

(south) of the 149.5-mile radius of the Anchorage VOR/DME, AK, and within a 73-mile radius of Homer Airport, AK, and within a 42-mile radius of the Middleton Island VOR/DME, AK, and south and east of the Alaska Peninsula within an 81.2-mile radius of Perryville Airport, AK, and south of the Alaska Peninsula within a 73-mile radius of the Port Heiden NDB/DME, AK.

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#### Control 1234L [Amended]

That airspace extending upward from 2,000 feet above the surface within an area bounded by a line beginning at lat. 58°06'57" N., long. 160°00'00" W., then south along 160°00'00" W. longitude, until it intersects the Anchorage Air Route Traffic Control Center (ARTCC) boundary; then southwest, northwest, north, and northeast along the Anchorage ARTCC boundary to lat. 62°35'00" N., long. 175°00'00" W., to lat. 59°59'57" N., long. 168°00'08" W., to lat. 57°45'57" N., long. 161°46'08" W., to the point of beginning; and that airspace extending upward from 1,200 feet above the surface within a 26.2-mile radius of Eareckson Air Station, AK, within an 11-mile radius of Adak Airport, AK, and within 16 miles of Adak Airport, AK, extending clockwise from the 033° bearing to the 081° bearing from the Mount Moffett NDB, AK, and within a 10-mile radius of Atka Airport, AK, and within a 10.6-mile radius from Cold Bay Airport, AK, and within 9 miles east and 4.3 miles west of the 321° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 20 miles northwest of Cold Bay Airport, AK, and 4 miles each side of the 070° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 13.6 miles northeast of Cold Bay Airport, AK, and west of 160° W. longitude within an 81.2-mile radius of Perryville Airport, AK, and within a 45-mile radius of the Nikolski Airport, AK, and west of 160° W. longitude within a 73-mile radius of the Port Heiden NDB/DME, AK, and within a 10-mile radius of St. George Airport, AK, and within a 73-mile radius of St. Paul Island Airport, AK, and within a 20-mile radius of Unalaska Airport, AK, extending clockwise from the 305° bearing from the Dutch Harbor NDB, AK, to the 075° bearing from the Dutch Harbor NDB, AK, and west of 160° W. longitude within a 25-mile radius of the Borland NDB/DME, AK, and west of 160° W. longitude within a 72.8-mile radius of Chignik Airport, AK; and that airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eareckson Air Station, AK, and within a 7-mile radius of Adak Airport, AK, and within 5.2 miles northwest and 4.2 miles southeast of the 061° bearing from the Mount Moffett NDB, AK, extending from the 7-mile radius of Adak Airport, AK, to 11.5 miles northeast of Adak Airport, AK and within a 6.5-mile radius of King Cove Airport, and extending 1.2 miles either side of the 103° bearing from King Cove Airport from the 6.5-mile radius out to 8.8 miles, and within a 6.4-mile radius of the Atka Airport, AK, and within a 6.3-mile radius of Nelson Lagoon Airport, AK, and within a 6.3-mile radius of the Nikolski Airport, AK, and within a 6.4-mile radius of

Sand Point Airport, AK, and within 3 miles each side of the 172° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 13.9 miles south of Sand Point Airport, AK, and within 5 miles either side of the 318° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of Sand Point Airport, AK, and within 5 miles either side of the 324° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of the Sand Point Airport, AK, and within a 6.6-mile radius of St. George Airport, AK, and within an 8-mile radius of St. Paul Island Airport, AK, and 8 miles west and 6 miles east of the 360° bearing from St. Paul Island Airport, AK, to 14 miles north of St. Paul Island Airport, AK, and within 6 miles west and 8 miles east of the 172° bearing from St. Paul Island Airport, AK, to 15 miles south of St. Paul Island Airport, AK, and within a 6.4-mile radius of Unalaska Airport, AK, and within 2.9 miles each side of the 360° bearing from the Dutch Harbor NDB, AK, extending from the 6.4-mile radius of Unalaska Airport, AK, to 9.5 miles north of Unalaska Airport, AK; and that airspace extending upward from the surface within a 4.6-mile radius of Cold Bay Airport, AK, and within 1.7 miles each side of the 150° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 7.7 miles southeast of Cold Bay Airport, AK, and within 3 miles west and 4 miles east of the 335° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 12.2 miles northwest of Cold Bay Airport, AK.

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#### Control 1487L [Amended]

That airspace extending upward from 8,000 feet MSL within 149.5 miles of the Anchorage VOR/DME clockwise from the 090° radial to the 185° radial of the Anchorage VOR/DME, AK; and that airspace extending upward from 5,500 feet MSL within the area bounded by a line beginning at lat. 58°19'58" N., long. 148°55'07" W.; to lat. 59°08'34" N., long. 147°16'06" W.; thence counterclockwise via the 149.5-mile radius of the Anchorage VOR/DME, AK, to the intersection with a point 12 miles from and parallel to the U.S. coastline; thence southeast 12 miles from and parallel to the U.S. coastline to a point 12 miles offshore on the Vancouver FIR boundary; to lat. 54°32'57" N., long. 133°11'29" W.; to lat. 54°00'00" N., long. 136°00'00" W.; to lat. 52°43'00" N., long. 135°00'00" W.; to lat. 56°45'42" N., long. 151°45'00" W.; to the point of beginning; and that airspace extending upward from 1,200 feet MSL within the area bounded by a line beginning at lat. 59°33'25" N., long. 141°03'22" W.; thence southeast 12 miles from and parallel to the U.S. coastline to lat. 58°56'18" N., long. 138°45'19" W.; to lat. 58°40'00" N., long. 139°30'00" W.; to lat. 59°00'00" N., long. 141°10'00" W.; to the point of beginning, and within an 85-mile radius of the Biorka Island VORTAC, AK, and within a 42-mile radius of the Middleton Island VOR/DME, AK, and within a 30-mile radius of the Glacier River NDB, AK, and within a 149.5-mile radius of

the Anchorage VOR/DME, AK, and within a 73-mile radius of Homer Airport, AK, and within a 73-mile radius of the Kodiak Airport, AK; and that airspace extending upward from 700 feet MSL within 14 miles of the Biorka Island VORTAC, AK, and within 4 miles west and 8 miles east of the Biorka Island VORTAC 209° radial extending to 16 miles southwest of the Biorka Island VORTAC, AK.

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Issued in Washington, DC, on October 22, 2008.

**Edith V. Parish,**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 93

[Docket No. FAA-2006-25709]

RIN 2120-A170

#### Congestion Management Rule for LaGuardia Airport

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

**ACTION:** Notice; clarification of final rule.

**SUMMARY:** On October 10, 2008, the FAA issued a final rule to address congestion at New York's LaGuardia Airport (LaGuardia). That final rule is scheduled to take effect December 9, 2008. As part of the final rule, the FAA explained how it would initially allocate slots to incumbent carriers on the rule's effective date. The preamble to the final rule noted that it would not allocate slots to a carrier that was no longer operating at the airport. However, it did not address how those slots would be allocated under the rule. Today's notice provides that explanation.

**ADDRESSES:** To read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket. Alternatively, go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this clarification notice contact: Nan Shellabarger, Office of Aviation Policy and Plans, APO-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3275; e-mail

*nan.shellabarger@faa.gov*. For legal questions concerning this rulemaking, contact: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3073; e-mail *rebecca.macpherson@faa.gov*.

**SUPPLEMENTARY INFORMATION:** On October 10, 2008, the FAA issued a final rule to address congestion at LaGuardia. 73 FR 60574. That final rule is scheduled to take effect December 9, 2008. As part of the final rule, the FAA explained how it would initially allocate slots to incumbent carriers no later than the rule's effective date. Under the rule, initial allocation is based on Operating Authorizations allocated under the Order Limiting Operations at LaGuardia Airport (LaGuardia Order) to carriers for the week of September 28, 2008. The preamble to the final rule noted that it would not allocate slots to a carrier that was no longer operating at the airport. However, it did not address how those slots would be allocated under the rule. Specifically, the preamble to the final rule stated:

One carrier that held Operating Authorizations in January 2007 is no longer in business, although it continues to hold an air carrier certificate. While those Operating Authorizations are currently being operated by another carrier solely within its marketing control, the FAA believes it is simply cleaner to allocate the slots to the holder of the Operating Authorization only if the carrier is still operating at the airport. (73 FR 60585)

Section 93.39(b) of the final rule's regulatory text states:

If a carrier was allocated operating rights under the Order Limiting Operations at LaGuardia Airport during the week of September 28–October 4, 2008, but the operating rights were held by another carrier regularly conducting operations at the airport as of that week, then the corresponding slots will be assigned to the carrier that held the operating rights for that period, as evidenced by the FAA's records.

Under the LaGuardia Order, ATA Airlines was allocated 14 slots at the airport. These slots have been operated under lease agreements by AirTran and Delta Air Lines. However, the allocation has remained with ATA Airlines. That carrier ceased operations at LaGuardia on January 7, 2008, and ceased operations entirely on April 3, 2008. Thus, section 93.39(b) does not apply. Likewise, these slots would not be considered new or returned capacity that can be reallocated only via auction under 93.40 and then designated as

unrestricted slots. Since no provision of the final rule specifically directs how these types of slots will be allocated, the FAA believes it is appropriate to provide clarification.

On October 17, 2008, in the bankruptcy proceeding of In re: ATA Airlines, Inc., U.S. Bankruptcy Court for the Southern District of Indiana, Indianapolis Division, case no. 08–03675–BHL–1 1, the court issued an Order Granting Expedited Motion under Bankruptcy Code Sections 105 and 363 to Establish Solicitation and Bid Procedures for the Sale of the Debtor's Business (Bankruptcy Order). The Bankruptcy Order establishes rules and procedures that will govern the solicitation and submission of proposals for the acquisition of ATA Airlines. At present, initial bids are due to the ATA Airlines by November 3, 2008. ATA Airlines will determine which Bid Proposal (as defined in the Bankruptcy Order) is the highest and best offer for the sale of the business. Each Bid Proposal shall be subject to bankruptcy court approval.

In proceeding before the court, the FAA has reiterated that the Operating Authorizations allocated under the LaGuardia Order cannot be sold. However, the Bankruptcy Order addresses the sale of the business as a whole. Accordingly, for the purpose of the LaGuardia Order and the Final Rule, the FAA would consider the acquiring entity to stand in the shoes of ATA Airlines. If the acquiring entity is an air carrier,<sup>1</sup> the FAA will allocate the 14 LaGuardia slots to that entity. The acquiring carrier need not currently have a presence at the airport. The provision in the preamble that the air carrier must operate at LaGuardia was directed to the holder of the Operating Authorization under the LaGuardia Order. The FAA simply did not contemplate a circumstance whereby ATA Airlines could be acquired by another carrier under bankruptcy proceedings.

The FAA understands that several aspects of the final rule need to be addressed given the possibility of these

<sup>1</sup> Only air carriers can hold either Operating Authorizations under the LaGuardia Order or slots under the final rule. Accordingly, the FAA assumes that only an existing air carrier would be likely to bid on ATA Airlines if its primary interest is acquiring the LaGuardia slots. Any entity that does not currently possess an air carrier certificate should contact the FAA's Indianapolis Flight Standards District Office (FSDO) to discuss concerns regarding ATA Airlines' operating certificate. Operating certificates cannot be sold, and the FAA requires certain criteria be met before it will issue a certificate. Questions to the Indianapolis FSDO should be directed to Ron Myers at (317) 837-4419 or Bruce Montigney at (317) 837-4410.

slots being allocated outside of the context of the LaGuardia Order.

- As is the case with all slots allocated in a manner other than under the provisions of section 93.40, these slots will be designated as common slots and, except as discussed below, will be subject to the rule's usage requirements and may be withdrawn for operational need.

- Should the acquisition transaction not be completed until after the rule's effective date, the FAA will hold the slots in abeyance until the transaction is complete, at which point it will allocate the slots.

- The slots will be included in the total number of common slots initially allocated to the carrier under the rule. Should the total number of common slots exceed 20, the carrier may lose a percentage of the slots in accordance with the final rule. However, depending on when the slots are allocated, reversion of the additional slots may not occur before March, 2010.

- Since the bankruptcy court order includes unexpired leases, the FAA anticipates the acquiring carrier will comply with the requirements of all leases related to the slots, including any time frames provided for termination of the lease agreement.

- The FAA will waive the usage requirements for a period of no more than six months following allocation so that the acquiring carrier has the opportunity to establish new routes or services.

#### Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

- (1) Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- (2) Visiting the FAA's Regulations and Policies Web page at <http://www.faa.gov/regulationspolicies/>; or
- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

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

Issued in Washington, DC on October 27, 2008.

**Rebecca B. MacPherson,**  
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*Federal Aviation Administration.*

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