

[4910-13]

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

[Docket No. FAA-2007-29320]

**Operating Limitations at New York's**

**John F. Kennedy International Airport, Notice of Meeting and Request for Information**

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

**ACTION:** Notice of scheduling reduction meeting and request for information.

**SUMMARY:** The FAA will conduct a meeting to discuss flight reductions at New York's John F. Kennedy International Airport (JFK) to reduce overscheduling and flight delays during peak hours of operation at that airport. This meeting is open to all scheduled air carriers, regardless of whether they currently provide scheduled service to JFK, and to the Port Authority of New York and New Jersey, which is the airport operator of JFK. Registration in advance of the meeting is requested. In addition, the FAA invites interested persons to submit written information on such schedule reductions. The FAA plans to issue its decision on scheduling limitations in a final order.

**DATES:** *Scheduling reduction meeting.* The FAA will hold the scheduling reduction meeting on October 23-24, 2007, beginning at 9:00 a.m., and the meeting may continue, if necessary, until adjourned by the Administrator.

*Written information.* Any written information on the subject of schedule reductions at JFK, including data and views, must be submitted by November 6, 2007. To the extent possible, the FAA will consider late-filed submissions in making its determination in its final order.

**ADDRESS:** *Scheduling reduction meeting.* The meeting will be held in the Bessie Coleman Room at the Orville Wright Building of the FAA, 800 Independence Ave., SW, Washington, DC.

*Written information.* You may submit written information, identified by docket number FAA-2007-29320, by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the instructions for submitting your information or comments electronically.
- Fax: Fax comments to the Docket Management Facility at 1-202-493-2251.
- Mail: Send information or comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590.
- Hand Delivery: Bring information or comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at the Department of Transportation, 1200 New Jersey Avenue, SE, Washington DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You must include the agency name and docket number FAA-2007-29320 for this notice at the beginning of the information that you submit. Note that the information received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Submissions to the docket that include trade secrets, confidential, commercial, or financial information, or sensitive security information will not be posted in the public docket. Such information will be placed in a

separate file to which the public does not have access, and a note will be placed in the public docket to state that the agency has received such materials from the submitter.

*Privacy:* We will post all comments we receive, without change, including any personal information you provide. Using the search function of the 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 or signing the comment. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78).

*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, you may visit the Docket Management Facility in Room W12-140 of the West Building Ground Floor of the Department of Transportation at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Registration:* To register for attendance, contact Gerry Shakley at the numbers provided in the FOR FURTHER INFORMATION CONTACT section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Gerry Shakley, System Operations Services, Air Traffic Organization; telephone--(202) 267-9424; facsimile--(202) 267-7277; e-mail--gerry.shakley@faa.gov. Registration must occur on or before October 19, 2007.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Act (the Act) at 49 U.S.C. § 41722, authorizes the Secretary of Transportation to request air carriers to attend a meeting with the FAA Administrator to discuss flight schedule reductions at any severely congested airport during peak operating hours.

Until relatively recently, the FAA managed congestion at JFK through the High Density Rule (HDR), 14 CFR part 93, subpart K, which limited aircraft operations at JFK during the five hours of peak transatlantic demand--3:00 p.m. through 7:59 p.m. local time.

The HDR is an air traffic rule that establishes limits on the number of arrivals and departures that can occur from certain airports during specific, identified hours. The HDR limits flights in order to manage congestion and delays. Currently, only Washington's Reagan National Airport is regulated under the HDR. The HDR was formerly effective at Chicago O'Hare International Airport (O'Hare), New York's JFK New York's LaGuardia Airport (LaGuardia), and Newark's Liberty International Airport (Newark).

In 2000, Congress, under the Aviation Investment and Reform Act for the 21st Century (AIR-21), called for the phase out of the HDR program at O'Hare, LaGuardia and JFK.<sup>1</sup>

The HDR was phased out at JFK as of January 1, 2007, permitting increased scheduling at JFK during the afternoon hours.<sup>2</sup> In addition, since the spring of 2006, JFK has evolved from its traditionally international role, as U.S. air carriers have significantly increased their domestic scheduled operations throughout the day. Most of the increase has come from the two largest operators at the airport, Delta Airlines and JetBlue Airways.

As a result of the increase in scheduled operations at JFK, demand exceeds the airport's capacity during some periods of the day. During the morning hours, JFK

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<sup>1</sup> Newark has not been impacted by the HDR since the early days of its inception.

<sup>2</sup> Since the expiration of the HDR, the FAA reinstated caps at O'Hare, by rule, and at LaGuardia, by FAA order.

routinely incurs volume-related delays during the 7:00 a.m. through 9:00 a.m. hours. The afternoon and evening demand at JFK now exceeds the airport's optimal capacity until nearly 10:00 p.m., denying the airport a late-day period to recover from congestion-related delays. Traffic management initiatives to accommodate the traffic are now routinely in use, even under the best operating conditions.

In addition, the relatively pronounced arrival and departure banks that historically characterized JFK's operations are now supplanted by mixed arrivals and departures during peak hours. Although JFK has four runways, it is limited, at most, to a three-runway configuration due to the shared airspace in the New York area. JFK's maximum efficiency is achieved using either two arrival runways and one departure runway or two departure runways and one arrival runway. The recent mixing of arrivals and departures throughout the day reduces the benefit of optimizing the configuration of active runways to favor arrivals or departures, as appropriate, which is a practice that air traffic control personnel previously employed to tailor JFK's runway configuration to the historical transatlantic traffic flows.

The increase in scheduled operations at JFK has had a profound effect on the delays that travelers have experienced there. During the first nine months of fiscal year 2007, the average daily operations at JFK increased 23% over the same period in the previous year. Travelers experienced an average twenty-six minutes of gate arrival delay per flight, which is an increase from the average eighteen-minute delay during the same period in fiscal year 2006. The number of arrival delays exceeding one hour has increased by 114%. The on-time arrival performance at JFK, which is defined as arrival at the gate within fifteen minutes of the scheduled time, declined from 70% in the first ten months of fiscal year 2006 to 61% over the same period in fiscal year 2007. During

June and July 2007, JFK's on-time arrival performance averaged 59%. At the same time, air carriers continued to announce new flights for JFK during peak and off-peak hours.

The increased congestion and delays at JFK have had impacts on other airports in the region and on the National Airspace System. Newark, LaGuardia and JFK have consistently been among the most delay-prone airports. While operations at LaGuardia and Newark have been relatively stable over the past year, JFK's operations have increased significantly, creating new challenges to accommodate demand safely and with minimal delay. The recently approved airspace redesign plan for the New York/New Jersey/Philadelphia metropolitan area documents well the costs and far-reaching impacts of delays that originate from this area. Although airspace redesign will provide efficiency gains and congestion relief, it is neither an immediate nor complete solution.

The FAA, working with the airport operator, carriers and other customer representatives, has begun to implement a number of short-term initiatives to improve the efficiency of airport operations and the air traffic control system, especially during periods of adverse weather when the effects of overscheduling are more pronounced. Moreover, airspace redesign will open additional arrival and departure routes in the New York area to reduce delays and congestion. These measures alone, however, are not expected to provide sufficient near-term gains to accommodate the peak hour schedules at JFK's current or forecast levels of demand.

Several air carriers have indicated to the FAA their willingness to adjust their schedules during peak hours to improve on-time performance, reduce congestion, and reduce delay-related operational costs. These carriers cite the experience at O'Hare in 2004 when the FAA had a voluntary agreement to twice reduce schedules by American Airlines and United Airlines, the largest operators at that airport, but ultimately convened

a scheduling reduction meeting under 49 U.S.C. § 41722 so that other carriers did not simply backfill schedule reductions and negate congestion relief. The FAA finds merit in these arguments as we did in the case of O'Hare.

Based on these and other factors, the Administrator has determined, pursuant to the Act, that JFK is a severely congested airport and that a scheduling reduction meeting is necessary in order to discuss flight reductions in an effort to reduce overscheduling and flight delays at JFK during peak operating hours. The Secretary of Transportation has also determined, pursuant to the Act, that a scheduling reduction meeting regarding flight reductions at JFK is necessary to meet a serious transportation need or to achieve an important public benefit. In light of these determinations, the FAA will conduct a scheduling reduction meeting pursuant to the Act.

As dictated by statute, the scheduling reduction meeting will only address planned operations by domestic air carriers. With the exception of Canadian air carriers, which are treated as domestic air carriers by virtue of an agreement with Canada, the scheduled operations of foreign air carriers are managed under a process defined by the International Air Transport Association (IATA). The FAA has already initiated steps under the IATA process to manage the scheduled operations of foreign air carriers at JFK that are complementary to the scheduling reduction meeting.

The FAA will convene the scheduling reduction meeting on October 23, 2007, beginning at 9:00 a.m., and will continue at least through the following day. The meeting may continue, if necessary, until adjourned by the Administrator. As provided in the Act, no later than forty-eight hours before convening the meeting, the FAA will identify on the FAA's website, <http://www.faa.gov>, the peak periods of operation at JFK and the FAA's targets for flight operations during those periods.

The FAA will transcribe the scheduling reduction meeting, including those sessions in which air carriers offer flight reductions to the FAA, as provided for by the procedures outlined below. The transcript and other documents related to the meeting will be available for inspection in Department of Transportation Docket FAA-2007-29320. In addition, any interested person may submit written information to the public docket no later than November 6, 2007. The docket may be accessed via the Internet at <http://www.regulations.gov> or at the Docket Management Facility for the Department of Transportation.

After conducting the scheduling reduction meeting and considering all submitted information, the FAA will publish its final order on delay reductions at JFK in the Federal Register. The order is expected to be effective through at least the summer 2008 scheduling season and may restrict service during peak hours by all carriers, including carriers that are not currently operating at JFK.

Additionally, the FAA is considering appropriate measures to address charters and other unscheduled flights at JFK. Under the HDR, unscheduled operations were severely constrained during the afternoon hours at JFK. Specifically, only two unscheduled operations were permitted in each afternoon hour other than the 1700 hour (5 pm), when no unscheduled operations were permitted. Likewise, unscheduled operations at O'Hare have been restricted to four per hour since the imposition of Arrival Authorizations at that airport in 2004.

To ensure that proper accommodations are afforded at the meeting, all scheduled carriers that wish to attend the scheduling reduction meeting should register for the meeting on or before October 19, 2007. Registration may be accomplished by contacting Gerry Shakley, System Operations Services, Air Traffic Organization; telephone--(202)



267-9424; facsimile--(202) 267-7277; e-mail--gerry.shakley@faa.gov, identifying the air carrier and its intention to attend the meeting, and identifying who will represent the air carrier at the meeting.

The FAA is currently conducting modeling based on the August 30, 2007 published schedule information from the Official Airline Guide. We will review the planned schedules for summer 2008, which carriers were to provide by October 11, 2007 (72 FR 54317, September 24, 2007). The FAA's Air Traffic Organization will work with individual carriers to validate the schedule information to be used by the FAA during the course of the scheduling reduction meeting.

Because the scheduling reduction meeting and all preparations for it are subject to the U.S. antitrust laws, the FAA has worked closely with the Department of Justice, Antitrust Division, on procedures for conducting the meeting in a way that should facilitate legal compliance. As noted in this correspondence, communications among carriers regarding competitively sensitive information could result in a violation of the antitrust laws and lead to civil or criminal liability. Thus, the procedures outlined in the notice provide for a series of scheduling reduction sessions to be conducted separately by FAA staff with each air carrier attending the meeting. We may also meet with representatives of the airport operator. During those sessions any scheduled air carrier or the airport operator in attendance may provide other supplemental information to the FAA regarding the targeted schedule reductions at JFK. The FAA requests the cooperation of all participants at the meeting in adhering to the procedures outlined in the notice.

The text of the FAA letter describing the planned procedures and the text of the Department of Justice letter assessing those procedures are as follows:

September 21, 2007

Thomas O. Barnett, Esq.

Assistant Attorney General

Antitrust Division, Room 3109

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

Dear Mr. Barnett:

We anticipate that the Secretary of Transportation will soon determine, pursuant to 49 U.S.C. § 41722,<sup>3</sup> that it is necessary to convene a meeting of air carriers with the Administrator of the Federal Aviation Administration (FAA) to discuss flight reductions at New York's John F. Kennedy International Airport (JFK) in an effort to reduce overscheduling and flight delays during peak hours of operation. Because of severe congestion at that airport and the resulting delays and inconvenience to the traveling public, the Administrator intends to convene such a meeting in the immediate future. The purpose of this letter is to describe the format and procedures for the meeting and to ensure that, provided the meeting is conducted in accordance with this letter, the Department of Justice would not seek to challenge as a violation of the U.S. antitrust laws any air carrier's attendance at or participation in the meeting or an air carrier's unilateral actions taken to comply with an Order of the Administrator issued as a result of the meeting.

**Meeting Procedures:**

1. *Notice to Air Carriers and Other Interested Parties*

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<sup>3</sup> [The text of a footnote quoting 49 U.S.C. § 41722 is omitted here.]

To assist the Administrator in formulating flight reduction targets, as contemplated by 49 U.S.C. § 41722, and to identify the air carriers that will attend the meeting, the Administrator will send a letter notifying the JFK airport operator and each scheduled air carrier serving JFK of the meeting. The letter will describe the necessity for the meeting and will identify the periods during a representative business day that the Administrator considers severely congested. The letter also will establish either the date and time for the meeting or a period during which the meeting is expected to take place. It will designate a location in the Washington, D.C., area as the meeting's location. The letter will advise that the meeting and all preparations for it are subject to the antitrust laws and that communications among air carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws. Copies of the letter will be sent to the Antitrust Division, as well as to the Air Transport Association, Regional Airline Association, and Air Carrier Association of America.

The FAA Air Traffic Organization (ATO) will separately provide the JFK airport operator and each air carrier serving JFK with a summary showing the FAA's current information as to scheduled arrivals and departures at JFK (including code-share flights) for each air carrier during each 15 minute period from 6 a.m. to 11 p.m. on a representative business day. The FAA's focus on these hours is for overall planning purposes only, and it does not necessarily reflect the peak hours of operation at JFK. A letter enclosed with this summary will request that each air carrier confirm the FAA's current information as to that air carrier's scheduled operations at JFK, respond as to whether the air carrier will attend the scheduling reduction meeting, and, if the air carrier will attend, identify its representative.

The FAA also will publish in the Federal Register a notice of the meeting that identifies the basis for the meeting, when and where the meeting will take place, and the manner in which the meeting will be conducted. The Federal Register notice will invite all scheduled air carriers to attend and will specify that a transcript of the meeting will be available for inspection in a public docket opened within three business days after the Administrator formally adjourns the scheduling reduction meeting.

### *2. Establishment and Notice of Flight Reduction Targets*

The Administrator shall establish flight reduction targets, based on the number of flight operations scheduled for a representative business day. As required by the statute, at least 48 hours prior to the meeting, the Administrator will publish notice of these targets on the FAA's website. The notice will specify the total number of reductions sought from the total number of flight operations conducted. The notice will not include carrier-specific limitations, targets, or suggested reductions.

### *3. Conduct of the Meeting*

The meeting will be conducted under the following procedures:

- a. The meeting will be chaired by the Administrator or by a delegate of the Administrator.
- b. The meeting will be open to attendance by the JFK airport operator and all scheduled air carriers, and the FAA will transcribe the meeting.
- c. Representatives of the Department of Justice will be invited to attend.
- d. At the beginning of the meeting, the FAA will announce that, pursuant to advice from the Department of Justice, no communication will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding the subject of flight reductions at JFK or regarding any other

- competitively sensitive information, including but not limited to markets served, prices charged, and marketing plans.
- e. The Administrator will then distribute to the meeting's attendees a list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day, and he will identify any periods that he considers severely congested, as well as general targets for flight reductions during those periods. This list will not include carrier-specific limitations, targets, or suggested reductions.
  - f. Each air carrier serving JFK and attending the meeting will then be invited into a separate and confidential session with representatives of the ATO, at which the air carrier will be asked to offer flight reductions or schedule modifications. Only representatives of that air carrier and the U.S. government will be permitted to attend the offer sessions; however, the sessions will be transcribed.
  - g. Any offer of flights reductions should specify the precise number of arrivals and departures, if any, the submitting air carrier is willing to remove from each of the severely congested periods identified by the Administrator, indicating whether the flight operation(s) would be cancelled or moved to another time period. The offer may not be explicitly contingent on specific flight reductions by other air carriers but may be conditioned on the Administrator's implementation of an overall reduction of specified numbers of flight operations toward the target during the periods in question. The offer may not contain information from the air carrier on markets served, prices charged, marketing plans or other competitively sensitive matters.

- h. After the completion of all such sessions, the ATO will: (1) review the offers made; (2) revise, in light of the offers made, the list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day; and (3) consult with the Administrator. The Administrator will distribute to the meeting's attendees the carrier non-specific list of the number of flights on a representative business day, and he will identify any periods that he continues to consider severely congested and identify targets for flight reductions during those periods.
- i. At his discretion, the Administrator or his delegate may repeat steps (f) through (h), and he may continue the schedule reduction meeting as he deems necessary.
- j. If the Administrator determines that identifying carrier-specific targets would facilitate voluntary flight reductions and schedule modifications, the Administrator may advise each air carrier separately and confidentially of flight reduction targets specific to that air carrier. No carrier-specific information will be provided to any air carrier other than information regarding that air carrier; however, the Administrator may make general assurances with respect to the overall proportionality of the flight reductions among the air carriers serving JFK.
- k. Following the Administrator's identification of further flight reduction targets, each air carrier attending the meeting that serves JFK will be invited to a separate and confidential session with representatives of the ATO, at which the air carrier will be given the opportunity to submit a new or revised offer of flight reductions or schedule modifications.
- l. At his discretion, the Administrator or his delegate may repeat steps (j) and (k), and he may continue the schedule reduction meeting as he deems necessary.

m. The Administrator may terminate the schedule reduction meeting at his discretion.

4. *Order of the Administrator Concerning Delays at JFK*

The ATO will review the final offers of each air carrier attendee of the meeting and recommend a proposed flight reduction plan to the Administrator. After the Administrator's review and approval of the plan, the resulting schedule reductions, including carrier-specific limitations, will be published in the Federal Register as a final order of the Administrator. The final order of the Administrator will specify a method by which air carriers adversely affected by the order may be relieved of its effect. The order will also be subject to modification by the Administrator.

Please advise if these procedures are acceptable to you.

Sincerely,

Kerry B. Long

Chief Counsel

September 24, 2007

Kerry B. Long, Esq.

Chief Counsel

U.S. Department of Transportation

Federal Aviation Administration

800 Independence Ave, S.W.

Washington, DC 20591

Re: Proposed JFK Airport Delay Reduction Meeting

Dear Mr. Long:

This letter is written in response to your September 21, 2007 letter describing the planned format of a meeting of air carriers with the Administrator of the Federal Aviation

Administration (“FAA”) to discuss flight reductions at New York’s John F. Kennedy International Airport (“JFK”). The meeting is being called because the Secretary of Transportation has determined, pursuant to 49 U.S.C. § 41722, that the meeting is necessary to reduce flight delays during peak hours of operation. You seek assurances that, provided the meeting and related activities are conducted as described in your letter, the Department of Justice would not seek to challenge as a violation of the antitrust laws any air carrier’s attendance at or participation in the meeting or any carrier’s unilateral actions taken to comply with an Order of the Administrator issued as a result of the meeting.

According to your letter, all carriers participating in the meeting will be advised that the meeting and all preparations for it are subject to the antitrust laws and that communications among carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws and lead to civil or criminal liability. At the beginning of the meeting, the Administrator (or his delegee) will announce that, pursuant to advice from the Department of Justice, no communication will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding flight reductions at JFK or any other competitively sensitive subject, including but not limited to markets served, prices charged, and marketing plans.

Prior to the meeting, the Administrator will establish flight reduction targets, based on the number of flight operations scheduled on a representative business day. The Administrator will publish notice of these targets on the FAA website at least 48 hours prior to the meeting, as required by statute. The notice will specify the total number of



reductions to be sought from the total number of flight operations conducted. The notice will not include carrier-specific limitations, targets or suggested reductions.

At the meeting, the Administrator will distribute a list of flights currently scheduled each 15-minute period from 6 a.m. to 11 p.m., indicate any periods that he considers to be severely congested, and provide general targets for flight reductions during those periods, which will not identify which carriers flights are targeted to be moved or eliminated. Each carrier will then be invited into a separate, confidential discussion with the Administrator during which the carrier will be asked to offer specific flight reductions or schedule changes, which shall *not* be contingent on reductions offered by another carrier or carriers.

After completion of the individual carrier sessions, the Administrator will revise the list of flights to reflect the individual discussions with the carriers. The carriers will again be given this list which will not identify flights by carrier. If the Administrator believes that severely congested time periods still exist, he may set revised targets and repeat the individual sessions with carriers.

If the Administrator determines that identifying carrier-specific targets is necessary to facilitate voluntary flight reductions and schedule modifications, he may advise each carrier separately and confidentially of flight reduction targets specific to that carrier, which information will *not* be given to any other carrier or carriers. The Administrator may also make a general assurance with respect to the overall proportionality of the flight reductions being sought by the FAA from carriers serving JFK.

The Administrator will develop and approve a proposed flight reduction plan and schedule reduction, which will be published in the Federal Register as a final order.

Importantly, the procedures do not provide for any meetings among the carriers without the FAA present. The procedures will not allow any discussion or negotiation among carriers about flight reductions, prices charged, or markets served. During the course of the meetings, carriers will not be told schedule reductions or modifications other carriers are offering or being asked to offer.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against any carrier that participates in the FAA's flight reduction meeting and conducts itself in the manner described in your September 21 letter. This expresses the Department's current enforcement intention regarding the carriers' participation in the flight reduction meeting. The Department reserves the right to bring an enforcement action against any conduct that violates the antitrust laws.

Yours sincerely,

Thomas O. Barnett

Issued in Washington, DC, on October 16, 2007.

Kerry B. Long,  
Chief Counsel