I. Introduction

By publication in the January 8, 2015, edition of the Federal Register (80 Fed.Reg. 1274 et seq.), the Federal Aviation Administration (FAA) has proposed to limit unscheduled operations at John F. Kennedy International Airport (JFK) to two per hour and Newark Liberty International Airport (EWR) to one per hour during the slot controlled hours of 0600 through 2259. This proposal is yet another attempt by the federal government to deal with the issues of congestion and delay in the New York Metropolitan area and substantially mirrors proposals made seven years ago. See, FAA Docket No. FAA-2008-0629.

The Cargo Airline Association (CAA or “the Association”) is the nationwide organization representing the interests of the leading U.S. all-cargo air carriers before federal administrative agencies, Congress and the various states and localities throughout the United States. Association members routinely serve both JFK and EWR and have a significant stake in

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1 FAA also proposes limiting scheduled operations at the New York Metropolitan area airports and provides five alternatives for a secondary market that would allow carriers to buy, sell, lease and trade slots. The Association’s comments herein are limited to the proposed limitations on unscheduled operations at JFK and EWR. Association members may be filing individual comments directed at the limits to scheduled operations.

2 U.S air carrier members of the Cargo Airline Association are ABX Air, Atlas Air, FedEx Express, Kalitta Air and UPS Airlines. Individual member airlines will also be submitting comments herein.
the outcome of this proceeding. Therefore, the Association submits the following comments in response to the FAA proposal.

II. **Air Cargo Service to the General Public will be Negatively Impacted if Limits are Placed on Unscheduled Operations**

While the Association recognizes the need to address the problem of congestion at JFK and EWR, and further understands that the federal government must play a role in this process, the severe limitation on unscheduled operations envisioned by the current proposal will have a significantly negative effect on shippers and customers, as well as members of the all-cargo air carrier industry – an industry segment that is in no way responsible for the congestion at issue. Members of the Cargo Airline Association provide expedited, time-definite, air freight service for shippers worldwide. To a very large extent, all-cargo airlines are the engine that drives the world economy. Industry members include, not only companies like FedEx Express and UPS that provide expedited express service, but also companies such as ABX Air, Atlas Air and Kalitta Air that serve the general global freight market. The all-cargo carriers, as a group, in 2014 carried 88.6% of domestic Revenue Ton Miles (RTMs), up from 70.1% in 2000, and 72.3% of international RTMs, up from 50.3% in 2000. *FAA Aerospace Forecast: Fiscal Years 2015-2035, p.57, March 2015.*

In the air cargo marketplace, demand drives the service levels provided. Our members’ customers and shippers demand time-definite, reliable, air transport. Utilization of the New York Metropolitan area airports is a critical part of the air transportation business and the all-cargo carrier’s worldwide networks. All-cargo carriers would simply be unable to service customer demand if any limits were placed on unscheduled operations. And since all-cargo carriers typically guarantee delivery by a time certain, any system delays or inability to operate
during certain hours have a dramatic impact on system service. Moreover, a further unique aspect of the all-cargo industry is that it requires significantly expanded operations during the winter holiday season in order to meet the demand for Christmas deliveries and, indeed, during other ad hoc peaks such as Mother’s Day (flowers), the introduction of new drugs when approved, and special “events” such as the initial retail sales of new technology such as cell phones and other personal communications devices. The instant proposal to restrict unscheduled operations will severely hamper the ability to provide these needed services.

III. The Proposed Rule Does Not Adequately Address the Unique Operational Requirements of the All-Cargo Industry and Discriminates Against the Unscheduled Operations Necessary in the All-Cargo Environment

It is important to understand that the airline industry in the United States is not a unified whole. Rather, it is made up of unique segments – all of which have different operational characteristics and which impact the nation’s airspace system in different ways. The all-cargo air carriers are one such segment. Therefore, in analyzing FAA’s unscheduled operations proposal, it is important to recognize the role each industry plays in the New York area.

Unlike the passenger segment of the airline industry, the all-cargo carriers cannot always schedule in advance the operations necessary to serve their worldwide customer bases and the scope of their operations regularly changes. Especially during the end-of-the-year Holiday Season, daily adjustments must be made to permit the expedited delivery of holiday packages. Similarly, during the rest of the year, operational spikes may require significant unscheduled service. The proposed restriction on unscheduled operations does not acknowledge, or make any

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3 This peak season operational demand also raises issues with respect to the allocation of scheduled slots. The FAA states that it is considering allocating slots based on flights actually operated in the March-September 2014 time frame – a time frame that does not take into account the seasonal variations of all-cargo operations. See, 80 Fed. Reg. at 1285.
provision for, these operational necessities. And unlike some passenger or general aviation operations, all-cargo operators cannot simply shift operations to other nearby airports. As a practical matter, all-cargo carriers operate worldwide systems of air transportation that are dependent on the ability to transfer express packages and heavy freight at major airports. Indeed, one of our members operates a major hub at Newark to facilitate these movements. Another has its operational base at JFK and requires unimpeded airport access.

The procedures proposed herein for obtaining the extremely limited unscheduled slots may be virtually unusable for all-cargo carriers. The proposed rule for example, provides that requests for reservations for unscheduled operations may be submitted 72 hours prior to the proposed arrival or departure. Such reservations would then be assigned on a “first-come, first served” basis. 80 Fed.Reg. at 1294. However, all-cargo carriers may not know 72 hours in advance that they will require an unscheduled operation. Because slots could be reserved by others at the beginning of the 72 hour window, the practical effect of the proposed rule would be to limit the ability of all-cargo carriers to obtain the required unscheduled slots. Conversely and perhaps more importantly, to accommodate customer requirements during peak season or for specific events, all-cargo carriers sometimes are asked to commit to operate charters weeks or months in advance. If the desired takeoff or landing time falls during the slot-restricted period, the proposed rule would make that impossible.

Moreover, in spite of the dominance in the air freight market, the all-cargo carriers are not a significant contributor to congestion at the nation’s airports in general, or at JFK and EWR in particular.4 And unscheduled all-cargo operations are an even smaller component of the congestion equation. Indeed, nowhere in any analysis of the New York congestion/delay

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4 Although a significant majority of all-cargo operations occur during nighttime hours, some flights in congested hours are necessary to meet service demands.
problem are all-cargo operations ever mentioned as a source of the congestion problem. If there were any doubt about this fact, it is completely eliminated when the FAA states:

The FAA believes the nonscheduled cargo carriers would not have a significant economic impact, as their flights would continue and most of their flights occur at night and would not incur delay costs. 80 Fed. Reg. at 1297.

In turn, this potential inability to operate when required by the shipping public constitutes discrimination against unscheduled operations in general and, more importantly for Association members, against the all-cargo carriers in particular. Although not the cause of problem at the root of the proposed rule, members of the all-cargo industry may be denied the slots necessary to serve its worldwide customer base.

IV. The FAA Has Not Adequately Assessed the Economic Impact on the All-Cargo Segment of the Industry in Proposing to Limit Unscheduled Operations at the Three Major New York Airports

After weighing the costs and benefits of the proposed restrictions, the FAA has concluded that the benefits will be $74,696,596 ($65,242,900 Present Value at 7%) while the costs will be $53,056,768 ($46,341,836 Present Value at 7%). However, this analysis is based on an industry-wide analysis, with no attempt to assess the costs and benefits to the all-cargo segment. The apparent assumption of the Agency is that the unscheduled operations of the all-cargo air carriers will remain unchanged, but will have little or no economic impact and that further analysis is therefore unnecessary. At least to some extent, this conclusion may be based on the assumption that “Unscheduled operations in excess of the hourly limit at all three New York airports would be redirected to other airports.” See, Initial Regulatory Evaluation, April 1, 2012, p.11.

However, as noted above, redirection of all-cargo flights to alternative airports is not consistent with the operational model of the all-cargo industry and cannot be assumed.
The Agency further notes that delay and congestion modeling assumes that all flights operate as scheduled, but unscheduled demand is randomized within the hour. See 80 Fed. Reg. at 1283. In order to fully understand the impact of any changes to the current unscheduled operations, the FAA must use real data and understand the peaks of cargo traffic, both scheduled and unscheduled during an entire years time. Seasonal peak allocations must be considered as it is a central part of the air cargo business model and service demands. Furthermore, the agency recognizes that although unscheduled operations are “typically a small percentage of overall traffic, the FAA has determined these limits are necessary because any airport operation affects congestion and delays.” 80 Fed.Reg. at 1294. It is unclear how the agency came to that conclusion when the Regulatory Evaluation does not contain an analysis on the impact of unscheduled all-cargo operations during an entire 24-hour period and over a yearly time frame at each airport. While an argument could be made that the addition of flights during peak congestion hours could result in additional delays, thus eroding the effectiveness of any slot limits, we urge the FAA to consider the uniqueness of air cargo service and the demands placed on such service by shippers worldwide. Such consideration must lead to the conclusion that all-cargo carriers should be exempt from any limits to unscheduled operations at JFK and EWR.

The effect of this failure to take into account the needs of the all-cargo industry cannot be overstated. Unlike the passenger carriers, many all-cargo carriers guarantee service by a time-certain; any inability to obtain the necessary slots at JFK and/or EWR will therefore require refunds to the customers whose delivery guarantees are not met. The FAA’s Regulatory Evaluation does not take into account any service delays or potential other losses that could potentially be incurred by air cargo carriers if limits on unscheduled operations were put into place.
In view of the fact that a limitation on unscheduled operations will have a significant impact on necessary all-cargo operations, it is incumbent on the FAA to measure this impact and perform the necessary cost/benefit analysis on the all-cargo industry separately from the impact on passenger operations.

V. Conclusion

In view of the all the circumstances enumerated herein, the Cargo Airline Association respectfully submits that the FAA has not demonstrated a need, from either an operational or delay reduction perspective, to limit the unscheduled operations of all-cargo air carriers. Therefore, the Association urges the FAA to recognize the need of the all-cargo industry to continue to operate unscheduled operations at the three major New York airports without restriction by exempting the all-cargo segment of the industry from any restrictions on unscheduled operations eventually imposed.

Respectfully submitted,

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