

SUPPORTING STATEMENT

OMB-2120-XXXX

(New Collection)

Congestion Management Rule for  
John F. Kennedy International Airport and Newark Liberty International Airport

Justification

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The FAA has broad authority to regulate and control the use of navigable airspace of the United States. Under 49 U.S.C. § 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of such airspace. Also, under 49 U.S.C. 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

On April 5, 2000, the "Wendell H. Ford Aviation Investment and Reform Act of the 21st Century" (the "AIR 21 Act") was enacted. This Act, among other things, provided for the phase-out of the High Density Rule ("HDR") at New York's John F. Kennedy International Airport (JFK) on January 1, 2007. Since 2006, there has been a pronounced growth in delay at JFK, and much more delay would result if projected growth in aircraft operations in 2008 and thereafter were realized.

Although Newark Liberty International Airport (Newark or EWR) was initially subject to the HDR, the FAA suspended the application of the HDR at Newark in 1970 due to sufficient airport capacity to meet demand. Even so, Newark has historically experienced a significant level of delays relative to other airports. Ranked according to the proportion of delayed operations, Newark has frequently been the most delayed airport in the system. Current and anticipated demand during peak hours approaches or exceeds the average runway capacity, particularly during peak hours, resulting in volume-related delays. The FAA expects that without action to restrain operations growth at Newark, the delay situation there would also become much worse in the near future.

The FAA proposes to establish procedures to address congestion in the New York City area by assigning slots at JFK and Newark in a way that allows carriers to respond to market forces to drive efficient airline behavior. This proposal is a companion to a separate rulemaking initiative addressing congestion mitigation at New York's LaGuardia airport.

By imposing caps and auctions for slot allocation at these airports, this regulation will prevent excessive congestion and, at the same time, facilitate the direction of scarce slots go to their highest value uses, as would occur in an efficient market. The FAA prefers to use measures that

allow carriers to respond to market forces to drive the most efficient airline behavior. To minimize disruption, the FAA proposes to grandfather the majority of operations at the airports and develop robust secondary markets by annually auctioning off a limited number of slots at each airport.

The FAA is proposing two different alternatives to auction slots. Under the first alternative, the FAA would auction off a portion of the slots at JFK and Newark and would use the net auction proceeds to mitigate congestion and delay in the New York City area. Under the second alternative, the FAA would conduct an auction at JFK as it would under the first alternative, but the net auction proceeds would go to the carriers previously holding the slots rather than the FAA (Newark would be handled as in the first alternative). This proposal also contains provisions for use-or-lose, unscheduled operations, and withdrawal of slots for operational need. The FAA proposes to sunset the rule in ten years (March 2019).

This collection of information is necessary to implement the information requirements discussed in the proposed rule. Generally, the information collection requirements of the rule involve scheduled carriers notifying the FAA of their transactions and uses of slots. An air carrier must notify the FAA of its: (1) designation of 50 percent of its Limited Slots (i.e., slots to be auctioned, if any); (2) request for FAA confirmation if it wishes to sublease slots; (3) FAA consent to transfer slots under the transferring carrier's marketing control; (4) request for FAA confirmation of one-for-one slot trades; (5) slot usage (operations); and (6) request for assignment of new slots or slots available on a temporary basis. These requirements also provide a means for carriers to participate in the primary (auction) and secondary slot markets.

This collection supports the Department of Transportation's strategic goal of mobility for shaping an accessible and reliable transportation system for all people, goods, and regions.

## **2. Indicate how, by whom, and for what purpose the information is to be used.**

The information is reported to the FAA by scheduled operators holding slots. The FAA logs, verifies, and processes the requests made by the operators.

This information is used to allocate, track usage, withdraw, and confirm transfers of slots among the operators and facilitates the buying and selling of slot leases in the secondary market. The FAA also uses this information in order to maintain an accurate base of operations to ensure compliance with the operations permitted under the rule and those actually conducted at the airport.

The proposed rule also requires unscheduled and public charter operations at JFK and Newark to be reserved using the Airport Reservation Office (ARO) or, for public charters seeking reservations up to six months in advance, through the Slot Administration Office. It is the FAA's intention, however, to require these reservation procedures at JFK and Newark regardless of the outcome of this rulemaking. Accordingly, the FAA will make available burden estimates relating to unscheduled and public charter operations in a separate rulemaking notice.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.**

A significant amount of the reporting requirements proposed in the rulemaking involve scheduling information that the carriers already have in their computer databases. The FAA expects to determine several common reporting formats for the information; therefore, the carriers may not have to alter their databases in order to meet this reporting requirement. The airline industry is one of the leaders in the use of improved information technology; the carriers are expected to use their information technology capabilities to assist them in reducing any burden due to the information reporting requirements of this proposed rule. Carriers that would be required to report slot usage information would be able to submit the necessary information electronically. In addition, the FAA expects carriers would be able to submit electronically all information for the transfer, sublease, and one-for-one trades of slots. This is consistent with the requirements of the Government Paperwork Elimination Act.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2 above.**

Since this proposed rule would be imposing modified reporting requirements for scheduled operators at JFK and Newark, there would be no duplication. There are no other data sources that would assign carrier operations to specific slots or to obtain the other information on the allocation, transfer, or usage of slots.

**5. If the collection of information has a significant impact on a substantial number of small businesses or other small entities (item 5 of OMB Form 83-I), describe the methods used to minimize burden.**

This collection affects scheduled operators at JFK and Newark. Based on a review of the number of employees for each scheduled operator, the FAA found that none of the scheduled operators at JFK and EWR that would incur administrative costs associated with identifying slots to be auctioned (the largest time component identified) are considered to be small entities under Small Business Administration size standards (in this case, firms with 1,500 or fewer employees). Annual reporting requirements for carriers not required to identify slots for auction would require approximately 12 hours per year per carrier per airport and are not considered to have a significant impact.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Most of the other reporting requirements (e.g., one-for-one slot transfers, subleases in the secondary market) occur on an as-needed basis with most of those events being initiated by the carriers. Reports on the use of slots would be required two times per summer and winter season or, on average, quarterly. This level of reporting frequency would ensure that corrective measures can be taken in a timely fashion if slots at this airport are not being transferred correctly or are not being utilized according to minimum usage

requirements. If this information is collected less frequently, the FAA would be unable to confirm carrier compliance or maintain an accurate inventory of slots and enforce operational limits.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with 5 CFR 1320.5(d)(2)(i)-(vii)**

This information reporting effort is consistent with the guidelines in 5 CFR § 1320. (d)(2), with the exception that some reporting is event-based (e.g., reporting of one-for-one slot transfers) and may occur more frequently than quarterly, particularly for large carriers. Again, this level of frequency would be necessary to ensure that appropriate measures could be taken in a timely fashion to confirm valid transactions and usage.

**8. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any) and on the data elements to be recorded, disclosed, or reported.**

The FAA is seeking comment from all interested parties through the publication of the NPRM in the Federal Register. The NPRM was published on May 21, 2008, vol. 73, no. 99, pages 29625-29651.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

There are no monetary considerations for this collection of information.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

The rule does not require the holder of slots to disclose confidential or sensitive information either to the FAA or to the public. Therefore, no assurances of confidentiality are required to be given.

**11. Provide additional justification for any questions of a sensitive nature such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary; the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature.

**12. Provide estimates of the hour burden of the collection of information.**

The annual reporting burden for each subsection of the rule is presented below. Annual burden estimates presented in today's notice are based on burden estimates from the the SNPRM "Congestion Management Rule for LaGuardia Airport" (Docket No. FAA-2006-25709; Notice No. 08-04).

The burden is calculated by the following formula:

Annual Hourly Burden = (# of respondents) \* (time involved) \* (frequency of the response).

All section references pertain to those in the proposed rule.

**§ 93.164(c)(2) Categories of Slots: A Carrier shall designate 50 percent of its Limited Slots**

JFK

(4 carriers with Limited Slots) \* (80 hours per submittal) = 320 hours

Based on the current allocation of Operating Authorizations and the proposed level of baseline operations each carrier would be grandfathered under the proposal, we assumed the four carriers with the most operations at JFK would expend up to ten days of planning time each, potentially 80 hours, to develop and submit their designations of 50 percent of their Limited Slots for eventual auction, for a total of 320 hours. This designation would occur once, ten days after the final rule effective date.

Newark

(1 carrier) \* (240 hours per submittal) = 240 hours

(5 carriers) \* (80 hours per submittal) = 400 hours

Total Annual Hourly Burden = 640 hours

Based on the projected allocation of Operating Authorizations and the proposed level of baseline operations each carrier would be grandfathered under the proposal, we assumed that one carrier, Continental Airlines, with the most operations at Newark would expend up to 30 days of planning time, potentially 240 hours, to develop and submit its designation of 50 percent of its Limited Slots for eventual auction. The remaining five carriers required to designate Limited Slots would each expend up to 10 days of planning time, potentially 80 hours each, to develop and submit their designation of 50 percent of their Limited Slots. These five carriers would therefore need 400 hours. In total, the six carriers at Newark required to designate Limited Slots would require 640 hours of effort to make the designation. This designation would occur once, ten days after the final rule effective date.

### **Section 93.165(c) Initial Assignment of Slots**

We assumed that the 77 carriers operating at JFK and 39 carriers operating at Newark would expend time submitting and collecting information to participate in the proposed auctions for slot assignments. The FAA is currently in the process of procuring auction software and services. The FAA will make available burden estimates for information requirements relating to auction participation in a separate notice.

### **Section 93.166(b)-(c) Assignment of New or Returned Slots**

We made no assumptions about additional workload for carriers at either airport associated with the IATA-like administrative process for assigning new or returned slots. Workload would vary depending on how many (if any) new or returned slots were to develop at either airport over the 10 year period of the proposed rule. In any case, carriers are already familiar with and use IATA-like allocation methods and would handle them in the course of normal operations at JFK and Newark.

### **Section 93.168 (b),(d),(f) Sublease and Transfer of Slots**

#### JFK

$(18 \text{ carriers}) * (1.5 \text{ hours per submittal}) * (4 \text{ occurrences per year}) = 108 \text{ hours}$

$(59 \text{ carriers}) * (1.5 \text{ hours per submittal}) * (2 \text{ occurrences per year}) = 177 \text{ hours}$

Total Annual Hourly Burden = 285 hours

Based on burden estimates from “Congestion Management Rule for LaGuardia Airport,” we assumed the 77 carriers operating at JFK would expend one and one half hours for each occurrence of a lease or transfer of a slot. For each operator with 6 or more slots (18 carriers total), we assumed that a lease or transfer of a slot would occur on average quarterly. For each operator with fewer than 6 slots (59 carriers total), we assumed that a lease or transfer of a slot would occur on average biannually. The total annual hourly burden for all carriers collectively would be 285 hours.

#### Newark

$(1 \text{ carrier}) * (1.5 \text{ hours per submittal}) * (16 \text{ occurrences per year}) = 24 \text{ hours}$

$(12 \text{ carriers}) * (1.5 \text{ hours per submittal}) * (4 \text{ occurrences per year}) = 72 \text{ hours}$

$(26 \text{ carriers}) * (1.5 \text{ hours per submittal}) * (2 \text{ occurrences per year}) = 78 \text{ hours}$

Total Annual Hourly Burden = 174 hours

As with JFK, we assumed the 39 carriers operating at Newark would expend one and one half hours for each occurrence of a lease or transfer of a slot. For the largest operator, we assumed that a lease or transfer of four slots would occur on average quarterly. For those operators at Newark with 6 or more slots (12 carriers total, excluding Continental Airlines), we assumed that a lease or transfer of a slot would occur on average quarterly. For each operator with fewer than 6 slots (26 carriers total), we assumed that a lease or transfer of a slot would

occur on average biannually. The total annual hourly burden for all carriers collectively would be 174 hours.

### **Section 93.169 (b), (d) One-for-One Trades of Slots**

#### JFK

(18 carriers) \* (1.5 hours per submittal) \* (4 occurrences per year) = 108 hours  
(59 carriers) \* (1.5 hours per submittal) \* (2 occurrences per year) = 177 hours  
Total Annual Hourly Burden = 285 hours

Based on burden estimates from “Congestion Management Rule for LaGuardia Airport,” we assumed the 77 carriers operating at JFK would expend one and one half hours for each occurrence of a one-for-one trade of a slot. For each operator with 6 or more slots (18 carriers total), we assumed that a one-for-one slot trade would occur on average quarterly. For each operator with fewer than 6 slots (59 carriers total), we assumed that a one-for-one slot trade would occur on average biannually. The total annual hourly burden would be 285 hours.

#### Newark

(1 carrier) \* (1.5 hours per submittal) \* (16 occurrences per year) = 24 hours  
(12 carriers) \* (1.5 hours per submittal) \* (4 occurrences per year) = 72 hours  
(26 carriers) \* (1.5 hours per submittal) \* (2 occurrences per year) = 78 hours  
Total Annual Hourly Burden = 174 hours

As with JFK, we assumed the 39 carriers operating at Newark would expend one and one half hours for each occurrence of a one-for-one trade of a slot. For the largest operator, we assumed that a one-for-one trade of four slots would occur on average quarterly. For those operators at Newark with 6 or more slots (12 carriers total, excluding Continental Airlines), we assumed that a one-for-one slot trade would occur on average quarterly. For each operator with fewer than 6 slots (26 carriers total), we assumed that a one-for-one slot trade would occur on average biannually. The total annual hourly burden would be 174 hours.

### **§ 93.171 Unscheduled Operations**

This section proposed rule requires unscheduled and public charter operations at JFK and Newark to be reserved using the Airport Reservation Office (ARO) or, for public charters seeking reservations up to six months in advance, through the Slot Administration Office. It is the FAA’s intention, however, to require these reservation procedures at JFK and Newark regardless of the outcome of this rulemaking. Accordingly, the FAA will make available burden estimates relating to unscheduled and public charter operations in a separate rulemaking notice.

### **Section 93.172(a)-(b) Reporting Requirements**

#### JFK

(77 carriers) \* (1.5 hours per submittal) \* (4 occurrences per year) = 462 hours

Based on burden estimates from the “Congestion Management Rule for LaGuardia Airport” (Docket No. FAA-2006-25709; Notice No. 08-04), we assumed the 77 carriers operating at JFK would expend, on average, one and one half hours, two times each per summer and winter season, to submit the data required by § 93.172.

#### Newark

(39 carriers) \* (1.5 hours per submittal) \* (4 occurrences per year) = 234 hours

Based on burden estimates from the “Congestion Management Rule for LaGuardia Airport” (Docket No. FAA-2006-25709; Notice No. 08-04), we assumed the 39 carriers operating at Newark would expend, on average, one and one half hours, two times each per summer and winter season, to submit the data required by § 93.172.

### **Summary**

#### JFK

Total First Year Hourly Burden — 320 Hours

Total Recurring Annual Hourly Burden (per year for 10 years) — 1,032 Hours

#### Newark

Total First Year Hourly Burden — 640 Hours

Total Recurring Annual Hourly Burden (per year for 10 years) — 582 Hours

The burden estimates for JFK and Newark do not include the time required to participate in the annual auctions. The FAA will make available burden estimates for information requirements relating to auction participation in a separate notice.

### **13. Provide an estimate of the total annual cost burden to respondents or record.**

From the Economic Values for FAA Investment and Regulatory Decisions, A Guide, we used an hourly labor rate of \$49.04 for a white-collar aviation industry employee.<sup>1</sup> The estimated first-year costs to respondents for the first-year burden (start up and recurring) are about \$66,000 at JFK and \$60,000 at Newark. The estimated annual costs for the recurring burden are about \$51,000 at JFK and \$29,000 at Newark. The estimated total discounted cost over the 10-year period of analysis (approximate life of the rule) is about \$376,000 at JFK and \$236,000 at Newark.<sup>2</sup>

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<sup>1</sup> Source: Economic Values for FAA Investment and Regulatory Decisions, A Guide. October 3, 2007. Prepared by GRA, Incorporated for the FAA Office of Aviation Policy and Plans (available at [http://www.faa.gov/regulations\\_policies/policy\\_guidance/benefit\\_cost](http://www.faa.gov/regulations_policies/policy_guidance/benefit_cost)).

<sup>2</sup> Values are rounded to the nearest \$1,000 (thousands). The discounted present value of costs is over 10 years using a 7% discount rate. Values for 2019 are through March only. Estimates of total burden time and costs may change after the rule is final.

**14. Provide estimates of annualized cost to the Federal Government.**

We assumed that the information processing requirement of the government consists of logging and verifying the information reported in #12. Based on the supporting statement for the new collection of information submitted for the SNPRM at LaGuardia, the FAA assumed that the collection would take about 30 minutes or less for the agency to log and verify each occurrence of the reporting requirements discussed in #12. Based on the same information, the FAA also assumed the same labor rate for a government employee as we did for an industry white-collar aviation employee. The FAA is currently in the process of procuring auction software and services. The FAA will make available a burden estimate for the FAA regarding auction participation in a separate notice.

The total hourly burden to the FAA at JFK is 346 hours in the first year and 344 hours recurring annually. The estimated first year and recurring annual costs to the FAA at JFK are about the same at \$17,000 per year. The estimated total discounted cost to the FAA over the 10-year period of analysis (the approximate life of the rule) is about \$128,000.<sup>3</sup>

The total hourly burden to the FAA at Newark is 197 hours in the first year and 194 hours recurring annually. The estimated first year and recurring annual costs to the FAA at Newark is about the same at \$10,000 per year. The estimated total discounted cost to the FAA over the 10-year period of analysis (the approximate life of the rule) is about \$73,000.<sup>4</sup>

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.**

This is a new collection. Therefore, there are no changes or adjustments.

**16. For collections of information whose results are planned to be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

Generally, the only information collected by the FAA that will be published would be the results of the secondary market transactions. The frequency of this reporting is expected to occur on an as-needed basis.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

The FAA is not seeking this approval.

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<sup>3</sup> See footnote 2.

<sup>4</sup> See footnote 2.

**18. Explain each exception to the certification statement identified in Item 19.  
"Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.**

There are no exceptions to Item 19.