

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[Docket No. 2004-16944]****Operating Limitations at Chicago O'Hare International Airport****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of order.

SUMMARY: On February 10, 2005, the Federal Aviation Administration (FAA) issued an order to show cause, which solicited written views on extending the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport (O'Hare). The August 2004 order made effective a series of schedule adjustments that the air carriers individually agreed to during a scheduling reduction meeting. These agreements, in general, resulted in a voluntary O'Hare peak-hour arrival rate of eighty-eight scheduled flights, with the exception of the 8 p.m. hour—the final peak hour of the day—when the rate would not exceed ninety-eight scheduled arrivals.

This notice extends the August 2004 order until October 29, 2005. The order was originally scheduled to expire on April 30, 2005.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Order Extending the August 2004 Limitation of Scheduled Operations at O'Hare International Airport**

On February 10, 2005, the Federal Aviation Administration (FAA) issued an order to show cause (70 FR 7792, Feb. 15, 2005), which solicited written views on extending the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport (O'Hare). The August 2004 order made effective a series of schedule adjustments that the air carriers individually agreed to during a scheduling reduction meeting convened under 49 U.S.C. 41722. These agreements, in general, resulted in a voluntary O'Hare peak-hour arrival rate of eighty-eight scheduled flights, with the exception of the 8 p.m. hour—the final peak hour of the day—when the rate would not exceed ninety-eight scheduled arrivals.

The order to show cause specifically requested written views on two issues. First, it solicited views on extending the duration of the August 2004 order. In the absence of an extension, the August

2004 order would expire on April 30. The order to show cause expressed the FAA's intention to extend the expiration date until October 31, 2005.

Second, the order to show cause sought views on the FAA's reallocation of any unused capacity assigned in the August 2004 order. Specifically, the FAA asked whether it should reallocate any unused capacity through the revised expiration date. If so, the order to show cause asked how the FAA should allocate any such arrival authority.

The FAA's authority to extend the August 2004 order is the same as the authority cited in that order. The FAA proposes to extend the August 2004 order under the agency's broad authority in 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

In addition, the FAA has begun a rulemaking in which it has proposed to adopt a rule that would limit scheduled operations at O'Hare. The proposed rule would take effect upon the expiration of this order limiting scheduled flights at O'Hare and would expire in April 2008.

Extension of the August 2004 Order:

A total of eleven respondents filed written views on the FAA's extension of the August 2004 order. The respondents included six air carriers (Air Canada, America West Airlines, American Airlines, Independence Air, United Airlines, and U.S. Airways); one air carrier association (Air Carrier Association of America); the City of Chicago; and three organizations representing general aviation, charter, and other unscheduled operators (National Air Transport Association, National Business Aviation Association, and Mark Travel, Inc.).

None of the respondents representing scheduled air carrier interests opposes an extension of the August 2004 order, but each carrier included additional comments or suggestions.

America West indicated it would not support an extension beyond the proposed October 31 date.

Independence Air questioned whether absent the limitations, carriers would in fact increase flight schedules. The FAA, however, expects that carriers would increase flights and that a substantial increase in congestion and delays at O'Hare would result if the August 2004 order were not extended, based on our experience before we issued that order.

US Airways conditioned its support for the extension on the FAA's determination that an increase in

scheduled operations at another Chicago-area airport—Midway Airport—is not causing additional delays at O'Hare. The FAA routinely monitors overall airspace capacity in the Chicago area and elsewhere and attempts to minimize the impact of operations wherever there are closely situated airports. We have specifically evaluated the number of scheduled operations at Midway Airport while the August 2004 order has been in effect and considered the operational impact on O'Hare when the August 2004 scheduling targets were adopted.

Comparing the August 2004 schedules with the March 2005 published schedules, the number of weekday scheduled air carrier operations at Midway Airport has declined about 23% from 732 to 566 per day. In the peak hours from 12 p.m. to 8 p.m. Central Time, the hours during which American Airlines and United Airlines reduced scheduled arrivals at O'Hare under the August 18 Order, Midway scheduled operations have decreased by 25%. Scheduled flights in the 7 p.m. hour, the peak hour in August 2004, have decreased by 37%. Many of these changes may be temporary as some carriers at Midway have announced plans to increase service. However, there is no evidence that the voluntary schedule adjustments at O'Hare have resulted in a significant increase in scheduled flights at Midway Airport or that the operational impact from flights at Midway has worsened since the August schedule discussions. The voluntary limitations in the August 2004 order do not appear to have prevented air carriers at either airport from publishing competitive schedules. Several carriers serve both O'Hare and Midway, as is the case in other cities with multiple airports. No evidence has been presented that the extension of the limits at O'Hare unduly restricts an operator from making service decisions for the Chicago region.

Mark Travel, which is a tour operator that conducts unscheduled public charters at O'Hare, the National Air Transport Association (NATA), and National Business Aviation Association (NBAA) collectively state that the congestion at O'Hare was caused primarily by scheduled air carriers. They request that adequate capacity be allocated to the operators of unscheduled flights at O'Hare. NBAA opposes an extension beyond October 2005, and NATA further opposes any limits on general aviation or other unscheduled arrivals.

The August 2004 order governs only the scheduled arrivals of air carriers at O'Hare and was issued under the FAA's

authority to conduct a scheduling reduction meeting under 49 U.S.C. 41722. The FAA is separately addressing unscheduled arrivals at O'Hare through proposed Special Federal Aviation Regulation No. 105, Docket FAA-2004-19411. In that proceeding, the FAA proposed a reservations system to assign peak-hour unscheduled arrivals at O'Hare. This proposal is based on historical average usage of the airport by unscheduled operations. Under the proposal, the number of reservations available to unscheduled operators could increase during periods when the FAA's Air Traffic Organization determines that O'Hare has excess capacity, such as when weather conditions permit a high arrival rate at the airport. Mark Travel, NATA and NBAA previously filed similar comments in the public docket opened for that proposed rulemaking, and their comments will be addressed in that proceeding.

The City of Chicago's Department of Aviation does not oppose a continued, temporary limitation on scheduled arrivals at O'Hare. However, the City posits that the hourly scheduled arrival rate of eighty-eight during most peak hours, as set forth in the August 2004 order, is too low and should yield to an hourly scheduled arrival rate of ninety-two. In arriving at the rate of eighty-eight scheduled arrivals in the August 2004 order, the FAA relied, in part, on aircraft queuing and delay modeling conducted by MITRE Corporation to simulate the effect of various schedule reductions on the flight delays experienced at O'Hare. We also relied on other operational indicia used by the FAA, such as the airport acceptance rate,¹ the number and duration of delays, on-time performance relative to schedule, and the number of flight cancellations.

In the FAA's experience, MITRE Corporation's queuing model has equated very closely to the flight delays actually experienced. In the case of the August 2004 order, assuming a rate of eighty-eight scheduled arrivals, modeling predicted an average 20% decrease in arrival delay minutes at O'Hare compared to August 2004 published schedules. Over the first four months that the August 2004 order has been in effect, actual air traffic data reflect that passengers at O'Hare have experienced an average decrease in arrival delay minutes of approximately 22%. MITRE Corporation's model also

predicted that arrival rates greater than eighty-eight per hour would significantly degrade the delay-reduction benefits that air carriers and their passengers would receive.

The FAA shares the goal of the City of Chicago to set the scheduling target as high as practicable, consistent with average airport capacity and our established delay reduction targets. The scheduling limits adopted in the August 2004 order reflect an increase from the number of arrivals initially proposed by the FAA and are significantly less restrictive than the limits imposed under the High Density Rule, which ceased to apply to O'Hare after July 1, 2002. As indicated by the analyses in the City's comments comparing scheduled arrivals against the recorded airport acceptance rate, the airport acceptance rate at O'Hare in the late summer through October 2004 was higher than that experienced earlier in the year. An airport's acceptance rate and system capacity are largely driven by weather and operating conditions. The actual hourly arrivals may vary from the acceptance rate based on the number and timing of scheduled arrivals, general aviation, charter, and other unscheduled flights, as well as scheduled flights that arrive earlier or later than the published times. Favorable weather conditions in late summer and early autumn and the resulting predominance of optimal or near-optimal acceptance rates indicated by the City, resulted in improved on-time performance and reduced delays at O'Hare.

In November 2004, when the schedule depeaking and reductions took effect, good weather continued to support high acceptance rates. Some additional, well-timed arrivals could have been accommodated in this period without delay impacts. However, since November 2004, adverse weather has decreased the acceptance rate resulting in delays and increased flight cancellations. While performance improved significantly over the previous year, we believe that more operational experience and data are needed before the schedule targets could be raised. We also note that some air carriers have elected temporarily not to use all the arrival allocations assigned to them, so some hours have been below the targeted eighty-eight scheduled arrivals since November 2004. As a result, we are not yet convinced that a peak-hour arrival rate greater than eighty-eight per hour would be sustainable under average operating conditions and provide air carriers and passengers with equivalent delay-reduction benefits. As we indicate in the

notice of proposed rulemaking related to O'Hare, we will continue to monitor operations and may propose an increase in the future if warranted. In the interim, the FAA expects to take advantage of opportunities to make capacity available for unscheduled arrivals and other short-term adjustments to meet air carrier scheduling needs.

It is also significant that the August 2004 order makes effective voluntary agreements negotiated during an August 2004 scheduling reduction meeting, which the FAA convened under 49 U.S.C. 41722. The scheduled arrival rate and the air carrier scheduling adjustments set forth in the August 2004 order followed negotiations that included the air carriers, and the order carefully considered their views and the views of the City within the context of the FAA's delay reduction goals. We do not think it wise to issue an order that establishes new scheduled arrival rates without additional supporting evidence and opportunities for air carrier input. The FAA's order to show cause sought views on the narrower proposition of extending the negotiated agreement for six additional months.

As we observed in the order to show cause, the FAA anticipates that extending the August 2004 order for six months would give way to a final rule that will govern, at least in the near term, the number of arrivals at O'Hare during peak hours. In response to the notice of proposed rulemaking, the City and all interested members of the public will have the opportunity to express their views on the proper level of service at O'Hare. The appropriate balance between a high level of service and anticipated increases in flight delays would fall within the scope of any such discourse.

The City also asks the FAA to implement a new procedure to permit land and hold short operations (LAHSO) for MD-80 aircraft on O'Hare's runway 22 Right. The City suggests that such a procedure would increase the aircraft arrival rate at O'Hare. Because a large number of MD-80-series aircraft operate at O'Hare, the FAA acknowledges that the ability to use another runway configuration for LAHSO could increase the airport's arrival and departure capacity. Moreover, the FAA is conducting a review of the performance capabilities of certain MD-80-series aircraft to determine the appropriate landing distances used for LAHSO procedures. The FAA soon expects to validate its preliminary conclusion that at least some of the MD-80-series aircraft would meet the established safety and operational criteria to

¹ The airport acceptance rate or airport arrival rate is the number of arrivals an airport is capable of accepting in an hour. These rates are based primarily on weather conditions, runway configuration, and arrival and departure traffic mix.

conduct LAHSO on O'Hare's runway 22 Right.

While air traffic control may offer a LAHSO clearance, however, it remains the air carrier's role to establish company operating procedures that are consistent with LAHSO requirements, and it is ultimately in the pilot's discretion to accept or reject a LAHSO clearance from air traffic control. Given the additional steps outside the FAA's control that must be accomplished before an operation may use LAHSO procedures, we are unable to predict at this point when, and how often, there would be realized capacity increases due to certain MD-80-series aircraft conducting LAHSO on runway 22 Right. Therefore, even assuming that the FAA could, in extending the August 2004 order, increase the peak-hour arrival rate it identifies, the determination regarding MD-80 aircraft and LAHSO that the City requests could not be factored into any such increase at this time.

The City additionally requests that the FAA exempt all international arrivals (whether conducted by domestic or foreign air carriers) from the limits by not counting them toward the arrival rates for each air carrier specified in the August 2004 order. Under the current order, arrivals by foreign flag carriers, except for Canadian carriers, are not limited. However, there are two important considerations as to the impact of foreign air carrier arrivals. First, the FAA included the number of then-scheduled foreign air carrier arrivals as of August 2004 when determining the cumulative airport demand, and adjustments by domestic air carriers were made based on then-existing foreign air carrier schedules. Second, foreign air carrier operations, at approximately 2.6%, are a relatively small percentage of O'Hare peak hour arrivals, and their overall level has historically remained quite stable. While there has been some shifting of foreign air carrier arrivals from one time period to another, there are limited increases during peak hours planned by foreign carriers for the summer 2005 season.

We do not dispute the City's assertion that the limitations on the international arrival gates and facilities in Terminal 5 would act as a natural constraint on overall international arrivals by both domestic and foreign air carriers. The effect of the City's proposal, however, would be to permit air carriers that operate international arrivals to add more domestic arrivals to fill the place of the exempted international flights, unless there was an corresponding, one-for-one reduction in the number and

timing of arrival authorizations currently authorized for either domestic or international arrivals. Given that there are over thirty international arrivals each day by domestic carriers, excluding arrivals from Canada, this could increase the peak-hour arrival rate among the air carriers well above eighty-eight scheduled flights and would correspondingly degrade the delay reductions achieved by the August 2004 order. As we indicated earlier, the FAA is not prepared at this time to increase the scheduling targets beyond the parameters in the August 2004 order. The FAA therefore will not, in the context of extending the August 2004 order, alter the underlying voluntary agreements in the fundamental way that the City recommends.

United Airlines and Air Canada, while not opposed to extending the August 2004 order, pointed out that the proposed expiration date of October 31 differs from the change of season recognized by the International Air Transport Association (IATA). In 2005, the IATA change of season will take place on October 29. The air carriers note that conforming the expiration of the August 2004 order to the IATA change of season would make any schedule changes at the expiration of the order less complicated for air carriers scheduling international operations at O'Hare. This is also consistent with scheduling adjustments made by many domestic operations to recognize the change from daylight savings time to standard time. As a result, and because the FAA does not believe that advancing the expiration of the August 2004 order by two days will either harm any interested party or materially undermine the extension's delay-reduction benefits, the FAA will adopt October 29, 2005, as the new expiration for the August 2004 order.

Reallocation of Unused Capacity: The order to show cause also solicited views on whether the FAA should reallocate, during the duration of the August 2004 order, any arrival authority that is unused by the air carrier to which it was assigned. Because the order implemented a series of voluntary agreements, the FAA believes that it would be advisable to reallocate unused capacity only if there were consensus on reallocation among the air carriers that are parties to these agreements. The written submissions reflect a lack of agreement either on reallocation or on an appropriate reallocation method.

Nine respondents expressed a position on a possible reallocation of unused arrival authority. Air Canada and Independence Air are opposed to the reallocation of unused capacity for

the duration of the August 2004 order. In addition, among the seven respondents expressing support for the reallocation of unused arrival authority, the respondents identified at least four mutually exclusive reallocation methods. Two air carriers would accord preference on reallocation to the air carriers that reduced their flight schedules to assist the FAA in arriving at the peak-hour schedule target. Two other air carriers would give preference to limited incumbent air carriers. The City proposed to manage the reallocation of unused capacity through a weighted lottery that accords varying degrees of preference to a number of factors. NATA proposed reserving any unused capacity for unscheduled operations. U.S. Airways supported reallocation but did not identify a reallocation method. Additionally, there was no universally accepted assessment among the respondents of when arrival authority is unused.

Because the comments raise diverse issues that would be more suitably addressed through agency rulemaking or through an additional scheduling reduction meeting rather than an extension of the existing order, for the duration of the August 2004 order the FAA will not reallocate unused arrival authority. As a result, the FAA's Air Traffic Organization will consider any such unused capacity when determining whether to permit additional reservations for unscheduled arrivals at O'Hare.

Conclusion: The FAA proposed to extend the August 2004 order for six months on the basis of its tentative findings that action is needed to prevent a recurrence of overscheduling at O'Hare and that extending the August 2004 order through October 2005 is a rational way of addressing that need, because the order reflects the FAA's agreements with U.S. and Canadian scheduled carriers serving O'Hare. After considering the responses, the FAA has determined to make those findings final and to extend the order until October 29, 2005.

Accordingly, with respect to scheduled flight operations at O'Hare, *it is ordered that:*

1. Ordering paragraph seven of the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport is amended to state that the order shall expire at 9 p.m. on October 29, 2005.

Issued in Washington, DC, on March 21,
2005.

Marion C. Blakey,

Administrator.

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