

2. Community Information Program

Development, publication and distribution of informational materials for residents and businesses outlining airport noise abatement efforts. (NCP, pages ES-4, 104, 105; and Table ES-1.)

FAA Action: Approved.

3. Periodic NCP Review

Review of operational activity and NCP implementation to assist in determining future NEM/NCP update timing. (NCP, pages ES-4, 105; and Table ES-1.)

FAA Action: Approved. If made necessary by NEM changes, an update to the NCP would address requirements of 150.23(e)(9). Section 150.21(d), as amended, states that the NEM should be updated if there is either a substantial new noncompatible use within the DNL 65 dB contour, or if there is a significant reduction in noise over existing noncompatible land uses [69 FR 57622, dated 9/24/04].

These determinations are set forth in detail in a Record of Approval signed by the FAA on June 23, 2008. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the City of Ocala. The Record of Approval also will be available on-line at: http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/part_150/states/.

Issued in Orlando, Florida on June 27, 2008.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. E8-15954 Filed 7-16-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2008-0629]

Operating Limitations for Unscheduled Operations at John F. Kennedy International Airport and Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Order Limiting Unscheduled Operations at John F. Kennedy International Airport and Newark Liberty International Airport; Request for comments.

SUMMARY: The FAA tentatively has determined that it is necessary to temporarily limit unscheduled aircraft operations at John F. Kennedy

International Airport (JFK) and Newark Liberty International Airport (EWR). By Orders dated January 15 and May 15, 2008, the FAA restricted the number of scheduled operations respectively at JFK and EWR. These orders were a result of persistent congestion and delays at JFK and EWR during the peak operating hours, as well as a dramatic projected increase in flight delays at both airports during the summer of 2008 if proposed schedules were implemented as requested by carriers. The FAA recently published a notice of proposed rulemaking that addresses the operating limits of scheduled and unscheduled operations at both airports for the longer term. The FAA believes that in the interim it is necessary to limit unscheduled operations, as even the addition of a few operations in the critical peak hours can result in added congestion and delay. The intended effect of this action would be consistent with the previously issued Orders governing scheduled operations. This final Order would take effect at 6 a.m., Eastern Time, on August 28, 2008, and would expire at 11:59 p.m., Eastern Time, on October 24, 2009.

This proposed Order would implement a reservation system to limit unscheduled operations at the airports and includes special provisions for public charter operations. A final Order would be enforceable under the FAA's civil penalty authority.

DATES: Send your comments on or before July 28, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA-2008-0629 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, 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* Bring 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: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information that you provide. Using the search function of the <http://www.regulations.gov> Web site,

anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). The electronic form of all comments posted to <http://www.regulations.gov> can be searched by the submitter's name. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78). For information about the privacy aspects of the Federal eRulemaking Portal, please see the Privacy and Use notice at <http://www.regulations.gov>.

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket. Alternatively, go to the 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 proposed rule contact: Gerry Shakley, System Operations Services, Air Traffic Organization; telephone (202) 267-9424; facsimile (202) 267-7277; e-mail gerry.shakley@faa.gov. For legal questions concerning this proposed rule contact: Rebecca B. MacPherson, Office of the Chief Counsel, Federal Aviation Administration; telephone (202) 267-7240; facsimile (202) 267-7971; e-mail: rebecca.macpherson@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Government has exclusive sovereignty over the airspace of the United States.¹ Under this broad authority, Congress has delegated to the Administrator extensive and plenary authority to ensure the safety of aircraft and the efficient use of the nation's navigable airspace. In this regard, the Administrator is required to assign the use of navigable airspace by regulation or order under such terms, conditions and limitations as he or she may deem necessary to ensure its efficient use.² The Administrator may modify or revoke an assignment when required in

¹ 49 U.S.C. 40103(a).

² 49 U.S.C. 40103(b)(1), as previously codified in 49 U.S.C. App. § 307(a). Title 49 was recodified by Public Law No. 103-222, 108 Stat. 745 (1994). The textual revisions were not intended to result in substantive changes to the law. The recodification stated that the words in § 307(a) "under such terms, conditions, and limitations as he may deem" were omitted as surplus. H. Rpt. 103-180 (103d Cong., 1st Sess. 1993) at 262.

the public interest.³ The FAA interprets its statutory directive to act in the public interest as implicitly applying to any decision by the FAA to assign the efficient use of the navigable airspace. Furthermore, in carrying out the Administrator's safety responsibilities under the statute, the Administrator must consider controlling the use of the navigable airspace and regulating civil operations in that airspace in the interest of the safety and efficiency of those operations.⁴

The FAA interprets its broad statutory authority to manage "the efficient use of airspace" to encompass its management of the nationwide system of air commerce and air traffic control. On a daily basis, that system regularly transports millions of passengers, thousands of tons of cargo, and millions of pieces of mail. The FAA believes that ensuring the efficient use of the airspace means that it must take all necessary steps to prevent extreme congestion at an airport from disrupting or adversely affecting the overall air traffic system for which the FAA is responsible. Delays at a single key airport of the sort experienced at JFK and EWR can have a crippling effect on other parts of the system, causing untold losses in time and money for individuals and businesses, as well as the operators at JFK and EWR and beyond.

John F. Kennedy International Airport (JFK)

In 1968, the FAA issued the High Density Rule (HDR), designating JFK a high density traffic airport and limiting the number of takeoffs and landings at the airport, effective April 27, 1969.⁵ Under the HDR, the FAA required carriers to hold a reservation, which came to be known as a "slot," for each takeoff or landing under instrument flight rules at the high density traffic airports. The HDR remained in effect at JFK for nearly four decades, during which aircraft operations at JFK were limited for the five hours of peak demand—3 p.m. through 7:59 p.m., Eastern Time.

In April 2000, Congress began phasing out the HDR at certain airports, including JFK, which was no longer subject to the HDR after January 1, 2007.⁶ The elimination of the HDR at JFK allowed increased scheduling during the peak hours, continuing a trend of increased operations at JFK in recent years. However, capacity has not

increased commensurate with the flight increases. In addition, JFK has evolved from an airport that historically served primarily international markets and the associated domestic feeder service into an airport that now also provides significantly more domestic service. There has been more recently an increased emphasis on connecting traffic that is typical of hub airports, as well as an increased focus on origin and destination traffic.

As a result of these changes at JFK, carriers increased their scheduled operations throughout the day to the point that by summer 2007, demand exceeded the airport's capacity during some periods. For example, from February through July 2007, JFK's average actual airport capacity was 83 total operations per hour, including scheduled and nonscheduled flights. The scheduled demand during the busiest hour, 4 p.m., was over 110 arrivals and departures during summer 2007. Adjacent hours had fewer scheduled flights, but they were still above the average hourly runway capacity which resulted in increased delays. Although air traffic control procedural and runway use plans adopted in early 2007 have increased JFK's aircraft throughput, especially for departures, they do not provide a capacity increase that would have accommodated the proposed summer 2008 demand.

The increase in scheduled operations at JFK has had a profound effect on the delays that travelers have experienced. During fiscal year 2007, the average daily operations at JFK increased 21% over fiscal year 2006. Corresponding to the increased operations, on-time performance and other delay metrics have declined year over year. The on-time arrival performance at JFK, which is defined as arrival at the gate within 15 minutes of the scheduled time, declined from 68.5% in fiscal year 2006 to 62.19% in fiscal year 2007. On-time arrivals during the peak travel months of June, July and August declined from 63.37% in 2006 to 58.53% in 2007 while on-time departures declined from 67.49% to 59.89%. For the entire fiscal year, the average daily arrival delays exceeding one hour increased by 87% over fiscal year 2006 levels. Taxi out delay, which measures the time that aircraft wait prior to departing the runway, increased by 15%. Taxi out delays in the evening departure periods frequently exceeded an hour in duration. At the same time, U.S. and foreign air carriers continued to announce new flights for JFK throughout the day, including during the most oversubscribed hours.

Unscheduled flights during the peak periods contributed to cumulative demand and shared in the resulting delays.

Using the authority conferred under § 41722 to address congested airports,⁷ the Secretary of Transportation and the Acting Administrator of the FAA concluded that a meeting with U.S. air carriers was necessary to discuss flight reductions at JFK to reduce overscheduling and flight delays.⁸

The FAA convened the scheduling reduction meeting with the U.S. air carrier participants and representatives of the airport operator on October 23 and 24. The FAA issued an Order on January 15, 2008, that limited scheduled operations of U.S. air carriers and foreign air carriers at JFK to a maximum of 81 per hour, except as provided in the appendix to the Order. The Order was effective at 6 a.m., Eastern Time on March 30, 2008, and expires at 11:59 p.m., Eastern Time on October 24, 2009. This order will reduce the substantial inconvenience to the traveling public caused by excessive congestion-related flight delays at the airport that magnify as they spread through the National Airspace System. This action also is expected to reduce the average length of delays by about 15 percent over summer 2007 levels and provide for a more efficient use of the nation's airspace by more closely tying demand to capacity. In order to ensure the effectiveness of the carrier scheduling adjustments and limitations in the JFK Order, it is necessary to restrict unscheduled operations at JFK, as further explained later in this Proposed Order. Otherwise, even a few additional operations during peak hours would result in additional delay and could erode the gains achieved through schedule reductions.

Newark Liberty International Airport (EWR)

On May 15, 2008, the Acting Administrator of the FAA issued an Order limiting scheduled operations at EWR in order to ensure that delays did not increase significantly as a result of proposed summer 2008 scheduled operations that included about 100 new

⁷ 49 U.S.C. 41722(a)

⁸ Through a notice issued October 16, 2007, and published in the *Federal Register*, the FAA invited all U.S. scheduled air carriers and the Port Authority of New York and New Jersey (PANYNJ) to attend the scheduling reduction meeting, commencing October 23, 2007. The FAA also invited all interested persons to submit information on the subject of overscheduling at JFK, including any data and their views, to a public docket for the FAA's consideration in issuing its Order. The Docket ID is FAA-2007-29320, and it can be examined online at www.regulations.gov or in person at the docket Operations address listed in the ADDRESSES section of this NPRM.

³ Id.

⁴ 49 U.S.C. 40101(d)(4).

⁵ 33 FR 17896 (1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K.

⁶ 49 U.S.C. 41715(a).

operations, many during the already busy afternoon and evening hours. Newark routinely experiences delays and there is limited capacity for additional flights during the busiest hours of the day. Additionally, flight limitations recently adopted by the FAA for JFK may otherwise encourage carriers to operate to Newark if they are unable to obtain timely Operating Authorizations for JFK. The EWR limitations are necessary to ensure that operations do not significantly exceed the airports capacity and applies to all U.S. and foreign air carriers' scheduled operations, excluding helicopters, from 6 a.m.: Eastern Time, through 10:59 p.m., Eastern Time. The Order is effective at 6 a.m., Eastern Time on June 20, 2008, and expires at 11:59 p.m. on October 24, 2009.

Although EWR has historically experienced a significant number of congestion related delays, often ranking as the most delayed airport in the system, the proportion of delayed operations was relatively stable for many years and had declined compared to several years ago. More recently, however, the airport's on-time performance has diminished, and the modeled delays for the proposed summer 2008 schedules would have increased significantly.

Initial Scheduling Information Requests

Based on JFK and EWR's summer 2007 operational and on-time performance, demand that exceeded capacity during certain hours, and limited runway capacity to accommodate additional flights, the FAA designated both airports as Level 2 Schedules Facilitated Airports for the summer 2008 scheduling season, in accordance with the International Air Transport Association (IATA) Worldwide Scheduling Guidelines.⁹ In designating the airports as Level 2 airports, the FAA required all U.S. and foreign air carriers to report to the FAA their proposed summer 2008 scheduled operations at the airports during designated hours.

In response to the U.S. and foreign air carriers' proposed summer 2008 schedules and discussions with carriers that indicated a purely voluntary solution to adjust schedules was unlikely to resolve expected congestion, the FAA elected to modify EWR's IATA designation to a Level 3 Coordinated Airport for summer 2008.¹⁰ This

designation permitted the FAA to approve new operations at the airports in hours during which airport capacity is available and to deny proposed new operations during peak hours. The results of the FAA's discussions with U.S. and foreign air carriers with respect to their summer 2008 schedules are captured in the appendix to the JFK and the EWR Orders.

The limitations on scheduled operations are based on the FAA's capacity review over a two year period from September 2006 through August 2007. That review indicated the airport average available runway capacity was 83 total operations per hour. This included scheduled and unscheduled operations.

The Proposed Order

Unscheduled operations, including general aviation, charter, cargo, ferry, and other ad hoc operations, are typically a small percentage of the overall traffic at JFK and EWR. When the airport operations at JFK were limited by the HDR, a total of 8 reservations were set aside for unscheduled operations during the five slot controlled hours. From 5 p.m. until 6 p.m., no unscheduled reservations were available, which permitted additional scheduled operations.

As part of the analyses conducted for developing appropriate scheduling targets at JFK and EWR, we reviewed both scheduled and unscheduled traffic levels. For calendar year 2007, unscheduled operations at both airports averaged about two operations (arrival and departures combined) per hour. We used this historical information at both airports as the baseline for unscheduled operations at JFK and EWR and reviewed alternatives to vary the number of authorized reservations in this proposal. The greatest delay reduction benefits would come from limiting unscheduled operations during peak hours, except when capacity exists to accommodate additional operations without delay. This additional capacity would primarily be days when the airport's optimal capacity could be achieved. Unscheduled operators are in a position to take advantage of this capacity whereas scheduled operators are not. The FAA is not proposing to completely eliminate unscheduled operations from any hour at either JFK or EWR. However, the number of reservations will be limited and an individual operator may be unable to obtain a reservation at the preferred time and may need to operate during

other hours, or possibly at another airport. The FAA proposes to implement a reservation system for unscheduled operations at JFK and EWR from 6 a.m. through 10:59 p.m. (Eastern Time), Sunday through Saturday. The limits would begin on August 14, 2008 and continue through October 24, 2009, consistent with ending dates for scheduled carrier limits. Reservations would be available on July 7 beginning 72 hours in advance of the proposed operation times at EWR or JFK.

At JFK, the FAA proposes that during the controlled hours, unless otherwise authorized, the number of reservations for unscheduled operations would be limited to two per hour from 6 a.m. through 1:59 p.m.; one per hour from 2 p.m. through 9:59 p.m.; and two per hour from 10 p.m. through 10:59 p.m. At EWR, the FAA proposes that during the controlled hours, unless otherwise authorized, the number of reservations for unscheduled operations would be limited to two per hour from 6 a.m. through 11:59 a.m.; one per hour from 12 p.m. through 9:59 p.m.; and two per hour from 10 p.m. to 10:59 p.m. This rule would apply to operations under instrument flight rules (IFR) and visual flight rules (VFR).

The hours that permit only one unscheduled operation per hour represent the most concentrated peak operating hours at the airports when the demand is highest and delays, especially under adverse operating conditions, are also routinely at their highest levels. In these hours, scheduled operations have been curtailed and reduced under the applicable Orders. While the FAA prefers increasing the capability of the system to accommodate demand, rather than limiting access, in the case of both JFK and EWR, all operations have to be restricted to reduce delays and recognize capacity constraints. Many unscheduled operations have flexibility because of the nature of the operation and the New York City area has other airports that can be used for some unscheduled flights including Westchester, Islip, Republic, Stewart, Morristown, and Teterboro.

Unscheduled operators, including air carriers conducting unscheduled operations at JFK and EWR, would need to review and possibly modify their plans based on the available reservations since the FAA cannot guarantee access to all operators without unduly increasing congestion. Unscheduled operators will need to consider the proposed reservation system at JFK and EWR, along with weight restrictions, noise abatement rules, and other limitations at other

⁹ 72 FR 54,317 (Sept. 24, 2007).

¹⁰ In connection with its January 15 order, the FAA also designated JFK an IATA Level 3 Coordinated Airport. 73 FR 3,510 (Jan. 18, 2008)(order limiting scheduled operations); 72 FR

60,710 (Oct. 25, 2007)(notice of airport level designation); 72 FR 73,418 (Dec. 27, 2007).

airports in the New York City area when planning their flights.

Under certain weather conditions and runway configurations, JFK and EWR have capacity to accommodate additional operations without causing significant additional delay. Scheduled operators cannot readily adjust the number or timing of arrivals and departures to take advantage of temporary fluctuations in the airports capacity during optimal weather. Unscheduled operators may have flexibility to make such adjustments and often conduct flights with short lead times. Therefore, when operating conditions permit, the FAA would make additional reservations available. The added capacity for unscheduled operations typically will not be determined more than eight hours in advance. There may also be times when the FAA has unallocated Operating Authorizations (under the Orders) for scheduled operations. The FAA would assess whether additional reservations could be made available for unscheduled flights. All reservations for unscheduled flights would be allocated using the procedures described below.

Each reservation would be allocated on a 60-minute basis during the restricted hours. Although a 30-minute reservation may provide some additional delay reduction benefits by potentially avoiding peaks, the FAA has determined that greater latitude in timing should be permitted given the limited number of proposed reservations. The FAA's Airport Reservation Office (ARO) would receive and process all reservations requests. The reservations would be allocated on a first-come, first-served basis, determined by the time the request is received by the ARO. Operators would primarily obtain reservations through the ARO's interactive computer system accessed via the internet or touch-tone telephone. This system is known as the Enhanced Computer Voice Reservation System (e-CVRS). Operators would provide the date/time of the proposed operation and other identifying information concerning the aircraft and the intended flight. The ARO would allocate through e-CVRS the added reservations that may be accommodated during periods of favorable weather and capacity conditions.

The allocation mechanism for unscheduled operations proposed in this Order is similar to the procedures used to allocate slots for the "Other" category under the HDR, and for unscheduled arrivals at Chicago's O'Hare International Airport (ORD). The proposed procedures are also similar to those used by unscheduled aircraft

operators during Special Traffic Management Programs implemented by the Air Traffic Organization during periods of abnormally high traffic demand due to special events such as major conventions, sporting events, fly-ins, and other circumstances that cause temporary increases in airport demand. Consequently, many aircraft operators are familiar with the procedures that the FAA now proposes to adopt.

Allocation of a reservation does not constitute an air traffic control (ATC) clearance nor does it obviate the need to file an IFR flight plan. Reservations would be required for both IFR and VFR operations. Although capacity typically increases in visual meteorological conditions, unscheduled VFR flights could still impact operations if concentrated in peak periods. The FAA would accommodate declared emergencies without regard to reservations. The filing of JFK or EWR as an alternate airport in flight plans, or an aircraft diversion absent a declared emergency, does not constitute a reservation. Non-emergency flights in support of national security, law enforcement, or similar requirements may be accommodated above the reservation limits with the prior approval of the FAA. The proposed text of the Order contains detailed instructions for requesting reservations via the Internet, telephone, or alternatively, by contacting the ARO. Reservations for regularly scheduled operations are authorized separately under the terms of the JFK and EWR Orders. The procedures described in this proposed Order would not be used for scheduled flights.

The provisions of this proposal would apply to unscheduled operations at JFK and EWR conducted by foreign or domestic operators, regardless of whether the operation is domestic or foreign. We propose special provisions necessary to support flight operation for national security and similar purposes. In the case of the airports serving the New York City area, which is the headquarters of the United Nations, this may include 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 FAA does not intend to categorically exclude these types of flights from the requirement to obtain a reservation prior to operation at JFK or EWR.

In order to address the needs of public charter operators for advance planning and compliance with 14 CFR part 380, the FAA proposes to allow public

charter operators to obtain a reservation up to six months in advance of a planned operation. Due to the limited number of reservations in the afternoon and evening periods, no more than one advance reservation would be allocated in any hour and no more than two advance reservations would be allocated in the 2 p.m. through 9:59 p.m. period. Public charter operators may need to consider operating at other times when capacity is available and may also obtain reservations within the 72 hour window. Carriers conducting charter operations or other unscheduled flights may use assigned Operating Authorizations under the JFK and EWR orders. Carriers could also lease Operating Authorizations from other carriers.

The proposed provisions regarding reservations for public charter operations that are not regularly conducted are similar to the provisions applicable to public charter arrivals at Chicago's O'Hare International Airport under SFAR 105.¹¹ Under the proposed provisions for public charter operations, the reservation is requested by and allocated to the public charter operator, regardless of whether the charter is operated by a U.S. or foreign air carrier. The public charter operator retains the discretion to select the direct air carrier. Thus, this proposed Order does not provide any incentive for a public charter operator to select a U.S. certificated carrier or a foreign air carrier.

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 accepted by the DOT in accordance with 14 CFR part 380 for the flight requiring a reservation; 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(s) or departure(s); origin airport immediately prior to JFK or EWR, or destination airport immediately following JFK or EWR; and aircraft type. A public charter operator also would be required to notify the Slot Administration Office of any changes to

¹¹ 70 FR 39610 (July 8, 2005). FAA considers regularly conducted public charter operations to be similar to scheduled operations, even if they are not listed in the Official Airline Guide or other computer reservation systems. Thus, regularly public charter operations are covered by the JFK and EWR Orders, not this proposal.

the above information once a reservation has been allocated. If each of the reservations reserved for public charters has been allocated, a public charter operator may request a reservation through the ARO beginning 72 hours in advance in accordance with the same procedures as unscheduled operators.

Historically under the HDR, military operations and public use aircraft operations were subject to the reservation requirement. Military and public aircraft would be subject to this proposed rule and would need reservations. As provided for in proposed paragraph 7(c) of the Proposed Order, the FAA will accommodate non-emergency flights in support of national security, law enforcement, or similar requirements above the administrative limit with prior approval by the FAA. Approvals for these reservations above the limits would be obtained from the ARO. We anticipate these exceptions to be limited. Since the operations must be approved in advance by the ARO, changes to proposed arrival times may be necessary to minimize impacts at the airport. We do not support a blanket exception for flights of this nature. The incremental addition of just a few flights during peak hours cumulatively affects the airport. Carriers conducting scheduled operations have had to either reduce operations or limit growth to reach the manageable level that exists today and most of the unscheduled arrivals at JFK and EWR will be covered by this proposed Order. While the FAA does not expect or intend for military and public aircraft operators at these airports to be unfairly burdened, we do not propose to categorically exclude all military and public aircraft flights from the coverage of this proposed Order while limiting others with similar time or operational constraints. The public interest is served by permitting access for these mission-critical flights but they still remain subject to the Order. We have also received comments in related rulemaking proceedings that some carriers operate under contracts to government agencies such as the Department of Defense to carry military troops or supplies, or the United States Postal Service to carry mail. These flights would require reservations but the FAA may treat qualified flights in a similar fashion to military or public aircraft. However, to the extent possible, military, public aircraft, and supporting flights should be conducted outside peak periods or possibly at other airports with less congestion than JFK and EWR.

The proposed Order may affect the use of JFK and EWR as an alternate

airport for flight planning purposes for unscheduled IFR flights. There are various factors affecting use that may be applicable to a particular airport. Due to runway configuration, certain aircraft may not be able to operate at an airport. There may be noise abatement rules, departure procedures, and other operational procedures that must be factored into the flight planning process and the selection process of an alternate airport. The proposed reservation system at JFK and EWR would be another such factor. It is a traffic management tool, and if an unscheduled IFR operation intended to use JFK or EWR as an alternate, that operator would have to be prepared to meet all the requirements necessary to operate at the airport, including a reservation. While JFK or EWR might be preferable as an alternate airport from the operator's point of view, it is not operationally expedient to permit unpredictable increases in demand by allowing the unrestricted use of JFK and EWR as alternate airports. The FAA recognizes that there may be circumstances when safety or other considerations lead an operator to arrive at JFK or EWR without a reservation and current regulations and enforcement procedures provide for those cases.

Enforcement of This Order

The FAA may enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. 4630 1(a). Under that provision, a carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, is liable for a civil penalty of up to \$25,000 for every day that it violates the limits set forth in the order. An individual or small business, as defined in the Small Business Act, is liable for a civil penalty of up to \$10,000 for every day that it violates the limits set forth in the Order. The FAA may also file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any entity from violating the terms of the Order.

Environmental Impact

The agency order stating FAA policies and procedures with respect to the environmental impact of FAA activities, FAA order 1015.1E, 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 that this Order qualifies for the categorical exclusion identified in paragraph 312d "Issuance of regulatory documents (e.g., Notice of

Proposed Rulemaking and issuance of Final Rules) covering administrative or procedures requirements (Does not include Air Traffic procedures; specific Air Traffic procedures that are categorically excluded are identified under paragraph 311 of this Order.)" This Order, which proposes a reservation system to temporarily limit unscheduled operations pending a future rulemaking, is in the nature of a rule. No extraordinary circumstance exists that may cause a significant impact and therefore no further environmental review is required.

Accordingly, with respect to unscheduled flight operations at JFK and EWR, the FAA proposes the following ordering language:

1. This Order applies to persons conducting unscheduled operations to and from John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR) from August 28, 2008, through October 24, 2009, during the hours of 6 a.m., Eastern Time, through 10:59 p.m., Eastern Time, Sunday through Saturday. This Order does not apply to helicopter operations.

2. *For purposes of this Order:*

"Additional Reservation" is an approved reservation above the operational limit in section 3. Additional Reservations are available for unscheduled operations only, and are allocated in accordance with the procedures described in paragraph 7 of this Order.

"Airport Reservation Office (ARO)" is an operational unit of the FAA's David J. Hurley Air Traffic Control System Command Center. It is responsible for the administration of reservations for the "other" category of operations, *i.e.* unscheduled flights at High Density Traffic Airports (14 CFR, part 93, subpart k); unscheduled flights under Special Traffic Management Programs; unscheduled flights at LaGuardia Airport; the O'Hare Arrival Reservation Program (excluding reservations for certain public charter flights allocated in accordance with section 6 of Special Federal Aviation Regulation No. 105); and unscheduled flights at JFK and EWR (excluding reservations for certain public charter flights allocated in accordance with paragraph 6 of this proposed Order).

"Enhanced Computer Voice Reservation System (e-CVRS)" is the system used by the FAA to make arrival and/or departure reservations at designated airports requiring reservations. Reservations are made through a touch-tone telephone interface, an Internet Web interface, or directly through the ARO.

“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 air 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 in compliance with applicable Notices to Airmen (NOTAMs) and procedures established by the FAA to operate an unscheduled flight to or from JFK or EWR during the restricted hours specified in paragraph 1. “Unscheduled Operation” is an operation other than one regularly conducted and scheduled by an air carrier or other operator between JFK or EWR and another service point. Certain types of air carrier operations are considered unscheduled operations for the purposes of this rule, including but not limited to: Public, on-demand, and other charter flights; hired aircraft service; ferry flights; and other non-passenger flights.

3. *Except as provided for in paragraph 7 below, Unscheduled operations:*

a. To and from JFK are limited to two reservations per hour from 6 a.m. through 1:59 p.m., one reservation per hour from 2 p.m. through 9:59 p.m.; and two reservations per hour from 10 p.m. through 10:59 p.m.

b. To and from EWR are limited to two reservations per hour from 6 a.m. through 11:59 a.m., one reservation per hour from 12 p.m. through 9:59 p.m.; and two reservations from 10 p.m. through 10:59 p.m.

4. Each person conducting an unscheduled flight to or from JFK or EWR during the peak hours described in paragraph 1 must obtain, for such flight operation, a Reservation allocated by the ARO or, in the case of public charters, in accordance with the procedures in paragraph 6. A Reservation is not an air traffic control clearance. Additionally, it is the separate and sole responsibility of the pilot/operator to comply with all NOTAMs, security or other regulatory requirements to operate at JFK or EWR.

5. *The reservation procedures are as follows:*

a. The FAA’s ARO will receive and process all Reservation requests for Unscheduled Operations at JFK and EWR during the effective period, except for requests for public charter flights made more than 72 hours and up to 6 months in advance of the planned operation. Requests for Reservations for such public charter flights are addressed in paragraph 6. Reservations are assigned on a “first-come, first-served” basis determined by the time the request is received at the ARO.

b. 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 must be filed only after the Reservation is obtained, and must be filed in accordance with FAA regulations and procedures. Reservation numbers should be included in the remarks section of the flight plan. The ARO does not accept or process flight plans.

c. Operators may obtain Reservations by (1) accessing the Internet; (2) calling the ARO’s interactive computer system via touch-tone telephone; or (3) calling the ARO directly. The telephone number for the e-CVRS computer is 1-800-875-9694. This toll free number is valid for calls originating within the United States, Canada, and the Caribbean. “Operators outside those areas may access e-CVRS by calling the toll number of (703) 707-0568. The Internet Web address for accessing e-CVRS is <http://www.fly.faa.gov/ecvrs>. Operators may contact the ARO at (703) 904-4452 if they have a technical problem making a Reservation using the automated interfaces, if they have a question concerning the procedures, or if they wish to” make a telephone Reservation from outside the United States, Canada, or the Caribbean.

6. *The following provisions apply to Public Charter operations:*

a. No more than one Reservation in any hour will be available for assignment to Public Charters in advance of 72 hours prior to the operation.

b. During the hours of 2 p.m. through 9:59 p.m., no more than two reservations total will be available for assignment to Public Charter operations in advance of 72 hours prior to operation.

c. The Public Charter Operator may request a Reservation up to six months from the date of the flight operation. Reservations should be submitted to Federal Aviation Administration, Slot Administration Office, AGC-200, 800 Independence Avenue, SW., Washington, DC 20591. Submissions may be made by facsimile to (202) 267-7277 or by e-mail to [7-AWA-slotadmin@faa.gov](mailto:slotadmin@faa.gov).

d. The Public Charter Operator must certify that its prospectus has been accepted by the Department of Transportation in accordance with 14 CFR part 380.

e. 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 operations, and aircraft type. For arrivals, the Public Charter Operator must also identify the origin airport

immediately prior to JFK or EWR, and, for departures, the Public Charter Operator must also identify the destination airport immediately following JFK or EWR. Any changes to an approved Reservation must be approved in advance by the Slot Administration Office.

f. If Reservations under paragraph (a) above have been assigned and are unavailable, the Public Charter Operator may request Reservations under paragraph 5.

7. *Notwithstanding the restrictions in paragraph 1:*

a. If the Air Traffic Organization determines that ATC weather and capacity conditions are favorable and significant delay is not likely, the FAA may determine that Additional Reservations may be accommodated for a specific time period. Generally, the availability of Additional Reservations will not be determined more than 8 hours in advance. Unused Operating Authorizations allocated for scheduled operations may also be made available as Additional Reservations for Unscheduled Operations. If available, Additional Reservations will be added to e-CVRS and granted on a first-come, first served basis using the procedures described in paragraph 5 of this Order. Reservations for additional unscheduled operations are not granted by the local ATC facility and must be obtained through e-CVRS or the ARO.

b. An operator that has been unable to obtain a Reservation at the beginning of the 72-hour window may find that a Reservation may be available on the scheduled date of operation due to Additional Reservations or cancellations.

c. ATC will accommodate declared emergencies without regard to Reservations. Non-emergency flights in support of national security, law enforcement, military aircraft operations, public-use aircraft operations, or similar mission-critical flights 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 are available on the Internet at the e-CVRS Web site at <http://www.fly.faa.gov/ecvrs>.

d. Reservations may not be bought, sold or leased.

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

Order. An individual or small business, as defined in the Small Business Act, will be liable for a civil penalty of up to \$10,000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any entity from violating the terms of this Order.

9. The FAA may modify or withdraw any provision in this Order on its own or on application by any operator for good cause shown.

Issued in Washington, DC on July 8, 2008.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulation.

[FR Doc. E8-15961 Filed 7-16-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 2008, there were seven applications approved. Additionally, 32 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: City of Des Moines, Iowa.

Application Number: 08-11-C-00-DSM.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$2,525,646.

Earliest Charge Effective Date: August 1, 2017.

Estimated Charge Expiration Date: January 1, 2018.

Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the

total annual enplanements at Des Moines International Airport.

Brief Description of Projects Approved for Collection and Use:

Concourses A and C enhancements.

East cargo pavement reconstruction.

Taxiway P reconstruction.

Snow blower head rebuild/replacement.

Decision Date: June 5, 2008.

FOR FURTHER INFORMATION CONTACT: Jan Monroe, Central Region Airports Division, (816) 329-2635.

Public Agency: City of Worland, Wyoming.

Application Number: 08-02-C-00-WRL.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$193,038.

Earliest Charge Effective Date: August 1, 2008.

Estimated Charge Expiration Date: July 1, 2022.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Road and trail relocation, construct spray operations area, extend and widen taxilane.

Reconstruct taxiway A south, grade safety area runway 16/34, Hanover Canal siphon.

Reconstruct taxiway A south, grade extended safety area runway 16/34, extend and widen taxilane.

Reconstruct runway 16/34 south.

Appraisal and hangar purchase costs (schedules I, II, III, and IV).

Relocate obstructions—Highland Hanover Canal and Country Road, phase 2.

Decision Date: June 5, 2008.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342-1258.

Public Agency: City of Modesto, California.

Application Number: 08-07-C-00-MOD.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$395,134.

Earliest Charge Effective Date: August 1, 2008.

Estimated Charge Expiration Date: December 1, 2015.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate taxilanes.

Install/upgrade airfield guidance signs.

Improve airport drainage.
Expand/construct parking lot.

Rehabilitate apron.

Conduct Part 150 noise compatibility study.

Miscellaneous planning study.

Procure aircraft rescue and

firefighting vehicle.

PFC administrative costs.

Brief Description of Projects Approved for Collection:

General aviation apron rehabilitation.

Enhance runway safety area.

Decision Date: June 6, 2008.

FOR FURTHER INFORMATION CONTACT: Ron Biaoco, San Francisco Airports District Office, (650) 876-2778, extension 626.

Public Agency: County of Okaloosa, Valparaiso, Florida.

Application Number: 08-04-C-00-VPS.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$1,485,650.

Earliest Charge Effective Date: July 1, 2020.

Estimated Charge Expiration Date: April 1, 2021.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Terminal expansion program.

Acquire interactive training system.

PFC program and administrative costs.

Decision Date: June 6, 2008.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812-6331, extension 120.

Public Agency: Meridian Airport Authority, Meridian, Mississippi.

Application Number: 08-10-C-00-MEI.

Application Type: Impose and use a PFC. PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$502,500.

Earliest Charge Effective Date: June 1, 2012.

Estimated Charge Expiration Date: August 1, 2017.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate general aviation apron.

Relocate taxiway A.

Acquire security vehicle.

Construct hangar access roads.

Rehabilitate security fencing.

Decision Date: June 6, 2008.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Jackson Airports District Office, (601) 664-9886.

Public Agency: County of Marquette, Marquette, Michigan.