\$107	\$256	(\$42)	(\$9)	(\$62)	\$40	(\$150)
SAV	\$96	n/a	\$158	n/a	\$123	n/a	\$27		(\$35)		
SDF	n/a	\$160	\$233	n/a	\$149	\$182		(\$11)	(\$84)		(\$33)
SYR	\$167	\$112	\$174	\$71	\$123	\$164	(\$43)	\$11	(\$50)	\$52	(\$41)
TPA	\$87	\$137	\$130	\$97	\$96	\$99	\$9	(\$41)	(\$34)	(\$1)	(\$3)

(Source: DOT O&D Survey, October 2-8, 2005)

Table 2 shows that LaGuardia fares are comparable to those at other East Coast airports. During the first week of October 2005, there were 30 cities served from LaGuardia by at least one round trip nonstop flight per day. Those 30 cities were also served from Boston, Washington-Reagan, Newark, JFK and Philadelphia. More than half the time, the LaGuardia fare was lower (shown in bold), and was within five percent of the lowest fare in nearly two-thirds of the cases. In fact, the LaGuardia fare was lower than the Newark fare for 28 of 30 destinations. The data simply does not support a conclusion that consumers are paying high fares at LaGuardia.

TABLE 3: Airport Average Load Factors

Airport	By Pax/Seats			By RPMs/ASMs		
	APR04- MAR05	JAN05- DEC05	APR05- MAR06	APR04- MAR05	JAN05- DEC05	APR05- MAR06
LGA	68.5	70.2	72.5	72.5	75.2	75.3
BOS	69.5	72.0	73.6	73.6	76.8	77.4
DCA	66.6	69.3	71.0	71.0	74.1	74.8
EWR	70.8	73.0	74.6	74.6	76.7	77.4
JFK	77.3	78.9	77.8	77.8	80.1	80.2
PHL	67.2	67.9	73.6	73.6	75.7	76.6
Industry Domestic	71.1	72.4	73.2	75.3	76.9	77.6

(Source: T-100)

Table 3 shows that average load factors at LaGuardia are not out of line with other East Coast airports. This is true whether measured by passengers/seats or RPMs/ASMs. While the FAA's regulatory evaluation used passengers/seats for the year ending March 2005 (FAA Regulatory Evaluation, p. 36 n.21), the data is consistent even if measured for the 2005 calendar year, or the year ending March 2006. In fact, the

average load factor at LaGuardia is lower than the industry domestic average by each measure. The lack of high load factors, coupled with the absence of high fares, demonstrates that competition at LaGuardia is healthy and serving consumers well.

Given these facts, it is ironic that some cite the antitrust laws as “the very reason why the [Government] must intervene to stop the hoarding behavior that is freezing competition in one of the nation’s most important markets” (Comments of ACAA, OST-2006-25755, 10/19/06, p. 7). As the Supreme Court has repeatedly noted, “[i]t is axiomatic that the antitrust laws were passed for ‘the protection of competition, not competitors.’” Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 224 (1993) (emphasis added). As demonstrated above, concentration, load factors and fares at LaGuardia are extremely competitive. Any claim that LaGuardia is “a market devoid of competition” and that incumbents have a “stranglehold” on the airport is little more than empty rhetoric (Comments of ACAA, OST-2006-25755, 10/19/06, p. 7).

C. The Secondary Market Has Failed At LaGuardia Because New Entrants And Limited Incumbents Have No Incentive To Purchase Slots When AIR-21 Makes Them Available For Free

Before AIR-21, new entry at LaGuardia was far from impossible. In 1998, AirTran, ATA Airlines and Frontier started service, joined by Spirit in 1999. Since 2000, JetBlue has started service using free slots granted under AIR-21. Had free slots not been available, these new entrants and limited incumbents would have used the secondary buy/sell market. New entrants and limited incumbents realize that they need not buy what is available at no cost. Simple economic theory dictates that goods have value only if they are scarce. One can assume that new entrants and limited incumbents at

LaGuardia would have been far more likely to purchase slots through the HDR's buy/sell market if AIR-21 did not make them available for free.

D. Consumer Demand Is Efficiently Met By Existing Service Levels At LaGuardia

The Port's proposal would regulate aircraft size in an effort to increase the average number of seats flown by airlines serving LaGuardia. This is similar to the LGA NPRM, which stated that such a rule would be necessary because it would force airlines "to use larger aircraft, on average, than are being operated at the airport now (and in the recent past) so that a larger share of consumer demand will be satisfied" (71 Fed. Reg. 51364). Yet it is unclear why the Port or the FAA concludes that there is a need to "increase passenger access to LaGuardia" (71 Fed. Reg. 51367).

For example, the LGA NPRM claimed that LaGuardia's "groundside facilities can handle more passengers than now use the airport" (71 Fed. Reg. 51367 n.19). Specifically, the LGA NPRM stated that while 28.5 million passengers could be accommodated at LaGuardia, only 24.5 million passengers actually were accommodated during the year ending March 2005. However, this fact does not automatically lead to the conclusion that consumer demand is being unmet – in fact, it is equally consistent with consumer demand being completely satisfied.² To establish that consumer demand is unmet one would have to demonstrate that load factors are extremely high at LaGuardia, and that fares are consistently above average.

² Moreover, much of the supposedly underutilized capacity at LaGuardia for the year ending March 2005 was in fact utilized during the following year. Passenger load factors climbed 1.7 points, from 68.5% to 70.2%. This reflects an increase of more than 750,000 passengers that took place without regulatory intervention (Source: T-100).

To the contrary, the FAA's regulatory evaluation established that LGA load factors average 68.6% – lower than other New York airports and less than the national average (as shown in Table 3). Nor are fares at LaGuardia inflated by an imbalance in supply and demand. To the contrary, average fares at LaGuardia are lower than those at Newark, and comparable to those at other East Coast airports like JFK, Boston, Washington-Reagan and Philadelphia (as shown in Table 2). This data shows that the belief held by the FAA and the Port that passenger demand is unmet at LaGuardia to be unsupported by the evidence. While LaGuardia may be able to accommodate 4 million more passengers than used the airport in 2004, the industry is already providing 7.8 million empty seats per year (FAA Regulatory Evaluation, p. 36 n.21).

In other words, load factors at LaGuardia could not exceed 78.5% at today's level of service without overwhelming the airport's infrastructure.³ If average aircraft size were increased, the additional seats would simply be wasted capacity. Moreover, there are unanswered questions about the impact larger planes would have on New York airspace or LaGuardia ground handling facilities. There is no evidence to support any proposal to force an increase of average aircraft seat size – and the risk of unintended consequences would be extremely high if such a rule were ever implemented.

While the Port's proposal wrongly assumes that consumer demand is not being met by existing service at LaGuardia, the average size of aircraft serving LaGuardia is less than that at other nearby airports. This phenomenon is easily explained by the fact that (a) airlines serve shorter routes from LaGuardia than they do at other airports; and

³ The FAA's regulatory evaluation states that the industry operates 36.3 million seats to LaGuardia. Assuming LaGuardia's terminals were used to capacity – 28.5 million – these passengers would fill 78.5% of the 36.3 million seats. Any higher passenger load factor would exceed the airport's capacity for passengers.

(b) long-haul domestic operations are operated at JFK, where growth has been unrestrained in recent years. Shorter routes tend to be flown by smaller planes – a fact not limited to LaGuardia (as shown in Table 4):

TABLE 4: Average aircraft Size At LaGuardia Is A Function Of The Markets Served – Not Market Failure

Airport	Average Aircraft Size For Routes:	
	0-1500 Miles	1,500+ Miles
ATL	106	191
DCA	99	149
JFK	95	166
PHL	94	154
LGA	91	164⁴
ORD	91	162
EWR	90	156
BOS	88	154
CLT	87	171
IAD	75	151

(Source: OAG (September 13, 2006); BuchAir; carrier websites)

Table 4 shows the average aircraft size by stage length for 10 major airports east of the Mississippi. Some, like O’Hare or Washington-Reagan, are capacity constrained. Others, like Charlotte and Washington-Dulles, are not. Yet once stage length is factored out as a variable, the average aircraft size of each of these airports is comparable. Indeed, the two lowest average aircraft size numbers are found at airports without slot controls. LaGuardia – at 91 seats – is squarely in the middle of the pack. Thus, it does not appear that the average aircraft size at LaGuardia is the result of anything other than competitive

⁴ While the LaGuardia perimeter rule limits operations to cities within 1,500 miles, Denver (1,620 miles) is a grandfathered exception to reflect the existing LGA-DEN service at the time the perimeter rule was formally imposed.

efficiency on the routes served. Furthermore, if capacity at JFK is capped one would expect average aircraft size at LaGuardia to rise.

III. The Port's Proposal Is Unworkable Given Commercial Realities

While the Port's proposal may appear relatively simple to administer given the fact that LaGuardia can accommodate 75 operations per hour and has 75 gates, it would in reality impose an unnecessarily complex and unworkable regulatory regime on the industry. While there are 75 operations per hour and 75 gates, splitting each gate into hourly operating rights would create chaos at LaGuardia. For example, if an airline had two gates – and thus two gate reservations per hour – it would hold a total of 32 gate reservations for the operating day. If the airline failed to use one of its gate reservations at least 90% of the time over a three month period, it would be returned to the Port. Moreover, gate reservations would be returned to the Port if an airline failed to fly more than 80% of the maximum target activity level (measured by seats) for that gate reservation. And on top of this turnover, the Port would confiscate gate reservations from incumbents that had met all of their obligations if there was not sufficient turnover at LaGuardia over a three year period. This could lead to a situation where each of the 75 gates at LaGuardia effectively becomes a common-use gate.

Such a rule would impose a heavy burden on the Port Authority, airlines and consumers by constantly confiscating and reallocating operating authorizations as they expire. Much like a computer hard drive, the constant movement of operations and airlines between gates and concourses would lead to fragmentation. However, unlike data – which moves seamlessly through walls at the speed of light – consumers need to know the location of their gate, clear security and walk to their flight in time for

departure. In addition to providing customer convenience, airlines need to build infrastructure at their gates to efficiently operate their flights – and benefit from having their operations consolidated in one or two areas.

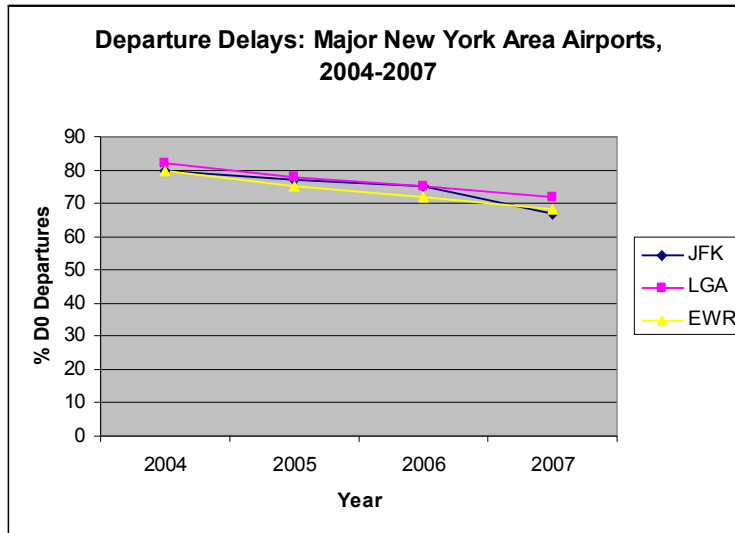
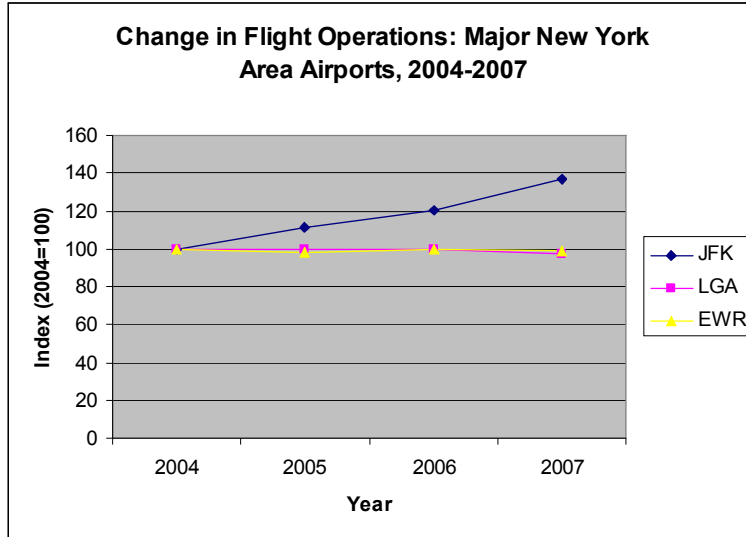
To illustrate this phenomenon, consider a carrier operating in Concourse A in Year 1. In Year 2, this carrier obtains operating authorizations from other carriers, but lacks space in Concourse A to accommodate the new flights. Thus, the carrier obtains real estate in Concourses C and D from the carrier that lost the operating authorizations. Moreover, having every gate be a common use gate would reduce carriers' flexibility during off-schedule operations, as one airline's delay on a gate at 2:00 p.m. would become another airline's problem at 3:00 p.m. Over time, operations will become more and more fragmented – leading to the inefficient use of check-in counters, baggage claim and security checkpoints. This inefficiency will all come at the consumer's expense. However, the Port's proposal fails to take these factors into account (Crain's New York Business, 11/27/06, p. 1).

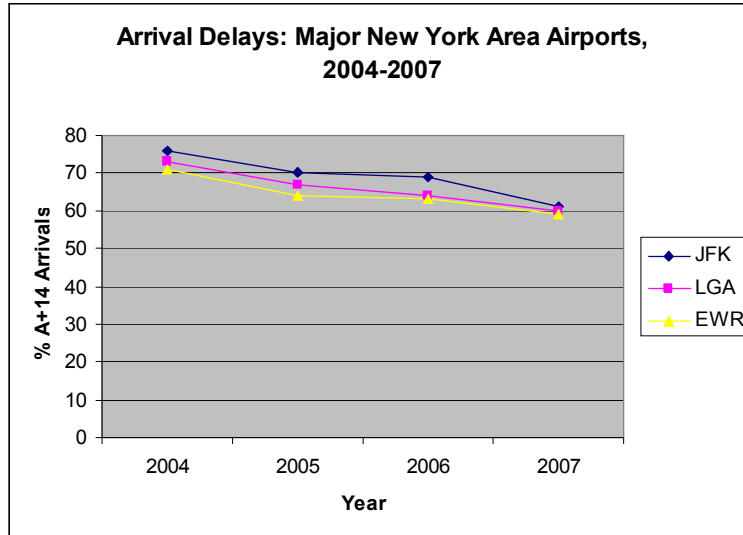
Conclusion

While the Port should be commended for proposing an alternative to the FAA's LGA NPRM, it suffers from the same fundamental flaws. The scheme would do more than simply regulate *capacity* to manage congestion – it would regulate *competition* by telling airlines when and what they can fly into LaGuardia. Moreover, the scheme would be unworkable in reality given the inefficiencies associated with common use gates at a facility like LaGuardia. There is simply no basis for concluding that competition is not alive and well for consumers in the New York region. Given that fact, there is no need to invent a more complex regulatory scheme to manage capacity – the Worldwide

Scheduling Guidelines will be easier to administer, are based on free market principles (as opposed to regulatory control of competition), and will do just as much as either the LGA NPRM or the Port's proposal to reduce congestion and delays for airlines and consumers alike.

GRAPHS FROM AMERICAN AIRLINES SHOWING THE CHANGE IN FLIGHT OPERATIONS AT THE NY AREA AIRPORTS FROM 2004 TO 2007





APPENDIX F — ATTACHMENTS RELATED TO WORKING GROUP 4 REPORT

PRIORITY AIR TRAFFIC PREFERENCES

Proposal

During constrained periods, abandon the “first-come, first-served” policy and assign scheduled, commercial operations the highest priority. Accommodate other users of regional ATC services by moving their operations to unconstrained periods.

Background

Airspace is a valuable public resource that enables our national aviation system to drive \$1.1 trillion in US economic activity. As the airspace above major metropolitan areas becomes saturated with aircraft, our aviation system grinds to a halt -- resulting in significant delays for airline passengers and shippers.

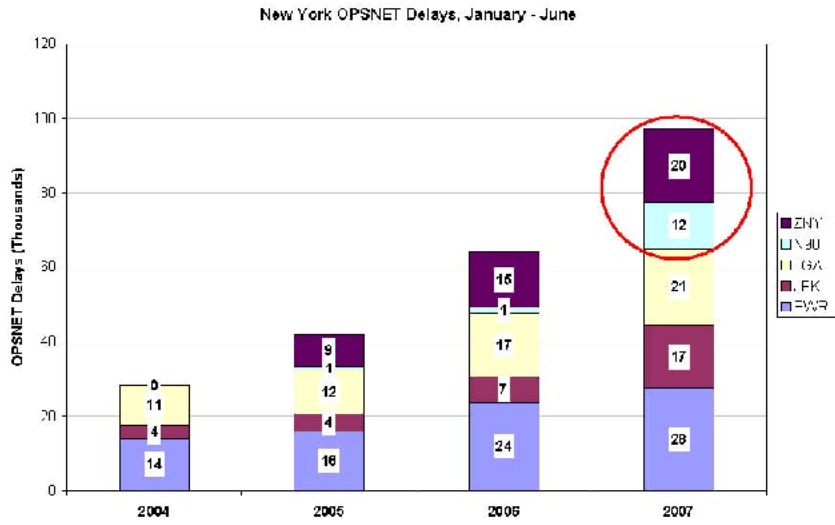
Today the airspace above the New York metropolitan area is complex and constrained. The NY TRACON handles traffic for 15 towered airports and over 30 others.

The New York TRACON Controls 15 Airports



While delays at the "Big 3" commercial airports have drawn most of the attention, delays attributable to the NY TRACON and NY Center have also increased due to this saturation.

Airspace Delays Up Significantly

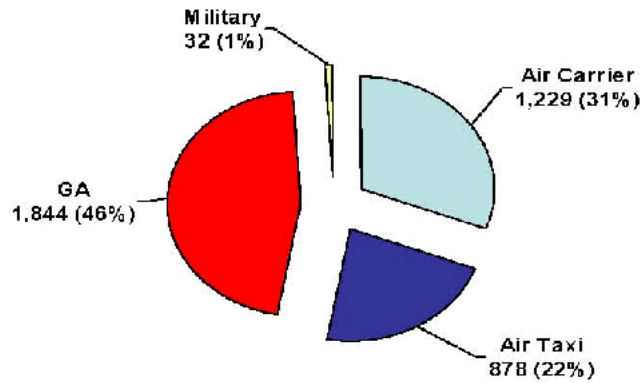


Source: A.A.

14

The diversity of the traffic using NY airspace adds to the complexity. Contrary to popular belief, commercial airlines account for only one-half of the traffic in the region.

Commercial* Ops are ~53% of NYC-Area Total Activity 3,983 Daily Departures (incl. 2,107 Commercial) in July 2007



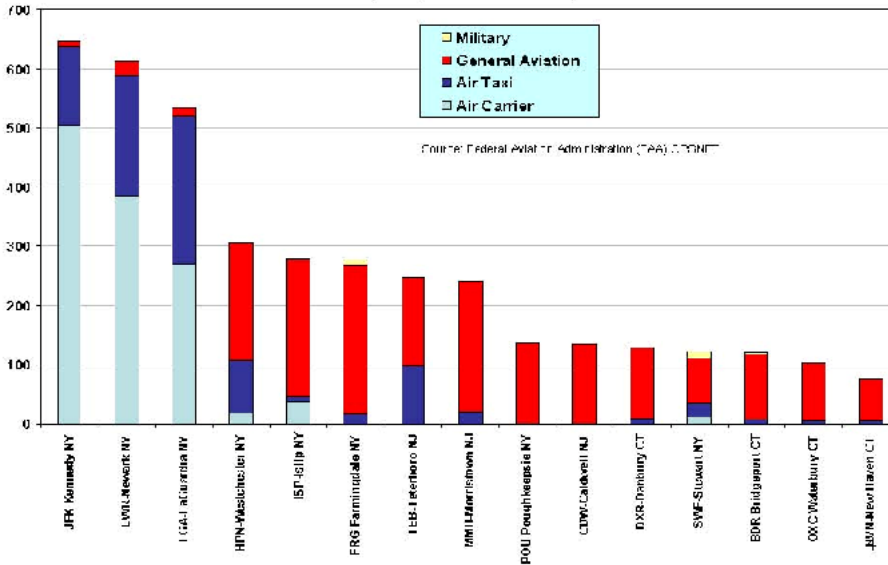
Source: Federal Aviation Administration (FAA) OPSNET

* Air Carrier + Air Taxi

9

TOTAL Air Activity in the NYC Area is Diverse

Total Daily Departures in July 2007



Justification

NY metropolitan area airspace is a scarce public resource and must be allocated in a way that yields the greatest public value.

Identifying areas of constrained airspace (i.e. chokepoints) and restricting non-essential operations from them will improve the throughput of the major commercial airports (EWR/JFK/LGA).

Air traffic controller workload would also be reduced due to non-essential operations being moved outside the constrained period.

Implementation

During constrained periods (3-9 pm weekdays and selected holidays/special events), FAA will identify constrained airspace and implement an AFP effective for all unscheduled, non-commercial operations. Impacted operators will have the option of routing around the constrained area(s) (FCAs) or moving their flight to a timeframe outside the AFP window.

AIR TRAFFIC PROCEDURES “FIRST COME FIRST SERVED”

The major commercial scheduled carriers serving the three congested New York passenger hub airports have proposed the elimination of the first-come first-served principle of air traffic control. They propose giving priority to their operations over all other use of the areas public aviation capacity and allege this would alleviate record delays at JFK, LaGuardia, and Newark airports.

The reality is that unscheduled non-commercial operators comprise only 2-3% of the traffic at these airports and do not contribute materially to congestion delays. Reliever airports like Teterboro and others accommodate the vast majority of these operations. In addition, the reliever airports are operating below capacity and are not congested, with total traffic at Teterboro in particular declining 9% over the past five years.

This overall decline in general aviation traffic is in stark contrast to the significant growth in commercial scheduled operations at the three primary airports. The over scheduling at JFK in particular is well documented and without some administrative protection, no other operators would ever be able to access the airport. Clearly that is why the former high density rule set aside a few slots for general aviation operations.

Raising the long standing and sound practice of first-come first-served for debate is a diversion from the real issue the ARC needs to address. It is the dramatic over scheduling of available capacity by the airlines that has caused the congestion in New York.

General aviation operators are suffering severe delays at their reliever airports from the congestion caused by this irresponsible over scheduling. In fact, an argument can be made that general aviation operations at reliever airports should be protected from the plague of congestion and inefficiency caused by the airlines business practices at the three primary passenger hub airports.

When traffic management initiatives like AFP's and ground delay programs are applied due to commercial airline operations that far exceed available capacity, general aviation operators are captured in the delay allocations fundamentally created by the scheduled commercial carriers. These delays that are applied are not created by the unscheduled traffic at the reliever airports but they do suffer the penalties of capacity abuse by the commercial airlines as they saturate the available capacity associated with the three primary passenger airports.

AIR CARRIER ASSOCIATION OF AMERICA MEMORANDUM



1776 K Street, N.W., 9th Floor, Washington, DC 20006
(202) 719-7420 (Telephone) (202) 719-7049 (Facsimile)
Ed Faberman, Executive Director
epfaberman@acaal.com
www.acaal.com

MEMORANDUM

TO: Working Group 4

FROM: Edward P. Faberman, Executive Director

DATE: November 30, 2007

SUBJECT: ARC Working Group 4 – Priority Air Traffic Services

The ACAA believes it is essential to address a limited delay free program in Working Group 4's review of options to address priority air traffic services.

On bad delay days at LGA and other airports, smaller carriers incur longer delays than the larger carriers that dominate the airports. When delay measures are in place, a higher percentage of smaller carrier flights are impacted and only a limited percentage of large carrier flights are impacted by those same delays. For example, during heavy delays at LGA, delays for small carriers can run for several hours. On those same delay days, large carriers are able to operate large numbers of their flights closer to scheduled times because of the significant number of scheduled operations (10 to 15 roundtrips) in the same market. These larger carriers have greater flexibility because of the many flights, so when they cancel a few flights, they can operate the rest on-time. In addition, passengers of large carriers can be moved to final destinations by various routings through multiple markets served by that carrier or by its alliance partners and their multiple hubs. A new entrant or limited incumbent cannot hold more than 20 slots at LGA due to limitations imposed by FAA regulations. Therefore, new entrants cannot cancel several flights to protect other flights, as the larger carriers are able to do. Similar problems occur at other cities.

To address this inequitable situation, steps should be taken to establish a "level" playing field. One option is to allow smaller carriers to designate a certain number of "delay-free" arrivals that would not be subject to delays (unless unusual conditions exist requiring the FAA to immediately and dramatically limit traffic). Each carrier would

advise the FAA of the arrivals it wanted to designate as "delay free" and the "delay-free" arrivals designated by any one carrier could not amount to more than one arrival in any 60-minute period. We would not object to all carriers receiving the same number of these delay-free flights.

Delay-free arrivals and other options must be fully explored so all carriers can operate with some degree of certainty, even on "delay" days. The delay programs have a significant impact on competition. A primary concern of smaller carriers has been that the FAA has not adjusted the system to reflect the size and scope of small carrier operations. The FAA has taken important steps to improve ATC performance and reduce delays for all parties, but in some cases the impacts on smaller low fare carriers have been significant. To reflect the dramatically changing airline industry, particularly the growth of low fare carriers, and to ensure that low fare carriers remain competitive, we ask that delay reduction procedures be modified to address these concerns so that all carriers operate on an equal basis.

SCHEDULE COMPRESSION BY FAIR ALLOCATION METHODS

Schedule Compression by Fair Allocation Methods

by

*Michael Ball
Andrew Churchill
David Lovell*

*University of Maryland
and
NEXTOR, the National Center of Excellence for Aviation Operations Research*

November 29, 2007

1. BACKGROUND

The IATA Worldwide Scheduling Guidelines describe a relatively orderly system in which airports move from one level to another as the number of scheduled operations approaches the airport capacity. Under the IATA system airports never reach a state of extreme congestion. Rather, as demand approaches capacity, slot controls are put in place in order to prevent such a situation from ever arising. Since the IATA system has not been used in the U.S., there are instances where airports have become highly congested to the extent that schedule compression is required to bring demand to a reasonable level. One can certainly argue that JFK airport is now in such a state. Before a solution is put in place, e.g. the use of the Worldwide Scheduling Guidelines, it is possible that other airports could reach such a state. If this happens then it would be necessary to reduce (perhaps significantly) the number of scheduled operations at one or more airports in order to effectively control congestion. Methods for doing this in an equitable manner are not specified as part of the IATA Guidelines. The purpose of this report is to outline an approach for doing this based on the application of certain principles from the body of knowledge on fair allocation methods (see Young [2]).

The specific situation we address would occur when the number of scheduled operations (arrivals and departures) at an airport exceeded the capacity of the airport. Here capacity would be specified by the number of arrivals and departures the runway system of the airport could sustain within a time window of specified length. Since flight operator schedules vary across the day, it would normally be the case that capacity might be exceeded only over limited time periods. For the methods described in this documents to be necessary it would have to be the case that capacity would be exceeded by a reasonably significant amount over several time windows. It is felt that the current status of JFK airport meets this criterion.

The output of the procedure would be a reduction in the number of scheduled operations so that demand was brought in line with capacity. Thus, for example suppose that the number of scheduled operations between 8:00 and 9:00 AM was 91 but that the declared capacity was 80. Then the procedure would reduce the number of scheduled operations from 91 to 80. This reduction would be accomplished by specifying for each flight operator with scheduled operations in that time window, a reduced number of scheduled operations. Thus, for example, it could be the case that airline A had 10 scheduled operations and the procedure specified that these 10 must be reduced to 8. The procedure labels an operation as either an arrival or departure; the “other” origin or destination airport is irrelevant. Thus, after airline A’s operations were reduced from 10 to 8, airline A would be free to use those operations to access any other origins or destinations.

We now describe three key features of the procedure.

Administrative procedure: The procedure is based on the application of a fair resource allocation mechanism. It does not employ a market mechanism. At the same time, we should note that it determines an allocation when there is excess demand. It is not applicable in an obvious way in situations where new capacity becomes available. In such cases, we would strongly favor use of a market-based approach.

Use of fair allocation principles: The procedure draws on techniques from the body of knowledge on fair resource allocation. As such it requires a fair allocation standard, in order to determine what constitutes the most equitable allocation.

Historical rights respected: The allocation standard we recommend be used to guide the fair allocation process is historical airport usage. The use of historical rights makes this allocation process compatible with the IATA Guidelines. We should note that since the number of scheduled operations must be reduced, it is impossible to literally respect historical rights in the sense of insuring that each flight operator is able to maintain the exact number of operations that it has historically employed.

2. FAIR ALLOCATION PROCEDURE

The three major components of the procedure are i) a baseline schedule, ii) a revised level of operations and iii) a fair allocation procedure. The baseline schedule specifies a level of operations (arrivals and departures) for each carrier in each time window throughout the day (or week). The baseline schedule represents the standard to be used in determining what constitutes a fair allocation. That is, it is the historical schedule that represents the “grandfather rights” of the flight operators. There are several alternatives for choosing this to be discussed later. The revised level of operations is the reduced level of operations that the procedure will seek to achieve. Thus, for each time window it specifies a maximum level of operations, which will be lower than the current level in at least some time windows. The fair allocation procedure is the process that starts with the

baseline schedule and removes operations from various flight operators so that the revised level of operations is achieved.

The principal goal of this report is to specify the fair allocation procedure. It can work with several alternative methods for specifying the baseline schedule and the revised level of operations. Before defining the fair allocation procedure, we first provide some thoughts on the baseline schedule and reduced level of operations.

2.1 Determining a Baseline Schedule

The baseline schedule is an essential and very critical input to the process, as it represents the rights of each flight operator and directly determines the resources allocation that each flight operator receives. The most obvious approach would be to pick a “typical” week in the most recent heavily scheduled season and use the schedule for that week as the baseline. For example, in the case of the current activities related to JFK, a week from the summer of 2007 might be chosen. An alternative might be to choose a week from each of three or four recent scheduling seasons and to average the associated schedules in some way. For example, one week from each of January, July and October of 2007 might be chosen for this purpose. Finally, if it were desirable to give longer term history more weight, then a set of weeks from the past 5 years might be chosen and averaged in some way. This would give greater weight to carriers with schedule longevity. Each of these approaches has its own justification. Each constitutes an alternative policy option.

2.2 Determining a Revised Level of Operations

The most typical approach to determining an airport capacity is to set a fixed hourly rate based on an assumption of close to ideal airport conditions. We would recommend a more judicious approach that takes into account the uncertainty associated with airport capacity (due to weather) and the uncertainty associated with flight operations, e.g. the fact that flights can be canceled and/or delayed for a variety of reasons not having to do with airport congestion. With this in mind, it can make sense to set the level of scheduled operations higher or lower than the declared capacity in certain time windows depending on the circumstances. Further, the best capacity profile might involve varying the number of scheduled operations over the course of the day. For example, when one takes into account that certain time windows have a higher value to flight operators (and passengers) than others, the most economic policy can be to schedule a slightly higher level of operations during the most desirable periods, while scheduling fewer flights during the less desirable periods. These periods of lower scheduled operations can serve as “cooling off” periods for high-delay days. The recent thesis of Churchill [1] presents a model for creating capacity profiles of the type just described.

2.3 The Fair Allocation Mechanism

The procedure proceeds from one time window to another, iteratively adjusting the number of operations for each flight operator in the base schedule so that the capacity limit is respected and the revised level of operations is met. In this description we will

use the generic term “operation.” As discussed later, this could refer to an arrival, a departure or either, depending on exactly how the process is set up. As a starting example, suppose that a time window currently had 17 scheduled operations but that the revised level of operations indicated a capacity limit of 15. A fair allocation should proportionally reduce for each carrier, a , its current level of operations, O_a . Ideally carrier a 's revised level of operations should be $15/17 O_a$. Of course, in nearly all cases this approach would not work since $15/17 O_a$ would not be an integer. Thus, some rounding procedure would need to be applied so that, typically, two carriers would have their level of operations reduced by 1, while all others receive no reduction. This process, of course, might be viewed as unfair, since two carriers would suffer a net loss, while all others would suffer no loss at all. The simple idea behind the fair allocation process is to keep a running tally of such net gains or losses and to take these into account when making decisions for future time windows. Thus, for example, if a flight operator received a net loss in one time window, then that flight operator should receive a net gain in another.

The following table illustrates three iterations of this process.

Airline		Base Ops		Share		Reduced Share		Allocated		Error
		24				21		21		
A	→	10	→	10	→	8.75	→	9	→	0.25
B	→	6	→	6	→	5.25	→	5	→	-0.25
C	→	2	→	2	→	1.75	→	2	→	0.25
D	→	6	→	6	→	5.25	→	5	→	-0.25
Airline		Base Ops		Share		Reduced Share		Allocated		Error
		21				18		18		
A	→	5	→	4.75	→	4.07	→	4	→	-0.07
B	→	4	→	4.25	→	3.64	→	4	→	0.36
C	→	3	→	2.75	→	2.36	→	2	→	-0.36
D	→	9	→	9.25	→	7.93	→	8	→	0.07
Airline		Base Ops		Share		Reduced Share		Allocated		Error
		26				22		22		
A	→	6	→	6.07	→	5.14	→	5	→	-0.14
B	→	3	→	2.64	→	2.24	→	2	→	-0.24
C	→	9	→	9.36	→	7.92	→	8	→	0.08
D	→	8	→	7.93	→	6.71	→	7	→	0.29

In this example, there are 4 airlines: A, B, C and D. The table illustrates the process of reducing operations in each of 3 time windows.

Iteration (time window) #1: In the first time window, the base level of operations is 24 and the reduced level is 21. Each of the 4 airlines starts respectively with 10, 6, 2 and 6 scheduled operations. The “ideal” reduced share for each airline is obtained by multiplying the reduction factor (21/24) by the initial share. Each of these reduced shares is rounded to the nearest integer to obtain the allocated number of operations, i.e. 9, 5, 2 and 5. These values indicate that in this time window airlines A, B and D must reduce their level of operations by 1 and airline C has no required reduction. The Error column gives the difference between the Reduced Share column and the Allocated column. If this value is positive, then the corresponding airline received more than it was owed and if it is negative, then the corresponding airline received less than it was owed. These error values will be carried over to the next iteration (time window) so that the process can correct any loss or gain by adjusting future allocations.

Iteration (time window) #2: In the second time window, the base level of operations is 21 and the reduced level is 18. Note the adjustment in each airline’s share that is applied going from the Base Ops column to the Share column. This adjustment is calculated by subtracting the Error column in the previous iteration from the Base Ops column. Thus, airlines that received less than their ideal share in the previous iteration are appropriately adjusted upward. The reduction factor (18/21) is now applied to the Share column to obtain the Reduced Share column. The process then proceeds as earlier to obtain the Allocated column. Thus, in this time window airline A, C and D must reduce their operations by 1 and airline B has no required reduction. Again a new Error column is calculated.

Iteration (time window) #3: In this time window, the base level of operations is 26 and the reduced level is 22. Again the Base Ops column is adjusted based on the Error column from the prior iteration to obtain the Share column. The process proceeds as earlier, multiplying the Share column by the reduction factor (22/26) to obtain the Reduced Share and finally rounding to obtain the Allocated column. The general approach should now be clear.

We should comment on the specific rounding procedure since it might not always be the case that rounding the values in the Reduced Share column to the nearest integer will produce a set of carrier allocations whose sum is the target total allocation. There are actually multiple approaches that could be used, however, the overall procedure is not too sensitive to the specific rounding approach used since the error term is carried over from iteration to iteration. The following approach is probably the most natural.

Define RS_a to be the entry in the Reduced Share column for airline a and TR to be the total reduced share. The procedure will calculate A_a , the entry in the Allocated column for airline a . Note that $\sum_a A_a$ should equal TR . We use $\lfloor A \rfloor$ to denote the smallest integer less than or equal to A , i.e. the value obtained by rounding down any real number A .

Rounding Algorithm:

Step 1: For all a , set $A_a = \lfloor RS_a \rfloor$. (Note that $\sum_a A_a \leq TR$).

If $\sum_a A_a = TR$ then stop; otherwise go to Step 2.

Step 2: Order the airlines according to decreasing value of $RS_a - A_a$; break ties arbitrarily.

For each airline a , in order, set $A_a = A_a + 1$ until $\sum_a A_a = TR$.

To illustrate how this process would work, let us consider the first iteration of the example given earlier. The initial RS vector is (8.75, 5.25, 1.75, 5.25). This is rounded down in Step 1 to obtain: (8, 5, 1, 5); note that $\sum_a A_a = 19 < 21 = TR$. The vector of values of $RS_a - A_a$ is (.75, .25, .75, .25). In Step 2, we order the airlines by A, C, B, D. (note that there were two ties that were broken arbitrarily). Thus, in Step 2, we successively set $A_A = 8 + 1 = 9$ and $A_C = 1 + 1 = 2$. At this point, $\sum_a A_a = 21 = TR$ so we stop.

2.4 Specific Parameters and Features.

Time window width: The entire process operates on a time-window basis and, as such, the time window width is a key parameter. The choices generally considered fall within the range of 15 minutes to 1 hour. Narrower windows limit airline scheduling flexibility, while wider windows run the risk of leading to unbalanced schedules and congestion. For example, with a 1-hour window, one might see the majority of flights in the 7 AM to 8 AM time window scheduled close to 8 AM. This in turn would lead to congestion at this time and significant delays, which could even spill over into later time windows. We will not make a specific recommendation here but only indicate that it is important to insure reasonable balance via narrower time windows to avoid congestion.

Allocation based on arrivals, departures or generic operations: Thus, far we have defined the procedure as allocating operations. In fact, there are two basic alternatives with respect to what rights are allocated. Specifically, are flight operators given the right to schedule a generic operation (arrival or departure) or are they given specific arrival operation and departure operation rights? In the latter case, within each time window, a specific maximum number of arrivals and a specific maximum number of departures would be set. Flight operators would be allocated a specific number of arrival “slots” and a specific number of departure “slots.” Certainly, the entire process would be easier to manage if one simply worked with generic operations rather than with arrivals and departures. However, airport runway configurations and procedures generally cannot treat arrivals and departures in a completely interchangeable fashion. Thus, if generic operations were allocated, then it might be necessary to set the maximum number of operations at an artificially low level in order to achieve congestion mitigation goals.

The procedure as stated could be directly applied in the case of allocating generic operations. If specific arrival and departure operations were allocated then some additional controls would have to be put in place. In particular, the simplest direct way of handling this case would be to apply the procedure to arrivals and departures in separate,

independent steps. The problem with such an approach is that a carrier might not receive a compatible set of arrival and departure slots. It is even possible, although fairly unlikely, that a flight operator would receive a different number of arrival and departure slots. A more likely, undesirable outcome would be to receive arrival and departure slots that could not easily be arranged into a set of compatible flights (and aircraft schedules). One approach to avoiding such outcomes would be to initially pair compatible arrivals and departures and then to use the fair allocation procedure to eliminate arrival-departure pairs. Thus, for example, after an initial pairing was determined, the procedure could be executed for arrival slots and then, when each arrival was eliminated, the corresponding departure would be eliminated as well. There are certainly many alternatives for coming up with an initial pairing. A very natural approach would be to pair arrivals and departures based on a historical fleet schedule. That is, each arrival would be paired with the departure that succeeded it in a historical aircraft schedule. If such an approach were used then there would not be as great a control over the balance of departures as over arrivals. However, the departures would generally be reasonably well balanced as they would tend to be spaced similar distances from their paired arrivals.

Daily vs. weekly slots: The historical policy used in the U.S. at the High Density Rule (HDR) airports was to allocate slots on a weekday and weekend basis. That is, a single “slot” gave the holder the right to schedule an operation within the specific time window on every weekday. On the other hand, the IATA guidelines define slots on a day to day basis, i.e. there are Monday slots, Tuesday slots, etc. Thus, a flight operator could conceivably operate a flight three days a week and would need to obtain three slots to do so. Under the U.S. HDR system, there was an implicit assumption that any weekday flight would be scheduled on every day of the week and so slots were allocated on that basis. The procedures described in this report could readily be applied to either the daily version of the problem or the weekday version. Because of the presence of many international carriers at JFK, who, at times, operate irregular schedules to some of the more distant destinations, it would appear that the IATA approach, i.e. defining slots for each day, is most appropriate.

Moving operations to less congested time windows: It is possible that there would be time windows at a congested airport where scheduled operations are below the level specified in the revised level of operations. It is also possible that certain carriers might want to move some of their operations into such periods rather than simply eliminating them when schedule reductions are specified by the procedures described earlier. This could be accomplished in an orderly fashion within our fair allocation procedure. We propose to implement this feature (if desired) by allowing flight operators to dynamically participate in the fair allocation process. Specifically, a pool of available slots would be maintained and, whenever a flight operator “lost” a scheduled operation, that flight operator would be given the opportunity to choose from among the slots remaining in the pool.

3. NEW CAPACITY AND MARKET MECHANISMS

The process we have described does not provide a means for accommodating new entrants or flight operators wishing to expand. Nor does it provide a mechanism for dealing with new capacity. We feel that both of these issues should be addressed using market-based approaches. Specifically, it is important to define property rights for the slots that are allocated as part of the process we have described and to allow secondary market trading (buy-sell). Many argue that the secondary market in the U.S. associated with the HDR slots has not operated in a satisfactory fashion. Specifically, in recent years, nearly all transactions associated with the LGA HDR slots have involved situations of bankruptcy or other types of financial distress. Some possible distortions in the market might include competitive advantages to holding slots rather than selling them, or unwillingness of purchasers to pay a fair price when political means to acquire slots for free are available. In any event, we recommend that the Federal Government continue to explore steps that would provide more liquidity in these markets.

It is tempting to try to extend the procedures we have described to allocate new airport capacity. In fact, a fundamental component of our approach is the presence of a baseline schedule on which to base the allocation. In the case of new capacity no such baseline exists. While incumbent flight operators can potentially justify grandfather rights to airport access based on investments made in gates and other resources, no such justification exists with respect to new capacity. Thus, we feel there are strong arguments in favor of the use of market-based approaches, e.g. slot auctions, for allocating new capacity.

References

- [1] Churchill, A., 2007 *Determining the Number of Slots to Submit to a Market Mechanism at a Single Airport*, MS Thesis, Department of Civil and Environmental Engineering, University of Maryland.
- [2] Young, H.P. 1994. *Equity in Theory and Practice*, Princeton University Press, Princeton, NJ.

AIR CARRIER ASSOCIATION OF AMERICA NY ARC RECOMMENDATIONS

**Air Carrier Association of America
NY ARC Recommendations
Working Group 5**

1. Within the context of the IATA guidelines, how can the government meet policy goals like providing access to new entrants or ensuring adequate access to small communities?

First, any reference to new entrants in the New York airport system should discuss limited incumbents as well. Limited incumbents and new entrants face the same slot allocation issues that block growth and access at restricted airports. Carriers limited to ten roundtrips cannot compete with carriers that have 50-200 roundtrips! Little has been done to improve competition and if additional access is not provided to new entrants and limited incumbents immediately, competition will erode even further.

Furthermore, while delays can negatively impact the entire market, they have a disproportionate effect on new entrants and limited incumbents, as these carriers have fewer flights. Limited incumbents and new entrants should not be punished for delays and congestion, as these problems are caused by the dominant carriers, who operate hundreds of flights a day. Many of the delays are the result of large carriers using regional jets in order to protect slots from new entrants, even on routes to major hubs that were historically served by full-size aircraft.

Through mergers and slot transactions, slot dominance has continued to increase and new entrants and limited incumbents are left in an impossible search for slots. Allowing large carriers to continue to add service – while limited incumbents have no ability to compete – drives out competitors and establishes competition-free markets. Over a decade has passed without any growth for limited incumbents or entry opportunities for new entrants. Without the FAA’s action, large carriers will continue to dominate LGA markets and block competitors from entry.

In order to meet policy goals at LGA, the DOT should immediately withdraw ten percent of all slots held by carriers holding more than sixty (60) operating authorizations and distribute half of the withdrawn slots to limited incumbents operating aircraft with at least 90 seats. The remaining slots should be held and not distributed in order to reduce

system overcrowding and allow flights to operate with fewer delays. Additionally, as other slots are returned for reasons such as use-or-lose, priority in redistribution should be given to limited incumbent carriers.

2. Should the IATA guidelines be supplemented by rules governing the purchase and lease of slots in a secondary market? If so, how?

Yes, IATA guidelines must be supplemented to provide for expansion by limited incumbents. A blind auction secondary market should be created so all carriers have full opportunities to obtain, purchase or lease slots. History has shown that legacy carrier incumbents rarely sell or lease slots to limited incumbents because maintaining market power is so profitable. As the Department of Justice has stated, incumbents with market power “will always have an incentive to outbid an equally efficient entrant for any slots offered.” The Department commented:

“Indeed, an incumbent with market power may well be able to outbid a more efficient entrant, simply because maintaining market power is more profitable than entering a competitive market...once a potential buyer’s identity is known to the seller, the seller has every incentive to seek out an incumbent airline that would be willing to offer more money to maintain its market power than the entrant would be willing to apply to erode it.”¹

** ** **

First, the mechanism chosen should ensure efficient allocation of scarce capacity at LGA, with slots going to their most productive use. Second, the mechanism chosen should permit competition to flourish. Allowing entrants to compete in a competitive primary market for the purchase of slots will increase the chances that more efficient entrants are able to acquire the slots they need. In order to promote a vibrant and competitive airline system, the scarce LGA capacity should be allocated in a way that encourages rather than discourages competition. Comments of the U.S. Department of Justice, June 20, 2002, Docket 2001-9854.

By using a blind auction mechanism and concealing the identity of bidders, large incumbent carriers will no longer be able to make sales decisions based on a bidder’s identity. This will eventually end the dominance over operating authorizations at LGA and will spread control and ownership more equally among all airlines. Blind auctions

¹ Comments of the United States Department of Justice regarding the Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of Lottery Allocation, Docket No. FAA-2001-9854, p.6.

also benefit the public interest, as they ensure that slots will continually become available and will be accessible by many different holders.

Additionally, in order for the auctions to be fair, a weighted system favoring new entrants and limited incumbents must be used to ensure that smaller carriers have clear opportunities to obtain slots. This will prevent small carriers from continually being outbid by legacy carriers with greater resources. Moreover, slots should not be sold in large groups, as large groupings would be prohibitively expensive for small carriers to purchase and would result in automatic sale to dominant carriers. The March 25, 2005 O'Hare Airport NPRM explained the importance of providing a preference to new entrants and limited incumbents, stating:

Several factors here suggest that it would be appropriate to provide a preference to new entrants and limited incumbents at the airport. First, as we noted above, the Secretary of Transportation considers a number of matters in the public interest when carrying out the Department's functions, including "placing maximum reliance on competitive market forces and competition. Second, the airline Deregulation Act of 1978, which reduced the regulation of domestic and international air transportation, enunciated pro-competitive policies. When addressing airport access issues, Congress has frequently favored new entrants over incumbents. Congress has added provisions to the statutes governing airport grants and passenger facility charges to encourage airports to adopt policies that will promote competition.

These recommendations are consistent with the FAA's repeated emphasis on the importance of increased competition and the establishment of a competitive environment as a top priority. In fact, in the Congestion Management NPRM (Docket No. FAA-2006-25709), the FAA highlights that it has clear statutory authority to promote competition when it allocates operating authorizations:

Keeping available a variety of adequate, economic, efficient, and low-priced air services; placing maximum reliance on competitive market forces and on actual and potential competition; avoiding airline industry conditions that would tend to allow at least one air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation; encouraging, developing, and maintaining an air transportation system relying on actual and potential competition; encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry; maintaining a complete and convenient system of scheduled air transportation for small communities; ensuring that consumers in all regions of the United States,

including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service; and acting consistently with obligations of the U.S. Government under international agreements. (Congestion Management Rule for LaGuardia Airport; Proposed Rule, 71 Fed. Reg. 51360, August 29, 2006.)

The FAA has clear authority to take steps to promote LGA access, transfer slots, and make other changes needed to protect operations and competition at LGA. Operating authorizations were not assigned for life nor with assurances that carriers could do whatever they want with them; to the contrary, all holders were informed that operating authorizations could be recalled.

3. Assuming a cap on operations is required, how do you deal with public policy issues such as small communities and other interests? How might these issues be addressed? Can the market deal with these issues adequately? (Data question: what has happened to small community service at ORD and LGA?)

First, the definition of “small community” must be changed. Second, 15 percent of slots should be set aside for service to non-hub airports. All other slots should be available for service with aircraft of 90 seats or more. When slots are available, they should first be offered to new entrants and limited incumbents.

4. What is the prospect for additional capacity over the short and long term? If and when additional capacity is added, how should it be allocated? If additional capacity comes from air carrier investments, does that change how it should be allocated?

As many as three additional operations per hour could result from short-term improvements. All of these additional operations should be made available to limited incumbents. The FAA should also make immediate changes to slot control hours to make available the hundreds of operating authorizations not utilized on Saturdays and Sunday mornings which the legacy carriers will not return. All additional capacity should first be made available to new entrants and limited incumbents. Carriers that have dominated the airport for 20 years do not need additional flight options.

ADDITIONAL STATEMENT OF FOREIGN CARRIERS ON WORKING GROUP 5 (AIR FRANCE, BRITISH AIRWAYS, LUFTHANSA)

The foreign carriers participating on Working Group 5 support the majority position endorsing application of the IATA Worldwide Scheduling Guidelines (WSG) as promulgated by IATA (without excessive local rules) for allocating capacity at congested NY airports.

The foreign carriers generally endorse the majority position on the issues of Local Rules and New Entrants with some reservations.

The foreign carriers differ with the majority position on the issues of Small Communities, Secondary Trading (except for British Airways), Access to U.S. Airports by Foreign Flag Carriers and Allocation of Capacity Through Market Mechanisms. Their specific positions on each of these issues are set forth in the body of the Final Recommendations.

On the critical issue of Access to U.S. Airports by Foreign Flag Carriers, the foreign carriers' position is that they would only seek a foreign carrier preference if U.S. local rules for new entrants/limited incumbents and small community service go beyond what is provided for under the WSG in order to assure their fair and equal opportunity to compete and to provide for some growth at the airport.

Moreover, extensive local rules that favor U.S. carriers exclusively would require some form of foreign carrier preference if U.S. bilateral obligations are to be met.

Foreign carriers either support or do not in principle oppose secondary trading for NY airports; - they could support postings on an industry "billboard" for informational purposes only; and some would be prepared to consider the specific mechanics of the secondary market post- ARC.

Foreign carriers would also be opposed to use of any market mechanism for allocating existing or new capacity at the airport other than under the IATA Worldwide Scheduling Guidelines.

COMMENTS OF AIRTRAN AIRWAYS ON IATA SCHEDULING GUIDELINES

*Comments of AirTran Airways on Work Group 5 Draft
IATA Scheduling Guidelines
November 29, 2007*

At the outset of the NY ARC when the five working groups were established, it was understood by at least the ACAA and AirTran Airways, and apparently others, that the discussion regarding IATA scheduling guideline in Work Group 5 was specifically as it might pertain to JFK and possibly EWR, but not LGA. The WG5 draft paper is not consistent with the general understanding that IATA scheduling guideline discussions applied only to JFK. Several comments during the presentation and discussion of the WG5 draft paper, illustrated the confusion held by many, that the recommendations were JFK specific. While the paper has stated the intent is to apply the IATA Worldwide Scheduling Guidelines (WSG) to all New York airports, members of the working group did acknowledge there was no consensus on including LGA, and further pointed out there was very little discussion on the inclusion or application of IATA WSG to LGA.

Additionally, given the confusion of the purpose and scope of this working group, which impacted potential participants, it is inappropriate and somewhat misleading to refer to majority and minority opinions without further clarification.

Nonetheless, we appreciate the opportunity to provide comments for consideration.

While we understand the unique character of JFK as an International hub, albeit with some domestic service, may make the application of the IATA WSG an appropriate mechanism for that airport, we do not believe that is true in any way at LGA, an airport with almost entirely domestic operations.

The DOT charter includes statutory mandates to promote air carrier competition and new entry in the U.S. It has done so through the judicious administration of numerous programs through the years that have facilitated and fostered improved competition at NYC airports by enabling reasonable access to new entrant and limited incumbent carriers and protecting the interests of and service to small communities. As a result, new entrant, limited incumbent and low cost carriers now account for just under 9% of operating authorities at the airport and provide low fare competition in more than 90 O&D citypair markets from LGA. These pro-competitive, pro-consumer achievements would not have occurred under IATA guidelines.

IATA has been clear and consistent in stating that exemptions and local rules, such as those that preserve small community access and that promote competition, are not consistent with and undermines the WSG, which has a primary objective of managing congestion in capacity constrained airports.

From WSG, 14th edition, Section 5.8, “General Principles of Coordination”

- The basic principle of the slot allocation process is historical precedence, which allows airlines to retain slots, which have been allocated to them, and operated by them to certain operating criteria, in the next equivalent scheduling period.

The NY ARC shares the objective of addressing congestion, but as Secretary Peters has stated on opening the ARC, “I am not in favor of a system that limits competition, nor do I want to reduce the ability of new entrants to fly into New York.” Clearly the Department doesn’t intend to forgo any additional competitive/consumer gains at LGA, so it is difficult to see how the conflicts of DOT’s requirements for competition can be reconciled with IATA’s objections to local rules.

- There are long standing definitions that establish new entrant/limited incumbent at LGA as a carrier holding fewer than 20 operating slots (10 roundtrips) within the hours of 0700-2100. This number is based on the reasonable assumption of allowing a new entrant an opportunity to compete effectively in U.S. domestic markets with significantly larger incumbent carriers. IATA guidelines should not usurp U.S. policy.
- IATA would reduce that threshold by 75% to only two round trips. It is worth noting the three largest carriers at LGA account for 75% or an average 135 daily departures each. At 2 roundtrips, the IATA standard would suggest that at less than 2% of the largest incumbent’s service level a new entrant, limited incumbent has parity.
- The average daily departures per carrier at London Heathrow (LHR) is on 7.8, just 2.8% of the largest carrier’s average daily departures at LHR. The nature of service from LHR is uniquely different than LGA: average stage is 1,750 miles, not surprising in that it serves international markets with an average frequency of just 3.97 daily flights per destination. By contrast, the average flight from LGA is 2.2 hours in duration, 576 miles, 67% less than LHR. Each of the five largest O&D market from LGA has between 15 and 35 daily departures on 2 to 3 competitors – at LHR only 36% of markets have daily competition.
- 20% of current departures at LGA are to 38 small communities and 95% of all flights are within the domestic U.S. The NYNJPA has expressed concern that a number of these markets would be at risk without specific rules protecting small community service. IATA has repeatedly stated these sorts of exemptions conflict with the WSG. Only 13% of LHR flights are within the United Kingdom and less than 52% of flights are within Europe.

Just this month, the European Commission issued a report questioning the effectiveness of the IATA scheduling guidelines. Excerpts from the November 15, 2007 report:

- “Although the Regulation has brought some improvements in use of airport capacity, it is not adequate to address the increasing congestion at Community airports.”
- The report goes on to reference an EC “action plan” adopted in October 2007 “to achieve a more efficient use of scarce airport capacity possibly accompanied by a more structured approach to market based slot allocation schemes.”
- The EC report also notes that – “Local guidelines have the potential to add more flexibility to adapt to local circumstances to allow for better use of existing slots at congested airports. The possibilities to introduce local guidelines should be enlarged.”

It seems that we are moving to adopt a system that the EC has already said does not work for congested airports. In the drive to address congestion the working group is proposing a system that the EC reports has failed to address both congestion and competition. Whatever value the IATA rules might have at JFK, they will only make the situation at LGA worse and block competition to the disadvantage of the consumer. As a practical matter the end result is that the passenger will spend the same amount of delay time on the airport runway but pay more for it.

While we are willing to concede there may be valid reasons to allow IATA WSG at JFK, we absolutely object to any consideration of applying IATA guidelines to LGA or other domestic airports. IATA guidelines would undermine the authority of the DOT to perform its responsibility to promote competition and local airports to administer their own facilities.

Adoption of IATA scheduling guidelines at LGA, or other U.S. domestic airports would reduce the economic benefits to consumers and communities of vigorous airline competition that has resulted from U.S. and DOT pro-competitive policies.

COMMENTS OF MIDWEST AIRLINES AND ALASKA AIRLINES

Comments of Midwest Airlines and Alaska Airlines

THE LONG-STANDING STATUTORY AND REGULATORY PREFERENCE FOR NEW ENTRANT & LIMITED INCUMBENT AIRLINES IN GENERAL AND AT CAPACITY-CONSTRAINED AIRPORTS IN PARTICULAR

New entrant air carriers (“new entrants”) and limited incumbent air carriers (“limited incumbents”) have consistently received preferential treatment under the statutes, regulations, and rules that govern the allocation of slots at high-density or congested airports ever since 1985, when the FAA took over the slot administration function previously exercised by airline scheduling committees. Such preferential treatment is consistent with the policy directives that have governed the activities of the DOT and the FAA throughout this period. What follows is a summary of the specific measures and broad policy statements that have established the preference as a deeply engrained element of U.S. domestic aviation law.

- Congress has directed the Secretary of Transportation (“Secretary”) to specifically consider as being in the public interest:
 - “encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry”;
 - “the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices”;
 - “placing maximum reliance on competitive market forces and on actual and potential competition”;
 - “avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation”; and
 - “encouraging, developing, and maintaining an air transportation system relying on actual and potential competition . . .” 49 U.S.C. § 40101(a)(4), (6), (10), (12), (13) (2005).

- Under the lottery provision of the high-density airports slot allocation and transfer rules adopted by the FAA in 1985, in each round new entrants and limited incumbents may complete their selections before other incumbent carriers are allowed to participate. *See* 14 C.F.R. § 93.225(e) (1997). In addition, in the first round, 25 percent of available slots (but not fewer than two slots) are set aside for new entrants. *See id.* § 93.225(h). If new entrants do not select all the set-aside slots, limited incumbents, i.e. those carriers

holding no more than 12 domestic slots (later raised to 20 in the Aviation Investment and Reform Act for the 21st Century (“AIR 21”)), may select the remaining slots before incumbent carriers may participate. *See id.* §§ 93.213(a)(5), 93.225(h). Moreover, before the clock begins to run for purposes of the use-or-lose provision as it applies to slots obtained in a lottery, new entrants are entitled to a 90-day grace period, while all other carriers have only 60 days. *See id.* § 93.227(b).

- In 1986, the FAA issued a Special Federal Aviation Regulation (“SFAR”) establishing a one-time withdrawal of five percent of the slots of incumbent carriers at three of the high-density airports – LGA, ORD, and DCA – and a reallocation of those slots by lottery to new entrants and limited incumbents. *See SFAR No. 48 Special Slot Withdrawal and Reallocation Procedures*, 51 Fed. Reg. 8,632 (Mar. 12, 1986).
- In AIR-21, Congress directed the Secretary (i) to grant every new entrant and limited incumbent 20 slot exemptions from the high density rules at LGA, 20 at JFK, and 30 at ORD, *see id.* §§ 41716(b), 41717(c), (ii) to grant 12 beyond-perimeter exemptions at DCA where the resulting service will, *inter alia*, “increase competition by new entrant air carriers or in multiple markets,” *id.* § 41718(a), (iii) to grant 12 within-perimeter exemptions at DCA using criteria that promote, *inter alia*, service by new entrants and limited incumbents or service “that will provide the maximum competitive benefits,” *id.* § 41718(b), and (iv) to ensure that the Secretary’s ongoing examination of slot regulations includes consideration of “the impact of such allocation process upon the ability of new entrant air carriers to obtain slots in time periods that enable them to provide service.” *Id.* § 41714(e)(1)(D).
- For the lotteries of slot exemptions at LGA that the FAA conducted on several occasions between 2000 and the termination of the high density rule at LGA, the FAA adopted a process similar to that described in 14 C.F.R. § 93.225, whereby only new entrants and limited incumbents could participate in the first round. *See, e.g., High Density Airports; Notice of Lottery of Slot Exemptions at LaGuardia Airport*, 65 Fed. Reg. 75,765, 75,766, 75,770 (Dec. 4, 2000). Also, under the current order limiting operations at LGA, if the FAA decides to reallocate any slots that are withdrawn, surrendered, or unassigned, it “will conduct a lottery using the provisions specified under 14 CFR 93.225,” which, as discussed above, contain preferences for new entrants as well as limited incumbents. *Operating Limitations at New York LaGuardia Airport; Notice of Order*, 71 Fed. Reg. 77,854, 77,860 (Dec. 27, 2006).
- Under the current regulations addressing delays at ORD, new entrants and limited incumbents may select up to eight arrival authorizations allocated by lottery before any other carrier may participate in the lottery. *See* 14 C.F.R. § 93.30(h).

- Finally, under the FAA's proposed rule for long-term congestion management at LGA, the FAA would reallocate slots in a weighted lottery, in which each carrier's weight is inversely proportional to its share of the total number of slots at LGA, thus heavily favoring new entrants and limited incumbents. *See* Congestion Management Rule for LaGuardia Airport; Proposed Rule, 71 Fed. Reg. 51,360, 51,380 (Aug. 29, 2006).

COMMENTS OF NACA ON IATA SCHEDULING GUIDELINES



TO: DJ Gribbin
Chair, NY ARC

Nancy LoBue
Vice Chair, NY ARC

FROM: Thomas E. Zoeller
President, National Air Carrier Association

SUBJECT: NACA Comments to Working Group 5/IATA Scheduling Guidelines

This memorandum represents the comments of the National Air Carrier Association (NACA) to the paper prepared by Working Group 5 – IATA Scheduling Guidelines, as part of the New York Aviation Rulemaking Committee (NYARC).

NACA represents 15 air carriers, all certificated under Part 121 of the Code of Federal Regulations. Our carriers provide a mix of regularly scheduled and charter passenger and cargo air service.¹ NACA is a participating member of the NYARC, but was not a participant on Working Group 5. We appreciate the opportunity to offer our comments for the record with respect to the recommendations of this working group.²

At the outset, we believe it is inaccurate label the proposal to impose IATA Worldwide Scheduling Guidelines (IATA WSG) at the New York/New Jersey airports as “widely supported.” First, many carriers, including Virgin America, Alaska Airlines, Midwest Airlines, and the Air Carrier Association of America (ACAA), all expressed opposition or concern about various aspects of implementing the IATA WSG, especially as it relates to the paltry (i.e., 2 ½ round trip) set aside for new entrants. If this paper is going to the Secretary from the ARC itself, and not just a Working Group, we believe it vitally important (a) to reflect more accurately the opposition of those on the Working Group, (b) the

¹ NACA carriers include: Allegiant Air, ATA Airlines, Atlas Air, Champion Air, Gemini Air Cargo, MAXjet, Miami Air International, North American Airlines, Omni Air International, Pace Airlines, Ryan Air International, Southern Air, Sun Country Airlines, USA3000 and World Airways.

² We note that the Air Carrier Association of America (ACAA) has submitted comments on this working group paper as well and NACA concurs in those comments.

opposition of both ACAA and NACA to adoption of the IATA WSG, and (c) the relative absence on the ARC of broader airport, community, and consumer interests. We would strongly urge you as the leaders of the NYARC to ensure the lack of consensus among the broader industry is accurately reflected in anything given to the Secretary.

We also believe it would be helpful to have a more standard format, and list the pros and cons of the proposal. As it is currently presented, the Working Group 5 paper contains “majority” and “minority” views.

We do not believe that imposition of the IATA WSG is proper for any of the PANYNJ airports. The IATA WSG is intended to address capacity at an international airport before there are capacity constraints. None of these airports, including JFK, are simply international airports. Each of the three commercial service airports are vital domestic airports. The use of an international scheduling tool, we believe, is inappropriate for the situation in the New York/New Jersey metropolitan area.

The paper suggests that the IATA WSG:

- ✈ is a “dynamic and flexible nature . . . designed to accommodate market and network complexities.”
- ✈ Offers a “fair and nondiscriminatory system that is globally accepted”

We strongly disagree. The IATA WSG essentially freezes the status quo of level of service at the airport and relies on “historic rights.” In addition, we believe that the definition of a “new entrant” carrier, one with fewer than five slots, is far too limited and conflicts with definitions and understanding of that term within the U.S. transportation policy, as stated by both the U.S. Congress and the U.S. Department of Transportation.

Despite the claims of the WG5, we do not believe that the IATA WSG “permits new entrant air access in a manner that the working group in general believes it is equitable.” Under the IATA WSG, a new entrant would be permitted two round trips per day. Any ability to expand beyond that allocation requires the carrier to obtain slots on the open market, which may well be closed to new entrant competitors. Large, incumbent carriers likely would be inclined to make slots available to their competitors, when they can achieve scarcity rents by charging higher fares to consumers.

The working group claims that this limitation thus “fosters a vibrant secondary market.” The only “vibrant secondary market” that is created by the WSG is market of trading slots, not increasing service or competition at the airport. Moreover, there is no secondary market for new entrants or limited incumbent carriers to move their operations. The entire metropolitan area of PANYNJ airports are already operating at or above capacity. To impose the IATA WSG at

one airport and assume that a new entrant or limited incumbent carrier can offer service at one of the other PANYNJ airports is misguided. For some of NACA carriers, the only ability to grow is at one airport, primarily JFK. For international travel, the market reality is that JFK is the entry and departure point for international travel. For carriers that are focused exclusively on international markets, JFK is the cornerstone of their business plan. The IATA WSG essentially destroys any ability for these types of carriers to succeed.

In addition, NACA carriers also offer significant non-schedule commercial service. It is unclear from the working group paper whether such non-scheduled operations are contemplated. It appears our interests were not even considered. Since the carriers do not publish a schedule, it remains unclear whether non-scheduled commercial operations would be able to operate in an airport under the IATA WSG. To the extent that the FAA or DOT would consider imposing these guidelines, NACA strongly urges making slots available for non-scheduled commercial operations. This is clearly something that appears to be contemplated by the working group in acknowledging that the IATA WSG permit for local rules.

While we believe that accommodating charter operations can be accomplished through the adoption of a local rule, we are not satisfied that the goals for other carriers, such as new entrants and limited incumbent carriers, could be satisfied with a local rule. We believe that the Federal transportation policy goals of promoting competition and access for carriers, as well as the need for service to small communities, would create so many local rule exemptions to the IATA WSG that the guidelines would be rendered essentially meaningless.

Finally, we would add that the IATA WSG does not encourage the Federal government or the airport authority to seek capacity improvements, whether through infrastructure or air traffic management. While it is stated that the use of the IATA WSG could be a short-term initiative, the record of other short-term initiatives such as the High Density Rule suggest otherwise. Federal and local resources would be better spent by making the investments in air traffic improvements and ground infrastructure that could expand the capacity of the region and accommodate the competing demands of the legacy carriers, charter carriers, and new entrants/limited incumbent carriers.

If you need any additional information, or wish to discuss these comments, please do not hesitate to contact me at (703) 358-8065 or by email at tzoeller@naca.cc.

AIR CARRIER ASSOCIATION OF AMERICA LETTER TO DJ GRIBBIN



1776 K Street, N.W., 9th Floor, Washington, DC 20006
(202) 719-7420 (Telephone) (202) 719-7049 (Facsimile)
epfaberman@acaal.com
www.acaal.com

December 3, 2007

DJ Gribbin
General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue, SE
9th Floor, West Tower
Washington, DC 20590

Re: Comments on Working Group 5 Recommendations

Dear DJ:

The Air Carrier Association of America (“ACAA”) hereby submits additional comments on the “Final Recommendation” of Working Group 5.

As discussed at the November 29, 2007 ARC meeting, the opening paragraph of the “Final Recommendation” does not accurately reflect the views of the ARC members. While some parties are willing to consider implementation of the IATA Worldwide Scheduling Guidelines for JFK (and some are also willing to discuss it as an allocation system for EWR), there is significant opposition to the use of the IATA Guidelines for allocation of operations at LGA¹. The Air Carrier Association is firmly opposed to the use of the IATA Guidelines at LGA and any IATA involvement in LGA operations.²

At that same ARC meeting, some carriers claimed that the secondary market works and that a carrier with 2 ½ daily roundtrips can easily add to those numbers. It is important that the record reflect reality: that it is difficult for many carriers to purchase access. As

¹ The number of international operations at LGA is very limited.

² Even if guidelines similar to IATA are utilized at JFK and/or EWR, they must provide for access for domestic new entrants and limited incumbents to operate a minimum of six roundtrips per day. No procedure should be considered that further blocks entry and competition at US airports. Carriers that operate hundreds of flights at an airport should not be allowed to close the airport to competition.

DJ Gribbin
Page 2
December 3, 2007

to the purchase of slots at Heathrow Airport, we note a November 12, 2007 Aviation Daily article that states:

US Airways says the tight slot market at London Heathrow is preventing it from launching flights to the airport, at least temporarily. The airline says it “intends to serve Heathrow someday but has no firm plans at this point.” It has to balance the demand for Heathrow with the cost of acquiring slots.

Apparently, US Airways felt the cost was worth it. On November 20th, it announced it would fly to Heathrow from PHL. A number of articles suggest US Airways paid \$40 million for the slots and probably obtained them from one of its Star Alliance partners. Domestically, not all carriers belong to alliances and not all carriers could spend large amounts of money for JFK slots to operate domestic flights.

As to suggestions that secondary markets can be used for carriers to add to a few roundtrips, it should be the secondary market process does not open doors for small carriers. The Working Group paper should reflect the U.S. Department of Justice comments about the secondary market in response to the Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of Lottery Allocation (Docket No. FAA-2001-9854):

“Indeed, an incumbent with market power may well be able to outbid a more efficient entrant, simply because maintaining market power is more profitable than entering a competitive market...once a potential buyer’s identity is known to the seller, the seller has every incentive to seek out an incumbent airline that would be willing to offer more money to maintain its market power than the entrant would be willing to apply to create it.”

* * * *

First, the mechanism chosen should ensure efficient allocation of scarce capacity at LGA, with slots going to their most productive use. Second, the mechanism chosen should permit competition to flourish. Allowing entrants to compete in a competitive primary market for the purchase of slots will increase the chances that more efficient entrants are able to acquire the slots they need. In order to promote a vibrant and competitive airline system, the scarce LGA capacity should be allocated in a way that encourages rather than discourages competition.

As to the Working Group comment that ACAA members received exemptions to operate at LGA, if this statement is to remain in the report, it should note that those exemptions were allocated under Congressional mandates which created one preference for new entrants and limited incumbents. Without that authority, there would be little competition at LGA and the airport would not have the significant benefits it has gained from the service offered by low-cost carriers. The paper should also note that the number of slots

DJ Gribbin
Page 3
December 3, 2007

provided to new entrants is small compared to preferences in the legislation that allowed large carriers to expand. Many large carriers were able to add dozens of operations at LGA because of language in that same legislation and the regional jet flights they added created the congestion that is now being addressed. Moreover, JetBlue is operating at JFK today because of authority granted by DOT.

ACAA opposes any consideration of the IATA guidelines at LGA or other U.S. airports. While the ACAA would not oppose consideration of the IATA Guidelines for international flights at JFK³, adoption of the IATA Guidelines for domestic service will neither enhance competition nor promote the efficiency of the overall aviation system. Opportunities for new entry and expansion of limited incumbents must be kept available⁴.

Please do not hesitate to contact us to further discuss this issue.

Sincerely,



Edward P. Faberman
Executive Director
Air Carrier of Association of America

cc: Nancy LoBue
Rebecca MacPherson

³ Limited incumbents must be able to operate 10 roundtrips at JFK before the dominant carriers are allowed to expand along with flights outside of the congested hours.

⁴ The ACAA supports the comments by the National Air Carrier Association (NACA) on these issues.

UNITED AIRLINES LETTER TO REBECCA MACPHERSON



STAR ALLIANCE

JULIE OETTINGER
MANAGING DIRECTOR, INTERNATIONAL AND REGULATORY AFFAIRS

(202) 296-2370
(817) 296-2869 FAX
JULIE.OETTINGER@UNITED.COM

December 3, 2007

Rebecca McPherson
Assistant Chief Counsel for Regulations
Office of the Chief Counsel
Federal Aviation Administration

Dear Rebecca,

Let me begin by thanking you for all your hard work in Chairing Working Group 5. You did an excellent job of pulling together a report that describes what most Working Group members consider to be the best way to control airport congestion, i.e., the Worldwide Scheduling Guidelines. The report also fairly sets forth different perspectives on aspects of the WSG. In response to your invitation to offer supplemental comments, I wanted to share some additional thoughts from United Airlines.

First, as you know, one of the issues that engendered the most discussion was the question of what should be U.S. government policy toward new entrants/limited incumbents. The working group discussed this issue at length, as did the entire ARC, following Virgin America's presentation last week. Much of the discussion referenced historical legislative and regulatory approaches that have at points in the past applied to new entrant/limited incumbent access to congested airports in the U.S. In our view, it is essential that public policies are developed with reference to current market realities, rather than based on historical circumstances that may no longer apply.

I have attached for your reference a recent study prepared by former DOT officials, Patrick Murphy and Randall Bennett. This study clearly reveals that the U.S. airline industry is experiencing a dramatic change in structure that began in 2000. The U.S. domestic airline industry is more competitive than at any time in history and is characterized by the emergence of two distinct business models – network carriers and low-cost carriers (LCC's). LCC's now drive industry growth and fare levels. Network carriers no longer dictate the terms of domestic competition. The results of this study clearly show that market dynamics that underlay historical U.S. policy concerns, like "hub fare premiums," have changed dramatically.

Given the high levels of competition and the continuing evolution of the industry in favor of the LCC business model, we suggest DOT must reevaluate historical policies of government intervention in favor of certain business models or individual firms. In our view, many of these policies can no longer be justified on the basis of a public policy need to promote competition.

1025 Connecticut Ave. NW, Suite 1270, Washington DC 20036

December 3, 2007

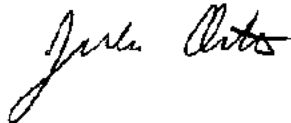
Page 2

Second, in Working Group 5 we discussed the New York area, and at times even included PHL, but never spoke of differing rules for LGA versus JFK or EWR. One advantage of the WSG is consistency in application; all airports are treated in a predictable manner on the same timeline allowing for airlines to develop schedule plans and rework those based on feedback as a package, not an individual airport on x day and another airport on y day. Additionally, following commonly accepted guidelines allows airlines to use a single commercially available slot management tool, such as those available from Sabre, Lufthansa Systems, or Gatwick Logistics, for tracking and reporting slots at all domestic and international airports.

Perhaps even more importantly, adoption of the WSG within the U.S. generally would provide a strong basis to prevent the sort of unacceptable congestion and delay problems plaguing New York. The WSG is designed to allow stakeholders to move gradually to slot controls before schedules become severely out of alignment with airport capacity. Broad adoption of the WSG would also provide a uniform solution to congestion problems that would not entail lengthy legislative and regulatory processes to address future problems. Therefore, United would strongly encourage broad adoption of the WSG at all current or future U.S. congested airports (including ORD, JFK, LGA, DCA and EWR) to minimize the financial and operational burden of maintaining various slot management tools each for use at single airports.

Thank you again for your leadership on this important working group.

Sincerely,



Julie Ottinger

cc: DJ Gribbin
Nancy Lobue

A COMPETITIVE ANALYSIS OF AN INDUSTRY IN TRANSITION (GERCHICK-MURPHY REPORT)

By **Randy Bennett**
 Patrick Murphy
 Jack Schmidt

July 2007

Executive Summary

The purpose of this study is to examine the competitiveness of the U.S. domestic airline industry following a period of unprecedented financial turmoil and considerable change in industry structure. The study is not limited to a static analysis of competition, but includes an examination of the factors that have driven change so that insights can be gained about implications for the future.

The study has two distinct sections. The first is an analysis of how the industry's structure is evolving. The second is a conventional analysis that examines concentration measures such as the number and types of competitors in city-pair markets. Both approaches unequivocally show that the industry is more competitive now than at any other time in the 12-year period examined. More city-pair markets and more passengers are benefiting from increased numbers of competitors and increased presence of low cost airlines. As a result, domestic average fares adjusted for distance and density (but not cost inflation) were lower for the year ended September 2006 than in 2000, or even 1995.

Industry Structure:

The title of this study does not precisely capture what has occurred in the domestic passenger airline industry during the last six years. Although the title correctly portrays that a transition is still underway, in point-of-fact a major transition in industry structure has already occurred. Indeed, industry snapshots of the latest six-year period and the six-year period that preceded it look so different that a casual observer might think that two different industries are under review. Despite the fact that most of the players are the same, in terms of overall competitive structure two different industries really are involved.

During the past six years the balance of influence in the domestic market has significantly shifted from the network airlines to the low cost airlines. The extent to which their relative positions and performance have changed in such a relatively short time would have seemed totally implausible a short time ago. The network airlines that were the dominant force in the domestic industry during the 1990s no longer drive change either in terms of price or growth, and are unlikely to again do so. Their focus has shifted from intensely competing for domestic market share with low cost airlines to growing international services which also serves to flow greatly increased volumes of international bound passengers and

revenue through their domestic networks. In essence they have turned to their strongest position of competitive strength, their global networks, to revive their profitability, both system-wide and domestically.

Despite the remarkable change that has already occurred, strong low cost airline expansion and resulting market share shifts can be expected for the foreseeable future, and competition will intensify. Low cost airlines will continue to pressure the network airlines to maintain and even expand the strategy that has evolved during the past several years of focusing more on international expansion and less on competing for market share of price sensitive domestic passengers.

The diversity of the two very different business models employed by the large network airlines and the low cost airlines is a key element of the success of deregulation. These two dueling business strategies have provided more intense competition than would occur from a more homogeneous system, and service to a much broader spectrum of demand than would have resulted from either model standing alone. Large network airlines provide the vast portion of service to smaller cities in the domestic market and to cities of all sizes linked to international markets. Low cost airlines provide service to large numbers of price sensitive passengers that would not otherwise have the opportunity to travel by air. Where both models serve, competition is intense and this competition will continue to benefit increased numbers of passengers and markets.

The most obvious difference that signals the important change of the past six years is the extreme variation in financial performance between network and low cost airlines. The network airlines, after experiencing a period of sustained strong profitability from the mid-1990s to 2000, have struggled to return to profitability, particularly in the domestic market. The low cost sector, on the other hand, has remained profitable throughout this period.

Obviously, there were many contributors to industry change, including the terrorist attacks, the Iraq War, SARS, and dramatic increases in fuel prices. However, these exogenous factors affected all airlines. Other changes that are more fundamental and structural in nature have weighed heavily on how the industry has evolved.

One element in the evolution is the emergence of a solid core of low cost airlines that joined the ever growing Southwest. During much of the 1990s, the low cost sector, other than Southwest, constantly struggled for survival, but that is no longer the case. This is a major factor contributing to the network airlines' struggle to regain their financial footing since 2000. The effect of low cost airline entry into a market served by a traditional airline has been demonstrated many times by virtually all who have examined airline industry competition. Although the basic reason for the resulting reduction in fares and surge in traffic is well understood, this study describes in detail the widely divergent sectors of passenger demand pursued by the network and low cost models. In this way,

the study provides insight into the broader implications for network airlines as low cost carriers continue to expand.

While the low cost airlines have continued to grow, the large network airlines, including their regional partners, now offer less domestic capacity than they did in early 2001.

Low cost airline expansion is not the only revenue-side phenomenon that has confronted the network airlines. A second major change involves a large decline in the numbers of passengers willing to pay higher fares. Even for the ever shrinking minority of passengers who travel in markets where low cost airlines are not present, the network airlines' ability to segment the market and charge time-sensitive business travelers higher prices has been significantly eroded. The result has been the loss of several billion dollars a year in revenues.

Placed in historical context this is a change of great consequence. In essence, almost three decades after deregulation demand has asserted itself. The primary service providers are no longer able to control supply that is made available to different segments of demand and in so doing maximize the price most passengers were willing to pay. The industry is now demand driven and not supply driven. Customers are insisting on lower prices and greater supply for price sensitive travelers. The implications of this for the airline industry are profound.

These two revenue-side phenomena that have challenged the network airlines – loss of marketshare and erosion of pricing power – point to another area of this study – costs. Many observers are familiar with the period of rapid cost escalation experienced by the network airlines beginning near the end of the 1990s and extending into 2001. It has now become clear that this inflation occurred just as the low cost airline sector began to solidify, which in turn was followed by the early stages of the weakening in high-fare demand in late 2000 and early 2001. These developments were then punctuated by the terrorist attacks of September 11. This combination of rapidly increasing costs and declining revenues led to the most intense efforts possible by the network airlines to reduce their costs. They have all had great success in doing that, both within and outside the bankruptcy process, but given that a cost gap of almost 50 percent with low cost airlines continues to exist, have they done enough?

For the near term, at least, it would seem that they have, as in their sixth year of recovery the network airlines have begun to report a return to profitability in the domestic market. But continued improvement in the financial recovery is far from certain for a number of reasons. First, the current recovery in the domestic market is largely the result of international expansion rather than regaining competitive influence in the domestic market. For the year ended September 2006, passengers and revenue related to domestic travel by the network carriers remained lower than in CY 2000, but the domestic portions of international trips

have increased markedly and now account for 25 percent of revenues that flow through the domestic networks. While the network airlines have found a new source of revenue to replace that lost in the domestic market, the long-term effects of continuing to add capacity in international markets remains to be seen.

Second, the low cost airlines continue to expand and in so doing continue to erode revenue pools traditionally held by the network airlines. Although low cost airlines now have a presence in markets that account for about three-fourths of domestic passengers, they can be expected to continue to gain market share in many if not most of those markets, and continue to expand into others given their current cost advantage over the network airlines. It is also significant that increased low cost airline market share is not solely the result of their aggressive growth, but also a function for network airline passengers and revenue decreasing as low cost airline presence increases and expands the market.

Third, the network airlines' return to profitability in the domestic market, even with the revenue benefit from international expansion, while clearly a positive, has come at the cost of shrinking their domestic networks. Since network size or scope is normally considered to be a key advantage of a network, the network airlines' apparent need to continue to shrink their domestic networks cannot be considered a positive sign going forward. It is unclear whether continued international expansion will change this dynamic, or whether new types of network airline responses will emerge.

Industry observers, and other airline managers for that matter, have consistently underestimated the ability of the low cost carrier sector of the industry to adapt. Despite a history of change, at nearly any point in time many observers would offer the opinion that low cost airlines are running out of opportunities and the prospects for further expansion are limited. Given the long tradition of adjusting to meet marketplace needs and opportunities, both here and abroad, the failure to anticipate still more change in the faster growing low cost industry sector would seem short sighted. New low cost business models are now being tested in the domestic market and expansion of low cost service into international markets could radically change the industry structure in the domestic market as well. While the network airlines can adapt to new situations the low cost airlines can also change.

Conventional Competitive Analysis:

Consistent with the results of this study's structural analysis, an analysis of traditional trends and concentration measures also demonstrates that the domestic airline industry is now more competitive than at any time during the past 12 years examined in this study. In fact, the airline industry is likely the most competitive it has ever been. More city-pair markets and more passengers are benefiting from increased numbers of competitors, increased presence of low cost airlines, and lower fares.

At the national level long term declines in real ticket prices and increases in traffic levels have continued. While broad measures of industry concentration ratios have fluctuated only slightly since 1995, the composition of airline industry competition has undergone great change with respect to the presence of low cost competitors.

In terms of passengers carried, Southwest is by far the largest domestic airline, carrying almost 50 percent more passengers than the second largest airline – American. Two other low cost airlines, JetBlue and AirTran, have recently entered the ranks of the top 10 airlines. Low cost airlines now account for 30 percent of domestic passengers, but more importantly they compete in markets that account for three of every four passengers. This, of course means that three quarters of air travelers are directly benefiting by the downward pressure the low cost competitors place on fares.

With respect to city-pair markets, measured either in terms of the presence of low cost airline competition or the numbers of competitors, competition has not just continued to increase throughout the 12-year period studied, it has accelerated. The result has been a remarkable reduction in prices. In 2006, overall average fares (unadjusted for inflation) were 7.2 percent lower than in 2000, and only 4.2 percent higher than 12 years ago. But adjusted to reflect changes in distance and density that have occurred, nominal average fares in 2006 are 10 percent lower than those in 2000, and are 2.4 percent lower than 12 years ago. Adjusted for cost inflation average fares for September 2006 were 20 percent lower than for either 2000 or 1995, and declined for all density increments examined, including the smallest markets.

The single area that has not been significantly affected by low cost entry has been service to the smaller cities, the vast majority of which are served only by the network airlines primarily with their regional partners. Nevertheless, between 2000 and 2006 competition measured by numbers of competitors has actually increased more in the smallest markets than in any other market density category. Adjusted for cost inflation, average fares in the smallest markets were 12 percent lower for the year ended September 2006 than in 2000, and 18 percent lower than in 1995. The likely reasons for this are twofold.

As smaller cities are heavily dependent upon network airlines for service, the network airlines, in turn, have developed a growing dependence upon revenues generated at those cities where they have little low cost airline competition. This is not unlike their efforts to shift focus from competing with low cost airlines to increasing international revenues flowing through their domestic networks. The increased competition in the smaller markets is made possible by virtue of smaller cities being linked to multiple network hub airports. As low cost airline expansion increases competitive pressures in larger markets, the network airlines will now become even more dependent on revenues from smaller cities.

In addition, competition at small communities benefits from new technology regional aircraft that enable service to more distant competing network hubs. Furthermore, increasingly independent regional airlines, either on their own or in affiliation with low cost airlines, offer the prospect for even more competitive benefits for smaller cities.

Given DOT's long-standing concern about higher prices charged by network airlines at their network hub cities, "hub premiums" were also examined. Hub premiums are calculated by comparing prices for service to and from hub cities with fares charged in other markets of comparable distance and density. Along with industry prices that have significantly declined during the past six years, premiums at most network airline hub cities have also declined, primarily as a result of low cost airline entry. With but a single exception at Cincinnati, low cost airlines have a growing presence at all network hub cities and should continue to discipline prices in hub markets.

The complete report can be found on the NY ARC KSN site (<https://ksn.faa.gov/km/aee/nyarc>).

LETTER FROM VIRGIN AMERICA, INC., TO D.J. GRIBBIN



Pillsbury
Winthrop
Shaw
Pittman^{llp}

2500 N Street, NW
Washington, DC 20037-1127

Tel: 202.663.6000
Fax: 202.663.6037
www.pillsburylaw.com

December 12, 2007

Kenneth P. Quinn
Phone: 202.663.8898
kenneth.quinn@pillsburylaw.com

The Honorable D.J. Gribbin
General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Re: Working Group 5: IATA Worldwide Scheduling Guidelines

Dear D.J.,

Thank you for the opportunity to reply on behalf of Virgin America Inc. (“Virgin America”) to the letter and study submitted and funded by United Airlines regarding allocating scarce capacity in New York. To provide balance in the presentation of the NYARC’s views to the Secretary, I understand that you will be providing a copy of this letter with your transmittal on Working Group 5 (“WG5”), which we appreciate.

As you know, we believe that congestion management in New York or elsewhere ought not to come at the expense of competition, and that the government should not implement the IATA World Schedule Guidelines (“WSG”) to address scarce domestic capacity. Doing so would create a huge financial windfall to incumbent carriers, shut out new entrants, erect formidable barriers to entry, encourage slot hoarding, and facilitate incumbent attempts to extract scarcity rents from consumers—a very anti-competitive, anti-consumer result.

The entire premise of the WSG—granting rights of “historic precedence” in perpetuity—is antithetical to the Airline Deregulation Act and 30 years of DOT precedent. As Virgin America emphasized during WG5’s discussions, this formula not only insulates incumbents from new entry and competition, but the “new entrant” access under the WSG is available only if capacity is declared available, and only then to a carrier that operates no more than two daily roundtrips at the airport. The WSG therefore effectively shut out new entrants and purports to send them to a secondary market, where incumbents would have economic incentives to hoard slots rather than supply them to competitors.

400886823v1

The Honorable D.J. Gribbin
December 12, 2007
Page 2

The Department and FAA consistently have taken into account their statutory mandate to promote new entrant and limited incumbent competition when administering the Federal Aviation Act and adopting regulations to allocate scarce capacity at congested airports in the U.S. You are well aware of this extensive precedent, which includes 5% withdrawals from incumbent carriers upon creation of the Buy Sell Rule in 1985 under President Reagan, and extensive slot exemptions during the Bush and Clinton Administrations, including over 75 slots given free of charge to JetBlue in 1999.

Large airlines favoring the wholesale adoption of the WSG in the U.S. have argued that meaningful competition will be assured through a “vibrant secondary market,” pointing to London’s Heathrow (“LHR”) as an example. Make no mistake: there has been very little new entrant competition at LHR over the last five years. Indeed, only two of the 21 new entrants at Heathrow between 2003 and 2008 now hold sufficient slots to operate at least two daily roundtrips. Only 0.5% of slots have come on the market from use-or-lose provisions. Recent U.S. “non-incumbent” transactions only underscore this difficulty, with US Airways apparently obtaining one pair of slots at LHR for \$40 million—from its alliance partner. The FAA and Department of Justice repeatedly have noted the lack of new entrant opportunities as a result of the secondary market.

In response to Virgin America’s position that congestion management must not come at the expense of competition, both United and the Air Transportation Association have cited to a United-funded study, *A Competitive Analysis of an Industry in Transition: The U.S. Airline Industry*,¹ for the proposition that the industry is more competitive than ever before, with low cost carriers (“LCCs”) accounting for a significant share of total domestic enplanements. We offer the following observations on the Study.

First, the LCCs’ share of the overall U.S. market has little relevance to questions on how new entrants will obtain meaningful access at specific city pairs and markets, especially one so large and important as New York. Second, the only access at slot-controlled airports in the U.S. for new entrants during the time period examined by the study’s authors (2000-2006) was largely the result of slot exemptions. Third, while the Study concludes that competition has driven down average domestic fares, NY area fares actually have been steadily increasing. The latest data prepared by DOT’s Office of Aviation Analysis on the 81 largest domestic markets reveal that average fares in the NY

¹ Gerchick Murphy Associates, LLC, A COMPETITIVE ANALYSIS OF AN INDUSTRY IN TRANSITION: THE U.S. AIRLINE INDUSTRY, available at <http://www.gerchickmurphy.com/files/study.pdf>.

The Honorable D.J. Gribbin
December 12, 2007
Page 3

area have actually increased by nearly 12% over the last two years.² New York is now the sixth most expensive market of the 81 cities tracked by DOT. Virgin America, which now competes in four of the 10 most expensive domestic long-haul city pairs,³ is eager to bring travelers in this region even more low fare options. Finally, LCC success has come about because they can enter markets that need service and lower fares, which would not happen under the WSG.

In sum, Virgin America urges the Department to strike the proper balance between policies to reduce intolerable passenger delays with adequate accommodation for new airlines to enter and compete in a meaningful manner at New York airports. The Department and FAA have provided careful consideration to the many thoughtful comments submitted by a diverse group of stakeholders throughout the entire NYARC process, and we appreciate the opportunity to share these observations. Thank you for your leadership efforts.

Very truly yours,



Kenneth P. Quinn
Counsel to Virgin America Inc.

cc: Nancy Lobue
Rebecca McPherson

² See DOT Office of Aviation Analysis, DOMESTIC AIRLINE FARES CONSUMER REPORT, at Table 2 (First Quarter 2007 and First Quarter 2006).

³ *Id.* at Table 1. Long haul ranking based on domestic city-pairs greater than 2,200 miles.

APPENDIX H — GENERAL COMMENTS

AIRCRAFT OWNERS AND PILOTS ASSOCIATION LETTER TO DOT SECRETARY



AIRCRAFT OWNERS AND PILOTS ASSOCIATION
421 Aviation Way • Frederick, Maryland 21701-4798
Telephone (301) 695-2020 • FAX (301) 695-2375

Phil Boyer
President

November 14, 2007

Honorable Mary Peters
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: NYC Aviation Rulemaking Committee

Dear Secretary Peters:

The Aircraft Owners and Pilots Association (AOPA), representing more than 414,000 pilots across the country is pleased to be a participant in the aviation rulemaking committee (ARC), established to reduce congestion in New York City (NYC). Your leadership is critical as the Department evaluates the various recommendations being developed by this committee to meet the early December 2007 deadline established by President Bush. AOPA wants to assist you in this effort and has developed the attached "New York Congestion White Paper."

It is crucial that the Department address the primary issues of airline scheduling and the physical limitation of an airport to handle a given amount of traffic, airline decisions to operate smaller aircraft, and airline promotion of travel during peak hours without setting the expectation of delays.

I want to emphasize that non-commercial general aviation operations are not the cause of congestion in New York. The Federal Aviation Administration's (FAA) operational data shows that since 2001, non-commercial operations at the New York Tracon (N90) are down by more than 15 percent, and the total number of non commercial operations at Teterboro, New Jersey (TEB) are down by more than 40 percent. The FAA data also reveals that non-commercial operations are less than three percent of New York's LaGuardia and Kennedy airports and Newark, New Jersey's airport. These facts must be considered as the solutions are developed.

Ultimately, the Department must identify a set of solutions that tackles the real problems without adversely affecting those that do not contribute to the problem, the AOPA membership. We propose a list of short and long term recommendations for inclusion in the ARC deliberations and the Department's subsequent action plan.

We believe it is important that the DOT and FAA have access to a list of balanced solutions that enables you to reach an informed decision and achieves the desired outcome to address the delay problems in the New York area.

Sincerely,

Phil Boyer

Member of International Council of Aircraft Owner and Pilot Associations

NY Congestion White Paper Aircraft Owners and Pilots Association

November 13, 2007

In October 2007 the Department of Transportation established an Aviation Rulemaking Committee (ARC) for the New York City area, designed to explore market-based mechanisms and other options for addressing airspace congestion and flight delays in the New York area. The Aircraft Owners and Pilots Association (AOPA) has developed this white paper for the Department's consideration as they deliberate on the NYC delay issue.

The Issue: Congestion at the New York City Airports

Fact #1: General Aviation Operations are not Contributing to the Airline Delay Problem

- The majority of delays are related to weather, and the remainder of the delays is airline induced or air traffic control delays.
- Nationwide, general aviation aircraft operations have declined by 17 percent since 2000. (Rep. Jerry F. Costello, September 26, 2007.)
- According to FAA statistics, air carrier operations have grown in the New York area by 15 percent since 2001 while general aviation activity has decreased 9 percent
- General aviation (noncommercial) traffic at the three NYC airports continues to be less than 3 percent of the total operations.
- General aviation operations at Teterboro Airport, the NYC's largest reliever airport were the same in Fiscal Year (FY) 2006 and 2007. Over the past five years, traffic levels at the Teterboro Airport are down.
- General aviation flights to satellite airports are nearly always segregated from airline flows to the three NYC airports. Air traffic controllers report that operations at reliever airports are segregated from the air traffic flows to the three NYC airports most of the time, meaning that general aviation does not affect airline operations.
- NATCA Eastern Regional Vice President Phil Barbarello verified these facts on October 4, 2007, (Aviation Daily) when he said it's not true that business jets are causing delays in the New York area because they have "separate arrival fixes and separate airspace when they enter the New York Terminal Radar Control (TRACON) area, and they don't impede air carriers. In fact," he added, "bizjet arrivals are often restricted to accommodate airline arrivals at Newark."
- General aviation operations accommodate airline demand. When weather permits, general aviation aircraft are encouraged to depart Teterboro airport under visual flight rules (VFR), using the Dalton Departure, and transition to instrument flight rules (IFR) when outside of the New York area.

Fact #2: Airline Schedules and Aircraft Sizes Generate Flight Delays and Passenger Travel Problems.

- At certain times of the day, the airline’s arrival/departure schedules exceed runway benchmark capacities at LaGuardia (LGA), John F. Kennedy (JFK), and Newark (EWR) airports.
- Since 2004, JFK’s scheduled operations have increased 44 percent. (Agham Sinha, MITRE, September 26, 2007.)
- JFK had the worst on-time rate in July 2007, with 57 percent of flights arriving on schedule. (Boston Globe, September 5, 2007)
- According to former FAA Administrator Marion Blakey, the airlines are operating flights with smaller aircraft, which affects passenger travel.
“Similarly, as airlines work to control costs per enplanement, they are using increasing numbers of small aircraft.”
- This is reflected in key facts from the DOT Inspector General Calvin L. Scovell III:
 - *The number of scheduled flights (capacity) decreased from 5.5 million in 2000 to 5.0 million in 2007, a drop of 9 percent. Scheduled seats also declined by over 9 percent between 2000 and 2007, from 510 million to 462 million.*
 - *Even though the number of flights and seats declined, passenger enplanements went up over 12 percent, from 312 million passengers in 2000 to 350 million passengers in 2007.*

Fact #3: Non-Commercial Traffic in the NYC Area is Declining

In FY 2007 the commercial aviation operations were higher than FY 2001, while general aviation operations were lower in FY 2007 than FY 2001. The FAA data below shows these and other facts.

2001 Traffic Levels

ATC Facility	Total 2001	Commercial 2001	Non-Commercial 2001	Percent GA of Total
N90	2,070,713	1,438,358	661,743	32.0%
JFK	340,459	331,808	8,156	02.3%
LGA	404,206	393,205	10,798	02.7%
EWR	462,202	445,582	16,437	03.5%
TEB	267,794	54,460	202,538	76%

2007 Traffic Levels

ATC Facility	Total 2007	Commercial 2007	Non-Commercial 2007	Percent GA of Total
N90	2,095,818	1,521,770	562,673	28.0%
JFK	453,258	359,771	7,245	01.6%
LGA	401,410	390,349	10,700	02.7%
EWR	444,973	429,357	15,453	03.4%
TEB	202,193	77,131	124,765	61.7%

Fact #4: The Capacity Issues in New York are Limited by Runways

- Airports have not expanded capacity. No new runways have been built for years.
- The airspace used by turbojets was nearly doubled in 2004 when the FAA implemented Domestic Reduced Vertical Separation Minimums (D-RVSM) nationwide.

Both Immediate and Longer Term Solutions are Available to Address Delays at the NYC Airports:

1. *Align schedules with capacity benchmarks.* The Federal Aviation Administration (FAA) has issued “Capacity Benchmarks” for each of the nation’s busiest airports. These benchmarks lay out how many flights can physically and safely arrive at and depart from a particular airport at a given period of time and at peak travel hours. The benchmarks then compare the airport’s capacity limit to how many flights the airlines have, in fact, scheduled for arrival and departure during that time period. FAA data shows that airline-scheduling practices at the three NYC area airports significantly exceed these capacity limits, with the result being that the number of flights scheduled to depart cannot possibly depart when scheduled and as advertised. The airlines should be required to align schedules with the capacity benchmarks. Establishing the correct benchmark is critical.
2. *Implement operational changes to air traffic procedures that improve the flow of traffic in the NYC area.* Task the RTCA Airspace Working Group to focus on quickly implementing these improvements.
3. *Provide Truth in Scheduling.* Inform all passengers flying to or from NYC that the flight they may choose to buy a seat on will experience regular and frequent delays due to the airline’s choice of aircraft size and schedule.
4. *Provide Truth in Reservations.* Before allowing passengers to make a reservation during peak hours, make sure that passengers are aware of other lower peak travel options, and that there are airports in the New York City metropolitan area that may be better options for their travel.

5. *Evaluate Air Traffic Control facilities to ensure they are adequately staffed with trained controllers.* It appears there may be open positions at the New York Air Route Air Traffic Control Center (ZNY ARTCC), the NYC TRACON (N90) and the JFK Air Traffic Control Tower (ATCT). According to the National Air Traffic Controllers Association (NATCA):
 - ZNY ARTCC: There are 370 positions authorized with 304 on board (234 certified professional controller and 70 trainees);
 - N90: There are 270 positions authorized with 200 onboard (178 certified professional controllers and 22 trainees); and
 - JFK ATCT: There are 37 positions authorized with 32 on board (24 certified professional controllers and 8 trainees)
6. *Encourage airlines to use more of the airports in the NYC metro area.*
7. *Identify options for more runways at existing airports.*
8. *Airlines operating to and from the three NYC airports should be required to equip with RNP and ADS-B “IN.”* The airlines indicate these systems can increase capacity, and efficiency. The technologies promise to improve the number of hourly operations per runway.

E-MAIL MESSAGE FROM DAVID STEMPLER TO DJ GRIBBIN AND NANCY LOBUE

Subject: Air Travelers Association Principles and "Passengers First"

Proposed Solutions

From: David Stempler <David.Stempler@AirTravelersAssociation.com>

Date: Tue, November 27, 2007 10:47 pm

To: "DJ Gribbin (E-mail)" <dj.Gribbin@dot.gov>, Nancy LoBue

<nancy.lobue@faa.gov>

Cc: All NY ARC members

D.J. and Nancy:

As the airline passenger/consumer member of the New York Aviation Rulemaking Committee ("NY ARC"), I want to again thank you both for allowing me to participate in all five of the Working Groups. It has not only allowed me to provide the airline passenger perspective in each of these Working Group meetings and telecons, but also enabled me to be aware of: items that do not fit squarely in any of the Working Groups; items that should be moved from one Working Group to another Working Group; items that fall between the "cracks" of the Working Groups; and items that were never raised for discussion in the NY ARC or any of the Working Groups. Because of ! this, I would like to present a number of items that I would propose be considered by the NY ARC.

Before describing those items, I would like to state for the written record, a number of procedural items that I have talked about in the NY ARC meetings but would like to have included in the written record of the NY ARC.

I. AIR TRAVELERS ASSOCIATION PRINCIPLES CONCERNING AIRLINE AND AIRLINE PASSENGER ISSUES.

1. A free, deregulated airline market is the best "market-based" solution for airline congestion and delays.

A. The Air Travelers Association believes that a free, deregulated airline market is the best "market-based" solution to provide the best airline service for airline passengers. The Association opposes any artificial, non-market based solutions at airports and on airlines, except restrictions required for safety and application of the laws and regulations that apply to all companies, such as antitrust, tax, etc.

(1) We do not believe in slot restrictions, perimeter rules, or other types of artificial congestion solutions. If an airport is too congested, passengers will go to other airports, use other means of transportation, or not travel at all, but passengers will decide what is best for them in each individual case. Passengers will "vote with

their wallets” if they approve or disapprove of the level of congestion, delay, and pricing of tickets for travel.

- (2) Congestion pricing has been discussed in the NY ARC. Congestion pricing is already in effect with airline “yield management”. Airlines charge more (or do not offer discount seats) at congested times of the day.
- (3) If restrictions or limitations must be made on airline operations, they should be as limited as possible, while measuring them against the Aviation System Standards, as described below.

B. “What’s the Other Choice?”

As I have mentioned many times in the NY ARC meetings and telecons, every proposal for congestion relief should not just be examined in a vacuum, but compared to other choices. “What’s the Other Choice?” should always be asked when viewing a solution. A choice may be bad, but it may be a better choice than the other choice being offered.

C. “Don’t Reinvent the Wheel”

If there has been a previously used and successful solution for a problem, do not try solutions that have not been tested or vetted in advance. Innovative solutions can be very positive, but sometimes can result in unintended consequences. In addition, when proposing previously used and successful solutions for a problem, we are always concerned about allowing exceptions to these solutions, because of our concern that it can an avalanche of other exceptions, and the previously used and successful solution can collapse like “death from a thousand cuts”.

2. “Aviation System Standards” – The Air Travelers Association believes that the following criteria should be used to measure each of the proposals to reduce congestion presented to the NY ARC.

A public aviation system should provide the following benefits for the public.

- A. Provide service for the most number of people, not the most number of aircraft – the most number of people include the most number of passengers and the most number of package shipper and recipients.
- B. Provide service to the most number of destinations.
- C. Provide service at the lowest possible prices.
- D. Provide the most competitive service with the most number of choices -- the most number of airlines, flights, airports, and alternative transportation choices.
- E. Provide service at the most convenient airport for passengers.
- F. Provide service at the most convenient times for passengers.
- G. Provide service with the shortest total travel times for passengers to and from their destinations.

- H. Provide service with highest, best, and most efficient use of the aviation infrastructure.
- I. Provide service, while disturbing and inconveniencing the fewest number of non-travelers.
- J. Provide service with the lowest negative environmental impact.

II. “PASSENGER FIRST” PROPOSALS TO BE ADDED TO THE LIST OF ITEMS FOR REVIEW BY THE NY ARC.

The following are some of the “Passengers First” solutions for review by the NY ARC. Because there is no “silver bullet” solution to the New York aviation congestion problem, which alone would produce a significant improvement to congestion and delays, the Air Travelers Association believes that aggregating a number of smaller improvements will hopefully produce the significant improvement that we are looking for.”

➤ Eliminate All Corporate Jet Operations at LaGuardia Airport and Convert the Corporate Jet Ramps for Use by Airline Aircraft as Delayed Aircraft Holding Pads.

- Eliminating corporate jets would immediately add airline operating slots at LaGuardia Airport and serve the greatest number of people. Corporate jets have multiple other convenient airports that they can use instead of LaGuardia, but airlines can only use Islip Airport in Eastern Long Island and Stewart Airport in Dutchess County, New York, both inconvenient for airline passengers traveling to Manhattan.
- Delayed aircraft holding pads are airport ramps where airliners can park after pushing back from the gate and required to wait prior to take-off, or are delayed after landing. When airliners are parked at these holding pads, passengers can use cell phones, move around the cabin, use aircraft lavatories, and in an emergency, passengers can safely be removed from the aircraft. These pads are expensive and take a long time to build. By taking over corporate jet aircraft facilities, these holding pads can be available almost immediately and serve the interests of a far greater number of passengers than corporate jets.

➤ Do Not Permit “Non-Standard” Departures at LaGuardia Airport.

- “Non-Standard” departures involve the use of a runway by an aircraft, when that runway is not then in use. Aircraft requests for “non-standard” departures at LaGuardia often arise because the aircraft, as loaded, cannot take-off and climb within required FAA and other operational requirements from the runway in use. “Non-standard” departures can result in substantial disruption and delays at LaGuardia. It is like sending a car down the opposite direction of the Long Island Expressway in rush hour, with all the disruptions and delays that would cause.
- To reduce delays at LaGuardia, the FAA should not permit “non-standard” departures at LaGuardia at any time. If wind, weather, or heat conditions do not

permit an aircraft to take-off on the runway then in use, then the aircraft must offload cargo, passengers, luggage, fuel, or other weight items to take-off on the runway in use, wait until the conditions are favorable for the runway being used, or cancel the flight.

➤ Eliminate All Published Airline Connections at LaGuardia Airport.

- The highest, best, and most efficient use of LaGuardia Airport is based on its proximity to Manhattan. Because of this, only passengers originating from and destined to LaGuardia should be served at LaGuardia.
- To reduce unnecessary passenger demand at LGA, the U.S. Department of Transportation should prohibit airlines from publishing airline connecting flights through LaGuardia. Published connections represent less than 5% of total passengers at LaGuardia, but this is extra passenger demand that is not needed at LaGuardia. These connecting passengers can be served through other hub airports.

➤ Consider Eliminating the 1500-mile Perimeter Limitation for Flights to and from LaGuardia. Allow Airlines to Move Beyond Perimeter Flights from JFK Airport to LaGuardia, and Reallocate Slots at LaGuardia to Accomplish This.

The 1500-mile LaGuardia perimeter limitation is a rule of the Port Authority of New York and New Jersey. With the congestion and delay situation that is now being faced in the New York metropolitan area, the elimination of the LaGuardia perimeter rule, along with allowing airlines to move beyond perimeter flights from JFK Airport to LaGuardia, and together with other changes, trades, compromises, and adjustments could allow a reduction of congestion at JFK Airport and reduce delays in the New York area.

➤ For all Airline Delays and Congestion, Change the DOT and FAA Definitions of “Delay”. They are Antiquated, Unrealistic, and Out of Keeping with the Current Congestion Reality. Fix the Definitions and Passengers Will Get a More Realistic Understanding of the Congestion/Delay Situation.

- The DOT definitions of when a flight is delayed, as arriving 15 minutes after the scheduled arrival time is not meaningful in today’s congested flying environment. This 15-minute standard does not relate to the scheduled flight time of a trip. A 15-minute delay on a one-hour flight (25% of the trip time), is more significant than a 15-minute delay on a 6-hour flight (about 4% of the trip time). Actually, in today’s flying environment, no passenger would seriously complain about a 15-minute delay.
- The FAA’s definition of when an airport is in delay is based on the unencumbered taxi-out times from each gate to the end of the runway, like in the middle of the night. Actual taxi-out times at each airport at congested times of the day should be the benchmark for whether any airport is in delay.

Thank you for including these principles and proposed solutions in the official record of the NY ARC.

Respectfully submitted,
David
David S. Stempler
President
Air Travelers Association

David.Stempler@AirTravelersAssociation.com

Tel: 301-469-8110
Cell: 301-980-8888

REGIONAL AIRLINE ASSOCIATION NY ARC COMMENTS

New York ARC Comments

Regional Airline Association
December 7, 2007

Contact: Roger Cohen
202-367-1170

INTRODUCTION

The Regional Airline Association (RAA) represents 43 member airlines that provide virtually all of the U.S. domestic scheduled service on aircraft seating fewer than 100 passengers. RAA appreciated the opportunity to represent these airlines on the DOT NY Aviation Rulemaking Committee (ARC), and to participate specifically in Working Groups 2, 3 and 4.

However, it is noteworthy that RAA was the *only* representative of the regional aviation industry invited to join the more than 40 some parties on the ARC, despite the following facts:

- Some 23% of the U.S. domestic passengers flew on a regional aircraft in 2006.
- Regional aircraft flew 49%, virtually one-half the scheduled domestic departures.
- Regional aircraft account for some 40% of the U.S. scheduled fleet
- More than 70% of the communities across the country receive scheduled service *exclusively* on regional aircraft.
- Regional aircraft offer nonstop service to 150 destinations from the New York airports. In most of these communities, regionals provide the *only* scheduled service into New York. (See attached maps)





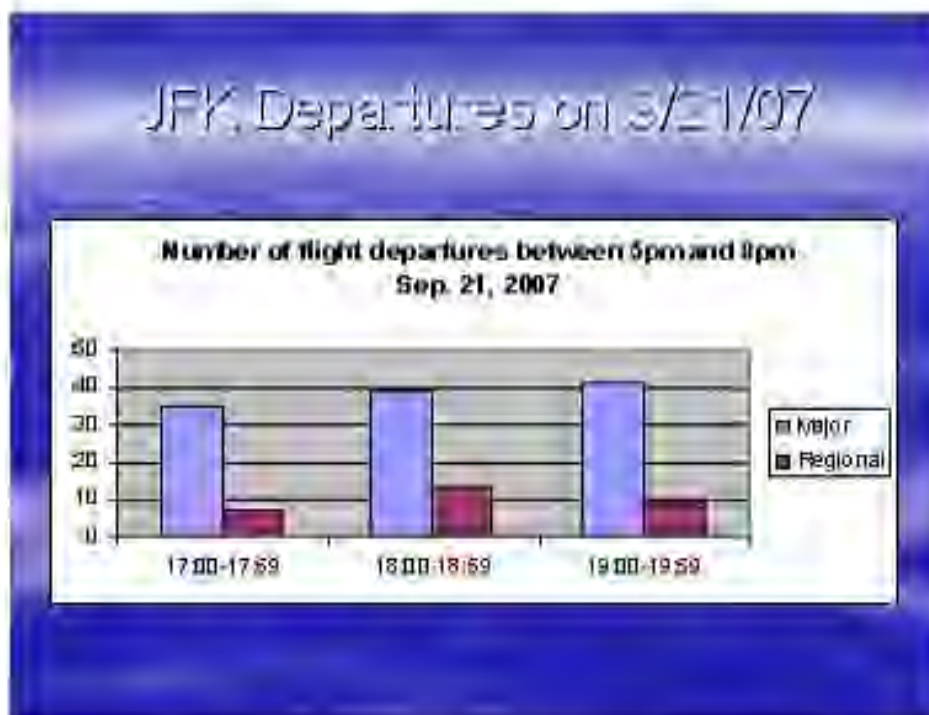
Most of the domestic passenger service on regional aircraft is provided in partnership with “network” hub and spoke airlines, which generally manage all of the joint scheduling and marketing. In this regard, RAA shares most of the issues and concerns that these network airline representatives have raised during the ARC process. To avoid duplication, RAA offers these supplementary comments to be considered in connection with the various Working Group and ARC reports.

RAA COMMENTS

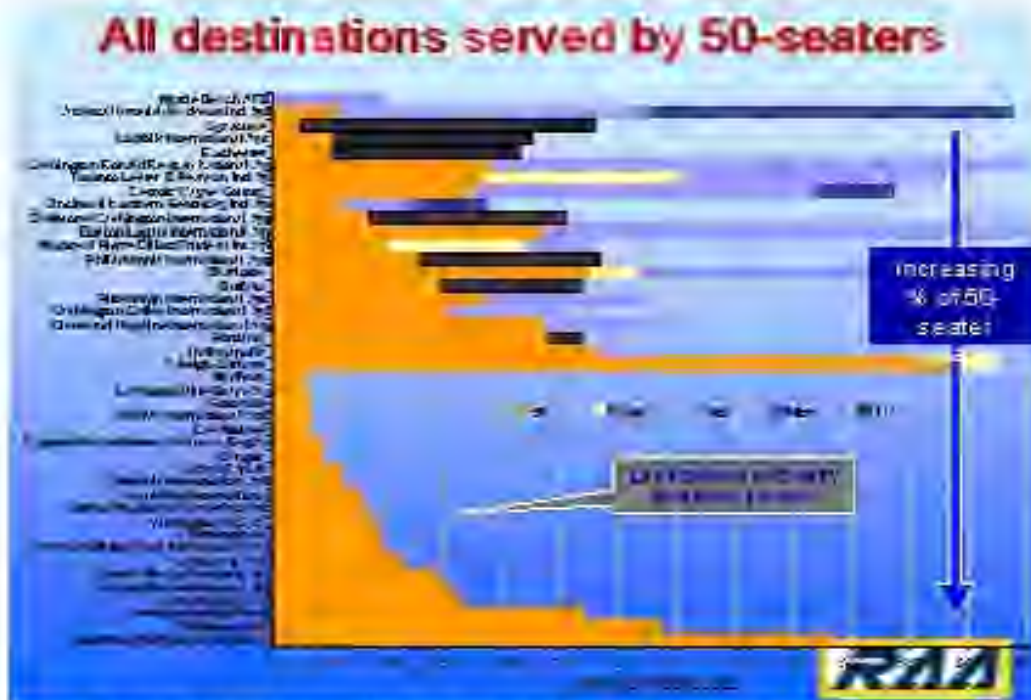
RAA provides the following comments to assist DOT as it considers policy and regulatory proposals on the stated purpose of the NYC ARC: to find ways to increase capacity and reduce flight delays in the New York region.

Because existing flights between New York airports and the small hubs and most medium hubs are on regional aircraft, the so-called “market-based” schemes (congestion pricing auctions, etc.) designed to re-distribute aviation capacity in the New York region have the likely potential to reduce, or perhaps even eliminate, service and competition between New York and these communities.

- These pricing schemes make regional flights more expensive, and with these additional costs spread over smaller aircraft carrying fewer passengers in less dense O&D markets, there is the very real likelihood communities will suffer reduced service to the New York airports.
- Reduced service could lead to fewer competitors, perhaps even monopolies, in those communities that retain service.
- The peak periods at JFK are already dominated by flights using aircraft with more than 70 seats operated to meet market demand during peak periods, as shown below:



- There is no evidence that replacement flights by different airlines with larger aircraft would improve operational performance. And competition, particularly in small and medium hub communities, would worsen under this scenario since fewer, rather than more communities could support competitive service to LGA with larger aircraft.
- Any forced or mandated “upgauging” requiring that service to all medium hubs be operated with aircraft larger than 90 seats would virtually wipe out existing service to dozens of communities, many of which today enjoy *competitive* service into the New York’s LaGuardia Airport. (See map of LGA service on regional jets)



- New York, particularly LGA, is one of if not the highest yield market in the U.S. Airlines currently have every incentive to maximize both the size of aircraft and the number of passengers per flight – particularly with \$100 barrel oil. If airlines *could* schedule larger planes into New York (regardless of destination) they would be doing so now.
- Market forces are currently “upgauging” the nation’s regional fleet (both jet AND turboprop), with the average aircraft seat capacity increasing 46% from 2002, from an average of 35 to a current average of 51 seats per flight.
- This natural upgauging has also been occurring at LGA, which last year saw an uptick in average aircraft seating capacity – a trend that is expected to continue as airlines are replenishing their fleets with larger 70 and 90 seats RJs.
- The “market based” schemes envision, at a minimum, new administrative processes, if not creation of whole new bureaucracies. The Draft WG2 paper Scenario 1 Hybrid Congestion Pricing/Auction proposal creates a Soviet-sounding “Pricing Board” (a term that makes us nostalgic for the less Orwellian “Civil Aeronautics Board”)
- One real world example of “auctioning” of a limited, perishable product in New York may be ticket scalping for Broadway shows. For example, tickets this Friday night for “Young Frankenstein” (face value of \$87-\$377) ranged up to \$945 each on Stub Hub. “Auctioning” does not add any additional capacity, nor, obviously, does it reduce demand during the peak.
- Service between New York airports and dozens of cities could be adversely affected if service by aircraft with 70 or fewer seats were reduced by the elimination of all service, elimination of competitive service or reductions in frequencies.

- As noted by ATA, American Airlines and others in their WG3 submissions, the proposed LGA gate leasing policy designed to “maximize the throughput” at the airport by requiring gate usage by larger aircraft is flawed in several respects:
 - In upholding the LGA perimeter rule, the court found that regulating ground congestion was at the “core” of an airport’s function. Increasing the number of passengers transiting the existing terminal and roadside facilities will only *worsen* ground congestion levels. Anyone who has ever tried to navigate LGA’s Central Terminal on a weekday afternoon – let alone the Grand Central Parkway getting to or out of the airport – would argue that adding *more* people and vehicles to the ground mix serves no good public purpose.
 - Since LGA currently has the lowest load factor of the three NYC airports, requiring *larger* planes would be creating more unused capacity, and making poorer use of scarce resources, including jet fuel. Today, if the 7.8 million seats flying empty out of LGA every year were filled, those seats alone would represent the 31st largest airport in the U.S., bigger than such major hubs as Oakland, St. Louis and Pittsburgh.
- From an operational perspective, there has been no evidence that replacing regional aircraft with larger planes will increase air traffic capacity or reduce delays, and in fact, substituting nimble regional planes with larger planes may actually aggravate the current situation.
 - From a landside terminal perspective, there is no doubt that regional aircraft can access smaller, tighter aircraft parking spaces than larger jets.
 - Enplaning and deplaning a regional aircraft requires less time and space than for a larger airplane.
 - Regional aircraft, which generally fly shorter hauls, put less strain on limited terminal capacity at the baggage carousel, particularly since regional passengers have the ability to check bags planeside.
- Congestion pricing/auctions neither create any new capacity nor reduce congestion unless caps are placed on the number of flights operated. In that case, the caps, not the congestion pricing/auction mechanisms, reduce congestion to the same extent that the same cap would regardless of the system used to distribute the capacity established by the caps. Instead, the congestion pricing/auction mechanisms would simply redistribute existing capacity, jeopardizing billions of dollars in airline investment in New York area facilities and route development and altering service patterns in ways that would clearly diminish access between New York and small and medium hub cities throughout the country. Moreover, if the congestion pricing or auction revenue accrues to the airport authorities or the federal government, these entities would have a substantial incentive to decrease capacity to enhance their revenues by limiting the scarce resource to maximize the revenues. Either mechanism imposes a tax on airlines and their passengers, which DOT lacks authority to do. Moreover, as FAA has recognized, congestion pricing makes no sense where demand is constant throughout the day, as it has been at LaGuardia and would become at Newark and JFK. Neither DOT nor FAA has the explicit statutory authority required to engage in auctions of existing capacity, and both congestion pricing and auctions would be so disruptive to airlines and their customers that litigation and legislative scrutiny would surely ensue if any such proposals were adopted. Although FAA has suggested that changes to the rates

and charges policy could be accomplished to move toward congestion pricing, even changes to that policy would require extensive rulemaking proceedings and risk reversal by Congress, the courts, or both. Clearly, any of these policies would also be challenged by foreign governments if DOT attempted to impose them on foreign airlines, and any program imposed only on U.S. airlines but not their foreign competitors would be a travesty of U.S. transportation policy and fail to address congestion caused by peaking of international flights in the evenings.

- Before embarking on any radical changes that would adversely affect longstanding service patterns, airline operations and investments and airline passengers who would lose all service, all competitive service, or prime-time service to New York, DOT should implement far less drastic measures which, coupled with changes already afoot in the marketplace, could reduce congestion in the New York area significantly by next summer.
- As all participants in the ARC process recognize, the critical first steps to be taken involve enhancements to FAA and airport operations to increase capacity and thereby reduce delays. Thus, the recommendations of Working Group 1 regarding immediate and mid-term steps to ease congestion are of primary importance. By the same token, the draconian cuts at JFK implied by setting hourly caps far lower than actual operations conducted successfully in the past must be reconsidered to avoid an unacceptably large gap between supply and passenger demand and to avoid spreading congestion problems to other airports in the New York area and beyond.
- Once all possible immediate steps to enhance capacity have been taken, voluntary flight reductions and rescheduling by the principal airlines serving JFK should also contribute to reductions in delays and cancellations. Similarly, using the IATA mechanisms to secure voluntary reductions and rescheduling will enable foreign airlines to participate along with U.S. airlines in the effort to ameliorate delays at JFK, which also affect the foreign airlines and their customers. With skyrocketing fuel prices and daily announcements that airlines are reducing the flights they had planned for 2008, forecasts of substantial flight increases for next summer made months ago may no longer be accurate, and airlines may well be willing to reduce their schedules at JFK or reschedule their operations to conserve fuel.
- Under these circumstances, the drastic changes considered by DOT and FAA (auctions, congestion pricing and severe reductions in hourly flights at JFK) and by the Port Authority (economic regulation by gate leasing) and the unintended consequences they would be likely to engender should, at the very least, be deferred pending implementation of all possible measures to increase capacity in the New York area in the short term and of voluntary reductions through DOT/FAA and IATA mechanisms at the New York airports.
- Mechanisms such as congestion pricing, auctions and up-gauging by gate leases or penalties that would adversely impact small and medium hub communities or operations by fuel-conserving regional jet aircraft at the New York area airports must be avoided to ensure that DOT meets its mandate to ensure that “consumers in all regions of the United States, including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service.” (49 U.S.C. § 40101(16))



FEDERAL REGISTER

Vol. 80

Thursday,

No. 5

January 8, 2015

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport; Proposed Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 93**

[Docket No.: FAA-2014-1073; Notice No. 14-11]

RIN 2120-AJ89

Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to replace the Orders limiting scheduled operations at John F. Kennedy International Airport (JFK), limiting scheduled operations at Newark Liberty International Airport (EWR), and limiting scheduled and unscheduled operations at LaGuardia Airport (LGA). The Orders are scheduled to expire when this proposed rule becomes effective but not later than October 29, 2016. This proposal is intended to provide a longer-term and comprehensive approach to slot management at JFK, EWR, and LGA. The FAA proposes to maintain the limits on scheduled and unscheduled operations in place under the Orders, limit unscheduled operations at JFK and EWR, and require use of an allocated slot 80% of the time for the same flight or series of flights to retain historic precedence. The FAA also proposes five alternatives for a secondary market that would allow carriers to buy, sell, lease, and trade slots. The DOT proposes to review certain slot transfer transactions for significant anti-competitive effects and harms to the public interest. Finally, the FAA proposes minor miscellaneous amendments to remove inapplicable references in the High Density Rule.

DATES: Send comments on or before April 8, 2015.

ADDRESSES: Send comments identified by docket number FAA-2014-1073 using any of the following methods:

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

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

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

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12-140 of the West Building Ground Floor 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: For technical questions concerning this action, contact Molly Smith, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3274; email molly.w.smith@faa.gov; Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-6462; email susan.pfingstler@faa.gov; or Peter Irvine, U.S. Department of Transportation, Office of Aviation Analysis, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-3156; email peter.irvine@dot.gov.

For legal questions concerning this action, contact Robert Hawks, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7143; email rob.hawks@faa.gov; or Cindy Baraban, U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9159; email cindy.baraban@dot.gov.

SUPPLEMENTARY INFORMATION: See the “Additional Information” section for information on how to comment on this proposal and how the FAA will handle comments received. The “Additional Information” section also contains related information about the docket,

privacy, the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Authority for This Rulemaking

This rulemaking is promulgated under the authority described in Title 49 of the United States Code, Subtitle VII, Part A, Subpart I, Sections 40101, 40103, 40105, and 41712

The Secretary of Transportation (Secretary) is the head of the DOT and has broad oversight of significant FAA decisions.¹ In addition, under 49 U.S.C. 41712, the Secretary has the authority to investigate and prohibit unfair and deceptive practices and unfair methods of competition in air transportation or the sale of air transportation. The Secretary is required to consider several objectives as being in the public interest, including, without limitation, the following: Keeping available a variety of adequate, economic, efficient, and low-priced air services; placing maximum reliance on competitive market forces and on actual and potential competition; avoiding airline industry conditions that would tend to allow at least one air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation; encouraging, developing, and maintaining an air transportation system relying on actual and potential competition; encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry; and ensuring that consumers in all regions of the United States, including those in small communities and rural and remote areas, have access to affordable, regularly-scheduled air service.

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 the FAA deems necessary for safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of navigable airspace. The FAA should ensure efficient use of navigable airspace in a manner that does not effectively shut out potential operators at the airport and in a manner that takes account of competitive market forces. The FAA should take steps to ensure the operational limits imposed and the rules

¹ See 49 U.S.C. 102 and 106.

governing their allocation and transfer do not inefficiently constrain competitive market forces. Competition at an airport benefits the flying public by providing price competition and expanded service. The ability of carriers to initiate or expand service at the airport is hindered, in large part, by the imposition of operations limits. Accordingly, the FAA believes it must strike a balance between (1) promoting competition and permitting access to new entrants and (2) recognizing historical investments in the airport and the need to provide continuity.

These authorities empower the DOT to ensure the efficient utilization of airspace by limiting the number of scheduled and unscheduled aircraft operations at JFK, EWR, and LGA, while balancing between promoting competition and recognizing historical investments in the airport and the need to provide continuity. They also authorize the DOT to review proposed transfers of slots and to limit or prohibit transfers where they present a potential for significant anticompetitive effects or adverse effects on the public interest.

Table of Contents

- I. Overview of Proposed Rule
- II. Background
 - A. High Density Rule and AIR-21
 - B. LaGuardia Airport After AIR-21
 - C. John F. Kennedy International Airport After AIR-21
 - D. Congestion at Newark Liberty International Airport

- E. Exploration of Long-Term Congestion Management
- F. Congestion Management Rules of 2008
- G. Current Slot Management at LGA, JFK, and EWR
- III. Discussion of the Proposal
 - A. Hourly and Daily Slot Limits
 - B. Allocation of Slots
 - C. Usage Requirement
 - D. Transfer of Slots
 - E. Oversight of Competitive and Public Interest Issues
 - F. Retiming, Suspension, and Withdrawal of Slots for Operational Reasons
 - G. Unscheduled Operations
 - H. Miscellaneous Amendments
- IV. Regulatory Notices and Analyses
 - A. Regulatory Evaluation
 - B. Regulatory Flexibility Determination
 - C. International Trade Impact Assessment
 - D. Unfunded Mandates Assessment
 - E. Paperwork Reduction Act
 - F. International Compatibility and Cooperation
 - G. Environmental Analysis
- V. Executive Order Determinations
 - A. Executive Orders 12866 and 13563
 - B. Executive Order 13132, Federalism
 - C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use
- VI. Additional Information
 - A. Comments Invited
 - B. Availability of Rulemaking Documents
- VII. The Proposed Amendment

I. Executive Summary

This proposed rule would replace the Orders limiting scheduled operations at JFK and EWR and the Order limiting scheduled and unscheduled operations at LGA. Those Orders remain effective until this proposed rule becomes

effective but not later than October 29, 2016. If adopted, this proposed rule would apply to all scheduled and unscheduled operations every day at JFK and EWR between the hours of 0600 and 2259, local time. This proposed rule would apply to all scheduled and unscheduled operations at LGA Monday through Friday between the hours of 0600 and 2159, local time, and Sunday between the hours of 1200 and 2159, local time. This proposed rule would apply, in large part, the International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG) to administering slots at each airport.

The following tables provide a comparison between requirements under the current Orders and under this proposal. The first table summarizes existing requirements for each airport under the Orders. The second table summarizes this proposal's establishment of an initial slot base based on carrier holdings under the Orders, the slot-controlled periods, hourly and daily limits for scheduled operations, hourly limits for unscheduled operations, and the general processes that would be used to allocate slots or reservations for scheduled and unscheduled flights. It also identifies differences between the five potential alternatives for a secondary market to buy, sell, lease, or otherwise transfer slots between carriers and introduces a review of slot transfer transactions for significant anti-competitive effect.

CURRENT ORDERS FOR JFK, EWR, AND LGA

Feature	JFK	EWR	LGA
Slot Base	Seasonal slot holdings, as approved by the FAA.	Seasonal slot holdings, as approved by the FAA.	Slot holdings, as approved by the FAA.
Slot (called Operating Authorization under the Orders).	Operational authority to conduct an arrival or departure operation on a particular day of the week during a specific 30-minute period.	Operational authority to conduct an arrival or departure operation on a particular day of the week during a specific 30-minute period.	Operational authority to conduct an arrival or departure operation during a specific 30-minute period.
Slot-controlled hours	Daily: 0600 to 2259, Eastern time	Daily: 0600 to 2259, Eastern time	M-F: 0600 to 2159, Eastern time Su: 1200 to 2159, Eastern time.
Hourly slot limits	81 per hour or in any 60-minute period.	81 per hour or in any 60-minute period.	71 per hour or in any 60-minute period.
Daily slot limits	Not formally set but based on accepted schedules and modeled delay when Orders adopted.		
Hourly unscheduled operations limits.	None	None	3.
Unscheduled operations reservation system.	None	None	Reservations available through the Enhanced Computer Voice Reservation System (e-CVRS) 72 hours in advance; reservations for certain public charter operations available through the Slot Administration Office 6 months in advance.
Allocation of slots	Adapted from IATA WSG	Adapted from IATA WSG	Lottery.
Scheduling season	IATA WSG	IATA WSG	Slot usage reporting on bimonthly basis.

CURRENT ORDERS FOR JFK, EWR, AND LGA—Continued

Feature	JFK	EWR	LGA
Use-or-lose	Must use allocated slot 80% of the time throughout the previous corresponding season; waiver for highly unusual and unpredictable condition lasting 5 or more consecutive days; waiver for Thanksgiving, the Friday after Thanksgiving, and the period from December 24 through the first Sunday of January.		
Secondary market	Privately-negotiated lease and trade that extend no longer than terms of Order; request for FAA approval.		
Logistical slot swaps	Permitted.		
Competitive review	None.		

PROPOSED REGULATION FOR JFK, EWR, AND LGA

Feature	JFK	EWR	LGA
Slot Base	Seasonal slot holdings, as approved by the FAA.		
Slot	Operational authority to conduct an arrival or departure operation on a particular day of the week during a specific 30-minute period.		
Slot-controlled hours	Daily: 0600 to 2259, Eastern time	Daily: 0600 to 2259, Eastern time	M–F: 0600 to 2159, Eastern time Su: 1200 to 2159, Eastern time.
Hourly slot limits	81 per hour or in any 60-minute period and 44 in any 30-minute period.	81 per hour or in any 60-minute period and 44 in any 30-minute period.	71 per hour or in any 60-minute period and 38 in any 30-minute period.
Daily slot limits	1205 for hours 0600 to 2159	1205 for hours 0600 to 2159	1136.
Hourly unscheduled operations limits.	2	1	3.
Unscheduled operations reservation system.	Reservations available through the e-CVRS 72 hours in advance; reservations for certain public charter operations available through Slot Administration Office 6 months in advance.		
Allocation of slots	Adapted from IATA WSG.		
Scheduling season	IATA WSG.		
Use-or-lose	Must use allocated slot 80% of the time for the same flight or series of flights throughout the previous corresponding season; waiver for strike; waiver for highly unusual and unpredictable condition lasting 5 or more consecutive days; waiver for slot allocation or acquisition by new entrant carrier.		
Secondary market (Alternative 1) ...	Privately-negotiated buy, sell, lease, and trade without prior public notice; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.		
Secondary market (Alternative 2) ...	FAA publishes a bulletin board notice of buy, sell, lease, and trade; bidding and negotiation between seller and bidders after public notice; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.		
Secondary market (Alternative 3) ...	FAA publishes a bulletin board notice of buy, sell, lease, and trade; negotiations prior to public notice permitted; bidding and negotiation between seller and bidders; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.		
Secondary market (Alternative 4) ...	FAA publishes a bulletin board notice of buy, sell, lease, and trade; bids posted on bulletin board; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.		
Secondary market (Alternative 5) ...	FAA publishes a bulletin board notice of buy, sell, and lease without identifying poster; cash-only bids posted on bulletin board without identifying bidders; seller must accept highest bid; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.		
Logistical slot swaps	Permitted.		
Competitive/Public Interest review ..	Performed by DOT based on submitted transaction terms; DOT has 14 days to decide whether to review transaction; DOT approval or non-objection required for FAA approval of transfer.		

The FAA developed this analysis using 2009 data to model the behaviors of carriers based on meeting the minimum requirement of the proposed rule. Under this assumption, carriers would incrementally increase actual operations in year one to meet the new usage requirement, and this new operating level would grow by the FAA’s Terminal Area Forecast (TAF) until it reached the daily limits. The analysis period is the first year because compliance cost is the highest in that year, and if benefits exceed the cost in

the first year, this relationship will continue until passenger demand forces operations up to 100% of the available slots. In the first year, carrier utilization of slots will be at least 80%. Thereafter, increases in operations and slot utilization are a result of an increase in forecasted demand. Assuming the highest cost secondary market alternative (either alternative four or five) is adopted, the total benefits and costs are estimated at \$74,696,596 (\$65,242,900 Present Value at 7%) for benefits and \$53,056,768 (\$46,341,836

Present Value at 7%) for costs. These costs and benefits result from the changed behavior concerning use-or-lose, secondary market, and reporting requirements under this proposal as compared to current behavior under the existing Orders for each airport. Moreover, the FAA believes that this rule would improve utilization of existing slots, possibly increase a carrier’s penalty for retaining slots of limited value and thus result in the return of some slots, and would result in net benefits.

TOTAL COST AND BENEFITS OF ALTERNATIVES FOUR OR FIVE OF THE PROPOSED RULE

First year	Benefits	Present value (7%)	Costs	Present value (7%)	Net benefits
Regulatory Case	\$74,696,596	\$65,242,900	\$53,056,768	\$46,341,836	\$18,901,064

II. Background

A. The High Density Rule and AIR-21

To manage airspace congestion, in 1968, the FAA adopted the High Density Rule (HDR), which limited take-offs and landings at JFK, EWR, LGA, Washington National Airport (DCA), and Chicago O'Hare International Airport (ORD).² In 1970, the FAA suspended the HDR's application at EWR because airport capacity could meet demand.³ To operate during the slot-controlled hours, a flight needed a reservation, commonly known as a "slot." The HDR divided the allowable slots by categories of users (*i.e.*, air carriers other than air taxis, scheduled air taxis, and others).⁴ These reservations applied to both scheduled and unscheduled (*i.e.*, "Other") operations. While LGA, DCA, and ORD were constrained throughout much of the day, JFK was constrained for only 5 hours from 1500 through 1959, Eastern Time.

Under the HDR, air carrier slots were allocated through airline scheduling committees, operating under then-authorized antitrust immunity, and the airlines would agree to the allocation. The FAA's role was limited to determining how many operations air traffic control (ATC) could reasonably handle during congested periods and enforcing operator compliance with the rules. After the Airline Deregulation Act in 1978, new entrant airlines sought access to, and legacy carriers sought expansion at, slot-controlled airports. This increased competition made it more difficult for airlines to reach agreement on slot allocation, and the scheduling committees began to deadlock. The Civil Aeronautics Board or DOT periodically stepped in to resolve the deadlocks. In resolving a 1980 deadlock at DCA, the DOT divested a small percentage of slots from incumbent airlines and reallocated them to a requesting new entrant. The DOT noted that additional reduced fare service was likely to increase competition and thus be consistent with the general pro-competitive policy of the Airline Deregulation Act of 1978.⁵

The U.S. Court of Appeals upheld the DOT's action on review following an airline challenge.⁶

In 1981, the FAA responded to a nationwide shortage of air traffic controllers by reducing the level of air traffic operations and imposing slot controls on the nation's 22 busiest airports.⁷ Through that experience, the FAA implemented new allocation and slot management methods. In 1982, the FAA utilized a lottery allocation and imposed a minimum usage requirement for the first time.⁸ Also in 1982, the FAA implemented an experimental "Buy/Sell" program, permitting transfers of slots in any number and for any consideration, to provide for "adjustments in slot assignments that may be occasioned by seasonal variation in demand, competitive pressures, or economic decisions of the carriers" and to increase flexibility of the slot allocation system.⁹ For the 6 weeks the "Buy/Sell" program was in place, approximately 190 slots were transferred by sale among carriers.¹⁰ Thereafter, the FAA no longer permitted slot sales (though trades continued to be permitted) because the necessity for slots was diminishing as the ATC system was being restored.¹¹

The FAA established more permanent allocation procedures for slots under the HDR in 1985 when it adopted the Buy/Sell Rule, which allowed carriers to buy, sell, lease, and trade most slots.¹² In a companion rulemaking to the Buy/

Sell Rule, the FAA provided for the withdrawal of up to five percent of slots at slot-controlled airports through a reverse lottery to provide a pool of slots for new entrants and limited incumbents.¹³ The Buy/Sell Rule included use-or-lose provisions and explicitly stated slots were an operating privilege and not the carriers' property.

For the next 15 years the agency relied primarily on the secondary market authorized by the Buy/Sell Rule to address access issues at HDR airports, particularly for domestic operations. However, carriers without a substantial presence at HDR airports increasingly criticized the Buy/Sell Rule because their access to slot-controlled airports was severely limited. Those carriers complained to the FAA that grandfathering 95 percent of slots at slot-controlled airports to incumbent carriers left insufficient capacity available for reallocation. Carriers further criticized the Buy/Sell Rule for failing to foster a robust secondary market and complained about a lack of transparency that permitted private transactions arranged to reduce competition. Some carriers also complained they were unaware of slots potentially available for sale or lease even when they were seeking to initiate or expand service. Finally, a small number of carriers contended they were effectively denied access to the airports because their competitors refused to sell slots or provide meaningful lease terms.

In 1994, Congress began to relax the HDR by authorizing the Secretary, upon making a public interest finding, to grant exemptions from the HDR to enable new entrant carriers¹⁴ to provide air transportation at certain slot-controlled airports, including JFK and LGA.¹⁵ At JFK, the DOT granted 75 slot exemptions to new entrant carrier JetBlue Airways (JetBlue) under this authority in 1999, which were phased in over a 5-year period.¹⁶ The order stated

¹³ SFAR 88, 51 FR 8630 (Mar. 12, 1986).

¹⁴ The term "new entrant carrier" was defined as "an air carrier that does not hold a slot at the airport concerned and has never sold or given up a slot at that airport after December 16, 1985, and a limited incumbent carrier." 49 U.S.C. 41714(h)(3).

¹⁵ Pub. L. 103-305 § 206(a)(1) (Jan. 25, 1994) (codified at 49 U.S.C. 41714).

¹⁶ Application of New Air Corporation for Exemption from 14 CFR part 93, subparts K and S

² 33 FR 17896 (Dec. 3, 1968) (codified at 14 CFR part 93 subpart K).

³ 35 FR 16591 (Oct. 24, 1970).

⁴ 33 FR 17896 (Dec. 3, 1968).

⁵ SFAR 43, 45 FR 72637 (Nov. 3, 1980).

⁶ *Northwest Airlines, Inc. v. Goldschmidt*, 645 F.2d 1309 (8th Cir. 1981).

⁷ See SFAR 44, 46 FR 39606 (Aug. 4, 1981); SFAR 44-1, 46 FR 44424 (Sept. 4, 1981); SFAR 44-2, 46 FR 48906 (Oct. 5, 1981). Those were then William B. Hartsfield Atlanta International Airport, Boston's Logan International Airport, ORD, Cleveland Hopkins International Airport, then Dallas/Fort Worth Regional Airport, Denver's Stapleton International Airport, Detroit Metropolitan Wayne County Airport, Fort Lauderdale-Hollywood International Airport, then Houston Intercontinental Airport, Kansas City International Airport, JFK, LGA, Las Vegas' McCarran International Airport, Los Angeles International Airport, Miami International Airport, Minneapolis/St. Paul International Airport, EWR, Philadelphia International Airport, Pittsburgh International Airport, San Francisco International Airport, Lambert-St. Louis International Airport, and DCA.

⁸ SFAR 44-3, 47 FR 7816 (Feb. 22, 1982).

⁹ 47 FR 19989 (May 10, 1982).

¹⁰ 47 FR 29814 (Jul. 8, 1982).

¹¹ *Id.* at 29815.

¹² 50 FR 52195 (Dec. 20, 1985).

that JetBlue would operate the majority of its flights outside the 5 HDR slot-controlled hours. The Secretary also granted 30 slot exemptions at LGA to new entrant carriers.

On April 5, 2000, Congress enacted the Wendell H. Ford Aviation and Investment Reform Act of the 21st Century (AIR-21).¹⁷ AIR-21 phased out and terminated the HDR at JFK, LGA, and ORD.¹⁸ In phasing out the HDR, AIR-21 directed the Secretary to grant two types of exemptions from the HDR's flight restrictions at LGA and JFK. The first type of exemption was designed to promote more competition at slot-controlled airports and required the Secretary to grant exemptions to a new entrant or limited incumbent, defined as a carrier holding fewer than 20 slots or slot exemptions.¹⁹ The second type of exemption was aimed at improving service to small communities and required the Secretary to grant exemptions to a carrier operating an aircraft with less than 71 seats to small-hub or non-hub airports for an unrestricted number of flights.²⁰ AIR-21 also preserved the FAA's authority to impose flight restrictions by stating that "[n]othing in this section . . . shall be construed . . . as affecting the Federal Aviation Administration's authority for safety and the movement of air traffic."²¹

B. LaGuardia Airport After AIR-21

LGA, which provides almost exclusively domestic service,²² consistently has been one of the most congested airports in the nation. Its proximity to midtown Manhattan makes it a desirable airport for many travelers, and airlines attempt to meet that demand by operating many flights to LGA. Physical constraints of the airfield limit the ability to expand capacity.

The slot exemptions mandated by Congress under AIR-21 facilitated access for new entrants and small community service at LGA, but the trade-off for this service was increased airport congestion and delays. By fall

2000, carriers had added over 300 new scheduled flights at LGA and had plans to operate even more, resulting from more than 600 exemption requests. While the number of allowable scheduled operations under the HDR remained constant at 62 per hour, the actual number of scheduled operations rose to over 100 in several hours with the additional AIR-21 slot exemptions. With no new airport infrastructure, overall airport capacity remained the same while the number of aircraft operations and delays soared. Additional operations following AIR-21 resulted in significantly higher delays at LGA than existed before 2000. The average minutes of delay for all arriving flights at LGA increased 144% from 15.52 minutes in March 2000 (the month before AIR-21 was enacted) to 37.86 minutes in September 2000.²³ The increase in delay as a result of AIR-21 was not limited to delays at LGA. Flights that arrived and departed late at LGA affected flights at other airports and in the national airspace system (NAS). By September 2000, flight delays at LGA accounted for 25 percent of the nation's delays, compared to 10 percent for the previous year.²⁴

Using its authority under 49 U.S.C. 40103, and pending the development of a long-term solution, the FAA published a Notice of Intent in the **Federal Register** on November 15, 2000, announcing its intent to temporarily limit AIR-21 slot exemptions at LGA and to allocate them via a lottery.²⁵ The lottery, which was conducted on December 4, 2000, was premised on the imposition of an airfield and airspace capacity management limit of 75 scheduled operations per hour (plus six unscheduled operations primarily used by the general aviation community) beginning January 31, 2001.²⁶ This limit still allowed a significant increase in operations at the airport above the HDR's regulatory limits, thus serving Congressional objectives while stretching capacity to its practical limits. The number of AIR-21 slot exemptions at LGA was restricted to a total of 159 a day between the hours of 0700 and 2159. As a result of the hourly restrictions, the average number of aircraft delays at LGA fell from 330 per day in October 2000 to 98 per day in April 2001.

Under AIR-21, slots allocated under the HDR at LGA were scheduled to

expire on January 1, 2007. Based on its experience in 2000, the FAA determined that simply lifting the HDR at LGA would result in a significant increase in delays and adversely impact the airspace around New York City and the NAS as a whole.

In August 2006, the FAA published a notice of proposed rulemaking (LGA NPRM) proposing a continuation of the existing cap of 75 scheduled and six unscheduled hourly operations as well as a new method of allocating capacity.²⁷ In addition to retaining the existing cap, the FAA proposed to impose an average minimum aircraft size requirement for much of the fleet serving the airport. By incentivizing carriers to use larger aircraft, the proposal was designed to maximize passenger throughput consistent with the airport's physical constraints. The FAA also proposed to implement a limit on the duration of slots that would assure 10 percent of the capacity at the airport would be available annually for reallocation by the FAA.

The FAA recognized that it would be unable to complete its rulemaking by January 1, 2007, when the HDR was scheduled to expire. After providing for notice and comment, the agency published an FAA Order Operating Limitations at New York LaGuardia Airport (LGA Order).²⁸ The LGA Order retained the existing limit of 75 scheduled operations and a reservation system for unscheduled operations that permitted six unscheduled operations per hour. The LGA Order did not distinguish between operations conducted pursuant to HDR slots and AIR-21 slot exemptions; rather, flights conducted pursuant to exemptions were included in the hourly cap without restriction. The slots and exemptions were grandfathered to the then-current holder as "Operating Authorizations." The LGA Order also explicitly linked its duration to the publication of a final rule and noted that no rights to Operating Authorizations allocated under the Order would survive beyond the Order. No one challenged the terms of the LGA Order or the FAA's authority to re-impose caps at the airport following the expiration of the HDR.

In August 2008, the FAA reduced the number of reservations available for unscheduled operations at LGA from six

of 49 U.S.C. 41714(c), Order 99-9-11 (Sep. 16, 1999).

¹⁷ Pub. L. 106-181.

¹⁸ Congress directed the HDR phase-out for JFK and LGA by January 1, 2007. 49 U.S.C. 41715(a)(2). Congress directed the HDR phase-out for ORD by July 1, 2002. 49 U.S.C. 41715(a)(1). AIR-21 did not phase out the HDR at DCA, and it remains the only HDR airport.

¹⁹ AIR-21 also granted authority for this type of exemption at DCA and ORD.

²⁰ AIR-21 also granted authority for this type of exemption at ORD.

²¹ 49 U.S.C. 41715(b).

²² The Port Authority of New York and New Jersey limits the distance to which commercial flights may operate on a nonstop basis.

²³ FAA Aviation System Performance Metrics (ASPM).

²⁴ Calculated from the FAA's Air Traffic Operations Network Database (OPSNET).

²⁵ 65 FR 69126 (Nov. 15, 2000).

²⁶ 65 FR 75765 (Dec. 4, 2000).

²⁷ 71 FR 51360 (Aug. 29, 2006).

²⁸ 71 FR 77854 (Dec. 27, 2006). The LGA Order was amended on November 8, 2007 (72 FR 63224), on August 19, 2008 (73 FR 48428), on January 15, 2009 (74 FR 2646), on October 7, 2009 (74 FR 51653), on April 4, 2011 (76 FR 18616), on May 14, 2013 (78 FR 28278), and on March 27, 2014 (79 FR 17222).

to three.²⁹ In January 2009, the FAA reduced the limits on scheduled operations to 71 per hour.³⁰ Although the FAA did not withdraw Operating Authorizations to reach 71 operations, it stated it would retire any returned Operating Authorizations to reach that limit. These two actions were intended to further reduce congestion and delays at LGA.

C. John F. Kennedy International Airport After AIR-21

Until recently, most operations at JFK took place during relatively pronounced arrival and departure banks corresponding to the operating windows of transatlantic flights. The FAA accommodated those banks and achieved maximum efficiency by using either two arrival runways and one departure runway, or two departure runways and one arrival runway. Air traffic controllers have employed that configuration to facilitate the historical transatlantic traffic flows.

Beginning in the spring of 2006, U.S. air carriers serving JFK significantly increased their domestic scheduled operations throughout the day, changing the historical arrival and departure patterns. For example, the traditional transatlantic arrival and departure periods now have significant levels of departing and arriving flights, respectively. While demand is somewhat more balanced, some loss of efficiency associated with a two-arrival or two-departure runway configuration has resulted.

While operations at LGA remained capped throughout 2007, caps on afternoon operations at JFK were lifted on January 1, 2007, when the HDR expired at that airport. Operations at JFK already had begun to increase during the morning hours, but the increase in operations in the afternoon hours soon led to long delays, especially for departing flights during the evening transatlantic departure bank.

During fiscal year 2007, the average daily operations at JFK increased 21 percent over fiscal year 2006. At the same time, on-time performance and other delay metrics declined year over year. The on-time performance at JFK, which is defined as the arrival at the gate within 15 minutes of the scheduled time, declined from 68.5 percent in fiscal year 2006 to 62.19 percent in fiscal year 2007. On-time arrivals during the peak travel months of June, July, and August declined from 63.37 percent in 2006 to 58.89 percent in 2007, while on-time departures declined from 67.49

percent to 59.89 percent during that period. For fiscal year 2007, the average daily arrival delays exceeding 1 hour increased by 87 percent over fiscal year 2006 levels. Additionally, taxi-out delays, which measure the time that aircraft wait prior to departing the runway, increased by 15 percent. Taxi-out delays in the evening departure periods frequently exceeded 1 hour in duration.

In September 2007, the FAA re-designated JFK as a Level 2 Schedules Facilitated Airport³¹ for the summer 2008 scheduling season in accordance with the WSG.³² Under the WSG, carriers must inform the schedules facilitator of projected operations at a Level 2 airport for the next scheduling season. When submitting the required information, the airlines expressed their intent to add new flights at JFK during peak and off-peak hours for summer 2008.

Also in September 2007, the Secretary and the Administrator determined that a delay reduction meeting was necessary to discuss flight reductions with U.S. air carriers to reduce over-scheduling and flight delays at JFK during peak operating hours.³³ On October 22, 2007, the FAA opened a docket for information on the establishment of flight reduction targets at JFK during peak hours.³⁴ To address increases in demand by U.S. and foreign air carriers and to provide a process for schedule actions, the FAA designated JFK a Level 3 Coordinated Airport.³⁵

To address the projected increased demand for summer 2008 and the previous over-scheduling in summer 2007 when the airport lacked scheduling limits, the FAA convened a scheduling reduction meeting on October 23–24, 2007. The FAA's goal was to obtain voluntary schedule reductions from historically operated

and planned flights. Subsequent in-person and telephonic meetings took place as well. American Airlines, Delta Air Lines, and JetBlue, which together accounted for three-quarters of the total JFK operations, withdrew the schedule increases each had proposed for summer 2008 during the airport's 1500 to 1959 peak hours. They also adjusted the timing of operations throughout the day to smooth out peaks. Other airlines agreed to retime peak operations. Consequently, the FAA was able to offer additional operations during non-peak hours, which increased the daily total of operations while decreasing delays over the previous summer season. As a result of the agreements reached at that meeting and other discussions held with carriers regarding their planned summer 2008 schedules, the FAA issued a temporary Order limiting scheduled operations at JFK to 81 per hour from 0600 to 2259 (JFK Order).³⁶ That temporary Order allocated slots to carriers operating at the airport based on the number and timing of operations negotiated during the schedule reduction meetings. Because the schedule reductions were voluntary, slot allocations in some hours exceeded 81. The Order permits the FAA to retire slots that exceed the hourly limit if those slots are returned to the FAA until the slot limit is reached. On February 14, 2008, the FAA amended the JFK Order to modify the use-or-lose provisions so that they would correspond to the WSG.³⁷ The JFK Order temporarily responds to the carriers' desire to schedule operations above the airport's capacity during peak operating hours, relieves the substantial inconvenience to the traveling public caused by excessive congestion-related flight delays at the airport (which rippled through the NAS), reduces the average length of delays, improves carriers' ability to plan operations and network connections, and provides for more efficient use of airspace.

In July 2008, the FAA proposed to limit unscheduled operations at JFK to two hourly reservations from 0600 through 1359, to one hourly reservation from 1400 through 2159, and to two from 2200 through 2259 at JFK.³⁸ The FAA never adopted that proposed Order, but the unscheduled limits were incorporated in the 2008 Congestion Management Rule for JFK and EWR, which is discussed later.

³¹ An airport is designated an IATA Level 2 Schedules Facilitated Airport when demand is approaching capacity, and a more formal level of cooperation is required to avoid the circumstances of over-capacity. At a Level 2-designated airport, a schedules facilitator seeks the cooperation and voluntary agreement of carriers serving the airport to avoid congestion.

³² 72 FR 54317 (Sept. 24, 2007).

³³ Under 49 U.S.C. 41722, the Secretary may request a delay reduction meeting if "(1) the Administrator determines that it is necessary to convene such a meeting; and (2) the Secretary determines that the meeting is necessary to meet a serious transportation need or achieve an important public benefit."

³⁴ 72 FR 59579 (Oct. 22, 2007).

³⁵ 72 FR 60710 (Oct. 25, 2007). When demand for an airport exceeds capacity, voluntary cooperation is unlikely to resolve the problem, and short-term capacity enhancements are not available, an airport may be designated as an IATA Level 3 to inform airlines that scheduling increases may be disallowed.

³⁶ 73 FR 3519 (Jan. 18, 2008), as amended by 73 FR 8737 (Feb. 14, 2008), 74 FR 51650 (Oct. 7, 2009), 76 FR 18620 (Apr. 4, 2011), 78 FR 28276 (May 14, 2013), and 79 FR 16854 (Mar. 26, 2014).

³⁷ 73 FR 8737.

³⁸ 73 FR 41156 (Jul. 17, 2008).

²⁹ 73 FR 48428 (Aug. 19, 2008).

³⁰ 74 FR 2646 (Jan. 15, 2009).

D. Congestion at Newark Liberty International Airport

EWR has grown to be one of the most delay-prone airports in the country. In 2007, demand during peak hours approached or exceeded the average runway capacity, resulting in significant volume-related delays. These delays were aggravated by weather or other adverse operating conditions.

Comparing fiscal year 2007 to fiscal year 2000, the percent of on-time gate arrivals decreased from 70.66 percent to 61.71 percent, and arrival delays greater than one hour increased, on average, from 54 to 93 per day. EWR's on-time arrival performance of 61.8 percent was the second worst among the 35 busiest airports. Based on "the airport's performance metrics and imbalance between ATC capacity and demand that is expected to continue in the near term," the FAA designated EWR a Level 2 IATA Schedules Facilitated Airport for the summer 2008 scheduling season.³⁹ The FAA explained that "increased levels of air traffic operations, congestion and delay at [both JFK and EWR] and a tangible decrease in operational performance" warranted this designation.⁴⁰ The FAA found the peak morning and afternoon hours were particularly congested, but that capacity otherwise was available for retiming of flights or new operations.

The information provided by carriers for the summer 2008 scheduling season reflected a projected increase in flight schedules, especially during the peak hours. U.S. and foreign carriers had planned about 100 new operations per day at EWR, many during the afternoon and early evening hours. For several consecutive hours, the number of hourly arrivals and departures would have reached between the upper 80s and mid-90s. These operations would have significantly exceeded the airport's average of 83 total operations per hour over the 12-month period ending August 2007. These additional flights would have caused a spike in congestion and delays at EWR and also would have adversely affected other airports in the New York-New Jersey region and the NAS.

In the autumn of 2007, the FAA found it necessary to informally discuss summer 2008 schedules with carriers operating at EWR because it was concerned proposed operations would cause excessive congestion-related delays. Modeling indicated a potential delay increase of almost 50 percent if the scheduled flights were operated as

planned. The FAA asked carriers to consider scheduling flights at times when there was available capacity. However, the FAA realized some carriers intended to proceed with their plans to begin operating their proposed schedules during the busiest hours, regardless of the potential impact on delay. The FAA also believed limiting operations at JFK would create a spillover effect at EWR, thus exacerbating historical and projected delays. To prevent carriers from adding flights to already oversubscribed hours at EWR and from shifting flights from JFK to EWR, the FAA designated EWR as a Level 3 Coordinated Airport effective for summer 2008.⁴¹ After the designation, a series of discussions with the FAA led some carriers to move a few of their historical flights from the most oversubscribed hours. The movement of these flights permitted addition of a few new entrant operations without a net increase in delays.

In May 2008, the FAA placed temporary limits on peak hour operations at EWR to mitigate persistent congestion and delays at the airport (EWR Order).⁴² The EWR Order limited scheduled operations during constrained hours to an average of 81 per hour.⁴³ That temporary Order allocated slots to carriers operating at the airport based on the number and timing of operations negotiated during the schedule discussions. Because the schedule reductions and retimings were voluntary, slot allocations in some hours exceeded 81. The Order permits the FAA to retire slots that exceed the hourly limit if those slots are returned to the FAA until the slot limit is reached. The provisions regarding the use of the WSG for use-or-lose mirrored those in place for JFK. In July 2008, the FAA proposed to limit unscheduled operations at EWR to two hourly reservations from 0600 through 1159, to one hourly reservation from 1200 through 2159, and two from 2200 through 2259.⁴⁴ The FAA never adopted that proposed Order, but the unscheduled limits were incorporated in the 2008 Congestion Management Rule for JFK and EWR, which is discussed later.

³⁹ 72 FR 73418 (Dec. 27, 2007).

⁴⁰ 73 FR 29550 (May 21, 2008), as amended by 74 FR 51648 (Oct. 7, 2009), 76 FR 18618 (Apr. 4, 2011), and 78 FR 28280 (May 14, 2013), and 79 FR 16857 (Mar. 26, 2014).

⁴¹ The appendix to the Order included a few operations for summer 2008 above the 81 per hour limit.

⁴² 73 FR 41156 (Jul. 17, 2008).

E. Exploration of Long-Term Congestion Management

Following the enactment of AIR-21, the FAA and the DOT began investigating a long-term congestion management plan for the New York City area airports. In June 2001, the FAA published a variety of congestion management alternatives for public comment, including the use of auctions, congestion pricing, and administrative alternatives.⁴⁵ Additionally, the FAA and the DOT, in conjunction with the National Center of Excellence for Aviation Operations Research (NEXTOR), conducted research initiatives of these alternatives.

The level of interest in a long-term plan increased as the sunset of the HDR neared and following the experience of increased operations at the airports. Nationally, the summer of 2007 was the second worst on record for flight delays. Delays impacted all three New York City area airports and cascaded throughout the NAS. On September 27, 2007, the Secretary announced the formation of the New York Aviation Rulemaking Committee (NYARC) to help the DOT and FAA explore available options for congestion management and how changes to current policy for JFK, EWR, and LGA would affect the airline access and utilization of the airports.

The NYARC was designed to provide opportunity for extensive input by all stakeholders, having members from every major U.S. air carrier, several foreign carriers, associations representing different aviation interests, and the Port Authority of New York and New Jersey (Port Authority). The NYARC submitted a report of its findings and recommendations to the Secretary, dated December 13, 2007.⁴⁶

The increased congestion and associated delays at JFK, EWR, and LGA impact each other and the NAS. The airspace redesign for the New York/New Jersey/Philadelphia metropolitan area, approved in 2007, documents the costs and far-reaching impacts of delays that originate from this area.⁴⁷ Implementing

⁴⁵ 66 FR 31731 (Jun. 12, 2001).

⁴⁶ A copy of the ARC Report may be found at http://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/NY.ARC.Final.Report.20071213.pdf. The report contained recommendations for operational improvements for the airports and associated airspace; discussed the use of market-based systems to allocate airport capacity at the airports; explored a gate utilization system at LGA proposed by the Port Authority; explored a US Airways proposal to relax the LGA perimeter rule; examined priority air traffic preferences; and considered the adoption of IATA WSG at the airports.

⁴⁷ See http://www.faa.gov/air_traffic/nas/redesign/regional_guidance/eastern_reg/nynjphl_redesign/documentation/.

³⁹ 72 FR 54317 (Sept. 24, 2007).

⁴⁰ *Id.*

airspace redesign will provide increased efficiency and congestion relief by, among other things, opening additional arrival and departure routes in the New York City area, and the FAA has begun that process.

Further, the FAA continues to work with stakeholders to implement short-term initiatives to improve the efficiency of airport operations and air traffic control, particularly during severe weather. Additionally, the FAA has increased the use of a second departure runway at JFK when conditions permit. However, none of these initiatives offer an immediate or complete solution.

F. Congestion Management Rules of 2008

With the three temporary Orders limiting operations in place, the FAA determined to pursue a long-term solution for limiting operations and allocating slots for all three airports. After evaluating comments to the LGA NPRM and input from the NYARC, the FAA decided not to adopt its earlier proposal to require upgauging aircraft size and to reallocate 10 percent of the existing capacity each year. Instead, the FAA published a supplemental notice of proposed rulemaking (LGA SNPRM) in April 2008.⁴⁸ The LGA SNPRM proposed to allocate the majority of slots to historical operators. The agency also proposed to develop a robust market and encourage competition by withdrawing some slots and auctioning them during the first 5 years of the rule. The LGA SNPRM would have allocated any new or returned capacity via

auctions. Finally, the FAA proposed to sunset the rule in 10 years.

In conjunction with the LGA SNPRM, the FAA published an NPRM for JFK and EWR that sought to provide a longer-term solution and address a number of congestion-related issues (JFK/EWR NPRM).⁴⁹ Similar to the LGA SNPRM, the FAA proposed to continue the hourly limits on flight operations at JFK and EWR, and to allocate the majority of slots at each airport to the historical operators. Similar to the proposal in the LGA SNPRM, the agency proposed to develop a robust market and induce competition by annually auctioning a limited number of slots during the first 5 years of the rule. Given the significant international presence at both airports, the JFK/EWR NPRM proposed to use WSG procedures instead of auctions to allocate new or returned capacity. Additionally, the JFK/EWR NPRM contained provisions for adoption of the WSG for use-or-lose, historic precedence, unscheduled operations, and slot withdrawal for operational needs. The FAA proposed to sunset the rule in 10 years.

The FAA issued a final rule for JFK and EWR, which was consistent with the JFK/EWR NPRM, in October 2008 with a published effective date of December 9, 2008.⁵⁰ The FAA issued a final rule for LGA, which was consistent with the LGA SNPRM, in October 2008 with an effective date of December 9, 2008.⁵¹ Multiple parties challenged these final rules under the

Administrative Procedure Act, and the U.S. Court of Appeals for the District of Columbia Circuit stayed their effectiveness pending litigation.⁵² The FAA rescinded both final rules on October 9, 2009.⁵³

G. Current Slot Management at LGA, JFK, and EWR

Currently, the JFK and EWR Orders remain in effect, limiting scheduled operations to 81 per hour at each airport, until this proposed rule becomes effective.⁵⁴ The LGA Order remains in effect, limiting scheduled operations to 71 per hour and unscheduled operations to three per hour, until this proposed rule becomes effective.⁵⁵ The following tables show a comparison of allocated slots and average actual operations for each airport for August 2012.⁵⁶

⁵² 74 FR 52132 (Oct. 9, 2009) (JFK and EWR); 74 FR 52134 (Oct. 9, 2009) (LGA).

⁵³ 74 FR 52132 (Oct. 9, 2009) (JFK and EWR); 74 FR 52134 (Oct. 9, 2009) (LGA). The FAA rescinded the rules because of the uncertainty caused by an Omnibus Appropriations Act provision prohibiting the agency from conducting slot auctions and the possible impact of the significantly changed economic circumstances on the slot auction program. *Id.*; see also Division I, section 115 of the Omnibus Appropriations Act of 2009, Pub. L. 111-8, 123 Stat. 115 (Feb. 17, 2009).

⁵⁴ 79 FR 16854 (Mar. 26, 2014) (JFK); 79 FR 16857 (Mar. 26, 2014) (EWR).

⁵⁵ 79 FR 17222 (Mar. 27, 2014).

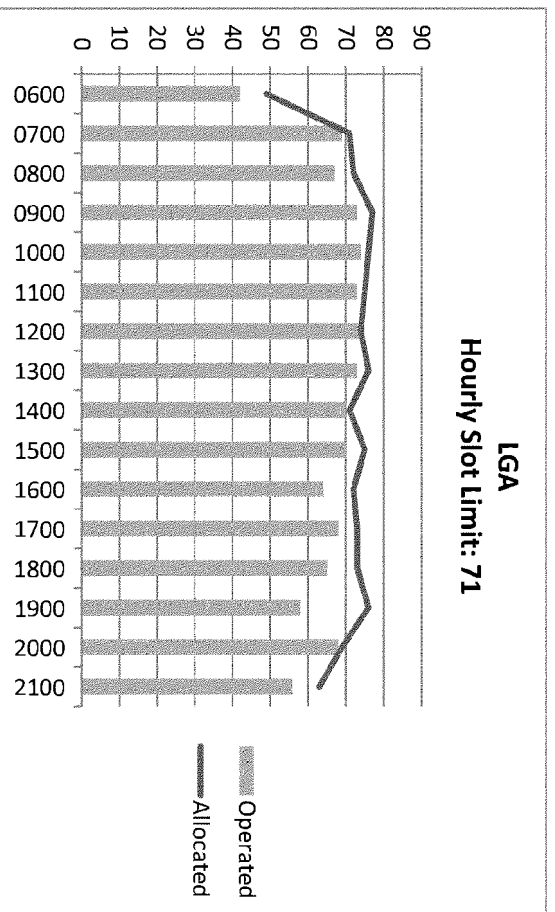
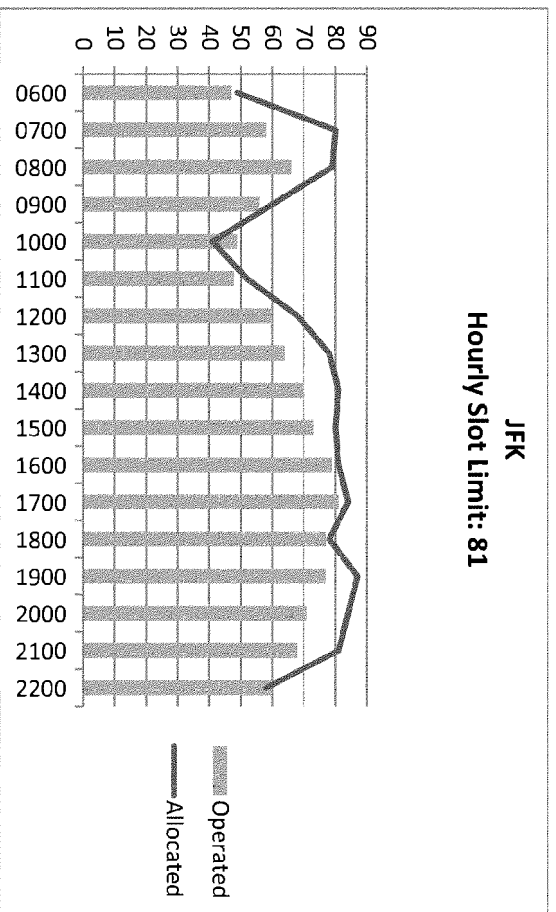
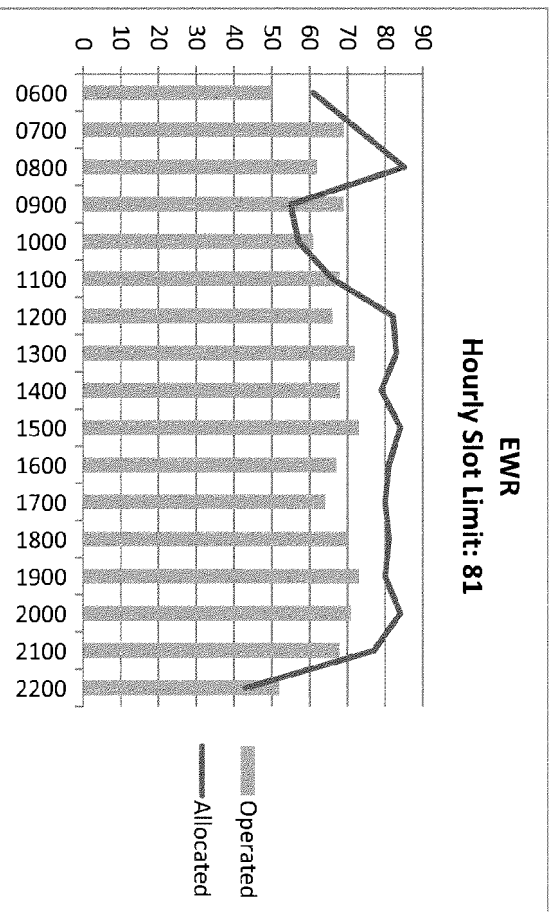
⁵⁶ Allocated slots represent slot allocations for Thursdays during August 2012 as reflected in slot records maintained by the FAA's Slot Administration Office. For actual operations, an average was calculated from Aviation System Performance Metrics (ASPM) data for each Thursday during August 2012. The ASPM data used for this comparison reflects runway arrival or departure time and may vary from a flight's scheduled arrival or departure (slot) time due to taxi time or other operational reasons.

⁴⁸ 73 FR 20846 (Apr. 17, 2008).

⁴⁹ 73 FR 29626 (May 21, 2008).

⁵⁰ 73 FR 60544 (Oct. 10, 2008), amended by 73 FR 66516 (Nov. 10, 2008).

⁵¹ 73 FR at 60574 (Oct. 10, 2008), amended by 73 FR 66517 (Nov. 10, 2008).



BILLING CODE 4910-13-C

JFK and EWR currently have similar demand profiles, with an early morning peak followed by lower demand in the mid-morning. Demand then approaches the average runway capacity in the early afternoon and typically continues until about 2200. LGA, on the other hand, has consistently high demand at or above the average runway capacity throughout the entire day.

To determine the scheduling limits and associated delay mitigation goals under the Orders, the FAA modeled congestion and delays for each airport.⁵⁷ To determine the average adjusted capacity for an airport, the FAA considered the airport's capacity to be the higher value of either the aircraft throughput at the airport in a given hour or the number of arrivals and departures that ATC personnel identified as achievable in that hour. As a result, the FAA accepted the higher number when the airport's performance exceeded expectations, as well as when the airport's potential capacity exceeded demand. This measurement reflects the airport's demonstrated and potential performance over time under actual meteorological and operational conditions. The FAA reviewed weekday operations over a two-year period to capture the variables in daily ATC operations. Delay and congestion modeling used by the FAA assumes that all flights operate as scheduled. Average unscheduled demand is randomized within the hour. These assumptions ensure the modeling reflects full utilization of the airport under various limits and allows the modeled queuing delay to be measured consistently as the scheduling limits are varied against demand. The model calculates arrival delay and departure delay relative to schedule, mean delay, and delay greater than 0, 15, 60 and 120 minutes. The model shows delay by time of day to ensure consideration of peak period delays.

When developing the scheduled and unscheduled limits (of 71 and 3, respectively) for LGA, modeling showed a reduction in the scheduled limit from

⁵⁷ This modeling used an aircraft queuing model produced for the FAA by the MITRE Corporation's Center for Advanced Aviation System Development (CAASD). When determining airport capacity, delay targets, and slot limits, the FAA relies on modeled delay data because it establishes the peak of congestion and delays. Modeled delay and actual delay may differ because a variety of things occur on the day of operation that a model cannot consider (such as not scheduled or cancelled operations). Actual delay statistics for airports are published by the Office of the Assistant Secretary for Research and Technology Bureau of Transportation Statistics and can be found at http://www.rita.dot.gov/bts/data_and_statistics/by_mode/airline_and_airports/index.html.

75 to 71 could generate a 41% decrease in mean delays. As discussed earlier, the FAA established a limit of 75 in December 2000 to reduce delays associated with new flights operating under AIR-21 slot exemptions.⁵⁸ Subsequently the FAA reduced the hourly scheduled limit from 75 to 71 to provide an opportunity for delay reduction at LGA from voluntary returns or slots failing to meet the minimum usage rules.⁵⁹ The FAA did not withdraw operating authority to achieve the lower limit, but reserved the authority to retire returned slots exceeding the limit.

When developing the scheduled limits for JFK, operational analysis showed that the average adjusted capacity was steadily increasing over time.⁶⁰ Additionally, a procedural change in early 2007 allowed departures on Runway 31L beginning at Taxiway KK, thereby providing increased runway capacity and reduced departure delays. Modeling for JFK used the higher adjusted airport capacity numbers since early 2007, rather than over the two-year historical period initially reviewed to capture that increased capacity. The FAA conducted discussions with carriers to seek voluntary agreement to retime flights at JFK from the busiest hours to less congested times when they could be accommodated with a lower delay impact. The FAA also restricted carriers from adding flights in the peak periods. The FAA's goal was to reduce the peak evening departure delays from the summer 2007 average of about 80 minutes.⁶¹ The limit of 81 scheduled operations per hour in the JFK Order reflected that goal and permitted a

⁵⁸ These hourly limits were adopted in the LGA Order.

⁵⁹ In early 2009, the FAA sought voluntary schedule reductions from carriers to reduce LGA delays. American Airlines voluntarily returned 13 Operating Authorizations in February 2009.

⁶⁰ The FAA reviewed JFK's hourly operations over a 2-year period, from July 2005 through July 2007. Over the entire period, the average adjusted capacity was 77 hourly operations. During the first year, from July 2005 through June 2006, the airport had an average adjusted capacity of 74 hourly operations. Over the final 6 months of the period (February 2007 through July 2007), the average adjusted capacity increased to 81 hourly operations. Changes in capacity can result from a number of factors, and it often is difficult to determine the specific cause of the capacity change. These factors can include changes in runway configurations, taxiway configurations, ground movement procedures, airspace procedures, and the interplay of regional demand. The FAA strives to increase efficiency of operations at all airports with a specific focus on safely and efficiently meeting the daily operational demand.

⁶¹ Schedules initially submitted by carriers for summer 2008 would have increased the evening departure delays to more than 120 minutes per flight.

margin for unscheduled operations.⁶² As a result, modeled peak departure delays decreased to about 50 minutes, or by 30 minutes per flight when compared to summer 2007. As part of the schedule discussions for JFK, the FAA accepted some flights that exceeded the scheduling limits but reserved the authority to retire returned slots exceeding the limits and work with carriers to continue to further depeak their schedules.

When developing the scheduled limits for EWR, modeling showed an average adjusted capacity of 83 total operations per hour with high sustained delays throughout the day. Additionally, the FAA modeled the proposed 2008 schedules and projected an even higher level of congestion and delays from those proposed schedules with EWR already one of the most delay-prone airports in the system. The FAA established a goal of no increase in delays at EWR while permitting additional operations to the extent practicable. The limit of 81 scheduled operations per hour reflected that goal and permitted a margin for unscheduled operations.⁶³ Although the FAA accepted some flights above the hourly limits, it reserved the authority to retire returned slots exceeding the limits and work with carriers to depeak their schedules.

The FAA has continued to monitor the three New York City area airports since the Orders were put in place to determine whether the limits continue to be appropriate. Actual performance in summer 2008 through 2012 was compared to the modeled projections to ensure that the model results were consistent with actual experience. Adjusted airport capacity information for 2008 through 2012 was updated. This information includes hourly arrival and departure rates based on runway configuration, demand, operating conditions, and actual hourly runway operations. Peak summer unscheduled demand for each hour between 0600 and 2259, Eastern time, was reviewed for 2008 through 2011.

Performance at JFK and EWR has improved in each year when compared to summer 2007. In some cases, actual operations were below allocated slot levels, and this contributed to delay reduction. However, as discussed later in this proposal, underutilization of

⁶² The Order also adopted an Appendix that contained the actual schedules then existing at the airport. In some hours, scheduled operations exceeded the limit of 81 scheduled operations.

⁶³ The Order also adopted an Appendix that contained the actual schedules then existing at the airport. In some hours, scheduled operations exceeded the limit of 81 scheduled operations.

slots at a carrier's discretion also has potential competitive and service consequences that must be considered along with delay mitigation goals. The 2012 analyses indicated that daily unscheduled flights have decreased slightly compared to 2008 while peak morning and afternoon demand are similar to 2007. The adjusted airport capacity analysis indicated modest changes at EWR and JFK, but the FAA is not proposing to change the current scheduling limits. The FAA will continue to monitor whether changes in adjusted airport capacity are long-term trends that warrant adjustment of the scheduling limits at one or more airports.

During summer 2010, one of the main runways at JFK was closed or partially closed so a valid comparison to earlier periods is not practical. Carriers voluntarily reduced scheduled operations, and the FAA waived the usage requirements to mitigate delay impacts from the construction and reduced airport capacity. The FAA used non-preferred runway configurations and waived slot usage requirements to facilitate temporary carrier schedule reductions to mitigate delays. In addition, the Port Authority has adopted an automated departure queuing program at JFK to manage when aircraft are released from the gate. This program reduces taxi-out delays for aircraft waiting to depart. Many of these procedural changes, including the departure queuing program, have been permanently implemented.

As stated earlier, delay modeling for EWR and JFK analyzed the effects of both scheduled and unscheduled operations. Although not adopted, the FAA had proposed limits on unscheduled operations at the airports, while accommodating existing scheduled operations without creating high levels of congestion and delays. For 2007, unscheduled operations at the two airports averaged two per hour with several hours exceeding that average. The FAA had proposed limits for each airport of one and two operations per hour depending on the time of day. For summer 2010, actual operations were down at JFK and EWR to an hourly average of roughly one unscheduled operation. Unscheduled operations averaged just less than two per hour at both airports during the afternoon hours.

The current Orders limit a carrier's ability to transfer a slot (either by trade, lease, or sale) beyond the duration of the Orders. The Orders were intended as a short-term measure to allow time for development of a long-term, comprehensive rule that included a

secondary market mechanism. The transfer mechanisms in place under the Orders differ significantly from those permitted under the HDR, currently in place only at DCA, which allow slots to be bought, sold, leased, or otherwise transferred for any duration and to any person.

The following tables show the approximate percentage of slots held at each airport by carriers holding more than one percent of total slots.⁶⁴ Since 2008, numerous carriers have obtained slots at EWR, JFK, and LGA through either FAA allocations or slot transactions with incumbent airlines.⁶⁵ At EWR, new carriers include: Austrian Airlines, Avianca Airlines, Cathay Pacific Airways, Icelandair, Iceland Express Airlines, La Compagnie, Southwest Airlines, Virgin America, and Vision Airlines. At JFK, new carriers include: Arik Air, Brussels Airlines, Fly Jamaica Airways, Hawaiian Airlines, Hellenic Imperial Airways, Interjet, LAN Peru, Nippon Cargo Airlines, Nordic Global Airlines, Norwegian Air Shuttle, Qatar Airways, Transaero Airlines, Virgin America, WestJet, and XL Airways France. At LGA, new carriers include: Southwest Airlines, Virgin America, and WestJet.

EWR

	Percent
United Airlines	73
American Airlines	7
Delta Air Lines	5
JetBlue	2
FedEx	2
Air Canada	2
Porter Airlines	2
Southwest Airlines	1

JFK

	Percent
Delta Air Lines	31
JetBlue	26
American Airlines	17
United Airlines	4
British Airways	2
Virgin America	2

LGA

	Percent
Delta Air Lines	45
American Airlines	29

⁶⁴ This information is current as of August 2014 as reflected in slot records maintained by the FAA's Slot Administration Office.

⁶⁵ This information is current as of August 2014 as reflected in slot records maintained by the FAA's Slot Administration Office. Not all indicated carriers may be currently operating at the airports.

LGA—Continued

	Percent
United Airlines	8
Southwest Airlines	5
Air Canada	4
JetBlue	3
Spirit Airlines	2
WestJet	1
Republic Airline	1
Virgin America	12

III. Discussion of the Proposal

Because of the combination of high demand and limited ability to increase capacity at JFK, EWR, and LGA, the FAA must address a dilemma: How can the agency manage delays while promoting access to carriers wishing to operate at the airport, thus encouraging competition? This proposed rule attempts to address that dilemma.

Ongoing implementation of the New York/New Jersey/Philadelphia Metropolitan Area Airspace Redesign project and Next Generation Air Transportation System (NextGen) technologies are expected to increase the efficiency and reliability of the airspace structure and ATC system and reduce delays within the next 10 years. Although the FAA continues to develop and implement these improvements, which it believes over time will reduce congestion and delays at the New York City area airports, it does not anticipate these airspace improvements will provide significant benefits at JFK, EWR, and LGA in the immediate future. Letting the Orders expire without replacing them with a more permanent solution likely would result in a growth in operations and consequently high levels of congestion and delays, as was experienced following AIR-21.

Rather than take repeated and piecemeal approaches to manage slots and efficient use of airspace at JFK, EWR, and LGA, the FAA believes a longer-term and comprehensive rule is prudent. The FAA's longstanding preference for addressing capacity limitations is to expand airport infrastructure, increase airport throughput, and improve airspace and airport surface efficiency. The FAA currently is implementing ways to utilize the airspace in the New York City area more efficiently and to decrease delays, but there are physical limitations to expanding these airports in the foreseeable future. This proposed rule would complement planned airspace and airport capacity improvements by encouraging more efficient use of existing capacity.

This proposed rule would treat all three New York City area airports

similarly. To achieve the goal of delay management, it would limit scheduled and unscheduled operations. To achieve the goals of promoting market access and competition, it would permit transfer of slots between carriers in a secondary market that encourages transparency. Proposed changes to the usage requirement also could improve competition and market access at the airports by increasing the number of scheduled operations that are actually operated. Under the current Orders, some slots are allocated but not scheduled and operated. The FAA believes it is necessary to address allocation and distribution of slots at JFK, EWR, and LGA in a coordinated manner because traffic at each of these airports affect each other and the NAS as a whole. The airports are located close to each other and consistently have been among the most delay-prone airports. This proposal presents five different alternatives the FAA is considering for how slot transfers would operate in a secondary market, and these alternatives are discussed in detail later in the preamble. The FAA intends that any final rule would become effective at the beginning of a scheduling season to facilitate the transition from the Orders to a final rule.

Currently, hourly scheduled operations are limited under the Orders to 81 at JFK, 81 at EWR, and 71 at LGA, and hourly unscheduled operations at LGA are limited to three under the LGA Order. This proposal, if adopted, would replace those Orders. It would adopt the current limits on operations, limit hourly unscheduled operations to two at JFK and one at EWR, and establish daily limits on scheduled operations at all three airports.

For seasonal allocations of available slots, the FAA proposes to substantially follow the WSG at each airport. The WSG generally provides a consistent, transparent, and fair method of slot allocation. This proposed rule specifically addresses the WSG processes being applied. For WSG processes not specifically addressed in this proposal or for future changes to the WSG, the FAA would consider whether they are consistent with this proposed rule or other U.S. statutes or regulations. The current allocation mechanisms at JFK and EWR generally are consistent with the WSG. The FAA proposes to extend this allocation approach to LGA, even though it is an overwhelmingly domestic airport, because these international guidelines are widely understood by carriers. One allocation mechanism for all airports also maintains consistency and reduces the

opportunity for confusion on how slot management applies at an individual airport. The allocation mechanism is discussed later and any significant deviations from the WSG are noted.

The FAA also proposes to retain the 80 percent usage requirement, which is consistent with the WSG, at each of the airports. The usage requirement would be applied to slots on an individual day-of-week basis over the entire season at each of the airports, similar to the method currently used at JFK and EWR. However, the FAA proposes a change in the way the utilization rules were applied under the Orders and under the HDR. The FAA proposes a specific flight or series of flights be identified for each requested slot throughout the entire season. Because each slot has a corresponding series of flights, a flight associated with one slot in the same 30-minute slot time period could not be used to help another slot meet the minimum usage rules.

A. Hourly and Daily Slot Limits

Based on modeling of airport capacity and demand at each of the airports, the FAA has determined that limits should apply throughout most of the day. As discussed in the Background section, operational demand is steady and approaches airport capacity throughout the day. The FAA proposes to retain the slot-controlled hours as they exist under the Orders. Accordingly, the FAA proposes the following slot-controlled hours: for JFK, daily from 0600 through 2259; for EWR, daily from 0600 through 2259; and for LGA, Monday through Friday from 0600 through 2159 and Sunday from 1200 through 2159. All times are expressed in Eastern time, which is the local time for all three airports. The FAA would use the 24-hour clock because carriers currently submit schedules using that international standard in local time or Coordinated Universal Time (UTC).

Although not proposed, the FAA is considering changing the slot-controlled hours to daily from 0600 to 2259 for LGA to maintain consistency across all airports. The FAA believes a consistent approach across the three airports would reduce confusion for carriers as to when slots are required for an operation and reduce the carriers' burden when submitting slot requests. If the FAA changed the slot-controlled hours at LGA, it would have to allocate slots in those new hours. The FAA tentatively is considering allocating daily slots to each carrier for the summer and winter scheduling seasons that correspond to the maximum number of flights that actually were operated by the carrier in that hour from

the last Sunday in March 2014 through the first Saturday in September 2014. Carriers would be afforded an opportunity to return unneeded slots to the FAA. Any modifications to allocations in those hours due to operational changes between the publication of the NPRM and effective date of any final rule would be handled on an individual basis and could be temporarily allocated until a permanent (historic precedence) allocation is made for the subsequent corresponding season. The FAA requests comments, including specific benefits and drawbacks, on whether it should adopt a common definition of "slot-controlled hours" across the three airports.

The FAA proposes to limit scheduled operations to no more than 81 per hour (or any 60-minute period) at JFK, 81 per hour at EWR, and 71 per hour at LGA. The FAA also proposes to assign slots specifically as an arrival or departure in 30-minute windows, a practice already in place under the Orders, to manage peaking of operations within the hour. These proposed schedule limits would be 44 in any 30-minute period at JFK, 44 in any 30-minute period at EWR, and 38 in any 30-minute period at LGA. While the FAA does not propose to change the limits from those currently in effect, it may change them in the future. Enhanced capacity or delay reduction resulting from technological advances or procedural changes (e.g., NextGen or wake turbulence recategorization) may result in future increases in slot limits at the airports. The FAA will continue to review each airport's capacity and operations before each scheduling season when determining whether to change slot limits.

The FAA acknowledges that allocated slots exceed these schedule limits in several hours at each airport, but the FAA does not propose to withdraw any allocated slots. As applies under the Orders, the FAA would reserve authority to retire any returned slots until allocations in an hour no longer exceed the limits. The FAA would continue to work with carriers and encourage retiming of operations to depeak individual time periods, as necessary to mitigate congestion and delays.

The nature of operations at JFK, and to a lesser extent at EWR, is such that demand has historically been less in mid-morning and very early afternoon. Therefore, many of those lower demand hours have allocations below the hourly limits of 81. These low demand hours currently provide a recovery period that reduces delays and prevents them from continuing into the peak afternoon

hours. The FAA has determined that allowing allocations in these hours to grow to the limit would result in higher and sustained delays throughout the entire day because total operations would exceed the airport's actual capacity. To mitigate increasing delays while preserving historic allocations, the FAA proposes a daily slot limit. This daily limit would apply to the slot-controlled hours at LGA and from hours 0600 to 2159 at JFK and EWR. The FAA believes applying the daily limit to the 2200 hour at JFK and EWR is unnecessary because operations in that hour contribute little to cumulative daily delays. The daily limit would not affect operations outside of those hours. A daily limit would provide flexibility to carriers scheduling flights because the FAA could approve new flights or retime existing flights to less congested hours while preventing a build-up of the schedule across the day that would result in significant increases in delays.

The FAA acknowledges the benefits of a daily limit at LGA are not as significant as at JFK and EWR because allocations in most hours at LGA currently are at or above the hourly limit. A daily LGA limit would limit additional allocations in hours that may be below 71 scheduled operations, now or in the future, providing modest delay-management benefits. Nevertheless, the FAA proposes a daily limit at LGA for consistency purposes and to ensure the operational impacts of additional flights are considered.

The FAA considered actual allocations accepted in 2008 and what was currently operating at each airport to determine this daily limit. These 2008 allocations, and subsequent slot allocation decisions made with respect to the Orders, establish the upper bound of allocations at the airport to meet the established delay goals. The FAA proposes a daily slot limit of 1,205 at both JFK and EWR and 1,136 at LGA. This proposed limit would not result in any withdrawal of slots. Based on current allocations at JFK, there would be roughly 20 slots in low demand hours available for allocation. At EWR or LGA, there would be no slots available for allocation. Additionally, like the hourly limit at LGA, actual allocations currently exceed the LGA daily limit. Because slot allocation and usage are dynamic, this number of available slots is likely to change prior to the FAA issuing a final rule.

B. Allocation of Slots

The FAA proposes to grandfather all existing slot allocations made under the Orders for both the summer and winter scheduling seasons. This grandfathering

recognizes that carriers have made investment, marketing, operating, and business decisions based on the assignment of Operating Authorizations under the Orders and the expectation that those slots would continue to be available in future seasons subject to the usage and other general Order provisions. On the proposed rule's effective date, at JFK and EWR, the FAA would assign, according to its records, each carrier all slots for the summer scheduling season that had been approved for the previous summer scheduling season as amended through the slot allocation process. Similarly, the FAA would assign, according to its records, each carrier all slots for the winter scheduling season that had been approved for the previous winter season as amended through the slot allocation process. At LGA, for the hours of 0600 through 2159 or 1200 through 2159 on Sunday, the FAA would assign each carrier all slots held as of the effective date for both the summer and winter scheduling seasons and for each day-of-week.

Temporary, one season-only, and other contingent allocations would not automatically receive historic precedence at the same times. For all other slots allocated under this transitional mechanism, carriers would have historic precedence, provided all other proposed conditions are met, for the subsequent corresponding scheduling season. The FAA tentatively has determined this is the most efficient method of transitioning from the temporary Orders to a more permanent regime. These allocated slots, however, would be subject to reversion to the FAA under the proposal's minimum usage requirements and could be withdrawn for operational reasons.

When making decisions regarding the allocation of available slots, the FAA would seek to allocate in a manner that ensures efficient use of a scarce resource and maximizes the benefits to both airport users and the traveling public. Except as indicated in the following discussion, the proposed allocation priorities mirror current WSG priorities. The FAA believes the WSG approach is well-understood and is an internationally-recognized system of slot allocation at airports. These allocation procedures would apply to JFK, EWR, and LGA. A WSG-like allocation process already applies under the JFK and EWR Orders because those airports have a significant international presence, and the WSG is commonly applied to international slot-controlled airports and understood by carriers with international service. Although a WSG procedure previously has not applied to

LGA, the FAA proposes to do so to maintain consistency between the airports. A common approach to allocating slots reduces the administrative burden of multiple procedures for both the FAA and carriers. A common approach also reduces confusion with respect to the rules for each airport. The FAA understands that carriers with only domestic service would have some adjustment to the new rules at LGA, but most of these carriers already operate at JFK or EWR (and would have familiarity with the WSG at those airports). The FAA does not anticipate changing the allocation and usage mechanisms at LGA would be overly burdensome.

Like the WSG, the FAA proposes to afford priority treatment for slot requests by new entrants. The FAA proposes to define a "new entrant" as a U.S. or foreign air carrier that holds or operates fewer than 20 slots on any day of the week, in any combination during the slot-controlled hours, at the respective airport. That number would include any slots that had been returned to FAA after the slot return deadline, or that had been revoked by the FAA for insufficient use, during the two corresponding scheduling seasons immediately preceding the scheduling season for which a slot allocation is being conducted. A carrier would not be eligible for slot allocation as a new entrant if it had returned slots to the FAA after the slot return deadline, or had slots revoked by the FAA for insufficient use, during the two corresponding scheduling seasons immediately preceding the scheduling season for which a slot allocation is being conducted.

The proposed "new entrant" definition differs from the definition contemplated under the WSG, which sets a threshold of five slots, because the lower threshold would provide little opportunity for a new entrant to establish its operations before losing new entrant status and thereafter being able to expand in those markets only through slots obtained in the secondary market. With up to 20 slots, a carrier would have sufficient flexibility to establish a competitive presence at a large metropolitan airport such as LGA, JFK, or EWR, giving the carrier not only a basic foothold but also a critical mass of frequencies that would allow it to compete effectively. The FAA also proposes the definition be applicable at each airport, thus establishing a uniform definition that is easily understood by all stakeholders.

For purposes of slot allocation, the FAA historically has treated U.S. air carriers conducting operations solely

under another carrier's marketing control with unified inventory control as a single carrier. Also, U.S. carriers having more than 50 percent common ownership have been treated as a single carrier for slot allocation purposes; however, individual foreign carriers, regardless of their ownership, have been treated as separate carriers. Under international obligations, Canadian carriers are treated the same as U.S. carriers for slot purposes at U.S. high-density airports. The FAA does not propose to change this approach.

Prior to the start of the scheduling season, and according to the schedule published by IATA, the FAA would publish a notice in the **Federal Register** announcing the deadline for submitting schedule requests for the upcoming season. Prior to announcing the submission deadline, the FAA would conduct an informal airport capacity review for each airport, which is consistent with its historical practice at JFK and EWR and with the WSG. The FAA also would provide each carrier with a listing of its historic slots. The method for calculating historic precedence is discussed in more detail later in this document. By the deadline stated in the **Federal Register** notice, each carrier would submit its proposed requests for each airport noting which requests are in addition to, or changes from, the previous corresponding season. If a carrier wishes to make a change from an historic slot, it should submit a request to retain that slot and indicate that it also is requesting the change to avoid losing the historic slot if the FAA could not confirm the change. Based on the FAA experience with carriers' slot trading when developing domestic schedules, the FAA believes that many carriers would not be ready to submit their schedules for LGA according to the IATA schedule, which requires slot request decisions several months before the start of the scheduling season. The FAA requests comment on whether the FAA should set a later submission deadline for LGA and what any later deadline should be.

The FAA is not proposing a particular format for the submission of schedule requests because it wants to avoid an unnecessary burden, especially for carriers that operate a large number of slots at the airports, and wants to maximize carrier flexibility. However, each slot request would be required to indicate the effective dates of the request, proposed days of operation, proposed time of operation (indicated as either UTC or local time), whether the operation is an arrival or departure, flight number, and aircraft type.

Although not required under this proposal, the FAA would accept schedule submissions in IATA Standard Schedules Information Manual (SSIM) format or another similar format.

The FAA would accommodate these requests by allocating available slots according to the priorities set forth in proposed § 93.41. First, the FAA would confirm any requests for historic slots, including those that have adjustments within the same 30-minute period or other minor changes that do not affect operations, prior to the IATA Slot Conference. The FAA then would split the remaining available slots into two pools: One pool for new entrants as defined in proposed § 93.36 and another pool for all carrier requests. The FAA acknowledges this method of establishing two pools prior to accommodating retimings differs from the WSG, but the FAA believes that it provides new entrants with a better opportunity to access desirable slot times. The FAA would allocate any available slots according to these priorities until there were no available slots remaining in each pool.

Within each pool, the FAA first would accommodate carrier requests to retime slots for operational reasons. The FAA recognizes that a carrier may request a retiming of a slot in a particular time period that the FAA cannot accommodate, and the FAA may offer a slot in a different time period. The carrier may then trade the slot with another carrier to conduct its desired operation or may operate in the allocated time period. A carrier in this situation that makes a request for a retiming to its desired slot time for a subsequent corresponding season will receive priority treatment within the set of requests for retimings. The FAA would use the carrier's previous requests and slot transfer records to make this determination of priority.

After addressing requests for retimings within each pool, the FAA then would accommodate requests by carriers to extend an allocated seasonal slot to year-round service. Consistent with the WSG, the FAA gives priority to requests for year-round service because that service most efficiently uses the scarce resource of available slots.

Finally, the FAA would accommodate any remaining requests. The FAA would consider the extent and regularity of the intended slot use by giving priority to intended year-round service and greater weight to requests for daily service. The FAA would consider the effective period of operation by giving greater weight to intended use throughout the entire season. The FAA also would consider schedule constraints of the

carriers requesting slots, especially if the carrier is operating to or from another slot-controlled airport. Finally, the FAA would consider the overall operational impacts of schedule requests, including the distribution of flights and mix of arrivals and departures. This holistic approach allows the FAA to best manage airport and airspace congestion.

Because the FAA expects that requests for slots would exceed the number of slots available in most seasons, the FAA proposes to include some tie-breaker factors to aid in allocation decision-making. Although the FAA does not intend these factors to be determinative, it could consider airport facilities constraints (such as constraints on gates, terminals, aircraft parking, customs and immigration, and curfews) and impacts to competition and markets served when weighing which request to accommodate.

C. Usage Requirement

The FAA proposes to retain the current 80% usage requirement for historic precedence, but the methodology for calculating usage would change. The proposed calculation method would be used to determine historic precedence only for slots allocated for summer and winter scheduling seasons after this proposed rule becomes effective. Determining historic precedence for the first summer and winter scheduling seasons after this proposed rule becomes effective would use the calculation method under the rules in effect when the slots were allocated and operated.

The 80% usage requirement provides a reasonable allowance for planned and unplanned cancellations. The usage calculation would be applied on an individual day-of-week basis. This method currently is used for JFK and EWR slots, and using this method for LGA slots would ensure consistency among the airports and afford carriers greater flexibility for slot allocations.

A carrier must use the allocated slot at least 80% of the time for the same flight or series of flights throughout the period for which it is allocated during the scheduling season. The same series of flights would be at least five flights at approximately the same time on the same day-of-week, generally with the same flight number, generally serving the same market, and distributed regularly in the same season (for example, a 1035 JFK-LAX flight on every Monday of the summer season). This definition of same series of flights allows the FAA to see the intent to operate a series of flights but is not intended to preclude a carrier from

changing the flight number, origin/destination, or flight time (within the same 30-minute slot time period) during the scheduling season. The requirement to identify markets served with a particular slot is not intended to restrict a carrier's service in a particular market; it is simply a tool to assist the FAA in tracking the use of a specific slot. The FAA recognizes tying a slot to a series of flights for usage calculation is a departure from how it has historically applied usage rules. This change, however, is consistent with the WSG in that a carrier should hold only slots it plans to operate. This change is intended to address actions by some carriers that report a series of flights in different slots on various days during the reporting period to record usage on multiple slots with a single flight. Although those actions are not prohibited by the current Orders, they artificially allow carriers to meet the minimum usage rules without scheduling a flight for each slot.

The FAA has found that the practice of spreading individual flights over a set of slots to achieve 80% usage potentially underutilizes slots because the full allocation of slots is not being scheduled and operated. Theoretically, operating four flights 100% of the time could meet the 80% usage requirement for five slots, which could result in non-utilization of 20% of the allocated slots (thereby limiting market access). While the FAA acknowledges scheduling realities make underutilization to this extent impractical, the FAA has observed some underutilization behavior at JFK, EWR, and LGA. The FAA believes this behavior could adversely affect the opportunities for new entrants to begin service at a particular airport or could reduce the choices available to consumers.

This proposal would better ensure that the scarce resource of slots is used optimally. The FAA acknowledges that requiring carriers to operate their full allocation of slots could increase the number of operations. However, any increase in delays over current levels should remain within the accepted delay levels that were modeled at the time the current Orders, and corresponding hourly slot limits, were implemented. This model assumed full slot usage. It is likely that any increase in flights also would increase the number of flight choices available to consumers. The FAA believes another result of the changed usage calculation could be that a carrier that operates fewer flights than its slot holdings could dispose of the excess slots on the secondary market. The exchange of these slots could increase competition at

the airport and provide consumer benefits, especially if the slots were acquired by a new entrant. Although the FAA believes it unlikely, especially in the peak demand hours, a carrier with excess slots could return those slots to the FAA, and they could be retired in hours exceeding the slot limits (providing delay-reduction benefits) or could be allocated to other carriers (providing consumer and economic benefits).

The FAA requests comment on whether the proposed usage rate is appropriate. Additionally, in theory, it is possible that usage requirements may encourage carriers to fly smaller-than-optimal aircraft or to fly less-than-full aircraft. The FAA requests comment on how the proposed usage requirement might impact utilization of slots. Please provide data supporting the comments.

The FAA would have discretion to waive the usage requirements when a carrier ceases operation at an airport due to a strike. The FAA also would retain discretion to waive the usage requirements in the event of a highly unusual and unpredictable condition beyond the carrier's control and affecting operations for 5 or more consecutive days. These exceptions allow carriers and the FAA flexibility to adapt to unusual and unexpected cancellations in contrast to the usual localized weather and mechanical cancellations the 80-percent usage rule permits. These usage waivers are similar to those under the WSG, and they previously have been successfully applied at U.S. slot-controlled airports. In certain circumstances, the FAA also could waive the usage requirements for a period up to 180 days for a new entrant acquiring slots at an airport either through FAA allocation or the secondary market.

Under the HDR and the Orders limiting operations, slots held by a carrier were treated as used on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday of January. Under those rules, a carrier was allocated slots for the entire season rather than according to the schedule submitted by the carrier. Under this proposed rule, a carrier may give back a slot to the FAA for short periods of time (e.g., the week between Christmas and New Year's Day) when the slot would not be scheduled. These periods of time are not included in the usage calculation. The carrier also would not receive historic precedence for the periods of time when the slot is given back to the FAA. However, because of the anticipated limited duration of these returns, the FAA believes it is unlikely

the carrier would be prohibited from scheduling during that period in the subsequent corresponding season. Accordingly, the FAA proposes to eliminate general waivers for holiday periods. The FAA requests comment on whether the elimination of these general waivers would create a hardship on carriers that the FAA has not considered. Comments should be supported by specific data demonstrating a hardship.

To aid in the usage calculation, the FAA proposes to require carriers to submit an interim and final usage report to the FAA, as is required under the JFK and EWR Orders. The interim report would be due by September 1 for the summer scheduling season and February 1 for the winter scheduling season. The final report would be due no later than 30 days after the end of the respective scheduling season. The interim and final reports should detail slot usage for each day of the respective scheduling season and report the following information for each slot held: The slot number, airport code, time, and arrival or departure designation; the operating carrier; the date and scheduled time of the actual operation, the flight number, origin and destination, and aircraft type identifier; and whether the flight was actually conducted. These reporting requirements are similar to those under the HDR and Orders. In addition to analyzing slot usage reports, the FAA would monitor slot usage throughout the scheduling season.

D. Transfer of Slots

When the FAA adopted the Buy/Sell Rule, it recognized slots have value in the secondary market. The FAA believes the development of a robust secondary market ultimately is the best way to maximize competition. Over the years, the FAA has received complaints that carriers were unaware of possible opportunities to buy or lease slots, that incumbent carriers were colluding to constrain new entrant carriers' market access to an airport, and that there was uncertainty about the value of slots. The DOT and FAA believe increased transparency in the secondary market would address these concerns as well as allow interested parties to better understand the nature of slot transactions. For these reasons, the FAA proposes a secondary market and offers five alternatives for proposed § 93.45. The FAA requests comments on each of these alternatives and assumptions associated with these alternatives. The most helpful comments would include a weighing of the benefits and drawbacks of how each alternative

addresses transparency of the market, efficiency of the transfer process, and carrier flexibility in transferring slots to meet operational or business goals.

Under the first alternative, the FAA would permit a carrier to buy, sell, or lease a slot to another carrier or to trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport. This alternative is similar to what was permitted under the Buy/Sell Rule and would permit privately-negotiated transactions between carriers. The FAA believes this alternative creates the least administrative burden on carriers, but it does not address previously-voiced concerns about lack of knowledge of opportunities to acquire slots. Transparency benefits would be realized largely through the transaction approval process, which is discussed later.

Under the second alternative, a carrier seeking to sell, lease, or trade a slot with another carrier would be required to follow a formal process to negotiate the terms of the transaction. This alternative would require a public notice on an FAA-managed bulletin board system. The carrier would have to submit a notice to the FAA that it intended to engage in a slot transaction, and the notice would include the carrier's intended terms. These terms would include the slots available for transfer (slot time and slot number), the type of transfer intended (trade, sale, lease), the proposed duration of a lease if applicable, and the intended effective date. The FAA requests comments on any additional information that the transferring carrier should provide.

The carrier would make its request to the FAA at least 4 months in advance of its intended effective date. The FAA would post a notice of the offer to transfer and relevant details on the FAA Web site. The FAA would post that notice at least 3 weeks in advance of the opening date for bidding, and the notice would state the opening and closing dates for bidding and the contact information for submitting bids. The bidding period would last 2 weeks unless the transferring carrier requested a longer period of time. Carriers (and other interested parties) would be able to register to receive automatic notices when a new posting is published on the FAA bulletin board. The transferring carrier would not be permitted to negotiate terms prior to the start of the bidding period. The FAA intends all bids would be submitted directly to the transferring carrier. The transferring carrier could conduct negotiations during the bidding period to clarify and refine the bid. The transferring carrier, however, would be able to consider and

negotiate only bids submitted during the bidding period, but that carrier could request an extension of the bidding period. Once the bidding period closes, the transferring carrier could select its preferred offer and negotiate the final terms of the transaction.

The proposed rule would allow the transferring carrier flexibility in determining the best offer. The FAA would not require the carrier to select the highest-dollar offer because a carrier could place a higher value on non-cash assets and on the overall impact of the proposed transaction on its operations.

The FAA requests comments on the timeframes being proposed. Is a 4-month advance notice to the FAA enough time to complete the proposed process for completing a transfer transaction? Is this advance notice period too long to be practical in light of operational necessity? Does a 3-week public notice provide sufficient time for a carrier to obtain necessary approvals to bid on a slot? With a system where bids are submitted directly to the transferring carrier for review and further negotiation, would a 1-week bidding period be sufficient?

The third alternative is similar to the second alternative, except that carriers would be permitted to privately negotiate tentative terms of a transaction before publishing its intent to transfer slots on the bulletin board. Carriers could approach any prospective transferor or transferee to evaluate the market or assess how to package the slots for transfer. Those tentative terms would be submitted to the FAA and posted on the bulletin board, and other carriers would be permitted to submit counter-offers. The transferring carrier could then select its preferred offer and privately negotiate the final transaction terms. Like the second alternative, the transferring carrier would be able to consider only counter-offer bids submitted during the bidding period. Under this alternative, a carrier would be able to submit a notice of intent to engage in a slot transaction, as under Alternative 2, without prior private negotiation.

The fourth alternative attempts to encourage the greatest transparency by requiring bidders to post their bids on the bulletin board during the bidding period. A carrier would submit a notice to the FAA that it intended to engage in a slot transaction, and the bidding time frames would be the same as under the second alternative. Bidding carriers would post their bids, and any counterbids, on the bulletin board. Therefore, negotiations in the form of iterative bids would be available to all registered interested parties. Because

this alternative may require posting of proprietary or confidential business information, a bidding carrier would have the option of posting a summary bid with more detailed information submitted directly to the transferring carrier. The FAA requests comment on whether the option for submitting both a publicly-available summary bid and private detailed bid adequately ensures protection of proprietary or confidential business information. What level of detail for the publicly-available summary bid is adequate to inform other potential bidders of the transaction value?

The fifth alternative is similar to the fourth alternative, but the identities of the offering carrier and bidders would not be revealed. Bids under this alternative would be cash only because non-monetary assets could reveal the identity of the parties. Under this alternative, the offering carrier would be required to accept the highest bid posted. This alternative would mitigate the possibility of any collusion between carriers (e.g., by a carrier signaling the precise value of its bid to the selling carrier). It would also ensure that the winning carrier is the carrier that places the greatest economic value on the slots, leading to more efficient use of slots. The FAA requests comment on whether a blind bidding process would facilitate a more robust secondary market.

Under the bulletin board alternatives, the FAA anticipates the transferring carrier would structure its notice in a way that permits a transaction involving multiple slots in any desirable combination. For example, the transferring carrier could require multiple slots be transferred as a set or it would consider bids for smaller groupings of slots. The FAA intends to allow maximum flexibility for transferring slots provided prospective bidders have adequate information on which to act. The FAA expects that if the material terms of the transaction change during or after the bidding period, the transferring carrier would repost the notice of intent to transfer for a new bidding period. The FAA requests comment on whether it should implement additional procedures for a subsequent bidding period that included shorter notice and bidding time frames. Does allowing the transferring carrier to craft a notice in a way to allow transfer of multiple combinations of slots ensure both that the transferring carrier would have sufficient flexibility in transferring the slots, and that bidding carriers would have an adequate opportunity to acquire the slots?

Under alternatives one through four, transactions could include both cash and non-cash consideration, and the transactions via the bulletin board would not have to be blind. A carrier also would need to know the identity of a bidder offering non-cash assets to accurately value those assets. The FAA requests comment on whether non-cash bids promote competition by enlarging the pool of potential bidders, which could result in more bidders and more valuable bids.

Do the bulletin board processes adequately accommodate complex transactions involving consideration other than cash? Do the bulletin board processes adequately accommodate transactions that are initiated by the transferee? The FAA also is willing to consider additional proposals for, and comments on, alternative secondary market mechanisms. These additional proposals should encourage the efficient transfer and use of slots in a transparent environment that permits meaningful opportunities for all carriers to participate.

Under each of these alternatives, the transferee would not be able to use the slot until the FAA approved the transaction.⁶⁶ Each party to the negotiated transaction would submit a request for approval to the FAA along with the final terms of the transaction including the names of all parties, the consideration offered by each party, the effective date of the transfer, and, if appropriate, the length of the lease. This information would be publicly available to provide the market with information to better value slots as well as provide information to the DOT for determining any anti-competitive effect of the transaction, which is discussed later in more detail. The FAA believes this knowledge would help establish a more robust secondary market and reduce the likelihood of collusive or anti-competitive behavior.

The FAA acknowledges submitting detailed terms of a transaction could in rare circumstances involve legitimate proprietary or confidential business information. A carrier may request confidential treatment of the request for approval while it is under review. The FAA's general practice has been to not make this type of information public until after approval is granted, consistent with the Freedom of Information Act. In addition to confidential treatment while the request is under review, the FAA requests

comment on whether it should develop a process for confidential treatment of certain information after the transaction is approved. If so, under what limited circumstances should this confidential treatment be granted to ensure a transparent secondary market? The FAA also requests comment on whether the transaction terms should not be made publicly available for a period of time after the transaction is approved. If so, what is a reasonable period of time?

Under alternatives two, three, four, and five, the FAA proposes some limited exceptions to using the bulletin board system. The FAA proposes these exceptions because it believes they would facilitate transfers made for operational reasons, or as part of a transaction that does not raise concerns about a transparent secondary market. A carrier may trade a slot on a one-for-one basis with another carrier without submitting a bulletin board notice, but no consideration or promise of consideration may be offered for these trades. A carrier also may lease a slot to another carrier for a period of time no longer than two scheduling seasons. The FAA would review a series of short-term leases to determine whether a carrier is effectively engaging in a longer-term transaction. For example, a one-season transfer that is executed for multiple seasons would be construed as a longer-term transfer. In this situation, the FAA may disapprove the transaction. Carriers would have the option of posting a notice on the bulletin board and negotiating a new transaction. Trades among carriers with unified marketing control are permitted without using the bulletin board, thus effectively allowing those carriers to treat slots as one inventory because these transactions do not have the characteristics of a normal arms-length transaction. Finally, slot transfers that take place as a result of a carrier merger or acquisition would not be subject to the bulletin board requirements. These transactions are subject to Federal agency review under antitrust and other authorities. While the bulletin board process would be suitable for purposes of transparency and competitive opportunity for standalone slot transactions, the proposed process is not designed for slot transfers that result from a carrier merger or acquisition.

Under these alternatives, it may be necessary for the DOT to conduct a public interest or competitive review of a transaction for anti-competitive effect, which is discussed later in this document. The FAA would not approve any transaction until it had received an approval or non-objection from the Secretary or the initial 14-day review

period had elapsed. To be clear, the FAA would monitor compliance with any required bid procedures.

The FAA requests comments on whether variations to the five alternatives presented would better achieve the stated goals of the rulemaking, including creating a vibrant secondary market. For example, under each alternative, the FAA would post the final terms of the transaction. Please comment on whether the availability of this information facilitates transactions in the secondary market.

While the FAA seeks comment on the proposed secondary market alternatives noted above, the FAA also is open to other mechanisms to more efficiently allocate slots in the secondary market. For this reason, the FAA requests comments regarding lessons learned from the use of secondary markets in other regulated industries (such as market for pollution permits, CAFE credits, or wireless spectrum). This information may assist the FAA in designing a more robust, flexible, and efficient secondary market for slots. Additionally, the FAA requests comments regarding lessons learned from historical secondary market mechanisms implemented by the FAA (such as the HDR or 2006 Chicago O'Hare final rule).

The FAA acknowledges that many carriers have engaged in short-term trades and leases at JFK, EWR, and LGA that extend until the termination date of the Orders. Carriers may intend these transactions be permanent rather than temporary, if permitted by FAA rules. In many cases a permanent transaction has operational or competition-enhancing benefits, but the Orders prohibit a transaction lasting beyond their effective dates. To facilitate the transition of these transactions from the Orders to this proposed rule, the FAA proposes to waive any bulletin board requirements, if adopted, for 90 days after the effective date of the final rule to allow carriers to negotiate and execute these transfers. These transactions still would be subject to the FAA approval process and DOT review.

Under the Orders, carriers must transfer slots among various carriers operating on behalf of the marketing carrier. Some of these carriers are commonly owned while others are contracted service providers. Because the carriers operate under their own DOT and FAA operating authorities and communicate with ATC using their discrete call signs, the FAA has a valid interest in ensuring that carriers operating at a slot-controlled airport have the proper slot authorizations. The FAA proposes a simplified process in

⁶⁶ Because the DOT would be able to review the terms of the transaction under this proposal, the FAA would strictly enforce the prohibition against using transferred slots prior to approval of the transfer transaction.

§ 93.46 for managing the slot holdings of carriers with unified inventory and marketing control. The FAA believes this process would reduce the administrative burden on both the FAA and on carriers and their regional partners. The marketing and operating carriers would provide advance information to the FAA including the planned airport(s), the flight number ranges that would be used for marketing and ATC purposes, statements by the carriers as to which carrier would be responsible for ensuring that a slot is available, and reporting after the fact which carrier(s) operated the slots. Only flights meeting the proposed criteria would be permitted an exception to the advance transfer requirements. Carriers would retain the option to transfer slots to carriers under their marketing control. The FAA requests comments on whether this simplified process would reduce the administrative burden.

E. Oversight of Competitive and Public Interest Issues

Over the course of the last several years, the DOT has heard many airlines, communities, and airports express concerns that incumbent slot holders have acted to limit competitors' access to slots. Arguments have been made that incumbent carriers have chosen not to transact with low-cost carriers or new entrants, preferring instead to deal with other incumbent carriers that hold a large portfolio of slots in order to preserve a competitive position in the market and forestall more rigorous competition. Similarly, there have been complaints that incumbent slot holders transfer slots for short periods to avoid losing slots under the application of the usage requirement. Consequently, some have sought more rigorous oversight and transparency of slot transactions.

This section describes the DOT's proposal to draw upon existing authority to review certain slot transactions at the New York City area airports that may raise potential competitive or public interest issues. First, this section will explain the DOT's authorities that allow for review of standalone transactions.⁶⁷ In addition,

⁶⁷ A standalone slot transaction is a slot transfer by one carrier to another carrier (whether by sale, purchase, lease, or trade), akin to monetizing a slot. The Delta/US Airways slot swap described below would be an example of a standalone slot transaction, for purposes of this NPRM. A standalone slot transaction would occur independently of any slot transfers that would result from a carrier merger or acquisition, defined as a transaction that combines the ownership/operation/control of two (or possibly more) carriers into a single entity. The term "carrier merger or acquisition" is drawn from the statutory provision governing transfers of HDR slot exemptions,

this section will provide a summary of how DOT has previously exercised these authorities. Next, this section will set forth the DOT's proposal for reviewing standalone slot transactions for competition and public interest impacts. Finally, this section will explain the DOT's proposed processes for engaging with the public regarding tentative determinations and protecting confidential information submitted in the course of such reviews. Through this proposal, the DOT would establish a more consistent, transparent, and predictable procedure for all stakeholders.

1. Legal Authorities for Reviewing Standalone Slot Transactions

The DOT's authority to review slot transfers resulting from standalone slot transactions derives from several statutory provisions. The DOT has authority under 49 U.S.C. 41712 to prohibit airline conduct comparable to antitrust violations. Section 41712 authorizes the DOT to prohibit conduct that it determines is an "unfair method of competition."⁶⁸ Although the DOT has not, in the past, relied on Section 41712 to take enforcement action in the context of airline slot transactions, the DOT nonetheless will consider exercising this enforcement authority as appropriate.

In addition, the DOT is directed by statute, under 49 U.S.C. 40101(a), to carry out the pro-competitive aspects of the Airline Deregulation Act, in the course of carrying out the agency's duties and responsibilities. These pro-competitive objectives include maintaining the availability of a variety of adequate, economic, efficient, and low-priced air services; placing maximum reliance on competitive market forces and on actual and potential competition; avoiding airline industry conditions that would tend to allow at least one air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation; encouraging, developing, and maintaining an air transportation system relying on actual and potential competition; encouraging entry into air

prohibiting their purchase, sale, lease, or other transfers, but permitting such transfers "through an air carrier merger or acquisition." See 49 U.S.C. 41714(j). Slot divestitures undertaken in response to a DOJ investigation of an airline merger or acquisition under the Hart Scott Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, would not be considered standalone slot transactions, and thus, would be exempt from the secondary marketplace alternatives proposed in this rule, unless otherwise directed by DOJ.

⁶⁸ See 49 U.S.C. 41712, authorizing the DOT to investigate and prohibit any unfair or deceptive practice or an unfair method of competition of an air carrier, foreign air carrier, or ticket agent.

transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.⁶⁹

Furthermore, the DOT also is directed by statute, under 49 U.S.C. 40101(a), to consider certain factors as being in the public interest, in the course of carrying out the agency's duties and responsibilities. Many of these public interest considerations are enumerated in the statute, while others are left to the Secretary's discretion.⁷⁰ Enumerated considerations include, among others, maintaining and enhancing service to small communities and encouraging transportation through secondary or satellite airports.⁷¹

2. Historical Application of Authorities

Recently, the DOT/FAA has had occasion to apply the Section 40101(a) pro-competitive policy considerations in responding to joint requests of two carriers with large slot holdings to waive, under 49 U.S.C. 40109,⁷² the prohibition on purchasing LGA slots.⁷³ In that proceeding, Delta Air Lines and US Airways sought to exchange slot interests at LGA and DCA. The DOT evaluated the competitive impact of the transaction because of its unique scope and scale: the transaction would have dramatically enhanced the respective market positions of Delta at LGA and US Airways at DCA. The combination of an increased concentration of slot holdings at both airports, an increase in the number of monopoly or dominant markets in which increased pricing power could be exercised, and the potential for use of the transferred slot interests in an anti-competitive manner, led the DOT to seek remedy of the potential anti-competitive effects by requiring a divestiture of slot interest at LGA and DCA.⁷⁴

⁶⁹ See 49 U.S.C. 40101(a)(9), (10), (12), (13), and (16).

⁷⁰ See 49 U.S.C. 40101(a), which directs the Secretary to consider identified matters, "among others," as being in the public interest.

⁷¹ 49 U.S.C. 40101(a)(8), (11), (16).

⁷² Section 40109(b) authorizes the FAA to grant an exemption from Section 40103(b)(1), the FAA's authority over use of navigable airspace, "when the Administrator decides the exemption is in the public interest."

⁷³ See Notice of a Petition for Waiver of the Terms of the Order Limited Scheduled Operations at LaGuardia Airport, 75 FR 7306 (Feb. 18, 2010); Notice on Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport, 75 FR 26322 (May 11, 2010); Petition for Waiver of the Terms of the Order Limited Scheduled Operations at LaGuardia Airport, 76 FR 63702 (Oct. 13, 2011).

⁷⁴ 75 FR at 26324 (May 11, 2010); 76 FR 63702 (Oct. 13, 2011). In reaching these conclusions, the DOT calculated each airline's share of slots and

In the course of that process, the Department of Justice (DOJ) and the DOT informally agreed that the DOT would have primary responsibility to consider the carriers' waiver request and DOJ would consider the carriers' Hart-Scott-Rodino Act (HSR) notification and report.⁷⁵ Under that arrangement, the DOT obtained waivers from the parties to the transaction and thereby gained access to the documents submitted to DOJ pursuant to the HSR process. Using the documents and its expertise in the airline industry, the DOT assisted DOJ in that agency's analysis of the transaction. DOJ also participated in the DOT's independent determination of the joint waiver request by submitting comments, as a party, to the DOT docket. In its 2010 grant of waiver with conditions, the DOT explained that its analysis was complementary to that of DOJ. Rather than attempting to enforce antitrust laws, the DOT explained that it was invoking its authority to protect the traveling public by fostering competition in the context of the requested waiver. Further, the DOT clarified that DOJ's authority under Section 7 of the Clayton Act to reject anticompetitive transactions "did not remove the DOT's responsibility to carry out its programs consistently with the public interest criteria" under the pro-competitive considerations in Section 40101.⁷⁶ DOJ's submissions and analyses of the effects of the requested waiver on the availability of slots, competition between US Airways and Delta, low-cost carrier competition, fares, and mitigations of the anticompetitive effects were helpful to the DOT's decision-making process.

3. Review of Standalone Slot Transactions for Competitive and/or Public Interest Factors

With respect to standalone slot transactions between or among carriers, the DOT proposes to conduct reviews for purposes of evaluating the effects of the transaction based on competitive, or other public interest, factors. For purposes of the DOT's review based on competitive factors, the DOT proposes to limit its review to circumstances where the standalone slot transaction

has the potential to substantially reduce competition or create unreasonable concentration. For purposes of the DOT's review based on public interest factors, the review may examine the adverse effects of the slot transfers on service to small communities, the traveling public, or other statutory public interest objectives.⁷⁷ The DOT, however, would not review, on either competitive or public interest factors, certain routine types of actions involving small numbers of slots or a lease of slots to new entrants or limited incumbents, as explained further below.

The FAA would forward each request for a standalone slot transaction approval and the final terms of the transaction, required under proposed § 93.45, to the Office of the Secretary. The DOT would determine, within 14 days of receiving the request for approval, whether it needed to request and evaluate additional information for either competitive or public interest concerns, or both. As part of the Secretary's determination of those slot transactions for which additional review is necessary, the Secretary would specifically identify the additional information required. If the DOT requests additional information, the FAA would not approve the transaction, and any slots involved could not be operated by the transferee until the DOT notifies the parties and the FAA of its approval or non-objection. If the Secretary did not notify the parties and the FAA within 14 days of the DOT's receipt of the request for approval, the FAA could approve the transaction.

The DOT would review the additional information as expeditiously as possible. The DOT's review process would be facilitated by the parties' timely information responses provided in a readable and workable format. For standalone slot transactions reviewed due to competition concerns, because the competitive factors would take antitrust law standards and policies into consideration, the DOT intends to coordinate and cooperate with DOJ to avoid unnecessary duplication of effort and burden by agencies and the parties concerned. If, after reviewing the additional information, the DOT determines the slot transaction raises no concerns, the Secretary would notify the parties and the FAA that the transaction may proceed. If the transaction raises concerns, the DOT would notify the parties of its concerns, propose remedies or other actions, and set appropriate procedures and timelines for review.

For standalone slot transactions that raise competitive issues, the DOT would coordinate and consult with DOJ throughout the review process, to minimize the burden on the affected parties and to utilize Government resources efficiently. With respect to standalone slot transactions, the DOT would conduct a separate review under 49 U.S.C. 40101, and may consider using its Section 41712 enforcement authority, as appropriate. The DOT requests comments and suggestions as to how best to minimize the burden on parties that may be subject to these reviews. The process that the DOT would use to conduct these reviews is proposed in § 93.47 and further explained below.

The DOT proposes to review competitive issues arising from standalone slot transactions having the potential for significant anti-competitive effects, such as those that would significantly change the market structure at one of the slot-controlled airports, allow unreasonable industry concentration, permit one or two airlines to excessively dominate a market, or create an environment that would facilitate monopoly powers or practices that would tend to cause a carrier to unreasonably raise fares, reduce services, or exclude competition. Such transactions raise concerns because they may impede the pro-competitive goals of the Airline Deregulation Act.

Among the issues that the DOT may consider in determining whether a particular standalone slot transaction merits further competitive review are those analyzed in connection with the Delta-US Airways slots swap, including whether:

- The transaction would increase the airline's already dominant position in a significant manner, or place the airline in a significantly dominant position;
 - the transaction would significantly enhance an airline's ability to unreasonably increase its airfares in a manner unconstrained by competitors;
- or
- the transaction would enable slot interests to be used in an anti-competitive manner, such as by targeting smaller competitors.

The DOT requests comments on the use of these and other criteria to address competitive concerns.

The DOT believes that the transparency of the transfer mechanisms proposed in some of the secondary market alternatives discussed earlier would allow a better understanding of the dynamics behind slot transactions. That additional transparency may protect against the kind of behavior

departures, finding that Delta's share of slot interests at LGA would increase substantially, while US Airways' share of slot interests at DCA would also increase substantially. The DOT noted that low-cost airlines have a limited presence at both airports, and the DOT determined that the transaction would further inhibit new entry because the airlines would have a greater interest in maintaining price premiums by forestalling new entry. See 75 FR at 7309-7310 (Feb. 18, 2010); 75 FR at 26329-26330 (May 11, 2010).

⁷⁵ See 15 U.S.C. 18a.

⁷⁶ See 75 FR at 26327.

⁷⁷ See 49 U.S.C. 40101(a).

complained of by some. If the proposed transparent system to implement slot transfers reveals standalone slot transactions that have the potential to substantially reduce competition or create unreasonable industry concentration, the DOT has authority to investigate further and disapprove or approve with remedies that address the potential harm. The DOT also may monitor bulletin board postings, if that option is adopted in a final rule, to determine whether it suspects anti-competitive behavior. These procedures for reviewing slot transfer transactions do not limit the Secretary's authority under 49 U.S.C. 41712 to investigate and prohibit unfair or deceptive practices or unfair methods of competition.

To prevent harm to the public interest pertaining to factors other than competition, the DOT is proposing to review standalone slot transactions for purposes of analyzing effects that may be inconsistent with the public interest objectives. The DOT's public interest review could consider adverse effects on the traveling public, service to small communities, service through secondary or satellite airports, or other areas covered by the public interest. The DOT requests comments on the use of these and other criteria to address public interest concerns.

4. Exceptions to Reviews of Standalone Slot Transactions

The DOT expects very few proposed standalone transactions would raise significant competitive or public interest concerns. Accordingly, the DOT proposes to exempt from its review the more routine types of transactions involving small numbers of slots (such as those consisting of fewer than eight slots in total), involving limited terms (such as those extending over two or fewer scheduling seasons), involving one-for-one trades among incumbents at any of the three airports, or involving a sale or lease entirely to a new entrant or incumbent that holds or operates a relatively small proportion of the slots at an airport. However, the DOT would consider multiple transactions within a period of a few years, including slot transfers to multiple carriers under the marketing or operational control of a single entity, as constituting a single aggregate transaction that could be subject to review. As with HSR filing guidance published by DOJ and the Federal Trade Commission, the DOT would seek to ensure that carriers not enter into multiple small transactions with the purpose of evading the review process; multiple transactions within a three-year period could be reviewed if

they constituted a pattern and raised competitive or public interest issues.

The DOT does not intend to review transactions that would be excepted from the bulletin board process. Nevertheless, it may conduct such reviews if it believes carriers have engaged in multiple transactions or have structured transactions to circumvent the competitive or public interest review process.

The DOT requests comments on whether the exceptions described above create a sufficient safe harbor so that transactions enhancing competition and providing public benefits are encouraged, while still providing the DOT with an opportunity to review transactions that could impede competition, promote monopoly markets, unreasonably raise fares, reduce service, cause undue harm to small communities or service to secondary or satellite airports, or otherwise adversely impact the public interest. Are there alternative ways to describe the sorts of slot transfers that may be excluded from the review (that is, measured by the percentage gain in market share by an acquiring carrier)? Do the proposed timeframes for additional review permit carriers to plan slot transfers without discouraging those transactions?

5. Process

With respect to the proposals outlined above regarding reviews of standalone transactions for competitive or public interest factors, if upon first examination, the DOT determines that review is necessary, the DOT anticipates using expedited procedures to conduct that review. The procedures may include an opportunity for public comment as in the Delta/US Airways slot swap proceeding, or, for example, as in a potential proceeding involving a tentative DOT decision that seeks public comment. The DOT intends to harmonize such proceedings with DOJ. The DOT requests comments on appropriate procedures to synchronize the process with DOJ and to avoid undue burden and duplication on the parties.

With respect to information submitted by the parties to a transaction, the DOT proposes that parties could request that any information submitted to the DOT for review and designated as confidential not be disclosed to the public. The DOT, subject to the procedures at 49 CFR part 7, would keep such designated information confidential and not include it in any public proceeding. The DOT would treat a request to examine or copy this information as any other request under

the Freedom of Information Act, 5 U.S.C. 552, and process the request under the DOT's procedures at 49 CFR part 7. The DOT would use the procedures described in proposed § 93.47(e) for receiving, handling, and disclosing such confidential information. The procedures at 14 CFR 302.12 (commonly known as Rule 12) would not apply. The DOT requests comments on these proposed procedures, including the handling of confidential documents or alternative procedures, to ensure that decisions are made in a timely, effective, and transparent manner.

F. Retiming, Suspension, and Withdrawal of Slots for Operational Reasons

The FAA proposes to reserve the authority to retime or temporarily suspend a slot if a reduction in operations during a particular time period is required. Events such as a runway or taxiway closure, a change in separation standards, or fleet mix change that could impact throughput⁷⁸ at the airport may reduce the airport's capacity on a short-term basis. As it has done in the past, the FAA would first seek voluntary cooperation to retime or reduce operations at the airport through waivers of the usage requirements and temporary schedule reductions. If these voluntary measures were insufficient, the FAA would temporarily suspend slots until reaching the desired operational level. The FAA would conduct a lottery of slot holdings in the particular time period to determine which slot to suspend, and credit would be given for any voluntarily suspended slot. The FAA would not suspend a slot held by a carrier that holds fewer than 20 slots on any day of the week at the airport. The FAA would provide notice 45 days in advance of its intention to temporarily suspend a slot, unless the operational circumstances necessitate a shorter notice period. Once the situation requiring a reduction in operations ceases, any temporarily suspended slots would be returned to the carrier that held them provided that carrier still is operating at the airport.

The FAA also reserves the authority to permanently withdraw slots at an airport. The FAA first would make a determination of decreased airport capacity that it does not expect to increase for an indefinite period of time.

⁷⁸ A fleet mix change could affect throughput in several ways. Introduction of larger aircraft with greater separation standards could reduce the number of aircraft that could use a runway. A fleet mix change also could change the runways available for use, which could affect the throughput.

The FAA expects to use a permanent withdrawal only in the most unusual circumstances when voluntary cooperation and a temporary suspension of slots is determined insufficient to address capacity constraints. The FAA would conduct a lottery of slot holdings in the particular time period to determine which slots to withdraw. The FAA would not withdraw a slot held by a carrier that holds fewer than 20 slots on any day of the week at the airport. The FAA would provide notice 45 days in advance of its intention to permanently withdraw a slot, unless the operational circumstances necessitate a shorter notice period. Following withdrawal, the slot would cease to exist.

The FAA believes that a carrier that ceases all operations at an airport should not continue to hold a slot and earn rental income from it, just as it believes that non-carriers should not be permitted to hold slots. The FAA believes slots held in these ways undermine the FAA's promotion of efficient use of a scarce resource controlled by the U.S. Government. The FAA proposes to allow a carrier that ceases all operations to hold the slot at that airport for no longer than 2 years after the end of the season in which it ceased operations. The carrier could lease the slot during this period so that it does not permanently lose it. This 2-year period provides adequate time for the carrier to determine its long-term plans for operating at the airport and either resume operations at the airport, return the slot to the FAA, or sell the slot to another carrier. After the 2 years elapse, the slot would revert to the FAA, and any carrier operating the slot would have to cease that operation. Similarly, if a carrier's DOT economic authority or FAA operating certificate is suspended, surrendered, or revoked, any slots held by that carrier would revert to the FAA. The FAA has determined only operating carriers may hold slots. If that carrier had an existing agreement under which another carrier were operating the slots, the FAA could allocate the slots on a temporary, non-historical basis for the remainder of the scheduling season or up to the duration of the agreement to avoid disrupting operations or expectations of the operating carrier.

G. *Unscheduled Operations*

The FAA proposes to limit unscheduled operations into and out of JFK, EWR, and LGA during the slot-controlled hours. Unscheduled operations already are limited at LGA by Order, and the FAA previously had proposed limits on unscheduled operations at JFK and EWR. Although

unscheduled operations (including general aviation, passenger and cargo charter, ferry, and other ad hoc operations) are typically a small percentage of overall traffic, the FAA has determined these limits are necessary because any airport operation affects congestion and delays. Even a few additional operations during peak hours could result in significant additional delay, thus eroding the effectiveness of the slot limits. Accordingly, limitations on unscheduled operations should be part of any comprehensive plan to manage congestion and delays and ensure the effectiveness of limits on scheduled operations. A comprehensive plan should seek to balance airport access to all potential operators without permitting unreasonably increased congestion and delays in the absence of FAA oversight.

The FAA believes most unscheduled operations can be accommodated under this proposed rule if operators are flexible in their arrival and departure times. Moreover, the FAA believes that general aviation demand and a segment of flights conducted as business and private charters can be accommodated within regional capacity, including operating at Westchester County Airport, Islip MacArthur Airport, Republic Airport, Stewart International Airport, Morristown Municipal Airport, and Teterboro Airport. Based on data from the FAA's Enhanced Traffic Management System (ETMS) for the year ended May 31, 2008,⁷⁹ most unscheduled flights can be accommodated in the actual requested hour or through capacity in an adjacent hour (1 hour on either side of the actual hour of operation in the data), or through additional reservations available in visual meteorological conditions. If an operator cannot obtain a reservation for its preferred time, its planned flight times may need to be revised because of the limited available reservations.

Unscheduled operations at JFK would be limited to two per hour, at EWR to one per hour, and at LGA to three per hour. The proposed LGA limits are consistent with the limit that has been in place since 2009. Although the limits for JFK and EWR are lower than that for LGA, these limits generally correlate to actual hourly unscheduled operations at the airports in summer 2008. To the extent possible, ATC would permit additional operations (for example, in

⁷⁹ The FAA also reviewed unscheduled operations in summer 2009, 2010 and 2012 and found slightly fewer unscheduled operations in those years. Therefore, the higher 2008 traffic is used for this analysis.

favorable weather conditions or if unallocated slots exist in a particular time period). Also, a secondary market alternative for unscheduled operations, in addition to the existing reservation system, could allow slot holders to exchange slots that they are not able to use on a particular day. The FAA requests comments on whether allowing slots to be exchanged in the secondary market to unscheduled operators would lead to a more efficient use of limited operational capacity.

Reservations obtained through the FAA's Airport Reservation Office (ARO) would be required prior to conducting the operation (except in the case of emergency operations) and could be obtained up to 72 hours in advance. These reservations would allow an unscheduled operation (either arrival or departure) during a 60-minute period. The reservations would be allocated on a first-come, first-served basis, determined by the time the request is received by the ARO. When the ARO allocates a reservation, it would assign a unique reservation number. Operators would primarily obtain reservations through the ARO's interactive computer system accessed via the Internet or touch-tone telephone system. This system is known as the e-CVRS. Operators would provide the date and time of the proposed operation along with other identifying information concerning the aircraft and the intended flight. Additional reservations would be available in the e-CVRS system, but these reservations may not appear until close to the reservation time.

All operations at the airport other than declared emergencies, whether under instrument flight rules (IFR) or visual flight rules (VFR), would require a reservation. However, non-emergency national security, law enforcement, military, public aircraft, or other similar mission-critical operations may be accommodated above the limits with prior FAA approval. In the case of diplomatic or other flights in direct support of foreign governments, the FAA would permit additional reservations, if necessary, to accommodate these flights but may approve an operation at a time other than the one initially requested.

The filing of a request for reservation would not constitute the filing of an IFR flight plan as required under other rules. However, an IFR flight plan could not be filed until the reservation is obtained. The operator would include the reservation number in the "Remarks" section of the flight plan to indicate that it has a reservation for the operation.

The FAA recognizes the needs of public charter operators to confirm

airport access for commercial planning and 14 CFR part 380 compliance purposes. Accordingly, the FAA proposes to allow public charter operators to obtain a reservation up to 6 months in advance for a planned individual operation or a series of operations occurring fewer than three times per month. Public charter operators planning to conduct a series of operations more than three times per month would need a slot for those operations.

Public charter operations that seek a reservation more than 72 hours and up to 6 months in advance of the planned operation, would submit their request to the FAA's Slot Administration Office. A public charter operator would be required to provide the Slot Administration Office with a certification that any required prospectus has been submitted to the DOT in accordance with 14 CFR part 380; the call sign/flight number to be used for ATC communication by the direct air carrier conducting the operation; the date and time of the proposed arrival or departure; and the origin airport immediately prior to JFK, EWR, or LGA, or the destination airport immediately following JFK, EWR, or LGA; and aircraft type. A public charter operator also would be required to notify the Slot Administration Office of any changes to the above information after the reservation has been allocated.

The number of reservations available in advance for public charter operations would be limited to one per hour at LGA and two per day at JFK and EWR. If a public charter operator were unable to obtain an advance reservation, it could attempt to obtain a reservation within the 3-day window that is open to all unscheduled operations. A public charter operator also could attempt to obtain a slot from another carrier in the secondary market under proposed § 93.45.

H. Miscellaneous Amendments

Because the HDR no longer is in effect for JFK, EWR, LGA, and ORD, the FAA

proposes to remove references to these airports in part 93, subparts K and S. These out-of-date references have caused confusion for the public, and these amendments would reduce that confusion. Accordingly, the FAA proposes to remove references to these airports in §§ 93.123 (including the table in § 93.123(a)), 93.211, 93.223, 93.226. The FAA also proposes to remove §§ 93.133, 93.215, 93.217, 93.218, and 93.221(e) because they do not apply to DCA, which is the only airport for which the HDR applies. None of these amendments would substantively change how the HDR applies to DCA.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct 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 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) 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, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers

seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined this proposed rule has benefits that justify its costs, and is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 because it raises novel policy issues contemplated under that executive order. The rule is also "significant" as defined in the DOT's Regulatory Policies and Procedures. The proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, would not create unnecessary obstacles to international trade and would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Total Benefits and Costs of This Rule

The FAA developed this analysis using 2009 data to model the behaviors of carriers based on meeting the minimum requirement of the proposed rule. Under this assumption, carriers would incrementally increase actual operations in year one to meet the new use-or-lose requirement and this new operating level would grow by the FAA's Terminal Area Forecast (TAF) until it reached the daily limits. In the first year carrier utilization of slots will be at least 80%. After this year, any increase in operations and slot utilization is due to an increase in forecasted demand. Total benefits and costs for the regulatory case are estimated at \$74,696,596 (\$65,242,900 Present Value at 7%) for benefits and \$53,056,768 (\$46,341,836 Present Value at 7%) for costs, assuming the highest cost secondary market alternative (either alternative four or five) is adopted. Moreover, the FAA believes that this rule would improve utilization of existing slots, possibly increase a carrier's penalty for retaining slots of limited value and thus result in the return of some slots, and would result in net benefits over one year.

TOTAL COST AND BENEFITS OF ALTERNATIVES FOUR OR FIVE OF THE PROPOSED RULE

Year 2012	Benefits	Present value (7%)	Costs	Present value (7%)	Net benefits
Regulatory Case	\$74,696,596	\$65,242,900	\$53,056,768	\$46,341,836	\$18,901,064

Who is potentially affected by this rule?

- Operators of scheduled and non-scheduled, domestic and international flights, and new entrants who do not yet operate at JFK, LGA, and EWR.

- All communities with air service to JFK, LGA, and EWR.
- Passengers of scheduled flights to JFK, LGA, and EWR.

- The Port Authority of New York and New Jersey, which operates the airports.
- FAA Air Traffic Control.

Assumptions

- All costs and benefits are in 2010 dollars.
- Costs and benefits estimated for the first year.
- Additional flights added to meet new usage requirement excludes weekends (Saturday and Sunday).
- Assume some flights rescheduled to meet new usage requirement.
- Present value discount rate of 7 percent is applied.
- Some unscheduled flights would be redirected.
- Carriers that would need to add a large number of flights in less desirable hours (hours 0600 and 2100) would return or sell those slots.

The majority of the costs and benefits from this proposed rule are from changes to the usage requirement. The secondary market and new administrative and reporting requirements result in minor benefits and costs. Benefits include consumer benefits (measured as consumer surplus) from additional flights at JFK, EWR, and LGA. Costs are attributed to the additional operating costs carriers incur for these added flights to meet the proposed usage requirement, the additional minutes of delay and any administrative and reporting costs.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The initial regulatory flexibility analysis addresses:

- Description of reasons the agency is considering the action;

The purpose of this rulemaking is to replace the current temporary Orders

limiting operations at LGA, JFK, and EWR with a permanent rule. Under the existing Orders the hourly scheduled operations are limited to 81 at JFK, 81 at EWR, and 71 at LGA, and unscheduled operations are limited to 3 at LGA. This proposal, if adopted, would replace those Orders and continue the existing limits on scheduled operations in addition to limiting unscheduled operations to 2 per hour at JFK and 1 at EWR and establishing daily scheduled operations limits. The FAA also intends to increase the use of slots through a revised usage requirement and secondary market.

- Statement of the legal basis and objectives of the proposed rule;

This rulemaking is promulgated under the authority described in Title 49 U.S.C. Subtitle VII, Part A, Subpart I, Sections 40101, 40103, 40105, and 41712 and in Title 15 U.S.C. Section 21. 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 the FAA deems necessary for safe and efficient utilization.

- Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule;

This rule would replace existing FAA Orders and does not duplicate, overlap, or conflict with other federal rules.

- Description of the recordkeeping and other compliance requirements. The FAA proposes a secondary market and offers five alternatives. The secondary market would permit a carrier to buy, sell, or lease a slot to another carrier or to trade a slot with another carrier. For all five alternatives, each carrier party to the negotiated transaction would be required to submit a request for approval to the FAA along with the final terms of the transaction including the names of all parties to the transaction, the consideration offered by each party, the effective date of the transfer, and, if appropriate, the length of the lease. For four of the alternatives, carriers would also submit information that would be submitted to the bulletin board through either the carrier or the FAA.

The scheduled carrier would incur reporting costs for buying, selling, leasing or trading a slot. While these costs for an operator are minimal, largely voluntary, and can provide revenue opportunities for small operators, a full discussion of these costs now follows. For all five alternatives, each carrier party to the negotiated transaction would be

required to submit a request for approval to the FAA along with the final terms of the transaction including the names of all parties to the transaction, the consideration offered by each party, the effective date of the transfer, and, if appropriate, the length of the lease. Each respondent would require 30 minutes, that includes 30 minutes for the transferring carrier and 30 minutes for the receiving carrier. Given the legal nature of the agreement a lawyer would be retained with an hourly burden labor rate⁸⁰ of \$89.89.

For alternatives that require the bulletin board the FAA estimates that carriers would need at least one hour to report the buying, selling, or trading of a slot. As mentioned above the FAA estimates that carriers would post up to 25 trades. To estimate the annual reporting costs to carriers for buying, selling, or trading on the bulletin board, the FAA multiplied the estimated number of annual reports by the number of hours needed per report and the wage. The hourly burden labor rate was for a computer support specialist⁸¹ at \$30.74. Total yearly cost to carriers, at all three airports, is estimated to be between \$461 and \$2,305. For alternative 4, there is also the added cost to carriers of submitting bids on the bulletin board. The bidding period would last 14 days, and the FAA estimates that bidders would spend approximately 2 hours dealing with the bid over the course of 14 days. Given the public nature of the bid, carriers would seek legal review before postings bids for an hourly burden labor rate for a lawyer⁸² of \$89.89. The rate multiplied by 2 hours per bid sums to \$179.78. Again, the FAA estimated that there would be roughly 25 notices per airport a year with approximately 5 bids per notice for a total of bids a year.

- A description and estimated number of small entities to which the rule would apply.

Any scheduled carrier, employing less than 1,500 employees, with existing slots or wanting a slot today would be affected by this rule. There are two

⁸⁰ <http://www.bls.gov/oes/current/oes532011.htm>; Bureau of Labor Statistics Occupational Employment and Wages Statistics; Lawyer (May 2009); In May 2009, the Employee Benefit Research Institute, using a Bureau of Labor Statistics Survey of employee benefits estimated the total 2009 benefit as a percentage of payroll at 30.2 percent.

⁸¹ <http://www.bls.gov/oes/current/oes151041.htm>, Occupational Employment and Wages, May 2009; (15-1041 Computer Support Specialists).

⁸² <http://www.bls.gov/oes/current/oes532011.htm>; Bureau of Labor Statistics Occupational Employment and Wages Statistics; Lawyer (May 2009); In May 2009, the Employee Benefit Research Institute, using a Bureau of Labor Statistics Survey of employee benefits estimated the total 2009 benefit as a percentage of payroll at 30.2 percent.

carriers operating scheduled service with less than 1,500 employees and one carrier with scheduled service that has slightly more than 1,500 employees. Also, unscheduled operators that employ less than 1,500 employees would be considered small entities.

The delay costs for the small entities at the New York City area airports would not result in a significant economic impact. The annual delay cost equals the average of delay per flight, multiplied by the total number of flights, then by 50 percent attributed to ground delay, and then multiplied by the average airplane operating cost. When this total delay cost is divided by annual revenue the result is less than 2 percent for the small entity scheduled operators. The FAA believes that compliance cost less than two percent of annual revenue is not a significant economic impact.

A small number of unscheduled passenger flights planning to operate at EWR or JFK may have to operate at another New York City area airport, such as Teterboro, if they are unable to obtain a reservation. This change in plans may result in an additional ground transportation cost to or from the alternative airport. However, when considering the cost of travel by private jet compared to commercial passenger service, any additional ground transportation cost is not significant.

The FAA believes the nonscheduled cargo carriers would not have a significant economic impact, as their flights would continue and most of their flights occur at night and would not incur delay costs.

The FAA considered two alternatives to the proposed rule. The first alternative was to simply extend the existing Orders. This alternative was rejected because the FAA wanted to increase competition by making slots available to more operators. The FAA believes these operators are likely to be small entities. The second alternative was to remove the existing Orders. This alternative would result in unacceptable delay costs from the increase in operations.

Thus, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign

commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

This action contains the following proposed information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

Title: Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport.

Summary: The FAA proposes to replace the current temporary Orders limiting operations with a permanent

rule to address the issues of slot management at JFK, EWR, and LGA airports. The rule would limit scheduled and unscheduled operations. The FAA also proposes to adjust the usage requirements at the New York City area airports, establish a cap on unscheduled operations at JFK and EWR, and develop a secondary market for the exchange of slots. More information on the proposed requirements is detailed elsewhere in today’s notice.

Use of: The information is reported to the FAA by carriers holding slots at JFK, EWR, or LGA. This information is used to allocate, track usage, withdraw, and confirm transfers of slots among the operators and facilitates the transfer of slots in the secondary market. The FAA uses this information in order to maintain an accurate accounting of operations to ensure compliance with the operations permitted under the rule and those actually conducted at the airports.

The FAA also uses this information to help provide access to unscheduled operators seeking access to these airports.

The slot exchange information posted on the FAA’s electronic bulletin board is designed to enhance competition by making the availability of slots known to new entrant and incumbent carriers seeking to serve these markets.

Respondents: Respondents would be carriers with existing service at JFK, EWR, and LGA and new carriers initiating service at those airports in the future (by acquiring slots through slot allocation or the secondary market). Various carriers included in these totals have service at all three airports. There are 26 operating carriers at LGA, 46 at EWR, and 75 at JFK.

Respondents also would be unscheduled operators seeking to operate at LGA, JFK, or EWR. For the period from May through August 2010, there were approximately 50 unscheduled operators at LGA, 25 at JFK, and 30 at EWR that used the respective airports for more than five operations.

Frequency: The information collection requirements of the rule involve carriers notifying the FAA of their use of slots. Each carrier must notify the FAA of its: (1) Slot requests for the upcoming season; (2) slot usage (operations); (3) requests for approval of one-for-one slot trades; (4) requests for approval of slots transferred between carriers under the same marketing control; and (5) submissions of bulletin board notices of intent to transfer slots and requests for approval of secondary market transactions. The information collection

requirements also include reservation requests from unscheduled operators seeking access to the three airports during the slot-controlled hours.

Slot requests for the upcoming scheduling season would take place twice per year, before the winter and summer IATA scheduling seasons. Slot usage reporting would occur four times per year, with interim and final usage reports for each scheduling season. Requests for approval of one-for-one trades, request for approvals for slots transferred between carriers under the same marketing control, and submission of bulletin board notices regarding the intent to transfer slots would all be event-driven and would occur as frequently as secondary market transactions warrant. The FAA estimates there would be approximately 2,700 secondary market transactions per year for all three airports. Similarly, reservation requests by unscheduled operators would also be event-driven and could occur as frequently as the hourly limit at the respective airport.

Annual Burden Estimate: The annual reporting burden for each subsection of the rule is presented below. These burden estimates consist of costs that would result from the imposition of this proposed rule. These include: A reservation system for unscheduled operations at JFK, EWR, and LGA, schedule requests for the upcoming season, reporting and monitoring of the usage requirement, and the documentation required for the secondary market bulletin board at all three airports.

Reservation system: 51 unscheduled operations per day (34 at JFK, 17 at EWR). From prior experience with the reservation system at LGA the reporting time per reservation is two minutes. LGA would continue to have up to 48 unscheduled operations per day.

JFK:

- (34 reservations per day) * (2 minutes per reservation) * (365 days per year) = Total Annual Hourly Burden = 414 hours

EWR:

- (17 reservations per day) * (2 minutes per reservation) * (365 days per year)—Total Annual Hourly Burden = 207 hours

LGA:

- *Monday–Fridays:* (48 reservations per day) * (2 minutes per reservation) * (5 days per week) * (52 weeks per year) = Total Annual Hourly Burden = 416 hours
- *Sundays:* (30 reservations per day) * (2 minutes per reservation) * (1 day per week) * (52 weeks per year) = Total Annual Hourly Burden = 52 hours

- Total burden (Mon–Fri, Sunday): = Total Annual Hourly Burden = 468 hours

Schedule Requests for Upcoming Season: The FAA estimates it would take each carrier approximately two hours per scheduling season to submit the required schedule request reports. These reports would be submitted to the FAA on a semiannual basis, corresponding with the winter and summer IATA scheduling seasons. There are 26 operating carriers at LGA, 46 at EWR and 75 at JFK for a total of 147 operating carriers at the three NY airports.

(147 carriers) * (2 hours per report) * (2 scheduling seasons) = Total Annual Hourly Burden = 588 hours⁸³

Usage requirement: To confirm adherence to the usage requirement, the FAA proposes to require carriers to submit an interim and final usage report to the FAA, for each scheduling season. The interim report would be due by September 1 for the summer scheduling season and February 1 for the winter scheduling season. The final report would be due no later than 30 days after the end of the respective scheduling season. The interim and final reports should detail slot usage for each day of the respective scheduling season and report the following information for each slot held: the slot number, airport code, time, and arrival or departure designation; the operating carrier; the date and scheduled time of the actual operation, the flight number, origin and destination, and aircraft type identifier; and whether the flight was actually conducted.

(147 carriers) * (1.5 hours per submittal) * (4 occurrences per year) = Total Annual Hourly Burden = 882 Hours

Secondary market transactions: Reporting costs for the secondary market would vary according to which of the five alternatives the FAA chooses. Alternative 1 is the least costly. This alternative is very similar to current practices for lease agreements. This alternative does not include the costs for a bulletin board, rather carriers would privately-negotiate buy, sell, lease, and trade transactions. Alternatives 2, 3, 4, and 5 alternatively propose a bulletin board to post information on buy, sell, trade, and lease transactions. Costs include the reporting by carriers to the FAA.

From prior experience, the FAA estimates that there would be

⁸³ This analysis does not assume that a carrier operating at more than one of the affected airports would recognize an economy of scale, thus reducing the estimated amount of time required to comply with the proposed requirements.

approximately 2,700 slot transfer transactions yearly for all three airports. This amounts to roughly 575 transactions for EWR, 1480 for LGA, and 645 for JFK. Many transactions include trades among carriers with unified marketing control, and those carriers could use the simplified process under proposed § 93.46 to reduce the reporting burden. The proposed oversight of secondary market competition may require submission of additional information, but the DOT expects few transactions would be reviewed.

Secondary Market Trades (not via Bulletin Board):

- 2,700 (total transactions) – 75 (bulletin board transactions) = 2,625 secondary market trades
- 2,625 (secondary market trades) * 1 hour per transaction (or 30 minutes per party) = 2,625 hours

The FAA estimates that there would be roughly 25 notices per airport per year that would be posted to a bulletin board under alternatives 2, 3, and 4. The FAA estimates carriers would spend 2 hours preparing and submitting those notices. For alternative 4, the FAA estimates approximately 5 bids per notice for a total of 375 bids at the three airports per year. The FAA estimates that bidders would spend approximately 2 hours dealing with each bid.

Secondary Market Bulletin Board Transactions:

(125 bids per airport) * (2 hours to respond to bids) * (3 airports) = Total Annual Hourly Burden = 750 hours

Summary

The agency requests comments to—
(1) Evaluate whether the proposed information requirements are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by March 9, 2015, and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of

Information and Regulatory Affairs, OMB, via facsimile at (202) 395-6974, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures*, identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion 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.)". It has been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental

review is required. A documented categorical exclusion has been filed in the docket.

V. Executive Order Determinations

A. Executive Orders 12866 and 13563

See the "Regulatory Evaluation" discussion in the "Regulatory Notices and Analyses" section elsewhere in this preamble.

B. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA

will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD-ROM, mark the outside of the disk or CD-ROM, and identify electronically within the disk or CD-ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from 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>.

Copies may also be obtained 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. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

VII. The Proposed Amendment

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (air).

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

- 1. Revise the authority citation for part 93 to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40106, 40109, 40113, 41712, 44502, 44514, 44701, 44715, 44719, 46301; 15 U.S.C. 21.

- 2. Amend part 93 by adding subpart C to read as follows:

Subpart C—LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport Slot Management Rules

Sec.

- 93.35 Applicability.
 93.36 Definitions.
 93.37 Slots for scheduled arrivals and departures.
 93.39 Determination of historic precedence.
 93.41 Allocation of slots.
 93.43 Reversion, suspension, and withdrawal of slots.
 93.44 Reporting requirements.
 93.45 Transfer of slots.
 93.46 Operation of slots by carriers under common marketing control.
 93.47 Oversight of competitive issues.
 93.49 Unscheduled operations.

Subpart C—John F. Kennedy International Airport, Newark Liberty International Airport, LaGuardia Airport Slot Management Rules

§ 93.35 Applicability.

(a) This subpart prescribes the air traffic rules for the arrival and departure of aircraft used for scheduled and unscheduled service, other than helicopters, at John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR), and LaGuardia Airport (LGA).

(b) This subpart prescribes procedures for the assignment, transfer, lease, and withdrawal of slots issued by the FAA for scheduled operations at JFK, EWR, and LGA.

(c) This subpart applies to operations at:

- (1) JFK, daily from 0600 through 2259, Eastern time;
- (2) EWR, daily from 0600 through 2259, Eastern time; and
- (3) LGA, Monday through Friday from 0600 through 2159, Eastern time, and Sunday from 1200 through 2159, Eastern time.

(d) A U.S. or, to the extent provided for by international agreements, foreign air carrier conducting operations solely under another carrier's marketing control with unified inventory control is

not considered a separate carrier under this subpart.

§ 93.36 Definitions.

For purposes of this subpart: *Airport Reservation Office (ARO)* is an operational unit of the FAA's David J. Hurley Air Traffic Control System Command Center. Its responsibilities include the administration of reservations for unscheduled operations at JFK, EWR, and LGA (excluding reservations for public charter operations allocated under § 93.49(d)).

Carrier is a U.S. or foreign air carrier with authority to conduct scheduled service or regularly conducted commercial service under parts 121, 129, or 135 of this chapter and the appropriate economic authority under 14 CFR chapter II and 49 U.S.C. chapter 401, 411, and 413.

Enhanced Computer Voice Reservation System (e-CVRS) is the FAA system used to make an arrival or departure reservation at JFK, EWR, or LGA. Reservations are made through a touch-tone telephone interface, an Internet Web interface, or directly through the ARO.

New entrant is a U.S. or foreign air carrier that holds or operates fewer than 20 slots on any day of the week, in any combination during the slot-controlled hours, at the respective airport, with that number including any slots that have been returned to the FAA after the slot return deadline or had slots revoked by the FAA for insufficient use, during the two corresponding scheduling seasons immediately preceding the scheduling season for which a slot allocation is conducted.

Public charter is defined in 14 CFR 380.2 as a one-way or roundtrip charter flight to be performed by one or more direct carriers that is arranged and sponsored by a charter operator.

Public charter operator is defined in 14 CFR 380.2 as a U.S. or foreign public charter operator.

Reservation is an authorization received from the FAA to operate an unscheduled arrival to or departure from JFK, EWR, or LGA for a specific 60-minute period during the slot-controlled hours.

Scheduled operation is the arrival or departure segment of any operation regularly conducted by a carrier between JFK, EWR, or LGA and another airport regularly served by the carrier.

Scheduled series of flights is at least 5 operations on the same day-of-week that represent substantially the same scheduled service. These operations generally would be at the same time within a specific 30-minute period, have the same flight number, serve the same

market, and be distributed regularly throughout the season.

Slot is the operational authority assigned by the FAA to a carrier to conduct one scheduled operation or a series of scheduled operations, or a series of public charter operations that are operated more than three times per month, at JFK, EWR, or LGA on a particular day(s) of the week during a specific 30-minute period.

Slot-controlled hours are:

- (1) For JFK, daily from 0600 through 2259, Eastern time;
- (2) For EWR, daily from 0600 through 2259, Eastern time;
- (3) For LGA, Monday through Friday from 0600 through 2159, Eastern time, and Sunday from 1200 through 2159, Eastern time.

Slot return deadline is the date by which a carrier must return a slot that it does not intend to operate. For the summer season, the deadline is January 15. For the winter season, the deadline is August 15.

Standalone slot transaction is a slot transfer by one carrier to another carrier (whether by sale, purchase, lease, or trade), akin to monetizing a slot. A standalone slot transaction would occur independently of any slot transfers that would result from a carrier merger or acquisition, defined as a transaction that combines the ownership/operation/control of two (or possibly more) carriers into a single entity. Specifically, slot divestitures undertaken in response to a DOJ investigation of an airline merger or acquisition under the Hart Scott Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, would not be considered standalone slot transactions.

Summer scheduling season begins on the last Sunday of March.

Unscheduled operation is an arrival or departure segment of any operation that is not regularly conducted by an air carrier, foreign air carrier, or other operator of an aircraft, excluding helicopters, between JFK, EWR, or LGA and another service point. Certain types of air carrier and foreign air carrier operations are considered unscheduled operations under this subpart including: on demand, public and other charter flights; hired aircraft services; extra sections of scheduled flights; ferry flights; and other non-passenger flights.

Winter scheduling season begins on the last Sunday of October.

§ 93.37 Slots for scheduled arrivals and departures.

(a) No person may operate certain public charters or any scheduled arrival into or departure out of JFK, EWR, or LGA during the slot-controlled hours

without first obtaining a slot under this subpart.

(b) Except as otherwise approved by the Administrator, the number of slots are limited to no more than 81 per hour at JFK, 81 per hour at EWR, and 71 per hour at LGA.

(1) At JFK, the number of slots may not exceed 44 in any 30-minute period, 81 in any 60-minute period, or a total of 1,205 between the slot-controlled hours of 0600 and 2159.

(2) At EWR, the number of slots may not exceed 44 in any 30-minute period, 81 in any 60-minute period, or a total of 1,205 between the slot-controlled hours of 0600 and 2159.

(3) At LGA, the number of slots may not exceed 38 in any 30-minute period, 71 in any 60-minute period, or a total of 1,136 during the slot-controlled hours.

(4) The FAA may adjust the number of arrival and departure slots in any period as necessary based on the actual or potential delays created by such number or other considerations relating to congestion, airfield capacity, and the air traffic control system.

§ 93.39 Determination of historic precedence.

(a) Any carrier holding operating authorizations (except for temporary, one-season-only, or other contingent operating authorizations) allocated under the Order limiting operations at JFK, the Order limiting operations at EWR, or the Order limiting operations at LGA, as evidenced by the FAA's records, will be assigned corresponding slots in 30-minute periods consistent with the limits under § 93.37(b) and the carrier's summer and winter season schedules as approved by the FAA. The carrier will have historic precedence, subject to the requirements of this section, for these slots for the subsequent corresponding season.

(b) To be eligible for historic precedence, an allocated slot must be used at least 80% of the time for which it is allocated during the scheduling period, subject to the following:

(1) Absent approval by the FAA, the same flight or series of flights must be reported as used for an allocated slot throughout the summer or winter season.

(2) For a series of flights operated on more than one day-of-week, each day-of-week is considered a separate series of flights.

(3) The FAA will treat as used a slot held by a carrier that ceases operations using that slot due to a strike.

(4) The FAA may waive these usage requirements in the event of a highly unusual and unpredictable condition

which is beyond the carrier's control and which affects carrier operations for a period of five or more consecutive days.

(5) The FAA may waive these usage requirements for a period of up to 180 days if a slot is allocated to or otherwise acquired by a new entrant carrier.

(c) A slot allocated by the FAA under § 93.41(i) does not have historic precedence for the subsequent corresponding season.

§ 93.41 Allocation of slots.

(a) Requests for slots must be submitted to the FAA Slot Administration Office at the address and by the deadline published by the FAA in a **Federal Register** notice for each summer and winter scheduling season. The request must include the following minimum information:

(1) The requesting carrier must submit its entire schedule at JFK, EWR, and LGA, as appropriate, for the particular season, noting which requests, if any, are in addition to, or changes from, the previous corresponding season at the respective airport.

(2) Each slot request must indicate the effective dates of the request, proposed days of operation, proposed time of operation (indicated as either UTC or local time), whether the operation is for an arrival or departure, flight number, and aircraft type.

(b) The FAA first will accommodate requests for slots for which the carrier has historic precedence and are for the same time period as the previous corresponding season.

(c) After accommodating historic precedence slots, the remaining slots available for allocation will be divided into two pools:

(1) Not less than 50% of the available slots will be for new entrants that have not returned slots to the FAA after the slot return deadline, or had slots revoked by the FAA for insufficient use, during the two corresponding scheduling seasons immediately preceding the scheduling season for which a slot allocation is being conducted; and

(2) The remainder will be for any carrier.

(d) Within each pool, the FAA first will accommodate carrier requests to retire slots for operational reasons.

(e) Within each pool, the FAA next will accommodate carrier requests to extend an allocated seasonal slot to year-round service.

(f) Within each pool, the FAA then will accommodate any remaining carrier requests. If all requests cannot be accommodated, the FAA will consider the following factors:

(1) The effective period of operation;

(2) The extent and regularity of intended slot use with priority given to year-round service;

(3) Schedule constraints of carriers requesting slots; and

(4) The operational impacts of scheduled demand, including the distribution of flights and the mix of arrivals and departures.

(g) If an available slot cannot be allocated according to the factors in paragraph (f) of this section, the FAA may consider the following factors:

(1) Airport facilities constraints including gates, terminals, parking, customs and immigration, and curfews; and

(2) Competition and impacts to markets served.

(h) A carrier allocated a slot under paragraph (f) of this section must operate that slot and may not transfer it for two corresponding seasons, except that carrier may engage in a one-for-one trade for operational reasons.

(i) Notwithstanding paragraphs (a) through (g) of this section, the FAA may assign an available slot to a carrier on a non-permanent, first-come, first-served basis subject to permanent assignment under this subpart. Any remaining unassigned slots may be made available to unscheduled operations on a non-permanent basis according to the procedures in § 93.49.

(j) The FAA will assign each slot a designation that consists of the airport code, slot number, 30-minute time period, frequency, summer or winter season, and arrival or departure designation.

(k) If directed by the Office of the Secretary of Transportation, the FAA will not apply the provisions of this section to any foreign air carrier or commuter operator of a country that provides slots to U.S. air carriers and commuter operators on a basis more restrictive than provided under this subpart.

§ 93.43 Reversion, suspension, and withdrawal of slots.

(a) Absent prior approval by the FAA and except as otherwise provided in this subpart, a carrier that ceases all operations at an airport may transfer, sell, or lease any slots to another carrier as provided in § 93.45, but the carrier may not hold any slots for a period exceeding 2 years after the season in which it ceases all operations at the respective airport.

(b) If a carrier's DOT economic authority or FAA operating certificate is suspended, surrendered, or revoked, any slots held by that carrier revert to the FAA. If another carrier is operating

the slots under an agreement with the holding carrier, the FAA may allocate those slots on a temporary basis not exceeding the duration of the agreement.

(c) The FAA may retime or temporarily suspend slots at any time to fulfill operational needs. The FAA will provide a 45-day notice, unless shorter notice is required for operational needs, to an affected carrier prior to temporarily suspending a slot that specifies the date by which operations using that slot must cease. The FAA will determine the suspended slots by lottery of slot holdings in the particular time period during which slots are being suspended. The FAA will reassign a suspended slot, if at all, only to the carrier from which it was suspended, provided the carrier continues to conduct scheduled operations at the respective airport.

(d) If the FAA determines to reduce the number of allocated slots following a determination of decreased airport capacity, it may permanently withdraw slots to reach the accepted limit. The FAA will determine the withdrawn slots by lottery of slot holdings in the particular time period during which slots are being withdrawn. Following withdrawal, those slots would cease to exist.

(e) The FAA will not retime, suspend, or withdraw slots, under this section, of a carrier that holds fewer than 20 slots on any day of the week at the respective airport.

§ 93.44 Reporting requirements.

(a)(1) No later than September 1 for the summer scheduling season and February 1 for the winter scheduling season, each carrier holding a slot must submit an interim report of slot usage for each day of the applicable scheduling season.

(2) No later than 30 days after the last day of the applicable scheduling season, each carrier must submit a final report of the completed operations for each day of the entire scheduling season.

(b) The report required under paragraph (a) this section must contain, in a format acceptable to the FAA, the following information for each slot:

(1) The slot number, airport code, time, and arrival or departure designation;

(2) The operating carrier;

(3) The date and scheduled time of each of the operations conducted with the slot, including the flight number, origin and destination, and aircraft type identifier; and

(4) Whether the flight was actually conducted.

(c) The FAA may withdraw the slots of any carrier that does not meet the reporting requirements of paragraph (a) of this section.

§ 93.45 Transfer of slots. [ALTERNATIVE ONE]

(a) Except as otherwise provided in this subpart, a carrier may buy, sell, or lease a slot to another carrier for any consideration and for any time period, and a carrier may trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport.

(b) Requests for FAA approval of transfers under this section must be submitted in writing by all parties to the transaction to the FAA Slot Administration Office in a manner acceptable to the Administrator. Requests must provide the names of the transferor and recipient; business address and telephone number of the person representing the transferor and recipient; whether the slot is to be used for an arrival or departure; and the slot designation of the slot as described in § 93.41(j).

(c) The request for FAA approval also must include the final terms of the transaction including:

(1) The names of all parties to the transaction;

(2) The consideration offered by each party;

(3) The effective date of the transfer; and

(4) The length of the lease, if applicable.

(d) Prior to approving the transfer, the FAA will confirm the transferred slots come from the transferor's FAA-approved slot holdings and that no transfer limitations apply.

(e) The Secretary may review the final terms of the transaction for any anti-competitive effects or adverse public interest effects under § 93.47. The FAA may not approve the transfer until the Secretary notifies the FAA of the Secretary's approval or non-objection or the 14-day notice period under § 93.47(b) elapses.

(f) The slot may not be used by the transferee until the conditions of this section have been met, and the FAA provides notice of its approval of the transfer.

§ 93.45 Transfer of slots. [ALTERNATIVE TWO]

(a) Except as otherwise provided in this subpart, a carrier may buy, sell, or lease a slot to another carrier for any consideration and for any time period, and a carrier may trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport.

(b) Except as permitted under paragraphs (c), (d), (e), (f), and (g) of this

section, a carrier must provide notice to the FAA four months before its intended transaction date of its intent to transfer a slot prior to negotiating with another carrier. The notice of intent to transfer must include the slot number and time, effective date of the transfer, and, if applicable, the duration of the lease. The FAA will post a notice of the offer to transfer the slot and relevant details on the FAA Web site at <http://www.faa.gov>. The notice will state the opening and closing dates for bids and the contact information of the transferring carrier for bid submission. The offering carrier may accept any bid and negotiate the final terms of the transfer, but it may consider only bids submitted during the bidding period.

(c) A carrier may trade a slot with another carrier on a one-for-one basis without providing notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification by both carriers that no consideration or promise of consideration was provided by either party to the trade.

(d) A carrier may lease a slot to another carrier without notice to the FAA under paragraph (b) of this section provided the lease is effective for no longer than two scheduling seasons.

(e) Carriers with agreements where one carrier operates solely under the other's marketing control may transfer a slot with another party subject to that agreement without notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification of that agreement by both carriers.

(f) Prior to [90 DAYS AFTER EFFECTIVE DATE], a carrier may buy, sell, or trade with another carrier a slot that was subject to a lease or short-term trade under the Order limiting operations at JFK, Order limiting operations at EWR, or Order limiting operations at LGA without notice to the FAA under paragraph (b) of this section.

(g) Requests for FAA approval for transfers under this section must be submitted in writing by all parties to the transaction to the FAA Slot Administration Office in a manner acceptable to the Administrator.

Requests must provide the names of the transferor and recipient; business address and telephone number of the person representing the transferor and recipient; whether the slot is to be used for an arrival or departure; and the slot designation of the slot as described in § 93.41(j).

(h) The request for FAA approval also must include the final terms of the transaction including, as applicable:

- (1) The names of all parties to the transaction;
- (2) A description of the transaction;
- (3) The consideration offered by each party;
- (4) The names of all bidders and consideration offered by each bidder;
- (5) The effective date of the transfer; and
- (6) The length of the lease.

(i) Prior to approving the transfer, the FAA will confirm the relevant slots are part of the carrier's FAA-approved slot holdings and that no transfer limitations apply.

(j) The Secretary may review the final terms of the transaction for any anti-competitive effects or adverse public interest effects under § 93.47. The FAA may not approve the transfer until the Secretary notifies the FAA of the Secretary's approval or non-objection or the 14-day notice period under § 93.47(b) elapses.

(k) The slot may not be used by the transferee until the conditions of this section have been met, and the FAA provides notice of its approval of the transfer.

§ 93.45 Transfer of slots. [ALTERNATIVE THREE]

(a) Except as otherwise provided in this subpart, a carrier may buy, sell, or lease a slot to another carrier for any consideration and for any time period, and a carrier may trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport.

(b) Except as permitted under paragraphs (c), (d), (e), and (f) of this section, a carrier may negotiate tentative terms of a transfer without providing advance notice to the FAA. A carrier must provide notice to the FAA four months before its intended transaction date of these tentative transfer terms that includes the slot number and time, effective date of the transfer, consideration offered, and, if applicable, the duration of the lease. The FAA will post a notice of the relevant details of the transfer on the FAA Web site at <http://www.faa.gov>. The notice will state the opening and closing dates for bids and the contact information of the transferring carrier(s) for bid submission. The offering carrier may accept the tentative transaction or any counterbid and then negotiate the final terms of the transfer, but it may consider only bids submitted during the bidding period.

(c) A carrier may trade a slot with another carrier on a one-for-one basis without providing notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification by both

carriers that no consideration or promise of consideration was provided by either party to the trade.

(d) A carrier may lease a slot to another carrier without notice to the FAA under paragraph (b) of this section provided the lease is effective for no longer than two scheduling seasons.

(e) Carriers with agreements where one carrier operates solely under the other's marketing control may transfer a slot with another party subject to that agreement without notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification of that agreement by both carriers.

(f) Prior to [90 DAYS AFTER EFFECTIVE DATE], a carrier may buy, sell, or trade with another carrier a slot that was subject to a lease or short-term trade under the Order limiting operations at JFK, Order limiting operations at EWR, or Order limiting operations at LGA without notice to the FAA under paragraph (b) of this section.

(g) Requests for FAA approval for transfers under this section must be submitted in writing by all parties to the transaction to the FAA Slot Administration Office in a manner acceptable to the Administrator.

Requests must provide the names of the transferor and recipient; business address and telephone number of the person representing the transferor and recipient; whether the slot is to be used for an arrival or departure; and the slot designation of the slot as described in § 93.41(j).

(h) The request for FAA approval also must include the final terms of the transaction including:

- (1) The names of all parties to the transaction;
- (2) The consideration offered by each party;
- (3) The names of all bidders and consideration offered by each bidder, if applicable;
- (4) The effective date of the transfer; and
- (5) The length of the lease, if applicable.

(i) Prior to approving the transfer, the FAA will confirm the transferred slots come from the transferor's FAA-approved slot holdings and that no transfer limitations apply.

(j) The Secretary may review the final terms of the transaction for any anti-competitive effects or adverse public interest effects under § 93.47. The FAA may not approve the transfer until the Secretary notifies the FAA of the Secretary's approval or non-objection or the 14-day notice period under § 93.47(b) elapses.

(k) The slot may not be used by the transferee until the conditions of this section have been met, and the FAA provides notice of its approval of the transfer.

§ 93.45 Transfer of slots. [ALTERNATIVE FOUR]

(a) Except as otherwise provided in this subpart, a carrier may buy, sell, or lease a slot to another carrier for any consideration and for any time period, and a carrier may trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport.

(b) Except as permitted under paragraphs (c), (d), (e), and (f) of this section, a carrier must provide notice to the FAA four months before its intended transaction date of its intent to transfer a slot prior to negotiating with another carrier. The notice of intent to transfer must include the slot number and time, effective date of the transfer, and, if applicable, the duration of the lease. The FAA will post a notice of the offer to transfer the slot and relevant details on the FAA Web site at <http://www.faa.gov>. The notice will state the opening and closing dates for bids and the contact information of the transferring carrier. Bids must be submitted through the bulletin board for public posting. The offering carrier may accept any bid and negotiate the final terms of the transfer, but it may consider only bids submitted during the bidding period.

(c) A carrier may trade a slot with another carrier on a one-for-one basis without providing notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification by both carriers that no consideration or promise of consideration was provided by either party to the trade.

(d) A carrier may lease a slot to another carrier without notice to the FAA under paragraph (b) of this section provided the lease is effective for no longer than two scheduling seasons.

(e) Carriers with agreements where one carrier operates solely under the other's marketing control may transfer a slot with another party subject to that agreement without notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification of that agreement by both carriers.

(f) Prior to [90 DAYS AFTER EFFECTIVE DATE], a carrier may buy, sell, or trade with another carrier a slot that was subject to a lease or short-term trade under the Order limiting operations at JFK, Order limiting operations at EWR, or Order limiting

operations at LGA without notice to the FAA under paragraph (b) of this section.

(g) Requests for FAA approval for transfers under this section must be submitted in writing by all parties to the transaction to the FAA Slot Administration Office in a manner acceptable to the Administrator. Requests must provide the names of the transferor and recipient; business address and telephone number of the person representing the transferor and recipient; whether the slot is to be used for an arrival or departure; and the slot designation of the slot as described in § 93.41(j).

(h) The request for FAA approval also must include the final terms of the transaction including:

(1) The names of all parties to the transaction;

(2) The consideration offered by each party;

(3) The names of all bidders and consideration offered by each bidder, if applicable;

(4) The effective date of the transfer; and

(5) The length of the lease, if applicable.

(i) Prior to approving the transfer, the FAA will confirm the transferred slots come from the transferor's FAA-approved slot holdings and that no transfer limitations apply.

(j) The Secretary may review the final terms of the transaction for any anti-competitive effects or adverse public interest effects under § 93.47. The FAA may not approve the transfer until the Secretary notifies the FAA of the Secretary's approval or non-objection or the 14-day notice period under § 93.47(b) elapses.

(k) The slot may not be used by the transferee until the conditions of this section have been met, and the FAA provides notice of its approval of the transfer.

§ 93.45 Transfer of slots. [ALTERNATIVE FIVE]

(a) Except as otherwise provided in this subpart, a carrier may buy, sell, or lease a slot to another carrier for currency only and for any time period, and a carrier may trade a slot with another carrier for a slot at any U.S. or foreign slot-controlled airport.

(b) Except as permitted under paragraphs (c), (d), (e), and (f) of this section, a carrier must provide notice to the FAA four months before its intended transaction date of its intent to transfer a slot. The notice of intent to transfer must include the slot number and time, effective date of the transfer, and, if applicable, the duration of the lease. The FAA will post a notice of the offer

to transfer the slot and relevant details on the FAA Web site at <http://www.faa.gov>. The notice will state the opening and closing dates for bids but not the identity of the transferring carrier. Bids must be submitted through the bulletin board for public posting. The identity of the bidders may not be disclosed during the bidding period. The offering carrier must accept the highest bid submitted during the bidding period.

(c) A carrier may trade a slot with another carrier on a one-for-one basis without providing notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification by both carriers that no consideration or promise of consideration was provided by either party to the trade.

(d) A carrier may lease a slot to another carrier without notice to the FAA under paragraph (b) of this section provided the lease is effective for no longer than two scheduling seasons.

(e) Carriers with agreements where one carrier operates solely under the other's marketing control may transfer a slot with another party subject to that agreement without notice to the FAA under paragraph (b) of this section provided the request for FAA approval also includes a certification of that agreement by both carriers.

(f) Prior to [90 DAYS AFTER EFFECTIVE DATE], a carrier may buy, sell, or trade with another carrier a slot that was subject to a lease or short-term trade under the Order limiting operations at JFK, Order limiting operations at EWR, or Order limiting operations at LGA without notice to the FAA under paragraph (b) of this section.

(g) Requests for FAA approval for transfers under this section must be submitted in writing by all parties to the transaction to the FAA Slot Administration Office in a manner acceptable to the Administrator. Requests must provide the names of the transferor and recipient; business address and telephone number of the person representing the transferor and recipient; whether the slot is to be used for an arrival or departure; and the slot designation of the slot as described in § 93.41(j).

(h) The request for FAA approval also must include the final terms of the transaction including:

(1) The names of all parties to the transaction;

(2) The price offered by each bidder;

(3) The effective date of the transfer; and

(4) The length of the lease, if applicable.

(i) Prior to approving the transfer, the FAA will confirm the transferred slots come from the transferor's FAA-approved slot holdings and that no transfer limitations apply.

(j) The Secretary may review the final terms of the transaction for any anti-competitive effects or public interest effects under § 93.47. The FAA may not approve the transfer until the Secretary notifies the FAA of the Secretary's approval or non-objection or the 14-day notice period under § 93.47(b) elapses.

(k) The slot may not be used by the transferee until the conditions of this section have been met, and the FAA provides notice of its approval of the transfer.

§ 93.46 Operation of slots by carriers under common marketing control.

A carrier that operates solely under the marketing control of another carrier may operate the other carrier's slots without transferring the slots provided that:

(a) The marketing carrier is responsible for ensuring that there are slots assigned for the planned operations of the carrier under its marketing control. The marketing carrier must submit information in advance to the FAA Slot Administration Office, at least on a seasonal basis, detailing the airport, carrier, marketed and operational flight number ranges, and effective dates.

(b) The marketing carrier must submit changes throughout the reporting period.

(c) The marketing carrier is responsible for submitting the usage reports required under § 93.44.

§ 93.47 Oversight of public interest and competitive issues.

(a) The Secretary may review a standalone slot transfer transaction conducted under § 93.45, to determine adverse public interest and/or anti-competitive effects, as described in 49 U.S.C. 40101(a). Small transactions of fewer than 8 slots in total or transfers extending for 2 or fewer seasons) would not be subject to review under this section. However, the Secretary may consider multiple transactions within a three-year period as constituting a single aggregate transaction, including transactions that involve the transfer of slots to carriers under the marketing or operational control of a single entity.

(b) The following procedures are used when conducting a review for public interest or competitive factors under paragraph (a) of this section.

(1) Within 14 days of receiving from the FAA the final terms of a transaction under § 93.45, the Secretary will notify

the parties of the Secretary's determination of whether to request and evaluate additional information. If the Secretary decides to request and evaluate additional information, the DOT will request the additional information.

(2) After receiving notice of a slot transfer under § 93.45, the FAA may not approve the transaction without further notice from the Secretary.

(3) If the Secretary does not notify the parties and the FAA within 14 days of the intent to request and evaluate additional information, the FAA may approve the transaction.

(c) The procedures for objections to public disclosure of information at 14 CFR 302.12 do not apply to information submitted to the DOT under paragraphs (a) or (b) of this section. Any person seeking confidential treatment for information submitted to the DOT under paragraphs (a) or (b) of this section must clearly designate the information for which confidential treatment is sought by including appropriate markings on each page of the submission. The DOT will not disclose such designated information to the public, except as required under the Freedom of Information Act, 5 U.S.C. 552, and pursuant to the procedures in 49 CFR part 7.

(d) Nothing in this section limits the authority of the Secretary to investigate and prohibit any unfair or deceptive practice or an unfair method of competition, as provided by 49 U.S.C. 41712.

§ 93.49 Unscheduled operations.

(a) During the slot-controlled hours, no person may operate an aircraft other than a helicopter to or from JFK, EWR, or LGA unless he or she has received, for that unscheduled operation, a reservation that is assigned by the ARO or, in the case of certain public charters, in accordance with the procedures in paragraph (d) of this section. The FAA will accept requests for reservations through the e-CVRS beginning 72 hours prior to the proposed time of arrival to or departure from the respective airport. Additional information on procedures for obtaining a reservation is available on the Internet at <http://www.fly.faa.gov/ecvrs>.

(b) Reservations, including those assigned to certain public charter operations under paragraph (d) of this section, will be available to be assigned by the ARO on a 60-minute basis as follows:

- (1) At JFK, two reservations per hour during the slot-controlled hours.
- (2) At EWR, one reservation per hour during the slot-controlled hours.

(3) At LGA, three reservations per hour during the slot-controlled hours.

(c) The ARO will receive and process all reservation requests for unscheduled arrivals and departures and assign reservations on a first-come, first-served basis determined by the time the request is received by the ARO.

(d) One reservation per hour at LGA and two reservations per day at JFK and EWR will be available for assignment to certain public charter operations prior to the 72-hour reservation window in paragraph (a) of this section.

(1) A public charter operator may request a reservation up to six months in advance of the date of the flight operation for a planned individual operation or a series of operations occurring fewer than 3 times per month. Reservation requests must be submitted to the Federal Aviation Administration, Slot Administration Office, AGC-200, 800 Independence Avenue SW., Washington, DC 20591. Requests may be made via facsimile at (202) 267-7277 or by email at 7-awa-slotadmin@faa.gov.

(2) The public charter operator must certify that its prospectus has been accepted by the Department of Transportation in accordance with 14 CFR part 380.

(3) The public charter operator must identify the call sign/flight number or aircraft registration number of the direct air carrier; the date and time of the proposed operation; the airport served immediately prior to or after JFK, EWR, or LGA; aircraft type; and the nature of the operation (e.g., ferry or passenger). Any changes to an approved reservation must be approved in advance by the Slot Administration Office.

(4) A series of operations occurring more than 3 times per month is required to have a slot allocated by the FAA as provided in § 93.37.

(5) If all reservations available under paragraph (d)(1) of this section have been assigned, the public charter operator may request a reservation under paragraph (a) of this section.

(e) The filing of a request for a reservation does not constitute the filing of an IFR flight plan as required by regulation. The IFR flight plan may be filed only after the reservation is obtained, must include the reservation number in the "Remarks" section, and must be filed in accordance with FAA regulations and procedures.

(f) Air Traffic Control will accommodate declared emergencies without regard to reservations. Non-emergency national security, law enforcement, military, public aircraft, or other similar mission-critical operations may 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 waiver will be available on the Internet at <http://www.fly.faa.gov/ecvrs>.

(g) Notwithstanding the limits in paragraph (b) of this section, if conditions are favorable, and significant delay is unlikely, the FAA may determine that additional reservations may be accommodated for a specific time period. Unused slots also may be made available temporarily for unscheduled operations. Reservations for additional operations must be obtained through the ARO.

(h) No reservations may be bought, sold, or leased.

(i) A Reservation must be canceled if it will not be used as assigned.

■ 3. Amend § 93.123 to revise paragraphs (a), (b)(4) to read as follows:

§ 93.123 High density traffic airports.

(a) Each of the following airports is designated as a high density traffic airport and, except as provided in § 93.129 and paragraph (b) of this section, or unless otherwise authorized by ATC, is limited to the hourly number of allocated IFR operations (takeoffs and landings) that may be reserved for the specified classes of users for that airport:

IFR OPERATIONS PER HOUR

Class of user	Ronald Reagan Washington National Airport
Air carriers	37
Commuters	11
Other	12

(b) * * *

(4) The allocation of IFR reservations for air carriers except commuters at Ronald Reagan Washington National Airport does not include extra sections of scheduled flights. The allocation of IFR reservations for scheduled commuters at Ronald Reagan Washington National Airport does not include extra sections of scheduled flights. These flights may be conducted without regard to the limitation upon the hourly IFR reservations at those airports.

* * * * *

§ 93.133 [Removed and Reserved]

■ 4. Remove and reserve § 93.133.

■ 5. Amend § 93.211 to revise paragraph (a) to read as follows:

§ 93.211 Applicability.

(a) This subpart prescribes rules applicable to the allocation and withdrawal of IFR operational authority (takeoffs and landings) to individual air carriers and commuter operators at the High Density Traffic Airports identified in subpart K of this part.

* * * * *

§ 93.215, 93.217 and 93.218 [Removed and Reserved]

■ 6. Remove and reserve §§ 93.215, 93.217, and 93.218.

■ 7. Amend § 93.221 to remove paragraph (e).

■ 8. Amend § 93.223 to revise paragraph (b) to read as follows:

§ 93.223 Slot withdrawal.

(b) Separate slot pools shall be established for air carriers and

commuter operators at each airport. The FAA shall assign, by random lottery, withdrawal priority numbers for the recall priority of slots at each airport. Each additional permanent slot, if any, will be assigned the next higher number for air carrier or commuter slots, as appropriate, at each airport. Each slot shall be assigned a designation consisting of the applicable withdrawal priority number; the airport code; a code indicating whether the slot is an air carrier or commuter operator slot; and the time period of the slot. The designation shall also indicate, as appropriate, if the slot is daily or for certain days of the week only; is limited to arrivals or departures; and is allocated for international operations or for EAS purposes.

* * * * *

■ 9. Amend § 93.226 to revise paragraph (a)(3) introductory text to read as follows:

§ 93.226 Allocation of slots in low-demand periods.

(a) * * *

(3) For Ronald Reagan Washington National Airport:

* * * * *

Issued in Washington, DC, on December 19, 2014.

Susan L. Kurland,
Assistant Secretary for Aviation and International Affairs.

Richard M. Swayze,
Assistant Administrator for Policy, International Affairs, and Environment.

[FR Doc. 2014-30378 Filed 1-6-15; 11:15 am]

BILLING CODE 4910-13-P

to employees of the importer across the enterprise, whether they interface with CBP or customs brokers or whether they are the employees who file certifications for the importer in CCMS. For DOE to adopt this approach, the importer would have to provide the same identifier in the corresponding CCMS report. DOE also welcomes comments as to other alternatives that would minimize importer burden while still allowing DOE to confirm that a covered import does not belong to a basic model that DOE has previously found to be noncompliant.

Commenters have expressed concern with respect to DOE's proposal to require certain information related to covered products or equipment that are a component of another finished product, due to the fact that an importer may use more than one basic model of component part in its finished product, and may not know which basic model is contained in a given shipment. DOE notes that the purpose of this proposal is to allow quick identification by CBP of a noncompliant product. DOE welcomes comments on alternatives, including alternatives that would reduce importer burden, such as allowing the importer to identify the range of possible component part basic models, but importers should be aware that this approach could potentially result in a greater impact by having CBP stop shipments that may not contain noncompliant products due to the importer's choice to group multiple basic models into a single identifier.

In addition, DOE understands that characterizing its proposed requirement as a "certificate of admissibility" may have created the mistaken impression that it was proposing a conformity assessment procedure as described in the Technical Barriers to Trade Agreement administered by the World Trade Organization. DOE wishes to emphasize, however, that it is not proposing to mandate any additional testing¹ or to require submission of information unnecessarily redundant of that already provided in accordance with those regulations. Instead, DOE only seeks in its proposal to collect the minimum information necessary to trace the covered import to the certified basic model to which it belongs.

Moreover, it is not DOE's intent to delay in any way the importation of any covered product or equipment, aside from that for which DOE has already, separately, made a final determination that the basic model to which the

covered import belongs is not compliant with applicable energy conservation standards. The importation of such a product is already prohibited. In addition, DOE notes that, although the information it proposes to collect would allow it to determine whether a covered import has been properly certified to DOE in CCMS, DOE is not proposing to delay the importation of a covered product subject to energy conservation standards solely due to a failure to certify the covered import. With this in mind, DOE welcomes comments on possible alternatives to the term "certification of admissibility" in reference to what is, in essence, a limited collection of information for purposes of traceability.

Finally, DOE seeks comments on alternatives to the proposed compliance date for the rule of 2 years after the date of publication of the final rule in the **Federal Register**, such as a delayed or phased-in compliance date.

DOE will accept comments, data, and information in response to the NOPR received no later than June 15, 2016. DOE will consider any comments in response to the NOPR received by midnight of June 15, 2016, and deems any comments received by that time to be timely submitted. Based on the comments received, DOE will determine whether it will need to issue a supplemental notice of proposed rulemaking or proceed to a final rule.

Public Participation

A. Submission of Comments

Any comments submitted must identify the NOPR for Import Data Collection, and provide docket number EERE-2015-BT-CE-0019 and/or regulatory information number (RIN) number 1990-AA44. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
2. *Email:* ImportData2015CE0019@ee.doe.gov. Include the docket number and/or RIN in the subject line of the message.
3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone:

(202) 586-2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: <http://www.regulations.gov/#!docketDetail;D=EERE-2015-BT-CE-0019>. This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment, review other public comments and the docket, or to request a public meeting, contact Ms. Brenda Edwards at (202) 586-2945 or by email: Brenda.Edwards@ee.doe.gov.

Issued in Washington, DC, on May 6, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016-11468 Filed 5-13-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No.: FAA-2014-1073; Notice No. 16-03]

RIN 2120-AJ89

Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The DOT is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) that would have replaced the Orders limiting scheduled operations at John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR), and LaGuardia Airport (LGA)

¹ Existing DOE regulations require testing to ensure compliance with energy conservation standards.

with longer-term limits on scheduled and unscheduled operations at JFK, EWR, and LGA, and requested comment on options to establish a secondary market for the purchase, sale, lease, or trade of slots at these airports, as well as procedures that would codify the review of slot transactions arising from the secondary market for public interest and anti-competitive effects.

DATES: As of May 16, 2016, the NPRM published on January 8, 2015 (80 FR 1274) is withdrawn.

SUPPLEMENTARY INFORMATION: In 2006, the FAA issued an Order imposing temporary limits on operations at LGA (71 FR 77854), and in 2008, issued Orders imposing temporary limits on operations at JFK (73 FR 3510) and EWR (73 FR 29550). These Orders have been extended and are in effect until October 29, 2016. On April 6, 2016, the FAA announced that the current Order at EWR will expire on October 29, 2016, and that EWR will be a Level 2, schedule-facilitated airport under the Worldwide Slot Guidelines effective for the Winter 2016 scheduling season (81 FR 19861). By this same announcement, the FAA indicated that slot-controlled restrictions at JFK and LGA remain necessary and that the FAA will extend these Orders, by separate **Federal Register** notices, until October 27, 2018.

On January 8, 2015, the FAA and DOT published an NPRM (80 FR 1274) that would replace the FAA's Orders limiting scheduled operations at JFK, EWR, and LGA with a long-term comprehensive approach to slot management at these airports. The NPRM proposed the continuation of the limits on scheduled and unscheduled operations in place at each of these airports under the Orders, and would have required use of an allocated slot 80% of the time for the same flight or series of flights. The NPRM also requested public comment about five alternatives for a secondary market for the purchase, sale, lease, or trade of slots and proposed procedures to codify the exercise of DOT's existing authority to review slot transactions for anti-competitive and public interest effects arising from those secondary market transactions that would have been permitted by the implementation of a bulletin board for the proposed secondary market.

Since the FAA and DOT first initiated this rulemaking effort there have been significant changes in circumstances affecting New York City area airports, including changes in competitive effects from ongoing industry consolidation, slot utilization and transfer behavior, and actual operational performance at

the three airports. Furthermore, the FAA recently announced that slot controls are no longer needed at EWR (81 FR 19861). The NPRM proposed an approach to manage slots and the efficient use of airspace at JFK, EWR, and LGA that would have treated all three New York City area airports similarly. In light of the changes in market conditions and operational performance, and particularly the potential impact of EWR's change in status, the Department is withdrawing the NPRM to allow for further evaluation of these changes. Withdrawal of this NPRM (80 FR 1274, January 8, 2015) does not preclude the agency from issuing future rulemakings on this issue, nor does it commit the agency to any course of action in the future. The FAA will continue to monitor the operational performance at these airports. Further, if the Department detects unfair or anticompetitive behavior, we will not hesitate to continue to use our existing authority to take corrective action. We will also continue to cooperate with the U.S. Department of Justice on any reviews it undertakes.

Issued under authority provided by 49 U.S.C. 106(f), 40101, 40103, 40105, and 41712 in Washington, DC on May 6, 2016.

Jenny T. Rosenberg,

Acting Assistant Secretary for Aviation and International Affairs.

Nan Shellabarger,

Acting Assistant Administrator for Policy, International Affairs, and Environment.

[FR Doc. 2016-11455 Filed 5-13-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 117 and 507

[Docket No. FDA-2016-D-1164]

Qualified Facility Attestation Using Form FDA 3942a (for Human Food) or Form FDA 3942b (for Animal Food); Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a draft guidance for industry entitled "Qualified Facility Attestation Using

Form FDA 3942a (for Human Food) or Form FDA 3942b (for Animal Food)." This draft guidance explains our current thinking on how to determine whether a business is a "qualified facility" that is subject to modified requirements under our rule entitled "Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food" (the Preventive Controls for Human Food Rule) or under our rule entitled "Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals" (the Preventive Controls for Animal Food Rule). This draft guidance also explains our current thinking on how a business would submit Form FDA 3942a attesting to its status as a qualified facility under the Preventive Controls for Human Food Rule and how a business would submit Form FDA 3942b attesting to its status as a qualified facility under the Preventive Controls for Animal Food Rule. We also are announcing an opportunity for public comment on the proposed collection of information embodied in Forms FDA 3942a and 3942b. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and allow 60 days for public comment in response to the notice.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that we consider your comment on this draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments by November 14, 2016. Submit either electronic or written comments on the proposed collection of information by July 15, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or