

law to a maximum of 180 days, will be completed on or before June 21, 2009.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration,  
Minneapolis Airport District Office,  
6020 28th Ave., South, Minneapolis,  
MN 55450.

General Mitchell International Airport,  
5300 South Howell Avenue,  
Milwaukee, WI 53207.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Minneapolis, Minnesota,  
December 24, 2008.

**Robert Huber,**

Manager, Minneapolis Airports District  
Office, FAA Great Lakes Region.

[FR Doc. E9-535 Filed 1-14-09; 8:45 am]

**BILLING CODE 4910-12-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2006-25755]

### Operating Limitations at New York's LaGuardia Airport; Notice of Order

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

**ACTION:** Notice of Amendment to Order.

**SUMMARY:** The Federal Aviation Administration (FAA) is amending its December 12, 2006 Order, which temporarily capped the scheduled operations at New York's LaGuardia Airport (LaGuardia) pending the implementation of a longer-term regulation to manage congestion there. In particular, we are amending the Order to move toward an hourly limit of 71 operations from 6 a.m. through 9:59

p.m., Eastern Time, Monday through Friday, and 12 noon through 9:59 p.m., Eastern Time, on Sunday. To move toward this new hourly limit, we do not through this amendment force air carriers to relinquish Operating Authorizations at the airport. Instead, the FAA will accept voluntary flight reductions for the duration of the Order, whereupon the FAA will retire the surrendered Operating Authorizations until an hourly average of 71 scheduled operations is achieved. In the event that the current final rule takes effect, that rule would impose a reduction in scheduled service using the air carriers' base of operations during the week of September 28, 2008. The FAA published that rule on October 10, 2008, and it is presently stayed pending judicial review. If it proves necessary to require a reduction in scheduled operations through a future amendment of the Order, air carriers that voluntarily surrender Operating Authorizations under this initiative will be credited with voluntary schedule reductions that they commit to on or before February 2, 2009.

The FAA will accept voluntarily offered schedule reductions through February 2, 2009, and expects air carriers to suspend service at LaGuardia under this arrangement on or before May 31, 2009. The FAA separately extended the Order's expiration until 11:59 p.m., Eastern Time, on October 24, 2009.<sup>1</sup>

If you wish to review the background documents or comments received in relation to this amendment, you may go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the electronic docket. You may also go to the U.S. Department of Transportation's Docket Operations in Room W12-140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

**DATES:** This amendment is effective on the date of publication.

**FOR FURTHER INFORMATION CONTACT:** Gerry Shakley, System Operations Services, Air Traffic Organization; telephone—(202) 267-9424; e-mail—[gerry.shakley@faa.gov](mailto:gerry.shakley@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The FAA briefly outlined the history of congestion at LaGuardia and the FAA's management of the problem in

the proposal for these amendments.<sup>2</sup> The problem, stated succinctly, is that the current cap of 75 scheduled operations per hour is very close to the maximum throughput for LaGuardia's two-runway configuration in optimal meteorological and operational conditions. If there are delays due to adverse weather or other operational reasons, a limit of 75 scheduled operations simply does not permit the airport a significant opportunity to recover, often consigning the airport to delays for the rest of the day.

The FAA's experience in managing congestion at other airports reflects that scheduled service short of maximum airport throughput permits needed flexibility to restore the schedule in many instances when the airport falls behind the published schedules. The FAA's proposal and this amendment are intended to give LaGuardia an additional margin of operational flexibility, providing increased reliability for passengers and others who depend on efficient air transportation. Depending on the air carriers' response to this initiative, LaGuardia passengers and air carriers can expect varying levels of relief from congestion-related delay.

## II. Discussion of the Written Submissions

### A. An Hourly Cap of 71 Scheduled Operations at LaGuardia Strikes an Appropriate Balance Between Airport Throughput and Operational Efficiency

The Port Authority of New York and New Jersey (Port Authority) contends that evidence is lacking that the currently hourly cap of 75 scheduled operations is too high. Instead, the Port Authority advocates that the FAA focus exclusively on operational improvements that might incrementally increase the maximum throughput of the airport's two-runway configuration.

Contrary to the Port Authority's intimation, the FAA continues to advance short-, intermediate-, and long-term initiatives that will improve LaGuardia's operating efficiency. The FAA achieved many such initiatives in 2008 and will field many more in 2009. There are limits to the gains that can be achieved at LaGuardia, given the airport's physical constraints, however. Over the near term while the Order remains in effect, these operational improvements will not make an hourly rate of 75 scheduled operations consistently achievable on an average day. Accordingly, the FAA determined that a modest, voluntary operational cut

<sup>1</sup> 74 FR 845 (Jan. 8, 2009).

<sup>2</sup> 73 FR 79,201 (Dec. 24, 2008).

merited enough consideration to solicit the public's comments.

The Port Authority also asserts that LaGuardia's on-time performance has recently improved, negating the need for a reduction in scheduled operations. In particular, the Port Authority points to the airport's performance in 2008, which was slightly better than its performance in 2007.

LaGuardia's on-time performance in 2007 was the airport's second worst performance in its history, falling only behind 2000, when operations at LaGuardia were nearly unconstrained. As a result, a modest improvement in 2008, while noteworthy, does not make the airport objectively efficient. Indeed, the comments received on the FAA's proposal do not bear out the Port Authority's assertion. None of the air carrier and passenger interest commenters expressed satisfaction with LaGuardia's current performance. To the contrary, such commenters uniformly expressed at least general support for the FAA effort to improve LaGuardia's operational efficiency through operational reductions. Moreover, one air carrier expressed concern that the FAA's effort to trim LaGuardia to 71 hourly scheduled operations does not cut deeply enough. The FAA is satisfied that its proposal to reduce scheduled operations at the airport through the end of the Order is appropriate.<sup>3</sup>

#### *B. The Suggested Variations on the FAA's Proposal Would Have Undesirable Consequences*

Three air carrier commenters—Delta Air Lines, U.S. Airways, and Midwest Airlines—contend that adjustments to the FAA's proposal might generate additional operational reductions. Among the alternatives, one or more of these carriers suggest a temporary waiver of the Order's use-or-lose provisions for the duration of the Order. They also suggest that the FAA state that it could return the Operating Authorizations to the air carrier that surrenders it at or before the conclusion of the Order.

The FAA has rarely afforded air carriers a temporary waiver of the use-or-lose requirements associated with the operating authority at capacity-constrained airports. The rare instances have typically resulted from unpredictable circumstances that make

it unreasonable to expect usage at or above the minimum 80% threshold. The problem with such a program in the present context is that there is no simple way to limit its effect with any precision. In an environment in which many air carriers may be interested in initiating service at LaGuardia, the most problematic result could be an underutilization of the existing airport capacity coupled with an inability to permit new entrant service. This result, too, would be an inefficient use of airport capacity and perhaps the only result that would be worse than overutilization.

The suggestion that the FAA should promise to return the surrendered Operating Authorization to the surrendering air carriers is equally problematic. Most or all the air carrier and passenger interest commenters recognize that a reduction in the hourly cap at LaGuardia is necessary to reduce congestion-related delay. The airport's delay statistics reflect that it is significantly overscheduled, and the air carriers would ideally participate proportionally in correcting the situation without any promise of future enrichment. If the FAA must force reductions in service at a later date, it will do so; however, it would be disingenuous at this point to permit an impression that LaGuardia will soon return to 75 scheduled operations per hour.

Delta Air Lines also suggests that, in lieu of the proposed reduction in scheduled operations, the FAA should make further reductions in the hourly operations of unscheduled operations. The FAA recently halved, from 6 to 3, the number of hourly Operating Authorizations available for unscheduled operations at LaGuardia during peak hours.<sup>4</sup> We do not agree that a further reduction in unscheduled operations is appropriate at this time.

#### *C. The FAA Anticipates That Any Voluntary Reductions Under the Order Could Be Credited Toward a Future, Required Schedule Reduction at LaGuardia*

American Airlines proposes that the FAA should credit an air carrier with any voluntary reductions the carrier makes in its scheduled operations in the event that a future mandatory schedule reduction at LaGuardia is necessary. Delta Air Lines opposes the suggestion.

The final rule related to scheduled operations at LaGuardia, which is currently stayed pending judicial review, called for a reduction in scheduled operations at LaGuardia to 71

per hour. If the relevant portion of the final rule ultimately goes into effect, the FAA's proposal to amend the Order noted that the rule would draw such reductions from each air carrier's base of operations at LaGuardia during the week of September 28, 2008. This provision of the rule would effectively restore the operations voluntarily discontinued under this amendment for the purpose of the withdrawal required by the October 10, 2008, final rule.

In the event that the portion of the October 10 rule reducing scheduled operations at LaGuardia does not go into effect, however, it remains possible that the FAA will further extend the duration of this Order and propose a mandatory mechanism to reduce the hourly scheduled operations at LaGuardia. Should mandatory operational reductions occur under a future amendment to this Order, any air carrier that voluntarily reduces its scheduled operations under this amendment to the Order will receive credit for the voluntary reductions that it takes now. Should a future reduction in LaGuardia's scheduled operations take place under a new rulemaking action, the FAA also anticipates that credit for an air carrier's current, voluntary schedule reductions would be afforded there, as well. The FAA recognizes that to do otherwise would tend to discourage air carriers from voluntarily contributing to an undertaking that the air carrier commenters agree will bring a needed improvement to the efficient operation of the airport.

### **III. The Final Amendment**

The FAA is amending paragraph A.1 of the Order's ordering language to reflect that 71 hourly Operating Authorizations are available for scheduled service during the specified peak operating hours at LaGuardia. In order to move from the current level of scheduled service toward the reduced level, the FAA will accept from air carriers voluntary reductions in scheduled service at LaGuardia. We will retire the surrendered Operating Authorizations we receive until we attain the new average hourly rate of scheduled service. To preserve antitrust principles during the voluntary reduction process, a carrier's identification of Operating Authorizations for voluntary reduction may not be contingent on specific flight reductions made by other carriers.

As we originally proposed, if there is a reduction in scheduled service below an average of 71 hourly operations, the FAA may elect to reallocate Operating Authorizations in order to maintain an

<sup>3</sup> The Port Authority also notes that, in contrast to the FAA's proposal, the FAA's 2004 airport benchmark report concluded that 75 scheduled operations per hour was within an appropriate range for LaGuardia. As American Airlines observes in its supplemental comments, LaGuardia's performance receded markedly after 2004 before improving modestly in 2008.

<sup>4</sup> 73 FR 48,428 (Aug. 19, 2008).

hourly average of 71 scheduled operations. In reaching and maintaining this level, the FAA will retire Operating Authorizations in the order in which the air carriers' commitments to reduce service are received and will notify an air carrier if any Operating Authorization that it is voluntarily offering to relinquish could be subject to reallocation. The FAA also notes that paragraphs A.6 and A.7 of the ordering paragraphs related to minimum usage requirements and the associated reallocation principles continue to apply to all Operating Authorizations that are not surrendered to the FAA and retired.

In order to receive credit for the voluntary reduction in the future, an air carrier must present its offer to reduce scheduled service at LaGuardia no later than February 2, 2009. If an air carrier wishes to offer a voluntary reduction in scheduled service at LaGuardia, an authorized representative of the carrier must contact the individual identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. In addition, air carriers must return all voluntarily surrendered Operating Authorizations to the FAA no later than May 31, 2009.

Accordingly, paragraph A.1 of the FAA's December 27, 2006 order limiting operations at LaGuardia, as previously amended, is amended as follows:

1. The final Order governs scheduled arrivals and departures, except helicopters, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday, and from 12 noon through 9:59 p.m., Eastern Time, Sunday. Seventy-one (71) Operating Authorizations are available per hour and will be assigned by the FAA on a 30-minute basis. The FAA will permit additional, existing operations above this threshold; however, the FAA will retire Operating Authorizations that are surrendered to the FAA, withdrawn for non-use, or unassigned during each affected hour until the number of Operating Authorizations in that hour reaches seventy-one (71).

Issued in Washington, DC, on January 12, 2009.

**Kerry B. Long,**

*Chief Counsel, Federal Aviation Administration.*

[FR Doc. E9-817 Filed 1-14-09; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2009-05]

#### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATE:** Comments on this petition must identify the petition docket number involved and must be received on or before February 4, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2008-1333 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Send 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.

- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.

- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

*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 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 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 or to the Docket Management Facility 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:

Ralen Gao, Office of Rulemaking, ARM-209, Federal Aviation Administration, 800 Independence Avenue, SW., Room 810, Washington, DC 20591, fax 202-267-5075, telephone 202-267-3168. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 8, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

#### Petition for Exemption

*Docket No.:* FAA-2008-1333.

*Petitioner:* Worldwide Aeros Corp.

*Section of 14 CFR Affected:* 14 CFR 21.135.

#### Description of Relief Sought:

Worldwide Aeros Corp. (Aeros) seeks an exemption to allow Aeros to perform initial airship inflation and flight testing at an especially large hangar facility that is not part of the Aeros primary manufacturing facility.

[FR Doc. E9-711 Filed 1-14-09; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[Docket No. FHWA-2009-0001]

#### Emergency Temporary Closure of I-395 & I-66 in the Commonwealth of Virginia

**AGENCIES:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Announcement for the Virginia Department of Transportation to temporarily close I-395 & I-66 on January 20, 2009, for safety and security purposes for the Inauguration of the President of the United States.

**SUMMARY:** Pursuant to section 658.11 of title 23, Code of Federal Regulations, the Virginia Department of Transportation (VDOT) has requested approval of a plan to temporarily close segments of the Interstate to all traffic except buses and authorized vehicles—I-395 (between the Capital Beltway and the District of Columbia (DC) line) and I-66 (between the Capital Beltway and the DC line)—on January 20, 2009, beginning at 12 a.m., for one consecutive 24-hour period because of the Presidential Inauguration. The