

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 26788; Amdt. No. 93-68]

RIN 2120-AE78

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

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

ACTION: Final rule.

SUMMARY: This action amends the regulations pertaining to the definition and allocation of commuter operator slots (i.e., allocated instrument flight rules takeoff and landing reservations) at O'Hare International Airport (O'Hare). It permits an air carrier to use larger aircraft in up to 50 percent of its commuter slot holdings at O'Hare, expands the category of aircraft that may be used in those slots, removes the restriction on the maximum number of larger aircraft operations in commuter slots per half hour or consecutive half hour periods, and makes permanent the use of the larger aircraft in commuter slots at O'Hare by eliminating the provision that limits the use of larger aircraft to a temporary 2-year trial period. This rule does not increase the number of operations at O'Hare nor direct the enhancement or reduction of air transport services to smaller communities.

EFFECTIVE DATE: August 25, 1993.

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SUPPLEMENTARY INFORMATION:**Availability of Document**

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment or docket number.

Background

The High Density Traffic Airport Rule ("High Density Rule" or HDR), 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 (33 FR 17896, December 3, 1968). The regulation limits the number of Instrument Flight Rules (IFR) operations at each airport, by hour or half hour (by half hour at O'Hare) during certain hours of the day (from 6:45 a.m. to 9:15 p.m. at O'Hare). It provides for the allocation to carriers of operational authority, or a "slot," for each IFR landing or takeoff during a specific 30- or 60-minute period. The restrictions were lifted at Newark in the early 1970's.

On August 19, 1991, the Department of Transportation (Department) published Amendment No. 93-62 which, among other changes, revised the definition of "commuter" aircraft in the High Density Rule to include turboprop or reciprocating aircraft having less than 75 passenger seats or turbojet aircraft having less than 56 seats (56 FR 41200). In that same amendment, the FAA changed the slot rules, effective for a 2-year period beginning September 20, 1991, to allow carriers at O'Hare to use up to 25 percent of their commuter slots for operations with aircraft having a maximum certificated seating capacity of no more than 110 passengers.

On January 5, 1993, the Department published a Notice of Proposed Rulemaking (NPRM), proposing to eliminate the temporary 2-year trial period provision in Amendment No. 93-62, permit an air carrier to use larger aircraft in up to 50 percent of its commuter slot holdings at O'Hare, expand the category of aircraft that may be used in those slots, and remove the restriction on the maximum number of larger aircraft operations in commuter slots per half hour or consecutive half hour periods (58 FR 280). The NPRM was published in response to a petition submitted by American Airlines (AAL) on February 18, 1992, seeking rulemaking to: (1) Suspend the 30- and 60-minute slot restrictions at O'Hare; (2) eliminate the category of commuter slots at O'Hare or increase from 25 percent to 45 percent the number of commuter slots for which larger aircraft may be used under Amendment 93-62; (3) impose slot restrictions at Midway Airport or establish a Chicago area slot system incorporating O'Hare and Midway; (4) permit AAL to revise its selection of commuter slot times for operations with larger aircraft under Amendment No. 93-62; and (5) make Amendment No. 93-62 permanent. The FAA published a summary of the petition on March 31, 1992 (57 FR 10836), and received 200 comments, predominantly in support of AAL's

petition. Those comments were discussed in the NPRM.

Comments on NPRM

Although greater in number than those responding to AAL's petition, the comments received in response to the NPRM were drawn along similar lines. Again, supporting commenters include government officials, community leaders, business owners or managers, and other residents of regions that have received Fokker 100 (F-100) jet service by AAL since the promulgation of Amendment No. 93-62, or that anticipate such service.

Comments in support came predominantly from the communities of Fargo, ND; Sioux Falls, SD; Nashville and Memphis, TN; and Raleigh-Durham, NC. The government leaders who submitted comments in favor of the proposed rule include 30 members of Congress, 3 governors, 6 state legislators, and 8 mayors. Over two thousand letters also came from AAL employees. Other supporting comments came from Chicago and Rockford, IL; Tulsa, OK; Dallas, TX; San Jose, CA; Cedar Rapids, IA; Muskegon, MI; and Albany and Rochester, NY.

United Air Lines (UAL) wrote in favor of the proposal, subject to certain reservations, as did the Transport Workers Union, which represents 35,000 employees at AAL, and the Regional Airline Association (RAA). Southwest Airlines also wrote in support, but limited its comments to the proposal concerning the establishment of a regional slot system incorporating Midway Airport. Fokker Aircraft USA submitted comments as well, favoring the proposal and recommending its expansion to the other High Density Traffic Airports (Kennedy, LaGuardia, and Washington National).

Similar to the comments submitted on AAL's petition, opponents of the proposed rule include government officials, community leaders, business owners or managers, and other residents of regions that have suffered or fear a reduction or elimination of air service. These communities include Mattoon, Bloomington, and Champaign-Urbana, IL; Terre Haute, IN; Lansing, MI; Toledo, OH; and Oshkosh and Appleton, WI. Various airport authorities and operators in the upper Midwest opposed the proposal, joined by the state transportation or aviation agencies of Michigan and Wisconsin, 3 members of Congress, and 4 mayors or city boards.

Also opposing the proposal are Trans World Airlines (TWA); Air Wisconsin employees; pilots of AAL's commuter subsidiary, Simmons Airlines; and the Suburban O'Hare Commission.

The supporting and opposing comments agree on three points: (1) Air service is critical to a region's economic growth; (2) government restrictions should not interfere with air carriers' determinations of the routes they serve; and (3) the proposed rule would enhance AAL's competitive position.

Discussion of Comments

A. Comments in Favor of the Proposal

Many supporting comments pointed to the increased passenger capacity at O'Hare that the proposed rule would effect. If an aircraft holding 110 seats is used in a slot that is currently restricted to 74 seats, there would be a gain in capacity of 36 seats. Assuming no impact on air traffic from this change, the commenters believe that any increase in passenger seats per slot would represent a more efficient use of O'Hare's operational capacity. The agency agrees that increased passenger capacity would likely benefit the Chicago market as well as the markets being served by the added capacity.

Most supporters of the proposal spoke in general terms about an anticipated benefit to the entire Midwest. A few commenters provided specific information on the effect of the temporary rule. The Municipal Airport Authority of Fargo, ND, served by two daily round trip Fokker 100 operations to O'Hare since May 1, 1992, cited a 20 percent increase in local boardings over the previous year. The Fargo Chamber of Commerce said that a major carrier is now being solicited to provide additional routes.

Commenters from Muskegon, MI, said that their commuter flights were almost always full, and that most local travelers drove an hour to board aircraft departing from Grand Rapids, MI. The frequency of service to Muskegon was reduced by one round trip daily to Chicago, but larger turboprops have been substituted, making Muskegon more competitive with Grand Rapids. Muskegon's enplanements have increased 19 percent, according to the Muskegon County Airport.

Greater Rochester International Airport, NY, sees a similar benefit for it if the proposed rule is adopted. Its acting director commented that the aircraft mix at the airport had become more commuter oriented, placing it at a competitive disadvantage compared to other cities.

The agency cannot predict that the airports of Muskegon, Rochester, Fargo, or any other community will enjoy or continue to enjoy increased passenger enplanements as a result of the rule adopted. Carriers remain free to choose

the routes they wish to operate; slots do not affect their origins or destinations. Even without the issuance of this rule, carriers have been free to serve these markets using their air carrier or commuter slots.

A commenter from Raleigh, NC, asserted that the use of larger aircraft would reduce congestion and eliminate the need for a third runway at O'Hare. The final rule allowing the use of certain turbojet aircraft in commuter slots will not reduce the level of airport operations since the rule provides for a substitution of equipment in a slot and not a reduction in service. Therefore, any decisions on additional runways at O'Hare, or the potential operational benefits that might occur from a new runway at O'Hare, are not likely to be affected by this rule.

One commenter suggested dropping the proposed seat limit and applying a flight-leg maximum mileage instead. Limiting the size of the aircraft available for use under this amendment acts as a de facto perimeter rule. A maximum mileage would need to include the most distant destinations within the range of commuter turboprops and, consequently, would not effect a substantial gain in addition to the seat and weight limits. Because any perimeter rule would contain the markets where commuters currently operate, total operations at air traffic facilities would remain the same.

UAL supports the proposed rule if the FAA monitors the use of commuter slots with larger aircraft for potential degradation of service to small communities, a new runway is promptly built at O'Hare, outstanding petitions are consolidated to overhaul the High Density Rule, and the use of 737-500 aircraft will be included within the seat limit and weight restrictions as proposed.

In response to UAL's position and as stated in the NPRM, the Department will continue to monitor any effect on service to smaller communities as a result of allowing the use of larger aircraft in commuter slots at O'Hare. The rule is not tied to future runway construction at O'Hare, since that capacity enhancement is not required to accommodate the limited scope of this rule. The other slot rule petitions will be addressed on their own merits. The bases for the seat limit and weight restrictions have not changed, and, therefore, they are being adopted as proposed.

Most of the North Dakota and South Dakota commenters asserted that, as further justification for the proposed rule, their states were beyond turboprop range from O'Hare. However, many of

the commuter aircraft used at O'Hare are capable of operating to their cities. Fargo and Sioux Falls are, respectively, 572 and 477 miles from O'Hare. This distance is well within the certificated ranges of the ATR 42, the ATR 72, the DASH 8, the Fokker F27, and the Saab 340B. No rule change is required to allow carriers to serve these cities with aircraft already within their fleets.

Fokker and the RAA suggested adopting similar rules applicable to commuter slot usage at the other HDR airports. The RAA suggested eliminating the HDR altogether. Those comments are beyond the scope of the proposal and will be considered in future rulemakings. Currently pending is a petition by Business Express to extend the use of larger aircraft in commuter slots to LaGuardia and Washington National Airports. As part of that rulemaking action, the potential use of commuter slots with larger aircraft at other HDR airports will be addressed.

AAL asserted that adopting the proposed rule would allow it to hire an additional 1100 employees in the Chicago area alone, potentially infusing the local economy with over \$120 million and creating jobs for graduates of its Maintenance Academy at Midway Airport. Similar figures are repeated by state and Federal government leaders from the Chicago area. The FAA received no comments disputing these figures and has no basis to confirm or deny their accuracy. The rule adopted does not compel this result, however; the choice remains that of the holders of commuter slots at O'Hare whether to use larger aircraft in those slots.

One commenter asserted that the proposed amendment would benefit the airlines and the communities they serve with no cost to the taxpayers. This statement is not necessarily true. Opponents of the proposal have argued that the proposal could lead to diminished service to small communities, triggering the need to subsidize service to those communities under the Essential Air Service program. If government funding had to be provided to replace lost service, to the extent the loss can be attributed to the change in the commuter slot restrictions, that would represent a cost to the taxpayers resulting from this rule.

AAL questioned the proposed 75-day advance request requirement and argued that no approval should be necessary to substitute a jet aircraft operating at the same time at which a commuter turboprop was being flown. The FAA is not persuaded that a carrier is overly burdened by a requirement to submit a request 75 days in advance. Because of the other planning, such as aircraft and

crew rotation schedules, marketing plans, and station staffing a carrier must undertake in effecting a schedule or equipment change, this advance request requirement will inure to the requester's benefit by reducing the risk that the FAA's response will come too late to give a carrier sufficient preparation time or to permit any adjustment if the schedule cannot be granted as requested.

B. Comments Opposing the Proposal

The greatest concern of commenters opposing the proposed rule was the loss or reduction of air service to smaller communities. One commenter believed that increasing the use of commuter slots with larger jets will make those slots more valuable, compelling carriers to use them for higher profit margin routes and making service to smaller communities economically unjustified. Commenters from Toledo, OH, and Champaign, IL, said they were losing service by Air Wisconsin because UAL, which owns Air Wisconsin, was taking the commenter slots for operations with larger aircraft to other markets. Commenters from southern Illinois asserted that 1 jet operation was replacing several commuter operations, thereby removing schedule flexibility which, in turn, risks reduced demand that could then lead to total suspension of service, rather than reinstatement of smaller commuter aircraft service.

Some commenters provided figures that they believe stem from allowing the use of larger aircraft in 25 percent of the commuter slots. The Toledo airport authority, according to a fixed-base operator, has suffered a direct loss of \$165,000 plus lost jobs, lost income for the associated fixed-base operators, and lost passenger spending at the airport because of Air Wisconsin's suspension of service there. Of the passengers using Outagamie County Airport, in Appleton, WI, 61 percent used the O'Hare gateway; Appleton's connections via other hubs are inadequate and involve higher fares due to off-line transfers, according to the Outagamie County Executive.

The director of the Hulman Regional Airport Authority, in Terre Haute, IN, predicted three results if the proposed rule is adopted: (1) Negative economic impacts on small to medium sized communities; (2) negative financial and operational impacts on the airports serving small to medium sized communities; and (3) a greater burden on taxpayers, who must make up for the airports' lost operating revenues if they are to remain open. He asserted that access to Midway is not an equivalent substitute because it lacks O'Hare's connecting flights. Loss of service to a

community means reduction of passenger enplanements, which would, if the number drops below 10,000 annually, endanger FAA entitlement funds and may require Essential Air Service designation, thereby precluding the assessment of Passenger Facility Charges, he further said.

The Michigan Department of Transportation pointed out that, once service is lost, it is very difficult to regain. The Director of the Institute of Aviation at the University of Illinois listed Champaign-Urbana, Lansing, South Bend, and State College (PA) as four of the top five producing markets for United Express' commuter operations and feared that the inclusion of larger aircraft in commuter slots might jeopardize their service, which is vital to research programs at the universities in those communities.

AAL asserted that it would continue to use turboprops in many commuter slots, even without the commuter restrictions, because of its capital investment in turboprop aircraft and corresponding facilities that support turboprop operations at smaller communities' airports, and its need for a combination of service to sustain a successful hub operation.

Notwithstanding AAL's assertion, the FAA is preserving 50 percent of the commuter slots for use strictly by commuter aircraft, as proposed. Increasing the percentage of commuter slots that could be used with larger aircraft is consistent with FAA's objective to reduce regulatory requirements. The selection of a 50 percent limit is intended to achieve a fair balance among competing interests and operational practicalities at O'Hare. No comments criticizing this limit suggested a more appropriate level other than allowing the temporary 25 percent limit to expire and reapplying the commuter slot restrictions to all commuter slots.

Many opposing commenters said that the seat number and aircraft weight restrictions would not deter the use of long-range aircraft in commuter slots. They pointed out that the Fokker 100 and Boeing 737-500 aircraft have sufficient ranges to serve virtually any destination in the continental United States from O'Hare. The FAA recognizes that these two aircraft, among others, meet the restrictions and yet have distant market capability. The intent, however, is to prevent the proliferation of, not totally preclude, the use of long-haul aircraft. The Fokker 100, Boeing 737-500, and other aircraft meeting the restrictions are more likely to serve smaller community markets than DC-10's, B767's, and certain Airbus aircraft.

The weight limit, in combination with the seat limit, will prevent the use of one of these large, long-haul aircraft in, for example, a combination passenger/cargo version that would meet the seat limit but would not be economical to use in a short-haul market.

Many of the commenters opposing the proposed rule criticized it as benefiting only one carrier, AAL. One commenter called it an exemption for AAL, and suggested that it be applied to all the High Density Airports. TWA asserted that the proposed rule would weaken its St. Louis hub and compromise its ability to compete with AAL's O'Hare hub operation. Comments coming from Tulsa, Dallas, Raleigh-Durham, and thousands of AAL employees make it obvious that this proposed rule is likely to enhance AAL's competitive and financial position.

It is not the purpose of the FAA to improve the commercial position of only one carrier. To the extent one member of a regulated industry has positioned itself to benefit from the relaxation of governmental restrictions, the relaxation itself should not be viewed as a conscious effort by the government to confer a benefit on that single entity. The purpose of this rule is to enhance the use of limited resources at O'Hare. That enhancement will benefit the traveling public and the markets that receive a part of that enhanced capacity.

Several alternative methods were recommended to prevent reduction of service to small communities or to increase the use of O'Hare's capacity without relieving the commuter slot restrictions. These recommendations included: (1) Reallocating capacity reserved for non-scheduled aircraft; (2) adding slots for commuter use based on technology and Air Traffic Control (ATC) improvements at O'Hare; (3) repealing the High Density Rule and letting physical capacity and actual demand regulate access, using alternative traffic management controls; (4) approve use of commuter slots with larger aircraft only if access for small and medium sized communities is protected; (5) allow increased usage only after trial periods and subsequent evaluation of the impact; (6) treat slots as assets of the community, not the airline; and (7) accommodate expansion of domestic service during off-peak hours.

The FAA is reviewing the historical data related to use of the capacity reserved for non-scheduled operations. This rulemaking is proceeding independently of that review, since additional capacity is not needed for the amendment. If the FAA's review

indicates that additional capacity can be made available for scheduled operations, the FAA will determine how that capacity should best be allocated in accordance with the specific findings of that review.

Fifty percent of the commuter slots are being preserved for use exclusively by commuter aircraft. The Department will also be monitoring service to small and medium sized communities. Access for these communities is thereby protected to some extent.

Trial periods and subsequent evaluation would entail cumbersome proceedings that would deprive air carriers of a predictable environment in which to plan routes and schedules. The past 2 years' experience with Amendment No. 93-62 indicates that this rule change will cause little impact in the O'Hare operational environment.

Slots can be treated already as assets of the community. The Buy-Sell Rule promulgated in 1985 did not dictate that only air carriers could acquire and hold slots. A significant number of slots are held today by non-carriers. Nothing in the rule prohibits communities from acquiring slots to enhance service to their regions' airports.

Accommodating expansion of services during off-peak hours can be accomplished without this amendment. Off-peak hours (i.e., times outside of the slot control period) fall in a narrow range. These hours are off-peak, by definition, because of reduced demand for air service at those times. This rule allows for incremental enhancement of capacity at times when demand is greatest, benefiting the air carriers and the traveling public, without a detrimental impact on O'Hare's operational environment.

The Suburban O'Hare Commission (SOC) asserted that a 5 percent or even a 1 percent increase in the Day Night Average Sound Level (DNL) 65 decibel (dB) contour at O'Hare was unacceptable to the residents of communities surrounding O'Hare. The environmental evaluation discussed in the NPRM represents a worst case scenario, however, assuming the substitution of the noisiest aircraft meeting the seat and weight limits with and, alternatively, without a Stage 3 restriction. But the aircraft most likely to be substituted under the rule adopted are Fokker 100's operated by AAL and Boeing 737-500's operated by UAL. These aircraft are likely to take the place of the larger turboprops, such as the ATR 42, DASH 8, ATR 72 and F27, which have take-off Effective Perceived Noise Decibel (EPNdB) levels of 83.1, 84.3, 86.5, and 87.5, respectively. The Fokker 100 and 737-500 have take-off

noise levels of EPNdB 81.8 and 83.6 (the take-off weight limit precludes the heavier 737-500 versions), respectively, or up to 6 percent quieter than the turboprops. The most realistic impact of the rule adopted is, therefore, a quieter operating environment around O'Hare.

The SOC also suggested that an Environmental Impact Statement (EIS) should be prepared. The need to prepare an EIS is determined pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321). Because the promulgation of this rule is consistent with existing national environmental policies and objectives as set forth in section 101(a) of NEPA and will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA, the preparation of an EIS is not required. Instead, the FAA has performed an Environmental Analysis using a computer model, as discussed under the Environmental Review section, *infra*.

Also as part of its comments, SOC perceived an inconsistency in the FAA's proposal concerning the 30- and 60-minute limitations. AAL sought in its petition the elimination of the ceiling on the number of slots that could be operated within 30- and 60-minute periods at O'Hare. AAL's request pertained to the broad slot restrictions per half hour or hour set forth in 14 CFR 93.123(a), which encompass more than just those commuter slots in which larger aircraft could be used. The FAA declined to relieve the broad restrictions, but proposed to drop the restriction on the number of commuter slots that could be used with larger aircraft per 30- and 60-minute period set forth in 14 CFR 93.221 (e)(3) and (e)(5) and 14 CFR part 93, appendix B. The FAA is now adopting the proposed amendment.

The Rule

By this action, the FAA is amending part 93 of the Federal Aviation Regulations (14 CFR), subpart S, to permit, in up to 50 percent of each carrier's commuter slot holdings at O'Hare International Airport, the operation of aircraft (1) having an actual seating configuration of 110 or fewer passengers, and (2) having a maximum certificated takeoff weight of less than 126,000 pounds. The cap will limit potential effects on airport operations and preserve at least 50 percent of existing commuter slots for operation with smaller aircraft that might include service to small communities. No matter which carriers hold or operate commuter slots, no more than 50

percent of any carrier's commuter slot base or of the total number of commuter slots at O'Hare can be used for larger aircraft. The FAA is also removing the limits on the number of large aircraft in commuter slot operations per half hour and consecutive half hour periods set forth in 14 CFR 93.221 (e)(3) and (e)(5) and 14 CFR part 93, appendix B, and allowing the continued use of larger aircraft in commuter slots by removing the trial period provision of 14 CFR 93.221(e)(8).

The FAA is modifying the 110-seat restriction promulgated under Amendment No. 93-62. That amendment limits the aircraft size to 110 maximum passenger seats according to the aircraft series' type certificate. This modification will allow the use of any aircraft having an actual seating configuration of 110 or fewer passengers as reflected in the most recent type certification (original, amended, or supplemental) for the operator's airplane, in up to 50 percent of a carrier's commuter slot holdings at O'Hare.

The NPRM solicited comments on whether using the most recent certificate for the aircraft might compel an operator to undergo the process of amending or supplementing a type certificate just to enable it to use the aircraft in commuter slots pursuant to this rule. No comments were received on this point. The FAA concludes, therefore, that using the most recent aircraft certification to determine compliance with the 110 seat limit is appropriate and will not impose an unwarranted burden on any carrier.

The FAA recognizes that even wide-body aircraft might be configured to hold 110 or fewer seats. To ensure that the larger aircraft used in the commuter slots will be comparable in size, the FAA is also adopting a maximum takeoff weight limit of 126,000 pounds, as proposed. This limitation will make the aircraft being used in commuter slots more likely to fit into the short- and medium-haul categories. The weight limit will also preclude heavy jets that would require greater in-flight separation and contribute to air traffic congestion and delays. The adoption of this additional restriction is consistent with the FAA's statements in the preamble to Amendment No. 93-62 that it would consider expanding the rule to include slightly larger aircraft in future rule changes. (56 FR at 41201.)

In the NPRM, the FAA solicited comments about including a Stage 3 restriction. Only two comments expressed support for this noise restriction. Because few, if any, aircraft not meeting the Stage 3 requirement are

likely to be used in commuter slots under this amendment, the FAA finds that a Stage 3 restriction would have little, if any, effect. Therefore, the rule adopted contains no Stage 3 restriction. Regulation of noise will continue pursuant to 14 CFR part 36. The FAA, however, will monitor the type of larger aircraft used in the commuter slots to determine whether there is an increase in the use of non-Stage 3 aircraft due to the implementation of this rule. The FAA may determine that further rulemaking is necessary to ensure that the composition of aircraft in the O'Hare environment is not drastically altered to allow a higher concentration of non-Stage 3 aircraft in the operating environment.

Experience to date under Amendment No. 93-62 does not indicate any direct adverse impact on air traffic delays or congestion. No further operating restrictions appear necessary due to the retention of two requirements that have helped avoid exacerbating congestion at O'Hare. The first requirement is that carriers wishing to use larger aircraft in commuter slots must submit their proposed schedules to ATC for its approval. ATC's review of these requests has included an analysis of all scheduled operations during the specific 5-minute period within which each operation is proposed. ATC will retain the authority to approve or deny a request and will exercise it as necessary. Consequently, up to 50 percent of the commuter slots can be used with larger aircraft without any regard to the 30- and 60-minute restrictions contained in 14 CFR part 93, appendix B, and additional delays should not result. Therefore, the rule adopted eliminates the hourly and half-hourly restrictions found in 14 CFR part 93, appendix B.

The rule as adopted incorporates the proposed 75-day advance request provision. The FAA anticipates a substantial increase in requests to use larger aircraft in commuter slots because of the adoption of this rule. This increase will add to the workload of ATC in analyzing each requested operation's impact on air traffic movement and would require more time to process the requests. Because the carriers have informed the FAA that they need as much notice as possible to schedule aircraft and crews, the FAA will amend the notice provision of 14 CFR 93.221(e)(4) to require that a carrier submit its request to ATC 75 days in advance of the planned operation of a larger aircraft in a commuter slot, enlarging by 15 days the current advance notice requirement. ATC retains the authority to disapprove a

request based on actual conditions at the time of the request or anticipated at the planned start date. ATC's approval, conditional approval, or disapproval will continue to be issued more than 45 calendar days before the planned start date stated in the notice to allow requesting carriers time to make operational and marketing preparations. ATC approval for a specific operation will be valid for 30 days after the planned start date, and will then expire if the operation has not commenced.

The second requirement is that an arrival gate be available without any planned waiting time. This amendment does not change the current requirement that any carrier intending to operate commuter slots with larger aircraft have sufficient gates available for those operations, to prevent ramp and taxiway congestion which could result from additional jet operations. This requirement appears to have helped avoid any adverse impact on ground congestion that might have resulted from Amendment No. 93-62. If an aircraft arrives without having a gate available, the ground controller typically must direct the aircraft to a holding area located away from the gate area and then clear the aircraft back into the gate area when a gate becomes available. Depending on the area used, this process may involve directing the aircraft across active runways and taxiways, further increasing controller workload and impeding other operations. Additionally, holding areas at O'Hare are limited and will be further limited during the winter season when certain holding areas are designated for use as secondary deicing facilities.

The advance notice and certification of gate availability requirements contained in Amendment No. 93-62 have helped prevent the bunching of additional operations at peak periods. These requirements provide the foundation for increasing to 50 percent the number of commuter slots for which larger aircraft could be used. Therefore, the rule adopted retains the requirement that gates be available to service these operations and that a carrier obtain ATC approval for its operation prior to the start of such operation.

Experience in implementing and working with Amendment No. 93-62 continues to indicate that the agency can remove the trial basis provision the amendment contained. The use of commuter slots as proposed herein should not exacerbate delays because ATC will retain its authority under the notice provisions of existing 14 CFR 93.223(e)(5); that authority permits ATC to ensure that the scheduling of additional arrivals and departures with

larger aircraft will be distributed to avoid bunching of operations with resulting congestion and delays. If further experience indicates a need for adjustment, however, the rule can be amended to resolve any unforeseen circumstance that may arise.

Removing the expiration date of 14 CFR 93.221(e)(8) will subject any future changes to notice and comment procedures. This provides some stability upon which the airlines can rely in developing their long-term schedules to maximize the use of O'Hare's capacity.

As proposed, the rule adopted adds to the notice provision the requirement to provide the series, type, and actual seating configuration of the aircraft to be used in the commuter slots. This information is needed to ensure that the seat and weight limits are being met.

The Department is concerned about the potential effect of the rule modification 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 to continue or add jet service. Contrary to the belief of many of those commenters, no current government regulation prevents AAL or any other carriers from providing jet service to their communities, and this rule will not require any carrier to fly to their cities, much less dictate the type of equipment to be used.

The Department seeks to promote access by all communities to the air transportation system. It ensures that Essential Air Service is provided to eligible points and supports the availability of air service to other small communities. To balance the interests of maximum economic use of a limited resource, on the one hand, and the Department's interest in preserving service to smaller markets in the Chicago region, on the other, the FAA is increasing the number of commuter slots that can be operated with larger aircraft only to 50 percent of the commuter slots held by each carrier at O'Hare, rather than eliminating the commuter slot restrictions entirely. Limiting seating to 110 passengers and maximum takeoff weight to 126,000 pounds will inhibit the use of commuter slots with long-haul aircraft designed for higher demand markets. The Department will continue to monitor the use of commuter slots at O'Hare, using the Essential Air Service program when necessary.

The NPRM solicited comments on slot withdrawals for international operations under 14 CFR 93.217, if commuter slots were going to be used for operations with larger aircraft that might serve

foreign markets. Commenters opposing the proposed rule saw international withdrawals of commuter slots as potentially reduced slots available to serve smaller communities. AAL, UAL, and other supporters of the proposed rule also opposed incorporating commuter slots into O'Hare's international withdrawal regime. Although the proposal was not to subject all commuter slots to withdrawal for international operations, the FAA will not alter the international slot provisions to include any commuter slots.

Environmental Review

The FAA has conducted three analyses of the potential environmental impact of this rule amendment using the Area Equivalent Method (AEM) computer model. The first analysis factored in the use of larger aircraft in 50 percent of the commuter slots without any Stage 3 restriction. As a worst possible case scenario, it assumed that all of the affected slots would be used with B737-200's or DC-9-30's; these are Stage 2 aircraft that generate the most noise among the aircraft that the rule will allow to operate in commuter slots. The analysis indicated a worst scenario increase of 6 percent in the Day Night Average Sound Level (DNL) 65 dB contour.

The second analysis included Stage 3 aircraft only. Applying a Stage 3 restriction brought the DNL 65 dB contour increase down to less than 1 percent.

The third analysis was performed assuming that Fokker 100's would be substituted in 108 slots for commuter turboprops holding 50 to 74 seats, and B737-500's would similarly be substituted in another 108 slots. This distribution resulted in a DNL 65 dB contour increase of less than 0.5 percent.

The FAA has therefore determined that this amendment, even without the Stage 3 requirement, is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act (NEPA) and would not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA. As mentioned previously, however, the FAA will monitor the type of larger aircraft used in the commuter slots to determine whether there is an increase in the use of non-Stage 3 aircraft due to the implementation of this rule. The FAA may determine that further rulemaking on this subject is necessary to ensure

that the composition of aircraft in the O'Hare environment is not drastically altered to allow a higher concentration of non-Stage 3 aircraft in the operating environment at the airport.

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 amendment is not "major" as defined in the Executive Order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this amendment without identifying alternatives.

Costs

This amendment is voluntary and will not impose any additional costs on part 121 or part 135 air carriers. This rule will allow them to use some of their commuter slots (up to 50 percent) at O'Hare Airport for operations with larger aircraft. The decision whether to use the larger aircraft rests, however, strictly with the operators, not the FAA. An increase from 108 to a maximum of 217 operations per day using larger aircraft will be permitted in commuter slots under this amendment.

The amendment will not significantly alter the operating environment at O'Hare for scheduled part 121 or part 135 air carriers. It is not expected that ground operations and departure and arrival procedures will be significantly affected.

This regulation will have no effect on the safety of either air or ground operations. ATC will retain the ability to disapprove proposed arrival or departure schedules of additional larger airplane operations at O'Hare. ATC procedures will continue to maintain a high level of safety and efficiency.

Many of the opposing comments claimed that the rule would inflict significant economic losses on communities that lose part or all of their air transportation services. It is the

decision of the air service provider, however, and not the rule, that will determine any changes in service. The rule removes, in part, a restriction that perpetuates economic inefficiencies in the use of limited resources, O'Hare's capacity, by air carriers. If increasing economic efficiency leads indirectly, i.e., as a result of an air carrier's marketing determination, to a shifting of services to a different market, that shift would likely be economically positive. At worst, one community's loss of service would be offset by another community's gain, in which case the net economic impact is neutral.

Benefits

This amendment will reduce some of the current restrictions on the use of commuter slots at O'Hare and will permit air carriers holding commuter slots additional flexibility in the use of these slots. To the extent jet aircraft are substituted for commuter turboprops, the rule will benefit passengers flying in those aircraft to and from Chicago.

The amendment could save time for the traveling public. For most commuter flights, which are short-range, turbojets would not provide any significant time savings. Passengers on long commuter flights, however, would save time. 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 \$41 per hour for 1992. Allowing turbojet airplanes to be used on long commuter flights would save \$680 in passenger time for each long commuter trip. This regulation will allow an additional 109 commuter slots to be used in this way. Assuming half of the slots will be used for long commuter flights with turbojet equipment, this amendment will save about \$37,000 per day in passenger time.

One commenter criticized this same analysis that was calculated for the NPRM. The basis for the criticism was that some communities had experienced reduced frequency of flights through schedule consolidations under Amendment No. 93-62. The reduced schedule flexibility could cause passengers additional waiting time, for example, between connecting flights at O'Hare, thereby negating any time savings gained through shorter flying times. The FAA acknowledges that such a result is possible, but the airlines may

change their schedules and reduce the number of flights serving a given community whether this rule is promulgated or not. This rule neither adds to nor detracts from their ability to adjust their schedules at will. The issue raised is immaterial to the regulatory relief provided air carriers through this rule. The rule will enable faster and enhanced service to more passengers, and the FAA upholds its conclusion, therefore, that the rule is beneficial.

Comparison on Benefits and Costs

The FAA finds that there will be no significant costs directly attributable to this regulation. However, there are some measurable benefits. As a result, the FAA has determined that the amendment will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines for 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 or fewer 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 \$4,600 per year for unscheduled operators, \$60,200 per year for scheduled operators, and \$115,500 per year for scheduled operators with aircraft containing no less than 60 passenger seats.

No small entity owning or operating nine or fewer airplanes holds commuter slots at O'Hare. Thus, the FAA determines that this amendment will have no significant economic impact on a substantial number of small entities.

Commenters have mentioned that their local economies or businesses will be helped or hurt, depending on the commenter's location, by the rule. As stated previously, the rule has no direct impact on communities outside of the Chicago region. Secondary effects stemming from air carriers' decisions are beyond the scope of this determination and could not, as a

practical matter, be meaningfully quantified.

International Trade Impact Assessment

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

Paperwork Reduction Act

This rule amendment does not substantially change 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 has approved the information collection provision of subpart S through August 31, 1995. OMB Approval Number 2120-0524 has been assigned to subpart S.

Federalism Implications

The amendment set forth herein will not have substantial direct effects on the states, on the relationship between the national government and that of any state, 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 will not have federalism implications warranting a Federalism Assessment.

Conclusion

For the above reasons, the FAA has determined that this rule (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). Further, I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (air), Reporting and recordkeeping requirements.

The Rule Amendment

Accordingly, pursuant to the authority delegated to me, the FAA

amends 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. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 *et seq.*; 49 U.S.C. 106(g).

2. Paragraphs (e)(1) and (e)(2) of § 93.221 are revised to read as follows:

§ 93.221 Transfer of slots.

* * * * *

(e) * * *

(1) Air carrier aircraft that may be operated under this paragraph are limited to aircraft:

(i) Having an actual seating configuration of 110 or fewer passengers; and

(ii) Having a maximum certificated takeoff weight of less than 126,000 pounds.

(2) No more than 50 percent of the total number of commuter slots held by a slot holder at O'Hare International Airport may be used with aircraft described in paragraph (e)(1) of this section.

* * * * *

3. Paragraphs (e)(3), (e)(5), and (e)(8) of § 93.221 are removed.

4. Section 93.221(e)(4) is redesignated as § 93.221(e)(3) and amended as follows:

In the first sentence, remove the number "60" and add in its place the number "75", and in the second sentence, after the words "aircraft type" add ", aircraft series, actual aircraft seating configuration".

5. Paragraphs (e)(6) and (e)(7) of § 93.221 are redesignated as paragraphs (e)(4) and (e)(5), respectively.

Appendix B to Part 93—[Removed]

6. Appendix B to part 93 is removed.

Issued in Washington, DC, on July 20, 1993.

Joseph N. Del Balzo,
Acting Administrator.

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