

171-1714 90-10

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 26151; Notice No. 90-10]

High Density Traffic Airports
Allocation of International Slots at
O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Federal Aviation Regulations relating to the allocation of air carrier and commuter operator slots (i.e., instrument flight rules (IFR) takeoff and landing reservations) at O'Hare International Airport to limit the availability of seasonal international slots at O'Hare Airport for carriers with 100 or more slots. The proposal responds to a petition from United Airlines to limit the requirement that U.S. carriers furnish domestic slots for international operations by other carriers. Under the rule proposed, slots would not be withdrawn from domestic operators at O'Hare to accommodate international operations by carriers with 100 or more slots at that airport. The proposal would require each large slot holder at the airport to accommodate international operations from its own slot base or from unallocated slots, rather than the domestic slots of other carriers.

DATES: Comments must be received on or before April 9, 1990.

ADDRESSES: Comments on this regulation may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26151, 800 Independence Avenue, SW., Washington, DC 20591

or delivered in triplicate to:

Federal Aviation Administration, Rules Docket, Room 915, 800 Independence Avenue, SW., Washington, DC 20591

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed rule by submitting such written data, views, or arguments as they may desire on any portion of the amendment. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26151." The postcard will be date/time stamped and returned to the commenter. Also, any portion of this rule may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267-8058. Communications must identify the amendment number of the NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

The High Density Traffic Airport Rule, 14 CFR part 93, subpart K, limits the number of operations during certain hours or half hours at four airports: Kennedy International, LaGuardia, O'Hare International, and Washington National. Comprehensive rules for the allocation and transfer of high density airport slots were adopted in December 1985 (14 CFR part 93, subpart S). A "slot" is defined as the authority to conduct one allocated IFR landing or takeoff operation during a specific hour or 30-minute period at one of the high density airports.

Slots used by foreign carriers and by U.S. carriers for international operations are allocated by the FAA under procedures different from those that apply to the allocation and transfer of slots for domestic operations. Under FAR § 93.217, international slots are allocated at Kennedy International Airport and O'Hare International Airport by the FAA for each summer and winter season. These slots may not be sold, and they expire at the end of the season for which they are allocated.

At Kennedy, an international slot is allocated upon request to a carrier that requested and operated the same slot in the same season the previous year. A new request is granted if a slot is available at the time requested, and denied if there is no slot available. An alternate slot will be offered at the nearest suitable time period if available. At O'Hare, a slot requested for scheduled international service by the dates specified in the rule (May 15 for the following winter season and October 15 for the following summer season) is allocated at or within two hours of the time requested. Domestic slots are withdrawn from U.S. operators to make slots available for the international requests, if those requests would otherwise have exceeded High Density Rule limits in that half hour.

The United Air Lines Petition

On July 10, 1987, the FAA published in the Federal Register a Notice of Petition for Rulemaking filed on behalf of United Air Lines, Inc. (52 FR 26020). The petition requested an amendment to the Federal Aviation Regulations (FAR) to conform the requirements for allocating international arrival and departure slots at O'Hare Airport to the requirements for allocating such slots at Kennedy Airport (JFK). The amendment as proposed would have removed the provision in the current rule that requires the FAA to make international slots at O'Hare available even if slots must be withdrawn from domestic carriers currently holding the slots.

More specifically, United requested that FAR § 93.217 be amended to make the procedures for the allocation of international slots at O'Hare identical with the procedures at JFK. Current regulations affecting JFK permit the allocation of international slots "to the extent vacant slots are available" and "if required by international obligations" (§ 93.217(a)(8)), while the regulations pertaining to O'Hare require allocation of international slots upon request even if the slots must be withdrawn from a domestic carrier (§ 93.217(a)(6)). United stated that the

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O'Hare policy is a hardship to the losing domestic carrier because of the uncertainty and operating inefficiencies resulting from withdrawal of slots, and is disruptive to the planning and investment decisions made in reliance on the continued operation of the slots.

Requests for international slots at O'Hare have exceeded slots available for several years. Slots have been withdrawn from domestic operators for the 1989 summer season and the 1989-90 winter season as indicated below:

Summer 1989 (August—typical day)

Carrier	Number withdrawn
American.....	4
Delta.....	1
Eastern.....	1
Northwest.....	1
United.....	15

Winter 1989-90 (January—typical day)

Carrier	Number withdrawn
American.....	3
Delta.....	1
Eastern.....	1
United.....	19

Requests for international slots received by the FAA for the summer 1990 season exceed requests for summer 1989.

Comments on the United Air Lines Petition

The FAA received six comments on the United Air Lines petition, with the majority of the commenters opposing the petition. Swissair, American Trans Air, American Airlines, and Wardair Canada, Inc., all opposed the petition for a variety of reasons. Swissair and American Airlines both stressed that O'Hare is the only international airport in the area, and that withdrawal of slots was necessary to provide access to O'Hare for carriers providing international service. American also commented that the disruption claimed by United was exaggerated, in that United could identify in advance the slots that would be withdrawn. American Trans Air further noted that O'Hare operated 14½ hours of slot restrictions while JFK only had 5 hours of restrictions. Noting that "the limited number of international slots makes trading virtually impossible," Swissair asserted that expansion of existing international service would be severely hampered.

American Trans Air further stated that charter international operators should be treated on an equal basis with scheduled international operators for

slot purposes. Finally, Wardair noted that the FAA has obligations under bilateral agreements with Canada to provide access to airports and to guarantee the ability of Canadian carriers to operate charter flights into the United States. Accordingly, it was Wardair's opinion that United's petition would violate such agreements by restricting the ability of international operators from access to the Chicago area.

Both commenters that supported the petition, Delta Air Lines and Air Wisconsin, believed that the withdrawal of domestic slots for international operations was unfair, disruptive, and expensive. Both stressed that slot allocation procedures should be consistent at both airports.

The Department agrees with comments that the continued withdrawal of slots for international operations at O'Hare is necessary and appropriate at this time, for several reasons. First, unlike New York, the Chicago area has no airport other than O'Hare available for service to Europe, Asia, and South America. Second, O'Hare is slot-restricted for 14½ hours of the day, compared to 5 hours at JFK. International operators at New York may serve New York through Newark Airport at any time, or through a substantial portion of the day at JFK. In Chicago, unlike New York, there are no suitable alternatives that would provide access to that market for international service, and withdrawal of slots for international operations at O'Hare is required to provide adequate access to the point Chicago under bilateral air service agreements. Finally, the proportion of international operations at O'Hare—about 6% of the total—is far smaller than that at Kennedy, where about 40% of total operations are international. As a result, the withdrawal of domestic slots for international operations has a substantially smaller effect on total service at O'Hare than it would at Kennedy. For these reasons, the Department is not proposing to adopt the action requested by United in its petition for rulemaking, i.e., to conform the O'Hare procedure to that in effect at Kennedy Airport, where new international slots are granted only if unallocated slots are available.

Proposed Amendments

In consideration of issues raised in the United petition and comments received, the status of current slot holdings, and trends in requests for international slots, the Department is proposing to limit the availability of international slots provided to carriers holding or operating 100 or more permanent slots at O'Hare

International Airport—currently American Airlines and United Airlines. Such carriers would be allocated a requested international slot if a slot is available, but a domestic slot would not be withdrawn from another carrier for that purpose. As a result, each such carrier would need to decide whether to use its own domestic slots for international operations. The rule would apply to commuter operators as well as air carriers; however, there are no international operations at O'Hare using commuter slots at this time, and no commuter slots have been requested or withdrawn for commuter operations since the adoption of the current allocation rules in 1985.

The two largest air carriers at O'Hare—American Airlines and United Airlines, which together hold more than 70% of air carrier slots at that airport—currently withdraw slots from each other and from smaller carriers to provide seasonal international operations. These larger carriers have the capacity and flexibility to use slots from their own bases for international service. The Department proposes that domestic slots not be withdrawn to provide slots for international operations for air carriers at O'Hare holding or operating 100 or more slots. Seasonal slots for international operations would be allocated to these carriers only in time periods in which withdrawal is not necessary, i.e., in which unallocated slots are available.

The rule proposed would have no effect on carriers with fewer than 100 slots at O'Hare, and would, for the foreseeable future, have no practical effect on commuter operators holding 100 or more commuter slots. The proposal would have two general effects on air carriers with 100 or more slots. First, the two largest carriers at O'Hare would be required to furnish slots for international service from their own domestic slot bases. However, the effect on these carriers would be less than the effect of the current system on carriers with far smaller slot bases at O'Hare. These carriers are currently required to supply slots for the international operations of the largest carriers.

Second, carriers with 100 or more slots would continue to be subject to withdrawal of their slots to accommodate international operations requested by other carriers. This is the current rule, and the fact that the two largest carriers hold more than 70% of all air carrier slots at O'Hare necessitates that these carriers continue to be subject to withdrawal along with other carriers at the airport. However, withdrawals from the two largest carriers would be reduced somewhat

from current levels by the fact that these carriers will not be furnishing slots for each other's international operations.

The Department recognizes the long-standing nature of some international operations by United and American, several of which have been in effect continuously since prior to the adoption of the current allocation rules. The Department does not intend that these operations be rolled back to a level substantially below current international operations. Rather, it is proposed that the slots allocated to and used by United and American for the winter 1989-90 season serve as a baseline for the number of operations by these carriers that will be granted in the future. Requests by American or United for international operations above the winter 1989-90 level would be granted only if slots were available in the season requested.

The Department notes that slots for international operations have been requested and allocated for summer 1990. This rule, if adopted, would not alter those allocations. Accordingly, the FAA would withdraw sufficient slots, in accordance with existing regulations, to accommodate operations for summer 1990. However, the rule would preclude allocation of some of those slots in future seasons, to the extent the summer 1990 allocation exceeded the number of slots allocated for the winter 1989-90 season used as a baseline.

Regulatory Evaluation

The proposed amendment does not significantly alter the current operations environment for air carriers at O'Hare Airport.

Since slots are neither created nor withdrawn, the net effect of this proposed amendment is arguably zero. To the extent that the use of slots under this amendment is different than the use of slots would be in its absence, the net effect is essentially unknowable without a great deal more information than is available. However, given the competitive pressures present at O'Hare Airport, which can be assumed to cause the slots to be used for highly valued services largely irrespective of their holders, it should be assumed that any economic differences attributable to the effects of this proposed amendment would be minimal.

The proposal to eliminate the withdrawal and reallocation of slots for international operations for the two largest air carriers at O'Hare Airport will impose a cost on those carriers, although it is somewhat offset by each carrier not having to furnish slots to its largest competitor for that purpose. Two commuters hold more than 100 slots at O'Hare, but would not be affected because currently there are no withdrawals of commuter slots for international operations. The proposed rule would have no identifiable impact on any other operators.

The Department has determined that the proposed amendment (1) is not a "major rule" under Executive Order 12291; and (2) is a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the reasons discussed above under Regulatory Evaluation, I certify that under the criteria of the Regulatory Flexibility Act, this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This amendment provides for no changes to the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget previously has approved the information collection provision of subpart S. OMB Approval Number 2120-0524 has been assigned to subpart S.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control, Reporting and recordkeeping requirements.

The Proposed Amendment

Accordingly, the Department of Transportation proposes to amend part 93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 is revised to read as follows:

Authority: 49 U.S.C. App. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. App. 106 (Revised Pub. L. 97-449, January 12, 1983).

§ 93.217 [Amended]

2. In § 93.217, paragraph (a)(5) is amended by removing the first word, "At", and substituting "Except as provided in paragraph (a)(10) of this section, at".

3. In § 93.217, paragraph (a)(6) is amended by removing the first word, "Additional", and substituting "Except as provided in paragraph (a)(10) of this section, additional".

4. In § 93.217, new paragraph (a)(10) is added to read as follows:

§ 93.217 Allocation of slots for international operations and applicable limitations.

(a) * * *

(10) A slot will not be allocated at O'Hare Airport under this section to a carrier holding or operating 100 or more permanent slots on the previous May 15 for a winter season or October 15 for a summer season unless:

(i) A lot is available for allocation without withdrawal of a permanent slot from any carrier; or

(ii) Allocation of the slot does not result in a total allocation to that carrier under this section that exceeds the number of slots allocated to, and operated by, that carrier under this section for the winter 1989-90 season.

Issued in Washington, DC on March 5, 1990.

Samuel K. Skinner,
Secretary of Transportation.

[FR Doc. 90-5423 Filed 3-6-90; 1:51 pm]

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