internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (air), Recordkeeping and reporting requirements.

The Proposed Amendment

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

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

Subpart N—[Removed and Reserved]

2. Remove and reserve Subpart N.

Issued in Washington, DC, on May 7, 2009.

Nan Shellabarger,

Director of Aviation Policy and Plans.

[FR Doc. E9–11293 Filed 5–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2006–25709; Notice No. 09–04]

RIN 2120–AJ49

Congestion Management Rule for LaGuardia Airport

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of proposed rescission.

SUMMARY: The FAA proposes to rescind the final rule *Congestion Management Rule for LaGuardia Airport.* The final rule established procedures to address congestion in the New York City area by assigning slots at LaGuardia Airport (LaGuardia), assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum usage, capping unscheduled operations, and withdrawal for operational need. The rule was scheduled to sunset in ten years.

DATES: Send your comments on or before June 15, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–25709 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.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket 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.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.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. Or, 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 questions concerning this rulemaking, contact: Molly W. Smith, Office of Aviation Policy and Plans, APO–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3275; e-mail *molly.w.smith@faa.gov.* For legal questions concerning this rulemaking, contact: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073; e-mail *rebecca.macpherson@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

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

I. Background

The final rule *Congestion Management Rule for LaGuardia Airport* was published in the **Federal Register** on October 10, 2008 (73 FR 60574). The final rule established procedures to address congestion in the New York City area by assigning slots at LaGuardia Airport (LaGuardia), assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum usage, capping unscheduled operations, and withdrawal for operational need. The rule was scheduled to sunset in ten years and was to become effective December 9, 2008.

The rulemaking was highly controversial. On August 29, 2006, the FAA had published a notice of proposed rulemaking (NPRM) proposing continuation of the cap on hourly operations at the airport as well as a new method of allocating capacity (71 FR 51360). The industry response to the new allocation method proposed in the NPRM was universally negative, although very few commenters argued that a cap on operations at the airport was unnecessary. The FAA received comments from 61 different commenters, with some commenters making multiple submissions. The FAA then published a supplemental notice of proposed rulemaking (SNPRM) on April 17, 2008 (73 FR 20846). Twenty-six interested parties filed comments to the docket addressing the SNPRM. The majority of comments were consistent in

rejecting the proposal. Many commenters said that the FAA had failed to demonstrate how the proposal would achieve any significant relief from congestion. Rather, according to the commenters, the SNPRM would impose an untested and unproven auction process on airlines that would not address the fundamental airspace congestion issues in the New York metro area. While other commenters did not completely object to an auction mechanism, they did note that the timing was not right or that the auction procedures needed to be fully developed prior to finalizing any rule.

The final rule was challenged by several parties before it could take effect. Petitioners included the Port Authority of New York and New Jersey, the Air Transport Association of America, Inc. (ATA), the International Air Transport Association (IATA), Continental, and US Airways. The petitioners sought a stay of the final rule pending judicial review, arguing that they would likely succeed on the merits of the underlying litigation, they would suffer irreparable harm, a stay would not harm other parties, and a stay was in the public interest. On December 8, 2008, the United States Court of Appeals for the District of Columbia Circuit determined that the petitioners had satisfied the standards for a stay and issued an order staying the rule. Accordingly, the rule has never been implemented. On January 22, 2009, the ATA requested that the Secretary of Transportation, Ray LaHood, withdraw the final rule in light of the court's stay.

At present, operations at LaGuardia remain capped by order at 75 scheduled operations and three unscheduled operations per hour until October 2009.[1] The FAA is in the process of considering its options with regard to managing congestion at the airport, while providing a means for carriers to either commence or expand operations at the airport, thereby introducing more competition and service options to benefit the traveling public.

On March 11, 2009, the President signed Public Law 111–8, Omnibus Appropriations Act, 2009. That legislation provides several departments within the executive branch, including the Department of Transportation, with the funds to operate until the end of this fiscal year. That legislation also contains a provision in Division I, section 115 that states in pertinent part:

> No funds provided in this Act may be used by the Secretary of Transportation to promulgate regulations or take any action regarding the scheduling of airline operations at any commercial airport in the United States if such regulation or action involves:
>
> (1) The auctioning by the Secretary or the FAA Administrator of rights or permission to conduct airline operations at such an airport, * * *
>
> (3) either:
>
> (A) withdrawal by the Secretary or Administrator of a right or permission to conduct operations at such an airport (except when the withdrawal is for operational reasons or pursuant to the terms or conditions of such operating right or permission), * * *

At the same time, the nation's economy has continued to suffer under the current recession, which is both deeper and longer than was first assumed. President Obama recently signed the American Recovery and Reinvestment Act of 2009[2] (ARRA), which provides an extraordinary amount of emergency funds to address the unprecedented global recession and to promote economic recovery.

The Omnibus Appropriations Act prevents the FAA from implementing the slot auction rule or conducting slot auctions. However, we recognize that the restriction in section 115 of the Act applies only until the end of this fiscal year, or September 30, 2009. The restriction in section 115 means the rule adopted last year can no longer operate in the way that the agency had planned. The halt in funding for this fiscal year makes it impossible for the rule to have the 10-year life originally contemplated, even without considering the challenging and widespread change in current economic conditions that led to the adoption of ARRA.

Because of the complexity of the issues, the uncertainty caused by the Omnibus Appropriations Act, and the possible impact of the significantly changed economic circumstances on the slot auction program, the FAA believes it would be better to rescind the rule rather than propose to extend it. Rescission would also eliminate the potential for wasting resources of all parties in the pending litigation. We specifically request comments and data from affected interests on whether and how the changed circumstances bear on this proposed rescission.

The current order for LaGuardia presently addresses congestion and delay associated with scheduled operations. However, the order does not address all issues associated with market access at a capped airport. Accordingly, the FAA believes it may need further work to address these concerns and limit operations at LaGuardia.

The FAA seeks comment on this proposal. DOT's Regulatory Policies and Procedures contemplate at least a 60-day comment period for a significant rulemaking, unless otherwise justified. The final rule was subject to notice and comment less than 12 months ago, and those comments were fully considered by the agency in issuing that rule. Since comments should be limited to any change in circumstances, including the statutory restriction discussed above, the FAA believes that a 30-day comments period is sufficient in this instance.

II. Regulatory Notices and Analyses

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

The FAA conducted all of these analyses when it originally issued the final rule. This proposed rescission is not economically significant under Executive Order 12866.

The paperwork burden anticipated under the rule would not be imposed on any parties. The FAA has already determined that the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Rescission of the rule would likewise impose no such burden. As the rescission of the rule would not impose any standard on any party, the FAA has

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

[2] Public Law 111–5, 123 Stat. 115 (Feb. 17, 2009).

assessed the potential effect of this proposal and determined that it would impose no costs on international entities and thus have a no trade impact. Nor would the rescission impose a Federal mandate that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, and the requirements of Title II of the Unfunded Mandate Reform Act of 1995 do not apply.

The proposed rescission of the final rule is not economically ''significant'' under Executive Order 12866, however it is ''significant'' under DOT's Regulatory Policies and Procedures. Accordingly, it has been reviewed by DOT and OMB.

Executive Order 13132, Federalism

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

Environmental Analysis

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

Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

Additional Information

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, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the agency will consider all comments received 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.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, it does not place it in the docket. The agency holds it in a separate file to which the public does not have access, and places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it is treated as any other request under the Freedom of Information Act (5 U.S.C. 552) and such requests are processed under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/*; or

3. Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 93

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

The Proposed Amendment

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

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

Subpart C—[Removed and Reserved]

2. Remove and reserve Subpart C.

Issued in Washington, DC, on May 7, 2009.

Nan Shellabarger,

Director of Aviation Policy and Plans.

[FR Doc. E9–11291 Filed 5–13–09; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 425

Rule Concerning the Use of Prenotification Negative Option Plans

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Advance Notice of Proposed Rulemaking; Request for public comments.

SUMMARY: As part of the Commission's systematic review of all current FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC's Trade Regulation Rule concerning ''Use of Prenotification Negative Option Plans.''

DATES: Written comments must be received on or before July 27, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Prenotification Negative Option Rule Review, Matter No. P064202'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form and clearly labeled ''Confidential.''[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-NegativeOptionRuleANPR*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-NegativeOptionRuleANPR*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Prenotification Negative Option Rule Review, Matter No. P064202'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex Q), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

[1] The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, (202) 326-3740 or Matthew Wilshire, (202) 326-2976, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A ''negative option'' is any type of sales term or condition that allows a seller to interpret the customer's silence or failure to take an affirmative step as acceptance of an offer. One common ''negative option'' is the prenotification negative option plan. In such a plan, consumers receive periodic announcements of upcoming merchandise and have a set period to contact the company and decline the item. If they remain silent, the company sends them the merchandise.

The Rule Concerning the Use of Prenotification Negative Option Plans (''Negative Option Rule'' or ''Rule'') regulates prenotification negative option plans for the sale of goods. The Commission first promulgated the Rule (then titled the ''Negative Option Rule'') in 1973 under the FTC Act, 15 U.S.C. 41 *et seq.*, after finding that prenotification negative option marketers had committed unfair and deceptive marketing practices violative of Section 5 of the Act. 15 U.S.C. 45.[2] In 1986, the Commission reviewed the Rule pursuant to Section 610 of the Regulatory Flexibility Act, 5 U.S.C. 610, to determine the impact of the Rule on small entities. The Commission concluded that the Rule had not had a significant impact on a substantial number of small entities and should not be changed.[3] In 1997, the Commission reviewed the Rule again and solicited comments on whether there was a continuing need for the Rule and whether it should be changed to increase its benefits or reduce its costs or other burdens.[4] Based on the response, in August 1998, the Commission concluded that the Rule ''continue[d] to be of value to consumers and firms, and [was] functioning well in the marketplace at

[2] The Rule became effective on June 4, 1974.

[3] 51 FR 42087 (Nov. 21, 1986).

[4] 62 FR 15135 (Mar. 31, 1997).