NPRM 91-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Authority

14 CFR Part 93

[Docket No. 26339; Notice No. 91-13]

RIN 2120-AE21

Operation of Jet Aircraft in Commuter Slots at O'Hare International Airport

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would amend the regulations pertaining to the allocation and definition of commuter operator slots (i.e., allocated instrument flight rules (IFR) takeoff and landing reservations) at O'Hare International Airport. Through this action, the FAA proposes to permit a limited number of commuter slots at O'Hare International Airport to be used by aircraft having a maximum seating capacity of up to 110 passenger seats. This proposed rule is in response to a petition for rulemaking submitted by American Airlines. The FAA proposes to limit the number of commuter slots available for operation of such aircraft to 25 percent of each operator's commuter slots at O'Hare International Airport, and to limit the number of such operations in any half hour. This change is proposed to remain in effect for a 2-year period to allow the FAA to evaluate the effect of the change on the operation of the airport and air traffic facilities. This action would relieve airlines at O'Hare of certain existing restrictions and permit (but not necessarily result in) additional jet service to some smaller communities while still preserving the class of commuter slots as distinct from air carrier slots.

DATES: Comments must be received on or before June 7, 1991.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, attention: Rules Docket, Docket No. 26339, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, room 916, 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 p.m.

FOR FUPTHER INFORMATION CONTACT: Patricia R. Lane, 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 participate in the proposal by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposals. Comments are specifically invited on the overall economic, energy, reporting, and recordkeeping aspects of the proposals. Communications should identify the notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this advance notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26339." Communications received before the specified closing date for comments will be considered before taking any further action on the proposal. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular (AC) No. 11-2, "Notice of Proposed Rulemaking Distribution System," which describes the application procedures.

Background

The High Density Traffic Airport Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in 1969 to reduce delays at five congested airports: JFK International, LaGuardia, O'Hare International, Washington National, and Newark International (at which limits are no longer in effect 33 FR 17896, December 3, 1968). The regulation limits the number of operations at each airport, by hour or half hour, during certain hours of the day. The limits were most recently amended in April 1984 (49 FR 8237, March 6, 1984). While allocations vary from hour to hour, the basic allocation is 120 slots each hour at O'Hare for operations by air carriers, 25 slots each hour for commuter operators, and 10 slots each hour for general aviation. The operating limits are in effect at O'Hare from 6:45 a.m. to 9:15 p.m. The limits on operations by scheduled air carriers and commuter operators are enforced by the allocation of takeoff and landing "slots" to individual operators (14 CFR 93.125: subpart S).

On August 22, 1989, the Department published amendment no. 93-57, a final rule which, among other changes, amended the definitions of "commuter" and "air carrier" aircraft in the High Density Rule (54 FR 34904; corrected 54 FR 37303, September 8, 1989). In response to the comments received and to the petition filed by Air Wisconsin to permit the use of larger propeller-driven aircraft in commuter slots, the FAA redefined commuter operations as those using turboprop or reciprocating aircraft having less than 75 passenger seats. On September 21, 1989, the Department suspended the effectiveness of this amendment to the extent it would prohibit operations by turbojet aircraft with less than 56 seats using commuter slots, to consider information presented by manufacturers currently developing small turbojet aircraft intended for commuter operations (54 FR 39843, September 28, 1989).

As a result, commuter slots currently may be used only with propeller-driven aircraft certificated with a maximum passenger seating capacity of less than 75 and turbojet aircraft with a maximum seating capacity of less than 56. The air carrier/commuter slot distinction was incorporated in the original High Density Airport Traffic Rule adopted in 1969 to protect the regional airline industry and to preserve air service in smaller, "commuter" markets within a short to medium range of the high density airports.

The American Airlines Petition

Summary

On September 6, 1990, American Airlines (AAL) filed a petition for rulemaking to permit the operation of Stage 3 jet aircraft with up to 110 passenger seats in commuter slots at O'Hare Airport. AAL argued that the change would permit it to upgrade service in a number of smaller markets from turboprops to jets. The FAA

published the petition on October 2 with a 60-day comment period (55 FR 40191).

On November 8, 1990, the FAA requested supplemental information and comments concerning certain concerns of the agency that were not addressed in the original petition (55 FR 46956). In particular, Air Traffic Control (ATC) had concerns about the capacity of terminal facilities at O'Hare Airport for the additional turbojet operations that would result if the seat limitation of the commuter aircraft were raised as the petition had requested. Specifically, the FAA requested further comment on gate availability at O'Hare for the additional jet aircraft, and the potential for ground congestion and safety concerns should gates not be available.

In response, to the AAL petition, Canadair filed a separate petition for rulemaking on December 3, 1990, requesting that its petition be consolidated with the AAL petition because of its related subject matter. Specifically, Canadair requested that the definition of "scheduled commuter," as defined in § 93.123(c), be amended to include in the definition of commuter aircraft turbojet aircraft with a maximum seating capacity of less than 56 seats.

Currently, the 435 commuter slots at O'Hare are allocated to three carriers as follows:

American (AMR Eagle, Simmons)	281	(65%)
Air Wisconsin	118	(27%)
Great Lakes	36	(8%)
Total	435	

Comments on the Petition

Approximately 250 comments were received on the petition. Virtually all the supporting comments were based on the assumption that American would provide improved air service to the commenter's community. Most comments came from businesses and individual travelers in Fargo, ND; Peoria and Springfield, IL; Sioux Falls, IA; Madison, WI; Vail, CO; and Allentown, PA; and members of Congress and local government officials representing those cities.

Representatives of several other communities in the Midwest, including members of Congress, opposed the petition because it would act as an incentive to abandon existing turboprop service to small communities that could not support jet service, to permit the carrier to use the slots for jet operations in other markets. Several carriers (United, USAir, Delta, Air Wisconsin, Continental, Pan Am Express) also opposed the petition on grounds of the lack of small community service, the exclusive benefit and windfall to AAL, and the resulting increase in air and ground congestion at O'Hare.

The Suburban O'Hare Commission opposed the petition for the environmental impact on the surrounding communities of increased jet operations and the apparent policy decision to increase the jet capacity of O'Hare. The Chairman of the Commission also questioned whether the addition of a number of larger aircraft at O'Hare would affect the safety of operations in the air and on the ground. Finally, the Commission believes that AAL would determine that jet service to certain smaller communities was not economically beneficial and would discontinue air service to some cities, leaving those cities without air access to O'Hare.

In response to the FAA's request for supplemental information, AAL stated that it now had enough jet gates available each day at O'Hare to handle any increase in operations due to the use of jet aircraft in commuter slots. AAL believes that the number of available gates at O'Hare would act as a natural limit as to the number of operations that could be used by larger turbojet aircraft. Further, AAL stressed that due to the delivery schedule of the larger aircraft, it would not be able to use that many commuter slots with larger turbojet aircraft at this time, because the planes would not all be delivered in the immediate future.

Discussion of Comments

A. *Effect on arrival/departure operations at O'Hare.* Many of the comments in general support of the petition stated that air service to the commenter's community would be improved by the granting of AAL's petition, but typically did not discuss what effect the use of jet aircraft in commuter slots would have on arrival, departure, and ground operations at the airport. Most of the carriers commenting on the petition stated their belief that arrival and departure operations would be detrimentally affected by additional

jet operations using the type of aircraft requested by AAL in its petition.

The FAA continually monitors operating conditions and system performance at the four high density traffic airports, to consider whether an easing of current High Density Rule restrictions is feasible. While the action requested by AAL in its petition has no benefit for ATC, the FAA is willing to consider such a request in the interest of imposing only the minimum level of industry regulation actually necessary for the safe and efficient operation of flight and ground operations at these airports. The agency's consideration is subject to cost-benefit analysis, environmental consideration, and the Office of the Secretary of Transportation's findings relating to service to small communities and effect on competition, as well as safe and efficient operations.

The FAA believes that unrestricted use of commuter slots by air carrier aircraft (as defined in § 93.123(c)(1)) would add greatly to delays and congestion of arrival and departure operations at O'Hare. The FAA is less concerned that a limited number of operations in commuter slots by the smaller jet aircraft described in AAL's petition, i.e., aircraft with a certified maximum seating capacity of 110 seats or less, would result in significant additional delays, if there is no increase in total operations. On the basis of an assessment of current O'Hare operations and delays and considering recent improvements in ATC resources and technical procedures in the Chicago area, the FAA believes that the trial use of turbojet aircraft with a certified maximum seating capacity of 110 or less in a limited number of commuter slots would not have a significant adverse effect on ATC or airport delays at O'Hare, if such operations are further limited during certain peak hours.

For this reason and as described in more detail below, the FAA is proposing to permit carriers holding commuter slots at O'Hare to conduct operations with aircraft having up to 110 passenger seats, with a limitation on the total number of such operations and on the number per half hour per two consecutive half hours. While AAL's petition mentioned only turbojet aircraft, the proposed rule is limited only by seat capacity of aircraft and not by engine type. The FAA requests comments on the expected effect of the resulting jet operations on arrival and departure operations at O'Hare.

B. *Effect on ground operations at O'Hare.* Additional information was solicited from AAL and the public on the availability of gates for the additional jet operations at O'Hare. AAL claims it is not using all of its jet gates now, so that the capacity exists for up to 71 added jet operations a day. Other commenters, especially the responding air carriers and the Suburban O'Hare Commission, stated that larger aircraft would cause severe ground congestion and resultant delays. These commenters questioned whether ATC would be able to handle the increase in the number of larger aircraft.

O'Hare is currently subject to substantial ground congestion. If a gate is not immediately available for an arriving aircraft, that aircraft must hold on the ramp until a gate becomes available. Aircraft waiting on the ramp can block ramp areas and even taxiways, exacerbating congestion and resulting in ground delays and increased complexity of controlling ground operations. To avoid the potential for increased ground congestion as a result of additional operations using terminal jet gates, the FAA is proposing to require that a gate be available for any operation of a commuter slot by an aircraft with up to 110 seats. This condition applies only to jet aircraft, because non-jet aircraft operating under the proposed rule would likely use the same ramp parking as the commuter aircraft they replace. The proposal to limit further the number of additional operations by aircraft of this size in peak hours also should tend to limit the impact of those operations on ground congestion.

c. *Effect on service to small communities.* The majority of support for the petition came from representatives or residents of small and mid-size cities for which AAL has promised additional flights and/or conversion of existing turboprop flights to jet service. Many of the commenters supporting the petition stated, incorrectly, that current FAA rules prevented the initiation or addition of jet service to the commenter's community. In fact, while the High Density Rule limits the number of jet operations by a carrier to the number of air carrier slots held, the rule does not limit a carrier's decision to use a non-international slot

for one market rather than another. (Slots allocated for Essential Air Service (EAS) Program operations may be limited to particular markets, but no air carrier slots are now allocated for EAS operations.) Neither AAL nor any other carrier at O'Hare is limited by FAA regulations from using its domestic air carrier slots to serve any particular market. As of December 15, 1990, AAL held 569 air carrier slots at O'Hare. Of that number, 21 were leased to Simmons Airlines and operated with turboprop aircraft with less than 56 seats, and approximately 30 were not used at all but were kept above the 65 percent slot use requirement by rotational assignment of slot numbers. Accordingly, in recent months AAL has held more than 50 air carrier slots which are not used for jet operations. As a result, AAL (and other carriers) could at that time have provided much or all of the jet service requested by commenters, with no change in regulations and no cancellation of jet service in other markets.

Several other communities and carriers stated that they believed that AAL's requested change would actually hurt smaller communities. Air Wisconsin, for instance, stated that in the current air service market, smaller communities would not receive upgraded air service, but would in fact probably have their service cut, because it may not be economically advantageous to operate the larger jet service to or from the smaller communities. The representative from Coles County Airport Authority located in Mattoon, Illinois, essentially agreed with this assessment, and suggested that the FAA review AAL's past commitments and practices in regard to the smaller communities. (Records of the Department of Transportation Office of Aviation Analysis indicate that AAL's subsidiary commuter operators have suspended O'Hare service to eight Essential Air Service points since June 1989.) The representative stated that he believed that, regardless of AAL's promises, the smaller communities would lose their air service.

The Department of Transportation believes that all communities should have access to the air transportation system. The Department ensures that Essential Air Service is provided to eligible points and supports the availability of air service to other small communities. At the same time, the Department recognizes that the greatest utility of the finite capacity of such high density airports as O'Hare may favor the use of larger aircraft in higher density markets. In order to balance the interests of economic efficiency, on the one hand, and the Department of Transportation's interest in preserving feeder service to smaller markets in the Chicago region, on the other, the FAA proposes to cap the number of commuter slots that can be operated with 110-seat aircraft at 25 percent of the commuter slots held by each commuter operator at O'Hare. This will tend to preserve the category of commuter slots and mitigate the impact on commuter markets generally. Also, the 2-year limit proposed in this notice will serve to enable the Department to assess air service impacts as well as operational effects.

In the formulation of this proposal, the Department is relying heavily on assurances by AAL in its petition and comments that the use of turbojet aircraft in commuter slots will not reduce the quality of air service to smaller communities. If this proposal is made effective, the Department will closely monitor the use of commuter slots at O'Hare in order to evaluate whether AAL's actions are consistent with its representations in the petition. Should the use of commuter slots under such a rule fail to maintain service to smaller communities in the region, the Department will reevaluate the use of turbojet aircraft in commuter slots.

D. *Environmental review.* Even though commuter slot operations by 56- to 110-seat aircraft would not add to total operations at O'Hare, the proposal would substitute jets for turboprops in a certain number of operations. (While the proposed rule would permit *any* aircraft with 56 to 110 passenger seats to be used in commuter slots, the FAA presumes that carriers will choose to operate turbojets.) AAL represents that all of the new jet operations by AAL would use small Stage 3 jets, specifically Fokker 100's. However, the rule change requested by AAL permits carriers now operating small jets in air carrier slots to move those flights into commuter slots, freeing the slots for large jet operations. (Air Wisconsin currently operates 44 flights each day with 110-passenger jets in air carrier slots). Also, the FAA has not limited jet use to Stage 3 aircraft, in recognition of the agency's current rulemaking proposing to adopt a schedule for the phase-out of stage 2 aircraft operations throughout the United States by 1999 (56 FR 8628, February 28, 1991).

Regulations of the Council on Environmental Quality provide for initiation of environmental review of agency actions at the earliest possible time in the agency decisionmaking process. In view of the public and industry requests for expeditious consideration of the proposed rule, and the fact that the agency currently has no information on the potential impacts of the proposal, the issuance of this notice has not been delayed for completion of environmental review. However, the FAA requests comments on the potential environmental effects, if any, of the proposed rule.

The Proposal

For the above mentioned reasons, the FAA proposes to amend FAR part 93, subpart K and subpart S, (1) to clarify that the definition of commuter aircraft under the High Density Rule includes turbojet aircraft having a maximum passenger seating capacity of less than 56 seats, and (2) to permit the temporary operation of jets (or other aircraft) with a maximum passenger seating capacity of 56 to and including 110 in certain commuter slots at O'Hare International Airport, subject to specific conditions. First, the FAA would limit the maximum number of commuter slots that could be operated with air carrier aircraft under the proposed rule to 25 percent of the total number of commuter slots held by each slot holder at O'Hare. The cap would limit potential effects on airport operations and preserve at least 75 percent of existing commuter slots for small community service. No matter which carriers held or operated commuter slots, no more than 25 percent of the total number of commuter slots at O'Hare could be used for larger aircraft.

AAL stated that the lack of unlimited gates at O'Hare and the delivery schedule of the Fokker 100 aircraft would limit the extent of the use of jets in commuter slots, with the implication that no further restriction was necessary. However, AAL admitted that the lack of larger aircraft would only serve as a limiting factor temporarily. Also, other carriers may not be so limited. For these reasons, the FAA is concerned that the market conditions and apparent gate availability would not serve as an effective limit on the number of commuter slots that would be used by larger aircraft. A limit of 25 percent of all commuter slots minimizes potential ground and flight congestion, and preserves the segment of operations that typically provide air service to smaller communities in the Chicago region. The FAA notes that 25 percent of AAL's 281 commuter slots is 70, which corresponds almost exactly with the number of jet gates that AAL represents it has available throughout the day at O'Hare for additional operations of Fokker 100 aircraft.

The second condition is that the number of commuter slots that could be used for operation of aircraft with 56 or more seats would be limited to a maximum number each half hour (beginning at 0645) and each two consecutive half hours. During most hours of the day, the limit would be a total of six in each half hour (beginning at 0645) and a total of 10 in any two consecutive half hours. In peak traffic hours the operations would be limited to two per half hour. This limitation would serve to distribute such operations throughout the day and prevent the scheduling of a too great a number of such operations in any one hour or half hour to be handled without significantly adding to airport delays. Full utilization of the authority, with this limitation on half-hour and consecutive half-hour operations, would permit a total of 108 new jet operations a day at O'Hare (with a like reduction in the number of turboprop operations).

The peak hours in which the limitation to two per half hour would apply are: 1015 through 1244, 1715 through 1944. O'Hare Airport, and airspace sectors in the Chicago region, are highly congested at the above times. This congestion often results in operating delays, and O'Hare currently experiences one of the highest levels of operating delays of any airport in the United States. The impact of the additional jet operations is not only the airport itself, but also on high altitude airspace handled by Chicago Center. The added jet operations would use altitudes higher than those used by turboprop aircraft. At certain times of day the en route airspace structure in the Chicago region is highly congested with through traffic as well as arrivals and departures to and from Chicago airports. The FAA believes that it is important to limit the addition of jet operations during those times of day, to avoid unacceptable operating delays for the traveling public and an unacceptable increase in ATC workload at what are already times of peak activity. The limitations per half hour and consecutive half hours on the number of 56- to 110-seat turbojet operations in commuter slots would be published in an appendix to part 93. A decision by ATC to amend these limits would be published in advance of the effective date of the change, in the **Federal Register**, as an amendment to the part 93 appendix.

Third, a carrier would be required to notify ATC 60 days in advance of the planned operation of a commuter slot with a 56- to 110-seat aircraft. ATC would have the authority to disapprove a request based on actual conditions at the time of the request, and also to grant a request with conditions such as operating only as an arrival or departure. ATC's approval, conditional approval, or disapproval would be issued more than 45 calendar days before the planned start date stated in the notice. ATC approval for a specific operation would be valid for 30 days after the planned start date, and then would expire if the operation had not commenced. If requests exceed the six or fewer commuter slots available for 56- to 110-seat aircraft operation in a half hour, the notice would be approved on a first-come first-served basis (based on proposed start date, not date of notice); however, a first-time notice would receive precedence over a refiling of an expired notice, to prevent carriers from "locking up" the six available slots long before intended operation. The FAA requests comments on whether the "first-come, first-served" provision, as proposed, would provide all affected operators equitable access to the use of commuter slots under the proposed rule.

Fourth, the FAA would require that any carrier intending to operate a commuter slot with a 56- to 110-seat jet aircraft have sufficient gates available for those operations, to prevent ramp and taxiway congestion which could result from additional jet operations.

Finally, the FAA believes that there is a need to limit the proposed amendment to a 2-year period in order to evaluate the impact on airport operations, especially delays, and on ATC resources and workload. At the end of 2 years, existing operations under this provision could be extended pending a study of impacts and rulemaking to revise, expand, or curtail the program. Within the 2-year period, AAL or any other holder of commuter slots at O'Hare could petition the FAA for rulemaking to modify the program to increase the number of turbojet aircraft permitted to use commuter slots or for any other adjustment. ATC would evaluate the request on the basis of actual experience to determine the predicted effect of the request on airport operations and the air traffic control system.

The proposed action represents a grant of the petition for rulemaking filed by Canadair, Inc., on December 3, 1990, and a partial grant of the petition for rulemaking filed by American Airlines on September 6, 1990.

Regulatory Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives.

Costs

This proposal is voluntary and would not impose any additional costs on part 121 operators. This rule would allow them to use some of their commuter slots (up to 25 percent) at O'Hare Airport for operations involving aircraft having up to 110 seats. A maximum of 108 operations per day using aircraft with up to 110 seats would be permitted to be used in commuter slots under this proposal. The number of commuter slots that could be used for these operations would also be limited to 6 in any half-hour slot period and 10 during any two consecutive half hours, except in certain peak hours when such operations would be limited to 2 per half hour.

As a result of the above limitations on the use of larger aircraft in commuter slots, the FAA believes that the proposal would not significantly alter the operating environment at O'Hare Airport for scheduled parts 135 or 121 air carrier operators. It is not expected that ground operations and departure and arrival procedures would be significantly affected. However, there might be some minor delays in enroute operations in the Great Lakes Region. The FAA solicits comments from the public regarding the impact that this proposal would have on operations at O'Hare Airport and in the Chicago region.

This proposed regulation would have no effect on the safety of either air or ground operations. ATC would retain the ability to delay arrival or departure of additional large airplane operations at O'Hare Airport in order to maintain safety.

In this evaluation, the FAA assumes that service to small airports would not

be reduced as a result of this proposal. This proposal would allow air carrier operators to substitute larger and faster turbojet airplanes for smaller and slower turboprop airplanes and, thereby, improve service to the small airports that they currently serve. However, the FAA recognizes that the ability to use jets in commuter slots may serve as an incentive to remove those slots from use in markets that cannot support jet service, and the FAA solicits public comment regarding this assumption.

Benefits

This proposal benefit some of the passengers who fly to and from Chicago on any portion of their trip. As a result of this proposal, passengers on long commuter flights would be able to fly in larger and faster turbojet airplanes which would save them some time. For most commuter flights, which are short, turbojets would not provide any significant time savings. The FAA estimates that about 20 minutes could be saved on a long commuter flight by using turbojet airplanes instead of turboprop airplanes. The FAA estimates that approximately 50 passengers would be on each turbojet commuter flight. The estimated passenger time saved is, therefore, 16.7 passenger-hours per commuter flight. The FAA estimates that the value of passenger time is $34 per hour. Allowing turbojet airplanes with up to 110 seats to be used on long commuter flights would save $568 in passenger time per trip. This proposed regulation would allow 108 commuter slots to be used in this way. Thus, this proposal would save as much as $61,300 per day in passenger time if all 108 commuter slots are converted to turbojet commuter flights. The FAA solicits public comment regarding the assumptions used in estimating the benefits of this proposal.

Benefit Cost Comparison

The FAA finds that in the absence of significant delays, there would be no significant costs to this proposed regulation. However, there are measurable benefits. As a result, the FAA has determined that the proposed regulation would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities". The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining if a proposed or existing rule has any significant economic impact on a substantial number of small entities.

The FAA defines a small entity as an operator who owns, but does not necessarily operate, nine airplanes. A substantial number of small entities is one-third of the small entities provided 11 or more small entities are substantially impacted. The FAA defines a significant economic impact as $4,000 per year for unscheduled operators, $57,000 per year for scheduled operators, and $101,000 per year for schedule operators whose fleets are entirely composed of aircraft with 60 or more passenger seats.

There are no small operators providing service to Chicago O'Hare Airport that have airplanes with 56 to 110 seats. Thus, the FAA determines that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Statement

The proposed regulation would only affect domestic operations at Chicago O'Hare Airport. Thus, it would not provide either an advantage or disadvantage to foreign air carriers providing service to and from the United States, nor would it provide either a trade advantage or disadvantage to US air carriers providing foreign service.

Paperwork Reduction Act

This proposal, if adopted, 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 Determination

The proposal set forth 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 12612, it is determined that this regulation, if adopted, would not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this proposal (1) would not be a "major rule" under Executive Order 12291; and (2) would be a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, I certify that under the criteria of the Regulatory Flexibility Act, this proposal would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, I propose 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 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97-449, January 12, 1983); Public Law 101-508.

2. In § 93.123, paragraph (c) is revised to read as follows:

§ 93.123 High density traffic airports.

* * * * *

(c) For purposes of this subpart—

(1) The number of operations allocated to "air carriers except commuters," as used in paragraph (a) of this section refers to the number of operations conducted by air carriers with turboprop and reciprocating engine aircraft having a certificated maximum passenger seating capacity of 75 or more or with turbojet powered aircraft having a certificated maximum passenger seating capacity of 56 or more, or, if used for cargo service in air transportation, with any aircraft having a maximum payload capacity of 18,000 pounds or more.

(2) The number of operations allocated to "scheduled commuters," as used in paragraph (a) of this section, refers to the number of operations conducted by air carriers with turboprop and reciprocating engine aircraft having a certificated maximum passenger seating capacity of less than 75 or by turbojet aircraft having a certificated maximum passenger seating capacity of less than 56, or, if used for cargo service in air transportation, with any aircraft having a maximum payload capacity of less than 18,000 pounds.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, a limited number of operations allocated for "scheduled commuters" under paragraph (a) of this section may be conducted with aircraft described in

§ 93.221(e) of this part pursuant to the requirements of § 93.221(e).

(3) Section 93.221 is amended by adding a new paragraph (e) to read as follows:

§ 93.221 Transfer of slots.

* * * * *

(e) Notwithstanding § 93.123(c)(2) of this part, a commuter slot at O'Hare International Airport may be used with an aircraft described in § 93.123(c)(1) of this part on the following conditions:

(1) Air carrier aircraft that may be operated under this paragraph are limited to aircraft with a maximum certificated passenger seating capacity of 56 to 110 seats.

(2) No more than 25 percent of the total number of commuter slots held by a slot holder at O'Hare International Airport may be used with an aircraft described in paragraph (e)(1) of this section.

(3) An air carrier or commuter operator planning to operate an aircraft described in paragraph (e)(1) in a commuter slot shall notify ATC at least 60 days in advance of the planned start date of such operation. The notice shall include the slot number, proposed time of operation, aircraft type, and planned start date. ATC will approve or disapprove the proposed operation no later than 45 days prior to the planned start date. If an operator does not initiate operation of a commuter slot under this section within 30 days of the planned start date first submitted to the FAA, the ATC approval for that operation will expire. That operator may file a new or revised notice for the same half-hour slot time; however, a first notice of planned operation by another carrier in the same half-hour slot time will receive priority in the event that proposed operations under this section exceed the number approved by ATC.

(4) ATC will not approve a number of operations by aircraft described in paragraph (e)(1) of this section in commuter slots in any half hour (beginning at 0645) or in any two consecutive half hours greater than the number indicated in appendix B to this part. ATC may approve fewer than the number of such operations listed in appendix B for any half hour or two consecutive half hours upon a determination that a greater number would have an adverse effect on airport delays.

(5) An operation may not be conducted under paragraph (e)(1) unless a gate is available for that operation without planned waiting time;

(6) For the purposes of this paragraph (e), notice to ATC shall be submitted in writing to: Director, Air Traffic System Management, ATM–1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

(7) The effectiveness of this paragraph (e) shall expire (2 years after the date of the enactment of this section).

4. Appendix B is added to part 93 to read as follows:

Appendix B to Part 93—Limits on the Number of Air Carrier Aircraft that May Be Used in Commuter Slots at O'Hare International Airport

The number of operations by aircraft described in § 93.221(e)(1) of this section in commuter slots at O'Hare International Airport may not exceed the following number indicated for each half-hour slot period and each two consecutive half hours:

Hours	Per half hour	Per 2 consecutive half hours
1015 through 1244	2	4
1715 through 1944	2	4
All other hours between 0645 and 2115	6	10

Issued in Washington, DC., on May 3, 1991.

L. Lane Speck,

Director, Air Traffic Rules and Procedures Service.

[FR Doc. 91–10888 Filed 5–3–91; 12:57 pm]

BILLING CODE 4910–13–M