

**UNITED STATES DEPARTMENT OF TRANSPORTATION**  
**FEDERAL AVIATION ADMINISTRATION**

**SETTLEMENT AGREEMENT AND ORDER**

**In the Matter of John F. Kennedy International Airport (“JFK”), FAA Case Nos. 2012AGC10027, 2013EA800015, 2013EA800040; Teterboro Airport (“TEB”), FAA Case No. 2012AGC10028; LaGuardia (“LGA”) and Newark Liberty International (“EWR”) Airports, FAA Case No. 2012AGC10029; EWR, FAA Case No. 2013EA800044.**

**I. General.**

1. This Settlement Agreement and Order is issued under the authority provided in 49 U.S.C. §§ 40113, 46102(a), and 46301.
2. This Settlement Agreement and Order concerns the actions of the Port Authority of New York and New Jersey (“PANYNJ”) under a grant of authority by the FAA to operate airports under part 139 of the Federal Aviation Regulations (“14 CFR part 139”). The PANYNJ is now, and at all times mentioned in this document was, the holder of Airport Operating Certificates issued under 14 CFR part 139 for JFK, TEB, LGA, and EWR. According to the PANYNJ, during the time period from December 2011 through June 2012, the ARFF functions at JFK, TEB, LGA, and EWR, were under the command of the Superintendent of the Port Authority Police Department (“PAPD”).
3. During the time period from December 2011 through June 2012, the FAA conducted annual inspections or investigations of JFK, TEB, LGA, and EWR and found substantial and continuing noncompliance by the PANYNJ with training requirements specified in 14 CFR part 139 for airport rescue and firefighting (“ARFF”) personnel, as set forth in Appendix A of this Order. Appendix A describes the instances of noncompliance of part 139 at each airport, identified and supported in the following FAA Enforcement Investigative Reports: JFK, Case No. 2012AGC10027; TEB, Case No. 2012AGC10028; LGA and EWR, Case No. 2012AGC10029. Each instance in which the PANYNJ failed to comply with part 139 ARFF training requirements constitutes a separate violation of the Federal Aviation Regulations. In addition, Appendix A describes further noncompliance at JFK and EWR, identified and supported by JFK Case No. 2013EA800015 and 2013EA800040 and EWR Case No. 2013EA800044, that occurred subsequently to the noncompliance with part 139 ARFF training requirements.
4. Under 49 U.S.C. § 46301(a), with modifications set forth at 14 CFR part 13, subpart H, the PANYNJ is subject to a civil penalty not to exceed \$25,000 for each violation occurring before December 29, 2010, and a civil penalty not to exceed \$27,500 for each violation occurring thereafter, with each day the violation continues constituting a separate violation. After considering all the facts and circumstances in Case Numbers 2012AGC10027, 2012AGC10028, 2012AGC10029, 2013EA800015, 2013EA800040, and 2013EA800044,

the FAA has determined that a civil penalty in the amount of \$14,925,000.00 is appropriate in resolution of all six cases.

5. The PANYNJ has a history of repeated noncompliance with the ARFF personnel training requirements under 14 CFR part 139. Numerous violations occurring between 2002 and 2004, that were the same as, or substantially similar to, those described in Appendix A, Sections A. through E., led to the execution of a Consent Order between the FAA and the PANYNJ on February 27, 2006. In the Consent Order dated February 27, 2006, signed by the PANYNJ Chief Operating Officer, the PANYNJ agreed “to ensure that all ARFF personnel on the active ARFF duty status at each facility are currently qualified in all areas required under part 139 of the FAR” and “to maintain an accurate training record tracking system at each Port Authority ARFF facility...”
6. Since the PANYNJ’s receipt of a May 1, 2012, Letter of Investigation concerning noncompliance with ARFF training requirements at JFK, the PANYNJ has invested resources and taken measures to remedy ARFF training recordkeeping and compliance issues. The measures are listed below.
  - a. PANYNJ filled the positions of Training Sergeants at JFK, LGA, and EWR/TEB with personnel who are now solely dedicated to the management of training records for ARFF personnel.
  - b. A PANYNJ agency-wide Working Group of ARFF personnel was established to coordinate efforts between PANYNJ Police Department (PAPD) and the PANYNJ Aviation Department for all issues concerning part 139 certification.
  - c. PANYNJ General Manager of Airport Certification and Safety was made a direct report to the Director of Aviation, elevating the importance of compliance within the agency.
  - d. PANYNJ management directed the Director of Aviation to hire three Airport Certification and Safety Managers at JFK, LGA, and EWR/TEB to oversee compliance and conduct daily audits of roll calls, under the direction of General Manager of Airport Certification and Safety. These positions were filled in September 2012.
  - e. To further improve ARFF operations, PANYNJ has retained the services of a former Fire Commissioner for the City of New York to provide expertise and support on the development of a stand-alone unit with analysis focused on staffing levels, and training management.
7. The FAA and the PANYNJ agree that it is in the best interest of safety and the public interest for the PANYNJ to implement certain additional corrective measures identified in Appendices B and C of this Settlement Agreement and Order to address longstanding operational and structural issues related to ARFF compliance at JFK, TEB, LGA, and EWR that were the primary root causes of the systemic training failures identified in Appendix A, Sections A. through C.

8. The PANYNJ has completed certain corrective measures outlined in paragraph 6 above and in Appendix B , and has agreed to complete by the dates indicated in Appendix C (“Milestones”), the additional corrective measures outlined in that Appendix.
9. In consideration of the PANYNJ’s agreement to complete the corrective measures in Appendices B and C, the FAA and the PANYNJ have reached a settlement of the regulatory noncompliance matters identified in Appendix A and are both willing to enter into this Settlement Agreement and Order.
10. In determining the terms of this Settlement Agreement and Order and the amounts of civil penalty to be paid by the PANYNJ, the FAA considered the PANYNJ’s current and planned remedial efforts to address the underlying deficiencies at the airports that led to the noncompliance and the associated costs of implementing the corrective measures.
11. The FAA and the PANYNJ agree that payment of the civil penalty set forth in Section II of this Settlement Agreement and Order is fair and reasonable.
12. In consideration of the mutual covenants and payments described herein, the FAA and the PANYNJ agree as follows:

## **II. Terms of Settlement Agreement and Order.**

1. The PANYNJ agrees to pay a civil penalty in the amount of \$3,500,000.00 no later than 30 days from the date of the signing of this Settlement Agreement and Order in full and final settlement of the apparent regulatory violations identified and described in Appendix A for JFK, Case No. 2012AGC10027; TEB, Case No. 2012AGC10028; LGA and EWR, Case No. 2012AGC10029; JFK, Case No. 2013EA800015; JFK, Case No. 2013EA800040, and EWR Case No. 2013EA800044, that might otherwise be adjudicated by a United States District Court or the Department of Transportation Office of Administrative Law Judges.
2. If the PANYNJ fails materially to comply with any provision of this Settlement Agreement and Order, and after exhaustion of the administrative review process set forth in Section IV, paragraph 4, the PANYNJ will pay:
  - a. a one-time civil penalty in an amount of \$1,500,000.00, and
  - b. a civil penalty of \$27,500 for each day for each instance that it fails materially to comply with any provision of this Settlement Agreement and Order.

If at the end of 30 days from the date of the final determination by the Associate Administrator for Airports under Section IV, paragraph 4 of this Settlement Agreement and Order, the PANYNJ has not materially complied with the provision at issue, the stipulated civil penalties shall be triggered, and due and payable within 10 days, without further notice, recourse, or appeal. The PANYNJ agrees that the payment instrument for the stipulated civil penalties will be made payable to the Federal Aviation Administration and shall be addressed to FAA Mike Monroney Aeronautical Center ATTN: Kathy Gore, General Accounting,

AMZ-350, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, with a copy to the Assistant Chief Counsel for Enforcement in FAA Headquarters Office of the Chief Counsel. The base case No. 2012AGC10027 will be indicated on the front of the payment instrument.

- c. After the FAA finds that the terms of this Settlement Agreement and Order have been fully complied with, the PANYNJ will no longer be subject to the penalties specified in Section II, paragraph 2 of this Settlement Agreement and Order. Once PANYNJ has fully complied with the terms, it will advise the FAA in writing. If the FAA finds that the terms have been fully complied with, the FAA will so advise the PANYNJ in writing.
3. The PANYNJ waives its right to seek administrative or judicial review of civil penalties imposed for a failure materially to comply with the terms of this Settlement Agreement and Order.
4. The FAA reserves its right to take civil penalty action or any other enforcement action for any violations of the Federal Aviation Regulations or 49 U.S.C. Subpart VII committed by the PANYNJ subsequent to the signing of this Settlement Agreement and Order. The PANYNJ may appeal such action or defend such action in accordance with applicable law.
5. As provided in Appendix C, the PANYNJ agrees to establish a separate, stand-alone ARFF Cadre, solely responsible for firefighting at JFK, EWR, LGA, and TEB. The ARFF Cadre will be established in accordance with the criteria in Appendix C and will be staffed with key management positions, as described in the Overview in Appendix D, which includes an Organizational Chart and Job Descriptions for those key positions.
6. In consideration of the covenants and payments set forth in this Settlement Agreement and Order, the FAA will not refer the apparent violations identified in Appendix A and JFK, Case Nos. 2012AGC10027, 2013EA800015, and 2013EA800040; TEB, Case No. 2012AGC10028; LGA and EWR, Case No. 2012AGC10029; and EWR Case No. 2013EA800044 to the appropriate United States Attorney's Office for the filing of a complaint in United States District Court or issue a notice of proposed civil penalty under 14 CFR part 13.

### **III. Terms of Payment.**

1. The PANYNJ agrees that the payment instrument under this Settlement Agreement and Order will be made payable to the Federal Aviation Administration and shall be addressed to FAA Mike Monroney Aeronautical Center ATTN: Kathy Gore, General Accounting, AMZ-350, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, no later than 30 days from the date of the signing of this Settlement Agreement and Order, with a copy to the Assistant Chief Counsel for Enforcement in FAA Headquarters Office of the Chief Counsel. The base case No. 2012AGC10027 will be indicated on the front of each payment instrument.

2. The PANYNJ agrees that this debt is justly due and owing by the PANYNJ, having arisen by this Settlement Agreement and Order because of apparent violations under 49 U.S.C. § 46301 and the Federal Aviation Regulations.
3. The PANYNJ agrees that in the event of default or failure to fully carry out the monetary obligations of this Settlement Agreement and Order, the FAA may sue to enforce collection of the monetary obligations contained in this Settlement Agreement and Order.

#### **IV. Waiver of Rights and Enforcement of the Terms of this Agreement.**

1. The PANYNJ waives any and all rights to further notice of the allegations in Appendix A concerning violations of 14 CFR part 139.
2. The PANYNJ waives any right to appeal or otherwise seek judicial or administrative review of this Settlement Agreement and Order.
3. The FAA reserves the right to judicially enforce the terms and provisions of this Settlement Agreement and Order under 49 U.S.C. § 46106.
4. The FAA Associate Administrator for Airports, upon the written recommendation of the FAA Office of Airport Safety and Standards and the FAA Eastern Region Office of Airports, will determine whether the PANYNJ has successfully completed to the satisfaction of the FAA the corrective measures identified in Appendix C by the dates indicated in that Appendix and any obligations in Appendix D. The recommendation will include the rationale underlying the determination and shall specify what, if anything, the FAA believes the PANYNJ must do to comply with its obligations under this Settlement Agreement and Order. A copy will be provided to the PANYNJ, which will have 30 days from receipt to rebut the recommendation to the Associate Administrator for Airports, who will make the final determination within 30 days of receipt of the PANYNJ's rebuttal. This determination must be reasonable and based on the facts and merits of the parties' respective positions. If at the end of 30 days from the date of the final determination by the Associate Administrator for Airports, the PANYNJ has not materially complied with the obligation at issue, the additional civil penalties set forth in Section II, paragraph 2 of this Settlement Agreement and Order shall be triggered, and due and payable within 10 days, without further notice, recourse, or appeal.
5. These terms shall constitute a full settlement and release of any and all civil penalties that could have been sought from the PANYNJ as a result of the alleged violations in Appendix A and the following enforcement investigative reports: JFK, Case No. 2012AGC10027; TEB, Case No. 2012AGC10028; LGA and EWR, Case No. 2012AGC10029; JFK, Case No. 2013EA800015; JFK, Case No. 2013EA800040, and EWR Case No. 2013EA800044.
6. This Settlement Agreement and Order is civil in nature and is not intended to, nor does it, address any possible criminal matters. Nor does it preclude suspension or revocation of any airport operating certificate(s) based on future evidence raising a reasonable question

regarding the PANYNJ's qualification to hold such certificate(s) or showing a lack of qualification to hold such certificate(s).

7. As of the date of this Settlement Agreement and Order, the FAA has found no basis in the evidence gathered for a referral for any criminal action to any other agency. Further, the FAA is aware of no evidence as of the date of this Settlement Agreement and Order that would warrant suspension or revocation of the PANYNJ's Airport Operating Certificates at JFK, EWR, LGA, or TEB.

**V. No Admissions.**

Execution of this Settlement Agreement and Order and payment of the agreed-upon amount of civil penalty to the FAA do not constitute a finding of violation by the FAA or an admission of any wrongdoing by the PANYNJ. In addition, this Settlement Agreement and Order is being entered into for settlement and compromise purposes only in accordance with Federal Rules of Evidence and applicable state rules.

**VI. Capacity to Execute Agreement.**

The representative of each party signing this Settlement Agreement and Order warrants that he or she is duly authorized to do so.

**VII. Photocopy/Facsimile/PDF.**

A photocopy, facsimile, or PDF copy of this Settlement Agreement and Order shall have the same force and effect as an original of this Settlement Agreement and Order.

**VIII. No Individual Liability.**

No Commissioner, officer, agent or employee of the PANYNJ shall be charged personally by the FAA with any liability or held liable to the FAA under any term or condition of this Settlement Agreement and Order, or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof.

**IX. Modification of Agreement.**

The PANYNJ and the FAA agree that this Settlement Agreement and Order may be modified for cause, provided both parties consent to such modification.

**SO AGREED:**

**FOR THE FEDERAL AVIATION ADMINISTRATION**

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**Kathryn B. Thomson**  
**Chief Counsel**

**Dated this 8<sup>th</sup> of April 2013.**

**FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

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**Patrick Foye**  
**Executive Director**

**Dated this 8<sup>th</sup> day of April 2013.**

**APPENDIX A**  
**NONCOMPLIANCE WITH 14 CFR PART 139**

**A. JFK, FAA Case No. 2012AGC10027**

1. The Port Authority of New York and New Jersey (“PANYNJ”) operates and controls JFK.
2. As the certificate holder, the PANYNJ is required to comply with all requirements of 14 CFR part 139, including but not limited to the requirement under 14 CFR § 139.201(a) to comply with its Airport Certification Manual (“ACM”) and the requirements under 14 CFR § 139.319(i)(2) to ensure that “all rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator.”
3. As set forth in the ACM for JFK, at all times mentioned in this letter, the PANYNJ delegated to the Port Authority Police Department (“PAPD”) the authority to train all airport rescue and firefighting (“ARFF”) personnel at JFK and maintain the required ARFF training records for those personnel.
4. The ACM for JFK incorporates the part 139 ARFF training curriculum requirements.
5. From December 5-12, 2011, the FAA conducted an annual certification safety inspection of JFK.
6. During the December 2011 annual inspection, the FAA Airport Certification Inspector requested that the PANYNJ provide ARFF training records for the 2011 calendar year at JFK.
7. The PANYNJ failed to furnish those records to the FAA during the inspection.
8. The FAA provided the PANYNJ extensions of time until April 30, 2012, to make ARFF training records available to the FAA for inspection.
9. The PANYNJ failed to submit the ARFF training records timely by April 30, 2012.
10. The PANYNJ did not provide complete ARFF training records to the FAA until June 6, 2012.
11. On May 1, 2012, the FAA issued a letter of investigation to the PANYNJ advising that despite its requests, it had not received ARFF training records for active personnel and that the lack of training records for active firefighters may indicate a violation of the ACM.
12. On May 9, 2012, the PANYNJ issued a Command Order directing that Tour Commanders “ensure that Officers and Sergeants assigned to ARFF Crash Fire Rescue posts are fully compliant with FAA 139 training requirements when reviewing and approving a roll call.”



13. On each day during the time period from December 1, 2010, through June 5, 2012, the PANYNJ failed to ensure that all rescue and firefighting personnel at JFK were trained to perform their duties in a manner authorized by the Administrator as set forth in JFK's ACM.
14. From December 1, 2010, through June 5, 2012, untrained rescue and firefighting personnel repeatedly performed active ARFF duty at JFK.
15. Notwithstanding the May 9, 2012, Command Order, the PANYNJ allowed 77 police officers who were untrained to serve on 357 shifts during the time period from May 11, 2012 through June 5, 2012 at JFK.
16. Based on the facts set forth in paragraphs A. 13 through 15 above, the PANYNJ failed to comply with the ACM for JFK as approved by the Administrator.

By reason of the foregoing facts and circumstances, it appears that the PANYNJ violated the following sections of the Federal Aviation Regulations with regard to JFK:

- a. 14 CFR § 139.201(a), in that it failed to comply with its ACM as approved by the Administrator.
- b. 14 CFR § 139.301(a), in that it failed to furnish upon request by the Administrator records required to be maintained under part 139.
- c. 14 CFR § 139.319(i)(2), in that it failed to ensure that all rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator.

**B. TEB, FAA Case No. 2012AGC10028**

1. The PANYNJ operates and controls TEB.
2. As the certificate holder, the PANYNJ is required to comply with all requirements of 14 CFR part 139, including but not limited to the requirement under 14 CFR § 139.201(a) to comply with its ACM and the requirements under 14 CFR § 139.319(i)(2) to ensure that “all rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator.”
3. As set forth in the ACM for TEB, at all times mentioned in this letter, the PANYNJ delegated to the PAPD the authority to train all ARFF personnel at TEB and maintain the required ARFF training records for those personnel.
4. The ACM for TEB incorporates the part 139 ARFF training curriculum requirements.
5. The ACM for TEB also incorporates the part 139 fueling personnel training requirements.
6. The ACM for TEB requires that all fueling agents engaged in handling and dispensing fuel at the airport, shall submit written certification to airport management once every 12 months that the above training standards have been accomplished. The records shall be maintained for at least 12 months.
7. Though not required for an airport of its size, on January 20, 2012, TEB voluntarily updated its ACM to incorporate part 139 initial driver training requirements at Section 329(1) of the ACM, which provides in relevant part:

All personnel that have unescorted access to the movement areas and safety areas are required to complete Teterboro Airport’s Ground Vehicle Operations Training Program that is part of the initial and recurrent part 139 training program.
8. From June 12-14, 2012, the FAA conducted an annual certification safety inspection of TEB.
9. During the time period from January 1, 2011, through June 9, 2012, the PANYNJ failed to ensure for 39 days that all rescue and firefighting personnel at TEB were trained to perform their duties in the manner authorized by the Administrator as set forth in TEB’s ACM.
10. During the time period from January 1, 2011, through June 9, 2012, the PANYNJ failed to complete for 153 days initial driver training for rescue and firefighting personnel as set forth in TEB’s ACM.
11. During the time period from January 1, 2011, through June 9, 2012, the PANYNJ failed to ensure for 269 days that all employees at TEB who fuel aircraft, accept fuel shipments, or otherwise handle fuel received recurrent training every 24 consecutive calendar months in fire safety.

12. Based on the facts set forth in paragraphs B.9 through 11 above, the PANYNJ failed to comply with the ACM for TEB as approved by the Administrator.

By reason of the foregoing facts and circumstances, it appears that the PANYNJ violated the following sections of the Federal Aviation Regulations with regard to TEB:

- a. 14 CFR § 139.201(a), in that it failed to comply with its ACM as approved by the Administrator.
- b. 14 CFR § 139.319(i)(2), in that it failed to ensure that all rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator.
- c. 14 CFR § 139.321(e)(2), in that it failed to ensure that all other employees who fuel aircraft, accept fuel shipments, or otherwise handle fuel must receive at least initial on-the-job training and recurrent instruction every 24 consecutive calendar months in fire safety.

**C. LGA and EWR, FAA Case No. 2012AGC10029**

1. The PANYNJ operates and controls LGA and EWR airports.
2. As the certificate holder, the PANYNJ is required to comply with all requirements of 14 CFR part 139, including but not limited to the requirement under 14 CFR § 139.201(a) to comply with its ACM and the requirements under 14 CFR § 139.319(i)(2) to ensure that “all rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator.”
3. As set forth in the ACM for LGA and EWR, respectively, at all times mentioned in this letter, the PANYNJ delegated to the PAPD the authority to train all ARFF personnel.
4. The ACM for LGA incorporates the part 139 ARFF training curriculum requirements.
5. The ACM for EWR incorporates the part 139 ARFF training curriculum requirements.
6. As a result of the annual inspection findings at JFK and TEB set forth in Section A. and B. above, the FAA conducted a special inspection of ARFF training, covering the time period from January 1, 2011, through June 9, 2012, at LGA, EWR, and Stewart International Airport, all of which are airports under the operation and control of the PANYNJ.
7. The FAA found Stewart International Airport in compliance with ARFF training requirements.
8. During the time period from January 1, 2011, through June 9, 2012, the PANYNJ failed to ensure for 341 days that all rescue and firefighting personnel at LGA were trained to perform their duties in the manner authorized by the Administrator as set forth in LGA’s ACM.
9. During the time period from January 1, 2011, through June 9, 2012, the PANYNJ failed to ensure for 378 days that all rescue and firefighting personnel at EWR were trained to perform their duties in the manner authorized by the Administrator as set forth in EWR’s ACM.
10. Based on the facts set forth in paragraphs C. 8 above, the PANYNJ failed to comply with the ACM for LGA as approved by the Administrator.
11. Based on the facts set forth in paragraphs C. 9 above, the PANYNJ failed to comply with the ACM for EWR as approved by the Administrator.

By reason of the foregoing facts and circumstances, it appears that the PANYNJ violated the following sections of the Federal Aviation Regulations with regard to LGA and EWR respectively:

- a. 14 CFR § 139.201(a), in that it failed to comply with its ACM as approved by the Administrator.
- b. 14 CFR § 139.319(i)(2), in that it failed to ensure that all rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator.

**D. JFK, FAA Case No. 2013EA800015**

1. The Port Authority of New York and New Jersey (“PANYNJ”) operates and controls JFK.
2. As the certificate holder, the PANYNJ is required to comply with all requirements of 14 CFR part 139, including but not limited to the requirement under 14 CFR § 139.201(a) to comply with its Airport Certification Manual (“ACM”) and the requirements under 14 CFR § 139.319(i)(2) to ensure that “all rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator.”
3. The ACM for JFK incorporates the ARFF part 139 training curriculum requirements.
4. On December 3, 2012, the PANYNJ failed to ensure that all rescue and firefighting personnel at JFK were trained to perform their duties in a manner authorized by the Administrator as set forth in JFK’s ACM.
5. On December 3, 2012, an untrained rescue and firefighting individual performed active ARFF duty at JFK.
6. Based on the facts set forth in paragraphs 4 and 5 above, the PANYNJ failed to comply with the ACM for JFK as approved by the Administrator.

By reason of the foregoing facts and circumstances, it appears that the PANYNJ violated the following sections of the Federal Aviation Regulations with regard to JFK:

- a. 14 CFR 139.201(a), in that it failed to comply with its ACM as approved by the Administrator.
- b. 14 CFR 139.319(i)(2), in that it failed to ensure that all rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator.

**E. JFK, FAA Case No. 2013EA800040**

1. The Port Authority of New York and New Jersey (“PANYNJ”) operates and controls JFK.
2. As the certificate holder, the PANYNJ is required to comply with all requirements of 14 CFR part 139, including but not limited to the requirement under 14 CFR § 139.201(a) to comply with its Airport Certification Manual (“ACM”) and the requirements under 14 CFR § 139.319(i)(2) to ensure that “all rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator.”
3. The ACM for JFK incorporates the ARFF part 139 training curriculum requirements.
4. On January 2 and 3, 2013, the PANYNJ failed to ensure that all rescue and firefighting personnel at JFK were trained to perform their duties in a manner authorized by the Administrator as set forth in JFK’s ACM.
5. On January 2 and 3, 2013, an untrained rescue and firefighting individual performed active ARFF duty at JFK.
6. Based on the facts set forth in paragraphs 4 and 5 above, the PANYNJ failed to comply with the ACM for JFK as approved by the Administrator.

By reason of the foregoing facts and circumstances, it appears that the PANYNJ violated the following sections of the Federal Aviation Regulations with regard to JFK:

- a. 14 CFR 139.201(a), in that it failed to comply with its ACM as approved by the Administrator.
- b. 14 CFR 139.319(i)(2), in that it failed to ensure that all rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator.

**F. EWR Case No. 2013EA800044**

1. The PANYNJ operates and controls EWR airport.
2. As the certificate holder, the PANYNJ is required to comply with all requirements of 14 CFR part 139, including but not limited to the requirement under 14 CFR § 139.201(a) to comply with its Airport Certification Manual (“ACM”) and the requirements under 14 CFR § 139.303(c) to ensure that it trains “all personnel who access movement areas and safety areas and perform duties in compliance with the requirements of the ACM and the requirements of 14 CFR part 139.
3. The ACM for EWR incorporates requirements for wildlife hazard management training in accordance with 14 CFR § 139.337.
4. During the time period from March 2011 through August 2012, the PANYNJ failed to ensure that four airport personnel received required recurrent training on wildlife hazard management in accordance with the EWR ACM.
5. During the time period from March 2011 through August 2012, the four airport personnel referenced in paragraph 4 worked a total of seven shifts when they had not received the required recurrent training on wildlife hazard management.
6. Based on the facts set forth in paragraphs 4 and 5 above, the PANYNJ failed to comply with the ACM for EWR as approved by the Administrator.

By reason of the foregoing facts and circumstances, it appears that the PANYNJ violated the following sections of the Federal Aviation Regulations with regard to EWR:

- a. 14 CFR § 139.201(a), in that it failed to comply with its ACM as approved by the Administrator.
- b. 14 CFR § 139.303(c), in that it failed to train all personnel who access movement areas and safety areas and perform duties in compliance with the requirements of its ACM and 14 CFR part 139.



## **APPENDIX B**

### **Corrective Measures to Remediate Systemic ARFF Training Noncompliance – Completed**

1. The PANYNJ may not delegate ARFF responsibilities under 14 CFR part 139 to the Police Department, and within 30 days of the date of this Settlement Agreement and Order, the Airport Certification Manuals for JFK, EWR, LGA, and TEB (“ACMs”) must be amended to reflect this prohibition.

**COMPLETED ON: November 16, 2012.**

2. Within 30 days of the date of this Settlement Agreement and Order, the PANYNJ agrees, in a manner approved by the Administrator, to amend its ACMs, to include the following:
  - a. An organizational chart reflecting the structural changes in this Appendix.
  - b. The process of how the PANYNJ maintains and oversees the requirements of 14 CFR part 139 at JFK, EWR, LGA, and TEB, including the maintenance of ARFF training records through the PANYNJ Department of Aviation.
  - c. A description of ARFF operations at JFK, EWR, LGA, and TEB, including revised initial and recurrent training program, procedures, shift assignments, Department of Aviation oversight, and personnel training records management.

**COMPLETED ON: November 16, 2012.**

3. Within 30 days of the date of this Settlement Agreement and Order, the PANYNJ agrees, in a manner approved by the Administrator, that the PANYNJ’s Department of Aviation will possess all authority to develop, implement, maintain, and oversee policies, training, operations, and recordkeeping for all 14 CFR part 139 activities, including ARFF. The PANYNJ will:
  - a. Create a centralized, quality control manager who reports to the Director of the Department of Aviation responsible for 14 CFR part 139 oversight and compliance at all airports operated and controlled by the PANYNJ.

**COMPLETED ON: November 16, 2012.**

- b. Develop and add to the ACMs a procedure for ensuring daily that all records, including ARFF shift assignments, meet both the PANYNJ’s and 14 CFR part 139 requirements.

**COMPLETED ON: November 16, 2012.**

4. Within 30 days of the date of this Settlement Agreement and Order, the PANYNJ agrees to amend its ACMs to ensure that any changes made to the qualified ARFF roster will be sent to the Department of Aviation to confirm compliance with 14 CFR part 139 within 24 hours of any changes.

**COMPLETED ON: November 16, 2012.**

5. On or before March 31, 2013, the PANYNJ will submit changes to its ACMs to provide that it must conduct:
  - a. Monthly internal audits of ARFF training and shift assignments to ensure that no ARFF personnel were assigned to a shift who did not meet 14 CFR part 139 requirements. Internal audits may not be conducted by the same personnel assigned to daily quality control review; and
  - b. Annual external audits of ARFF training and shift assignments to ensure that no ARFF personnel were assigned to a shift who did not meet 14 CFR part 139 requirements.

**COMPLETED ON: March 28, 2013.**

## **APPENDIX C**

### **Corrective Measures to Remediate Systemic ARFF Training Noncompliance – Obligations and Milestones to be Completed**

1. On or before October 31, 2013, the PANYNJ will establish and implement a redundant credentialing system that will be fully operational and designed to prohibit the assignment of unqualified ARFF personnel (those who do not have required training) to ARFF shifts and will submit a change to incorporate the automated credentialing system in the ACM.
2. On or before March 31, 2014, the PANYNJ will establish a stand-alone ARFF Cadre, separate from the Port Authority Police Department, under the authority of the PANYNJ for which the criteria, requirements, and terms of establishment are documented in the ACM for each airport. The terms of establishment and requirements for the Port Authority ARFF Cadre, which must be included in the ACMs, are the following:
  - a. The terms governing the establishment of the ARFF Cadre and its full operation cannot be modified without the consent of the FAA.
  - b. ARFF Cadre Firefighters will perform only ARFF duties and no collateral duties as Police Officers, except for the following:
    - i. On days they are not scheduled to perform ARFF duties, ARFF Cadre Firefighters may attend only firearms training and any other training required under State law up to 36 hours to maintain their status as sworn Police Officers.
    - ii. ARFF Cadre Firefighters are prohibited from performing non-ARFF duties, including police duties, except to the extent permitted under 14 CFR § 139.113.
  - c. ARFF Cadre Firefighters will not perform overtime for police duties or any non-ARFF function.
  - d. The PANYNJ intends to recruit ARFF Cadre Firefighters from the current and future pools of trained and documented PAPD Police Officers. Any additions to the ARFF Cadre will be subject to the same limitations on the ARFF Cadre as set forth in Appendix C of this Settlement Agreement and Order.
  - e. ARFF Cadre Firefighters will commit to a minimum of five years of service to the ARFF Cadre, except for 1) retirement, 2) voluntary or involuntary termination from PANYNJ service, or 3) opportunity for promotion to another rank.
  - f. The ARFF Cadre will report to the Department of Aviation. In addition, the ARFF Fire Chief will report to the Chief Security Officer and will oversee ARFF technical standards as reflected in Appendix D.

3. On or before September 30, 2013, the Chief Security Officer will be initially trained in 14 CFR part 139 via industry-related courses such as Basic Airport Safety and Operations Specialist School (“ASOS”).
4. On or before March 31, 2014, the PANYNJ will accomplish the following milestones with respect to the ARFF Cadre:
  - a. Understanding that the goal is to retain the ARFF Fire Chief as soon as is practicable, the ARFF Fire Chief will be hired and on duty and present at the PANYNJ offices or facilities.
  - b. Understanding that the goal is to retain the ARFF Facility Captains as soon as is practicable, the ARFF Facility Captains will be hired and on duty and present at their respective facility.
  - c. The Port Authority will select the ARFF Cadre personnel, and they will be on duty and present at their respective facility.
  - d. The Port Authority will implement a 12-hour shift duration for the stand-alone ARFF Cadre.
5. On or before October 31, 2013, the PANYNJ will submit to the FAA for its review draft updated ACMs and AEPs that incorporate the new ARFF Cadre, how it will function, and how the ARFF Cadre will respond to airport emergencies. Appendix D to this Settlement Agreement and Order sets forth an overview for those ARFF functions, the ARFF organizational chart, and a description of key ARFF management positions.
6. On or before March 1, 2014, the PANYNJ will submit updated ACMs and AEPs acceptable to the FAA that incorporate the new ARFF Cadre, how it will function, and how the ARFF Cadre will respond to airport emergencies.
7. All current and future ARFF Cadre personnel will receive National Fire Protection Association (NFPA) training or its equivalent at a level above the requirements set forth in 14 CFR § 139.319. This training is in addition to the required 14 CFR part 139 ARFF training. This training will be developed and completed in accordance with the following milestones:
  - a. On or before December 31, 2013, the PANYNJ will submit to the FAA for approval a training curriculum that will provide for at least 75 hours of initial, and 40 hours of annual recurrent, coursework and skill training from a combination of Firefighter I and Firefighter II training as defined by the NFPA.
  - b. On or before October 31, 2014, all ARFF Cadre personnel on board as of March 31, 2014, will complete 75 hours of initial coursework and training in accordance with the curriculum approved by the FAA under Appendix C, subparagraph 8.a. of this Settlement Agreement and Order. Each subsequent year following completion of the 75 hours of

coursework and skill training, ARFF Cadre personnel will complete at least 40 hours of recurrent coursework and skill training in accordance with the curriculum approved by the FAA under Appendix C, subparagraph 8.a. of this Settlement Agreement and Order. Any ARFF Cadre personnel who can demonstrate to the satisfaction of the FAA that they have successfully completed NFPA Firefighter II training or its equivalent are exempt from the initial 75 hours of training agreed upon by the PANYNJ and the FAA.

- c. Individuals added to the ARFF Cadre after March 31, 2014, must complete the 75 hours of initial training within a year of their start date with the ARFF Cadre and the 40 hours of recurrent training each subsequent year.
8. On or before March 1, 2014, the PANYNJ will make a good faith effort to submit to the FAA for approval updates to all mutual aid agreements, as necessary, to incorporate and reflect the new ARFF Cadre functions and responsibilities.
9. On or before January 1, 2014, the PANYNJ will submit to the FAA a plan acceptable to the FAA for ensuring safety on the airfield and the performance of all safety-related functions as they relate to the PANYNJ mutual aid partners, to the extent the mutual aid agreements cannot be updated by March 1, 2014.
10. Each mutual aid agreement is subject to approval by the FAA in accordance with part 139 of the Federal Aviation Regulations.
11. Within 30 days of the date of the signing of this Settlement Agreement and Order, the PANYNJ will submit to the FAA a plan for how the PANYNJ will meet the obligations and implementation dates in Appendix C. Beginning 30 days from the date of the signing of this Settlement Agreement and Order, the PANYNJ and the FAA agree to have monthly status meetings where the PANYNJ will provide the FAA with status reports on its completion of this plan to accomplish the obligations in Appendix C.

## **APPENDIX D**

### **Overview of Separate ARFF Cadre for the Port Authority of New York and New Jersey**

The Port Authority will manage all part 139 requirements through the Department of Aviation, including Aircraft Rescue and Firefighting (ARFF). By March 31, 2014, the Port Authority will establish a separate ARFF Cadre that reports to the Department of Aviation.

Newark International (EWR)/Teterboro (TEB), John F. Kennedy International (JFK), and LaGuardia Airport (LGA) (the “Facility” or collectively, the “Facilities”) will each have its own ARFF Captain, who reports to his or her respective Manager of Operations. The Department of Defense (DOD) provides all ARFF services to Stewart International (SWF).

ARFF Captains are the Commanding Officers of the ARFF Cadre at the Facilities. The ARFF Captains are responsible for meeting part 139 ARFF requirements. These ARFF Captains report directly to the Managers of Airport Operations.

ARFF personnel in the ARFF Cadre report to the ARFF Captain at their respective Facility. They will be selected and assigned in accordance with the Collective Bargaining Agreement (CBA). All hiring, promotion and discipline will be handled in accordance with the CBA. The ARFF Captain, who is a member of the Department of Aviation, will initiate disciplinary action.

The Fire Chief, who reports to the Chief Security Officer (CSO), is a technical expert and is responsible for personnel matters in accordance with the CBA. The Fire Chief has overall responsibility for developing and delivering standardized ARFF training in coordination with the General Manager of Airport Certification and Safety. The ARFF Fire Chief will oversee the ARFF Training Academy operation. Additionally, the Fire Chief will work closely with the General Manager of Airport Certification and Safety, the Airport General Managers, and the Facility ARFF Captains to ensure that part 139 ARFF requirements are met.

The CSO is a direct report to the Executive Director. The CSO is responsible for the security and safety of all Port Authority facilities and oversees all security and safety operations to include the Port Authority Public Safety Department, the ARFF Training Academy, and the Security Department. The Fire Chief, the Chief of the Port Authority Police, and the Director of the Security Department, have the same positional authority and report to the CSO.

## **ARFF Position Descriptions (See Appendix E)**

### **Chief Security Officer (CSO)**

The Chief Security Officer (CSO), who reports to the Executive Director, is responsible for the security and public safety of all Facilities. The CSO oversees all security and public safety operations to include the Port Authority Public Safety Department, the Security Department, and the ARFF Fire Chief. The CSO will also oversee the development of standardized policies and procedures related to the security and public safety of Port Authority assets. The CSO is responsible for assuring that training is available and conducted to meet Port Authority personnel requirements for the areas mentioned above, including ARFF Cadre personnel at each Facility.

### **Fire Chief**

The Fire Chief reports to the Chief Security Officer and is responsible for ARFF personnel matters in accordance with the CBA. The Fire Chief supervises the ARFF Training Captain and is the technical ARFF subject matter expert for the Port Authority. The Fire Chief coordinates with the General Manager of Airport Certification and Safety and ARFF Fire Captains to develop and deliver standardized ARFF training, technical standards, and standard operating procedures to ensure that part 139 ARFF requirements are met. The PANYNJ will develop and use minimum qualification standards acceptable to the FAA for the ARFF Cadre Fire Chief.

### **Captain of the ARFF Training Academy**

The Captain of the ARFF Training Academy reports to the Fire Chief and will develop and implement the ARFF training curriculum to include initial and recurrent training and airport-specific training programs and materials. The Captain of the ARFF Training Academy will be responsible for providing completed training records to ARFF Captains at the facilities.

### **Director of Aviation**

The Director of Aviation has overall authority and responsibility for all Port Authority airports and is responsible for the airports' compliance with all aspects of part 139 including ARFF. The Department of Aviation is responsible for maintaining official training records for the ARFF Cadre at the airport and in accordance with each airport's Airport Certification Manual.

### **General Manager, Airport Certification and Safety**

The General Manager of Airport Certification and Safety reports to the Director of Aviation. The General Manager of Airport Certification and Safety oversees compliance with part 139 certification and safety standards at all Port Authority airports. The General Manager of Airport Certification and Safety acts as a principal liaison to the FAA for airport certification matters and coordinates with the Fire Chief on ARFF training.

### **Airport General Manager**

The General Manager reports to the Director of Aviation and has overall responsibility for the Airport as delegated by the Director of Aviation. This includes authority and responsibility for part 139 compliance. In addition, the General Manager has budgetary authority to allocate resources necessary to implement and operate the ARFF Cadre.

**Manager, Airport Operations**

The Manager of Airport Operations reports to the General Manager for overseeing all part 139 regulatory requirements including ARFF. The ARFF Captain is a direct report.

**ARFF Captain**

The ARFF Captain is the Commanding Officer of the ARFF Cadre at the facility and supervises ARFF Personnel. He or she reports directly to the Manager, Airport Operations. The ARFF Captain is responsible for ensuring that only qualified and trained personnel are assigned to ARFF positions. The ARFF Captain implements part 139 ARFF requirements at each Facility. The ARFF Captain coordinates with the Fire Chief on training, personnel, and technical standards at their Facility.



## APPENDIX E ARFF Organizational Chart

